



UTAH STATE LEGISLATURE

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July 31, 2019

Dear Colleagues:

As discussed at the Utah Water Task Force meeting on July 29, the water banking group has developed the attached draft legislation, which a diverse group of 60 professionals from across Utah's water community developed over the past two years. The legislation would authorize a 10-year pilot program during which water banks could be created and monitored.

We would appreciate your input because water banking will need the support and participation of Utah's water community to work. Accordingly, we will discuss the bill in greater detail and solicit feedback at the next Task Force meeting on August 26. Importantly, we will not be asking the Task Force to endorse the legislation at the next meeting. Instead, we are working with Sterling Brown of the Utah Farm Bureau Federation and others to meet with stakeholders around the state to collect feedback and comments. Once we have completed this outreach effort, we will incorporate the feedback we receive and seek the Task Force's endorsement at a later date.

Please send any comments or questions that you may have regarding the legislation to us at jiwamoto@le.utah.gov and thawkes@le.utah.gov, with copies to Patricia Owen with the Office of Legislative Research (powen@le.utah.gov); Nathan Bracken with Smith Hartvigsen (nbracken@water.law); and Emily Lewis with Clyde Snow (eel@clydesnow.com). More information is also available at: <https://utahwaterbank.org/>.

As you review the draft legislation in preparation for the next Task Force meeting, please keep the following in mind:

1. Water banking is not a new concept and is used in a number of other western states. The water banking group studied the banking programs in other states and various basins around Utah to develop this draft legislation.
2. The legislation is intended to further the Governor's 2017 Recommended Water Strategy, which recommended water banking as a way of providing more flexible water management by facilitating the voluntary and temporary transfer of water for a variety of uses, including but not limited to agriculture uses, municipal uses, and environmental needs.


3. Consistent with the Governor's Strategy, one of the goals of the legislation is to provide an alternative to "buy-and-dry" transfers and court actions in which water rights are permanently taken out of agriculture to satisfy urban or environmental needs.
4. Instead, the legislation is intended to lessen the need for "buy-and-dry" transfers and court actions by authorizing voluntary, temporary, and local water markets in which right holders can voluntarily lease or "bank" water rights for others to use for a variety of uses in exchange for compensation. There are already a number of informal water marketing efforts around Utah that are similar to water banking. The legislation would not affect those efforts. It would, however, create a 10-year pilot program that would establish a statutory framework that would give water right holders the option of creating and operating their own water banks, subject to public notice and comment as well as oversight from the Board of Water Resources and coordination with the State Engineer.
5. No banks would be operated or managed at the state level and the decision to create a water bank or to participate in one would be entirely voluntary.
6. The legislation authorizes right holders to create two types of banks: (1) "statutory banks," which would operate as open marketplaces where water rights could be leased and used within a defined service area; and (2) "contract banks" based on option contracts or other voluntary leasing arrangements involving a public water supplier. Notably, many public water suppliers in Utah are already using "contract banks" and the legislation seeks to provide more clarity and transparency for this practice.
7. Rights holders seeking to deposit a water right into a bank would go through the same change application process that applies to all water rights. This means the State Engineer would review all applications that seek to place a water right into a bank to ensure that they do not impair other rights. It also means that the existing limitations on out-of-basin transfers would also apply.
8. After the State Engineer approves a right for use within a bank, the right could then be used within the bank's service area for other uses for a specified period of time without the need for another change application, subject to any limitations imposed by the State Engineer.
9. Water right holders would retain ownership of their water rights at all times and the rights would revert to their prior "heretofore" use when withdrawn from the bank without the need for a change application. Water rights deposited within a bank would also not be subject to abandonment and forfeiture for the period of time the State Engineer authorizes them to be used within a bank.
10. As a pilot program, every bank would submit an annual report to the Board of Water Resources. At the end of the pilot program, the Board would report on the effectiveness of the water banking program to the Legislature, which would then determine whether to continue the program, modify it, or allow it to terminate.

11. Because this program is intended to be a pilot, we have tried to keep it as simple as possible to limit the potential for unintended consequences and to make it easier to study the effectiveness of the program.


Lastly and most importantly, this is still a draft that will hopefully improve as we incorporate your comments and feedback. Moreover, because this is still a work in progress, we have not sought the endorsement of any of the water banking group participants. Instead, we hope to work with you to refine this draft and develop a consensus bill that Utah's water community can support.

Thank you in advance for your comments.

Sincerely,



Senator Jani Iwamoto
Assistant Senate Minority Whip
Utah State Senate



Representative Timothy Hawkes
Rules Chair
Utah House of Representatives

1 **WATER BANKING AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill addresses water banking.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ authorizes the Division of Water Resources, the state engineer, and the Board of
- 11 Water Resources to implement water banking;
- 12 ▶ enacts the Water Banking Act, including:
 - 13 • defining terms;
 - 14 • outlining the objectives of a water banking system;
 - 15 • providing the scope of the act;
 - 16 • outlining how statutory water banks are established;
 - 17 • outlining how contract water banks are established;
 - 18 • requiring annual reports to the Board of Water Resources;
 - 19 • addressing default of a water bank and revocation of a water bank;
 - 20 • providing for banking of water;
 - 21 • addressing condemnation of banked water;
 - 22 • addressing delivery request for loaned water in water banks;
 - 23 • addressing the enforcement powers of the state engineer; and
 - 24 • imposing reporting procedures on the board and the Department of Natural
 - 25 Resources;
- 26 ▶ provides for a repeal date of the water banking provisions;
- 27 ▶ specifies that water rights deposited in a water bank are not subject to abandonment
- 28 or forfeiture while approved for use in a water bank; and
- 29 ▶ makes technical and conforming amendments.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63I-1-273**, as last amended by Laws of Utah 2019, Chapters 96 and 246

37 **73-1-4**, as last amended by Laws of Utah 2017, Chapter 132

38 **73-10-4**, as last amended by Laws of Utah 1969, Chapter 198

39 ENACTS:

40 **73-31-101**, Utah Code Annotated 1953

41 **73-31-102**, Utah Code Annotated 1953

42 **73-31-103**, Utah Code Annotated 1953

43 **73-31-104**, Utah Code Annotated 1953

44 **73-31-201**, Utah Code Annotated 1953

45 **73-31-202**, Utah Code Annotated 1953

46 **73-31-203**, Utah Code Annotated 1953

47 **73-31-204**, Utah Code Annotated 1953

48 **73-31-205**, Utah Code Annotated 1953

49 **73-31-301**, Utah Code Annotated 1953

50 **73-31-302**, Utah Code Annotated 1953

51 **73-31-303**, Utah Code Annotated 1953

52 **73-31-304**, Utah Code Annotated 1953

53 **73-31-401**, Utah Code Annotated 1953

54 **73-31-402**, Utah Code Annotated 1953

55 **73-31-501**, Utah Code Annotated 1953

56 **73-31-502**, Utah Code Annotated 1953

57 **73-31-503**, Utah Code Annotated 1953

58 **73-31-601**, Utah Code Annotated 1953

59



60 *Be it enacted by the Legislature of the state of Utah:*

61 Section 1. Section **63I-1-273** is amended to read:

62 **63I-1-273. Repeal dates, Title 73.**

63 (1) In relation to the Legislative Water Development Commission, on January 1, 2021:

64 ~~[(1)]~~ (a) in Subsection 73-10g-105(3), the language that states "and in consultation
65 with the State Water Development Commission created in Section 73-27-102" is repealed;

66 ~~[(2)]~~ (b) Subsection 73-10g-203(4)(a) is repealed; and

67 ~~[(3)]~~ (c) Title 73, Chapter 27, State Water Development Commission, is repealed.

68 (2) In relation to Title 73, Chapter 31, Water Banking Act, on December 31, 2030:

69 (a) Subsection 73-1-4(2)(e)(x) is repealed;

70 (b) Subsection 73-10-4(1)(h) is repealed; and

71 (c) Title 73, Chapter 31, Water Banking Act, is repealed.

72 Section 2. Section **73-1-4** is amended to read:

73 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
74 **seven years -- Nonuse application.**

75 (1) As used in this section:

76 (a) "Public entity" means:

77 (i) the United States;

78 (ii) an agency of the United States;

79 (iii) the state;

80 (iv) a state agency;

81 (v) a political subdivision of the state; or

82 (vi) an agency of a political subdivision of the state.

83 (b) "Public water supplier" means an entity that:

84 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
85 industrial use; and

86 (ii) is:

87 (A) a public entity;

88 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
89 Service Commission;

90 (C) a community water system:

91 (I) that:

92 (Aa) supplies water to at least 100 service connections used by year-round residents; or

93 (Bb) regularly serves at least 200 year-round residents; and

94 (II) whose voting members:

- 95 (Aa) own a share in the community water system;
- 96 (Bb) receive water from the community water system in proportion to the member's
97 share in the community water system; and
- 98 (Cc) pay the rate set by the community water system based on the water the member
99 receives; or
- 100 (D) a water users association:
- 101 (I) in which one or more public entities own at least 70% of the outstanding shares; and
102 (II) that is a local sponsor of a water project constructed by the United States Bureau of
103 Reclamation.
- 104 (c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.
- 105 (d) "Water company" means the same as that term is defined in Section 73-3-3.5.
- 106 (e) "Water supply entity" means an entity that supplies water as a utility service or for
107 irrigation purposes and is also:
- 108 (i) a municipality, water conservancy district, metropolitan water district, irrigation
109 district, or other public agency;
- 110 (ii) a water company regulated by the Public Service Commission; or
111 (iii) any other owner of a community water system.
- 112 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
113 appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a
114 water right for a period of at least seven years, the water right or the unused portion of that
115 water right is subject to forfeiture in accordance with Subsection (2)(c).
- 116 (b) (i) An appropriator or the appropriator's successor in interest may file an
117 application for nonuse with the state engineer.
- 118 (ii) A nonuse application may be filed on all or a portion of the water right, including
119 water rights held by a water company.
- 120 (iii) After giving written notice to the water company, a shareholder may file a nonuse
121 application with the state engineer on the water represented by the stock.
- 122 (iv) (A) The approval of a nonuse application excuses the requirement of beneficial use
123 of water from the date of filing.
- 124 (B) The time during which an approved nonuse application is in effect does not count
125 toward the seven-year period described in Subsection (2)(a).

126 (v) The filing or approval of a nonuse application or a series of nonuse applications
127 under Subsection (3) does not:

128 (A) constitute beneficial use of a water right;

129 (B) protect a water right that is already subject to forfeiture under this section; or

130 (C) bar a water right owner from:

131 (I) using the water under the water right as permitted under the water right; or

132 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided

133 by law.

134 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the
135 water right may not be forfeited unless a judicial action to declare the right forfeited is
136 commenced:

137 (A) within 15 years from the end of the latest period of nonuse of at least seven years;

138 or

139 (B) within the combined time of 15 years from the end of the most recent period of
140 nonuse of at least seven years and the time the water right was subject to one or more nonuse
141 applications.

142 (ii) (A) The state engineer, in a proposed determination of rights filed with the court
143 and prepared in accordance with Section 73-4-11, may not assert that a water right was
144 forfeited unless the most recent period of nonuse of seven years ends or occurs:

145 (I) during the 15 years immediately preceding the day on which the state engineer files
146 the proposed determination of rights with the court; or

147 (II) during the combined time immediately preceding the day on which the state
148 engineer files the proposed determination of rights consisting of 15 years and the time the
149 water right was subject to one or more approved nonuse applications.

150 (B) After the day on which a proposed determination of rights is filed with the court a
151 person may not assert that a water right subject to that determination was forfeited before the
152 issuance of the proposed determination, unless the state engineer asserts forfeiture in the
153 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection
154 to the proposed determination that asserts forfeiture.

155 (iii) A water right, found to be valid in a decree entered in an action for general
156 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim

157 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
158 engineer filed the related proposed determination of rights with the court, unless the decree
159 provides otherwise.

160 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
161 the water right is forfeited:

162 (A) the right to beneficially use the water reverts to the public; and

163 (B) the water made available by the forfeiture:

164 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

165 and

166 (II) second, may be appropriated as provided in this title.

167 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or
168 abandoned water or a portion of the water is:

169 (i) permitted to run to waste; or

170 (ii) beneficially used by others without right with the knowledge of the water right

171 holder.

172 (e) This section does not apply to:

173 (i) the beneficial use of water according to a lease or other agreement with the
174 appropriator or the appropriator's successor in interest;

175 (ii) a water right if its place of use is contracted under an approved state agreement or
176 federal conservation fallowing program;

177 (iii) those periods of time when a surface water or groundwater source fails to yield
178 sufficient water to satisfy the water right;

179 (iv) a water right when water is unavailable because of the water right's priority date;

180 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with

181 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

182 (A) the water is stored for present or future beneficial use; or

183 (B) storage is limited by a safety, regulatory, or engineering restraint that the
184 appropriator or the appropriator's successor in interest cannot reasonably correct;

185 (vi) a water right if a water user has beneficially used substantially all of the water right

186 within a seven-year period, provided that this exemption does not apply to the adjudication of a

187 water right in a general determination of water rights under Chapter 4, Determination of Water

188 Rights;

189 (vii) except as provided by Subsection (2)(g), a water right:

190 (A) (I) owned by a public water supplier;

191 (II) represented by a public water supplier's ownership interest in a water company; or

192 (III) to which a public water supplier owns the right of beneficial use; and

193 (B) conserved or held for the reasonable future water requirement of the public, which
194 is determined according to Subsection (2)(f);

195 (viii) a supplemental water right during a period of time when another water right
196 available to the appropriator or the appropriator's successor in interest provides sufficient water
197 so as to not require beneficial use of the supplemental water right; [~~or~~]

198 (ix) a period of nonuse of a water right during the time the water right is subject to an
199 approved change application where the applicant is diligently pursuing certification[~~]; or~~

200 (x) a water right subject to an approved change application for use within a water bank
201 that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the
202 period of time the state engineer authorizes the water right to be used within the water bank.

203 (f) (i) The reasonable future water requirement of the public is the amount of water
204 needed in the next 40 years by:

205 (A) the persons within the public water supplier's reasonably anticipated service area
206 based on reasonably anticipated population growth; or

207 (B) other water use demand.

208 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
209 anticipated service area:

210 (A) is the area served by the community water system's distribution facilities; and

211 (B) expands as the community water system expands the distribution facilities in
212 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

213 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
214 Subsection (2)(e)(vii) applies if:

215 (i) the public water supplier submits a change application under Section 73-3-3; and

216 (ii) the state engineer approves the change application.

217 (3) (a) The state engineer shall furnish a nonuse application form requiring the
218 following information:

- 219 (i) the name and address of the applicant;
- 220 (ii) a description of the water right or a portion of the water right, including the point of
221 diversion, place of use, and priority;
- 222 (iii) the quantity of water;
- 223 (iv) the period of use;
- 224 (v) the extension of time applied for;
- 225 (vi) a statement of the reason for the nonuse of the water; and
- 226 (vii) any other information that the state engineer requires.
- 227 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
228 application once a week for two successive weeks:
- 229 (A) in a newspaper of general circulation in the county in which the source of the water
230 supply is located and where the water is to be beneficially used; and
- 231 (B) as required in Section 45-1-101.
- 232 (ii) The notice shall:
- 233 (A) state that an application has been made; and
- 234 (B) specify where the interested party may obtain additional information relating to the
235 application.
- 236 (c) [~~Any~~] An interested person may file a written protest with the state engineer against
237 the granting of the application:
- 238 (i) within 20 days after the notice is published, if the adjudicative proceeding is
239 informal; and
- 240 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
241 formal.
- 242 (d) In [~~any proceedings~~] a proceeding to determine whether the nonuse application
243 should be approved or rejected, the state engineer shall follow the procedures and requirements
244 of Title 63G, Chapter 4, Administrative Procedures Act.
- 245 (e) After further investigation, the state engineer may approve or reject the application.
- 246 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
247 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
248 for nonuse.
- 249 (b) A reasonable cause for nonuse includes:

- 250 (i) a demonstrable financial hardship or economic depression;
- 251 (ii) a physical [causes or changes] cause or change that ~~[render]~~ renders use beyond the
 252 reasonable control of the water right owner so long as the water right owner acts with
 253 reasonable diligence to resume or restore the use;
- 254 (iii) the initiation of water conservation or an efficiency [practices] practice, or the
 255 operation of a groundwater recharge recovery program approved by the state engineer;
- 256 (iv) operation of a legal [proceedings] proceeding;
- 257 (v) the holding of a water right or stock in a mutual water company without use by
 258 ~~[any]~~ a water supply entity to meet the reasonable future requirements of the public;
- 259 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
 260 implementing an existing, approved water management plan; or
- 261 (vii) the loss of capacity caused by deterioration of the water supply or delivery
 262 equipment if the applicant submits, with the application, a specific plan to resume full use of
 263 the water right by replacing, restoring, or improving the equipment.

264 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
 265 notify the applicant by mail or by any form of electronic communication through which receipt
 266 is verifiable, of the date when the nonuse application will expire.

267 (b) An applicant may file a subsequent nonuse application in accordance with this
 268 section.

269 Section 3. Section **73-10-4** is amended to read:

270 **73-10-4. Powers and duties of board.**

271 (1) The board shall have the following powers and duties to:

272 ~~[(1) To]~~ (a) authorize studies, investigations, and plans for the full development, and
 273 ~~[utilization]~~ use and promotion of the water and power resources of the state, including
 274 preliminary surveys, stream gauging, examinations, tests, and other estimates either separately
 275 or in consultation with federal, state and other agencies~~[-]~~;

276 ~~[(2) To]~~ (b) enter into contracts subject to the provisions of this ~~[act]~~ chapter for the
 277 construction of conservation projects ~~[which]~~ that in the opinion of the board will conserve and
 278 ~~[utilize]~~ use for the best advantage of the people of this state the water and power resources of
 279 the state, including projects beyond the boundaries of the state of Utah located on interstate
 280 waters when the benefit of such projects accrues to the citizens of the state~~[-]~~;

281 ~~[(3) To]~~ (c) sue and be sued in accordance with applicable law~~[-];~~
 282 ~~[(4) To]~~ (d) supervise in cooperation with the governor and the executive director of
 283 natural resources all matters affecting interstate compact negotiations and the administration of
 284 ~~[such]~~ the compacts affecting the waters of interstate rivers, lakes and other sources of
 285 supply~~[-];~~

286 ~~[(5) To]~~ (e) contract with federal and other agencies and with the National
 287 ~~[Reclamation]~~ Water Resources Association and to make studies, investigations and
 288 recommendations and do all other things on behalf of the state for any purpose ~~[which]~~ that
 289 relates to the development, conservation, protection and control of the water and power
 290 resources of the state~~[-];~~

291 ~~[(6) To]~~ (f) consult and advise with the Utah Water Users' Association and other
 292 organized water users' associations in the state~~[-];~~

293 ~~[(7) To]~~ (g) consider and make recommendations on behalf of the state ~~[of Utah]~~ of
 294 reclamation projects or other water development projects for construction by any agency of the
 295 state or United States and in so doing recommend the order in which projects shall be
 296 undertaken~~[-]; or~~

297 (h) review, approve, and revoke an application to create a water bank under Chapter
 298 31, Water Banking Act, collect an annual report, maintain the water banking website, and
 299 conduct any other function related to a water bank as described in Chapter 31, Water Bank Act.

300 ~~[(8)]~~ (2) Nothing contained ~~[herein]~~ in this section shall be construed to impair or
 301 otherwise interfere with the authority of the state engineer granted by Title 73, Water and
 302 Irrigation, except as ~~[herein]~~ specifically otherwise provided in this section.

303 Section 4. Section **73-31-101** is enacted to read:

CHAPTER 31. WATER BANKING ACT

Part 1. General Provisions

306 **73-31-101. Title.**

307 This chapter is known as the "Water Banking Act."

308 Section 5. Section **73-31-102** is enacted to read:

309 **73-31-102. Definitions.**

310 As used in this chapter:

311 (1) "Applicant" means a record holder of a perfected water right or public entity

312 applying for board approval of a water bank.

313 (2) "Application" means an application submitted to the board to approve a water bank.

314 (3) "Banked water" means a water right, or a portion of a water right, deposited in a
315 water bank that the state engineer authorizes for use in a water bank through an approved
316 change application.

317 (4) "Board" means the Board of Water Resources.

318 (5) "Borrower" means a person seeking to use banked water within a water bank's
319 service area.

320 (6) "Contract water bank" means a water bank created pursuant to Part 3, Contract
321 Water Banks.

322 (7) "Delivery request" means a request to use banked water made by a borrower in
323 accordance with a water bank's policies approved under the water bank's application.

324 (8) "Deposit" means depositing banked water for use within the service area of the
325 water bank.

326 (9) "Depositor" means a person seeking to bank water in a water bank.

327 (10) "Hereafter use" means the conditions of use the state engineer authorizes for
328 banked water for the term of an approved change application.

329 (11) "Heretofore use" means the authorized conditions of use that were in effect before
330 the state engineer approves a change application authorizing new conditions for the use of
331 banked water.

332 (12) "Loaned water" means banked water that is used pursuant to an approved delivery
333 request.

334 (13) "Perfected water right" means a water right evidenced by:

335 (a) a decree;

336 (b) a certificate of appropriation;

337 (c) a diligence claim to the use of surface or underground water; or

338 (d) a proposed determination or court order issued in a general adjudication.

339 (14) "Public entity" means the same as that term is defined in Section 73-1-4 except for
340 the United States or an agency of the United States.

341 (15) "Publicly post" means publishing notice in accordance with Subsection
342 73-3-6(1) and posting notice to the water bank website.

343 (16) "Service area" means the geographic area where a water bank operates.

344 (17) "State engineer" means the state engineer appointed under Section 73-2-1.

345 (18) "Statutory water bank" means a water bank created pursuant to Part 2, Statutory
 346 Water Banks.

347 (19) "Water bank" means a contract water bank or a statutory water bank.

348 (20) "Water bank website" means a website overseen by the board for the purpose of
 349 making water banking information available to the public.

350 (21) "Water year" means November 1 through October 31.

351 Section 6. Section **73-31-103** is enacted to read:

352 **73-31-103. Objectives of water banks.**

353 The objectives in creating a water bank are to:

354 (1) promote:

355 (a) the efficient use of the public's water;

356 (b) transparency and access to water markets;

357 (c) temporary, flexible, and low cost water transactions between water users; and

358 (d) Utah's agricultural economy by providing access to water resources and income for
 359 Utah's agricultural industry; and

360 (2) facilitate:

361 (a) ways of protecting sustainable agricultural production while meeting growing
 362 municipal and industrial water demands, such as fallowing arrangements;

363 (b) the use of water to meet environmental and water quality needs;

364 (c) water rights administration and distribution; and

365 (d) meeting other statewide water objectives, programs, and strategies.

366 Section 7. Section **73-31-104** is enacted to read:

367 **73-31-104. Scope.**

368 Nothing in this chapter prevents a water user from entering into an agreement regarding
 369 the use of water that differs from the requirements of this chapter, except that only a water bank
 370 approved under this chapter may avail itself of the provisions applicable to a water bank.

371 Section 8. Section **73-31-201** is enacted to read:

372 **Part 2. Statutory Water Banks**

373 **73-31-201. Approval of statutory water bank.**

374 (1) The board shall approve a statutory water bank pursuant to this part.

375 (2) As a condition of approval, a statutory water bank shall agree to be subject to this
376 chapter.

377 Section 9. Section **73-31-202** is enacted to read:

378 **73-31-202. Statutory water bank application.**

379 (1) A record holder of a perfected water right may request approval for a proposed
380 statutory water bank if the place of use and point of diversion for the applicant's perfected
381 water right are encompassed within the proposed service area of the proposed statutory water
382 bank and the applicant files an application with the board that includes the following:

383 (a) the name of the statutory water bank;

384 (b) a mailing address for the statutory water bank;

385 (c) the corporate or other legal form of the statutory water bank;

386 (d) a proposed service area map for the statutory water bank;

387 (e) whether the statutory water bank will accept deposits of surface water rights or
388 groundwater rights, provided that:

389 (i) a statutory water bank may not accept deposits of both surface water rights and
390 groundwater rights; and

391 (ii) the applicant's perfected water right is of the type accepted by the statutory water
392 bank.

393 (f) a description of how the statutory water bank's governing body will be structured
394 and operate, including:

395 (i) the number of members of the governing body, which may not be an even number;

396 (ii) requisite qualifications for governing members, including terms and election or
397 appointment procedures; and

398 (iii) the initial governing members of a statutory water bank including:

399 (A) the person's name, telephone number, and post office address; and

400 (B) a confirmation that the person meets the criteria listed in Subsection (1)(e)(ii);

401 (g) procedures that describe how the statutory water bank will:

402 (i) determine and fund its administrative costs;

403 (ii) design, facilitate, and conduct transactions between borrowers and depositors for
404 the use of banked water; and

405 (iii) accept, reject, and manage water rights seeking to be deposited in the statutory
406 water bank, including:

407 (A) what information a depositor is to provide to sufficiently inform the statutory water
408 bank, the state engineer, or other distributing entity as to whether it is feasible to use the water
409 right within the statutory water bank's designated service area and therefore be eligible to be the
410 subject of a change application seeking authorization to use the water right as banked water;

411 (B) how a potential depositor is to work with the statutory water bank to jointly file a
412 change application seeking authorization to use the water right as banked water;

413 (C) conditions for depositing banked water with the statutory water bank;

414 (D) how payments to depositors are determined;

415 (E) under what conditions a depositor may use water at the heretofore place of use
416 pursuant to Subsection 73-31-501(4); and

417 (F) how the statutory water bank will return an outstanding deposit to the record owner
418 of the deposit if the statutory water bank dissolves or the statutory water bank's approval to
419 operate is revoked pursuant to this chapter;

420 (iv) accept, review, and approve delivery requests, including:

421 (A) deadlines for submitting a delivery request to the statutory water bank;

422 (B) a cost or fee associated with submitting a delivery request and how that cost or fee
423 is to be applied or used by the statutory water bank;

424 (C) what information a borrower is to include on a delivery request to sufficiently
425 inform the statutory water bank, state engineer, or another distributing entity whether the
426 delivery request is feasible within the statutory water bank's designated service area;

427 (D) any notice and comment procedures for notifying other water users of the delivery
428 request;

429 (E) the criteria the statutory water bank will use to assess and approve delivery
430 requests;

431 (F) how the statutory water bank will inform water users who have submitted a
432 delivery request if the delivery request is approved or denied, the reasons for denial if denied,
433 and conditions if approved;

434 (G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial
435 of a delivery request, including identifying who has the burden in an appeal and the standards

436 of review;
437 (H) how prices for the use of loaned water are determined; and
438 (I) how the statutory water bank will coordinate with the state engineer to facilitate
439 distribution of approved delivery requests;
440 (v) how the statutory water bank will ensure that the aggregate amount of loaned water
441 during a calendar year does not exceed the total sum of the deposited water; and
442 (vi) how the statutory water bank will resolve complaints regarding the statutory water
443 bank's operations;
444 (h) how the statutory water bank is to be dissolved; and
445 (i) a signed declaration or affidavit, signed under criminal penalty under the law of
446 Utah, from at least two officials of the statutory water bank affirming that:
447 (i) the information submitted is correct;
448 (ii) as a condition for permission to operate, the statutory water bank has no
449 preferences between uses and borrowers for the use of loaned water;
450 (iii) the statutory water bank shall comply with the conditions of an approved changed
451 application for banked water; and
452 (iv) the statutory water bank shall report to the state engineer known violations of
453 approved change applications for banked water.
454 (2) The board may prepare a form or online application for an applicant to use in
455 submitting an application to the board under this part.
456 Section 10. Section **73-31-203** is enacted to read:
457 **73-31-203. Action by board on statutory water bank applications.**
458 (1) Upon receipt of an application under Subsection 73-31-202, the board shall record
459 the date the board receives the application.
460 (2) The board shall:
461 (a) examine an application for completeness to determine whether additional
462 information, corrections, amendments, or deletions are required for the board to process the
463 application pursuant to this part;
464 (b) review an application to determine whether it meets the objectives described in
465 Section 73-31-103;
466 (c) consider an application complete if the application minimally satisfies the

467 requirements of this part; and

468 (d) notify the applicant within 30 days of receiving the application if any additional
469 information or changes are needed to process the application.

470 (3) Within 30 days of the date the board receives a complete application, the board
471 shall publically post notice and the application.

472 (4) The notice required by Subsection (3) shall state:

473 (a) that an application to create a statutory water bank has been filed with the board;

474 (b) where an interested party may obtain additional information related to the
475 application; and

476 (c) the date, time, and place of the public meeting required by Section 73-31-204,
477 which may not be more than 30 days from the date notice is sent.

478 Section 11. Section **73-31-204** is enacted to read:

479 **73-31-204. Public meeting -- Comments.**

480 (1) On the date indicated in the notice publically posted under Section 73-31-203, the
481 board shall hold a public meeting to:

482 (a) inform water users within the service area of the proposed statutory water bank; and

483 (b) receive comments from water users regarding the application.

484 (2) The board shall accept public comments for a period of time no less than 30 days
485 after the date of the public meeting.

486 (3) The board shall review public comments when reviewing the proposed statutory
487 water bank's application, but submitting a comment does not create a right of appeal of the
488 board's decision nor is the board required to address how or whether public comments
489 impacted the board's decision.

490 (4) A statutory water bank may review public comments and comments from the board
491 before a final decision is made by the board. If the statutory water bank desires to make
492 changes to the statutory water bank's application, the statutory water bank may notify the board
493 in writing before the board takes action on the application that the statutory water bank will
494 submit a revised application following the same process as filing the original application.

495 Section 12. Section **73-31-205** is enacted to read:

496 **73-31-205. Review of statutory bank application.**

497 (1) After complying with Sections 73-31-203 and 73-31-204, the board shall approve

498 an application if there is reason to believe that the application satisfies the requirements of
 499 Section 73-31-202, which is to be liberally interpreted by the board to facilitate the objectives
 500 described in Section 73-31-103.

501 (2) In approving an application, the board shall:

502 (a) issue an order approving the statutory water bank;

503 (b) approve persons to serve as the initial members of the governing body in
 504 accordance with the proposed statutory water bank's structure and Section 73-31-202; and

505 (c) publish the approved application on the water banking website.

506 (3) If the board denies an application, the board shall issue a written explanation to the
 507 applicant that sets forth the reason for denial.

508 Section 13. Section **73-31-301** is enacted to read:

509 **Part 3. Contract Water Banks**

510 **73-31-301. Approval of contract water bank.**

511 (1) The board shall approve a contract water bank pursuant to this part.

512 (2) As a condition of approval, a contract water bank shall agree to be subject to this
 513 chapter.

514 Section 14. Section **73-31-302** is enacted to read:

515 **73-31-302. Contract water bank application.**

516 (1) A public entity that seeks to have a contract for water use approved as a contract
 517 water bank under this chapter, shall submit to the board an application that meets the following
 518 criteria:

519 (a) the name of the contract water bank;

520 (b) a mailing address for the contract water bank;

521 (c) the proposed service area map for the contract water bank;

522 (d) a description of how the contract water bank's governing body will be structured
 523 and operate;

524 (e) a description for how water delivery requests and loaned water are to be
 525 administered;

526 (f) criteria for the participation, if any, of non-public entities;

527 (g) includes a copy of the contract, provided that a public entity may redact any
 528 proprietary or otherwise privileged information;

529 (h) information regarding how the public can learn when the submittal of an
530 application or contract that is the basis of the contract water bank is on the agenda of a public
531 meeting of the public entity; and

532 (i) whether the contract water bank will accept deposits of surface water rights or
533 groundwater rights, provided that a contract water bank may not accept deposits of both surface
534 water rights and groundwater rights.

535 (2) The board may prepare a form or online application for an applicant to use in
536 submitting an application to the board under this part.

537 Section 15. Section **73-31-303** is enacted to read:

538 **73-31-303. Action by board on contract water bank application.**

539 (1) Upon receipt of an application for a proposed contract water bank, the board shall
540 record the day on which the board receives the application.

541 (2) The board shall:

542 (a) examine the application to determine whether additional information, corrections,
543 amendments, or deletions are required for the board to process the application in accordance
544 with this part;

545 (b) review the application with the purposes of fulfilling the objectives of a water bank
546 described in Section 73-31-103;

547 (c) consider the application complete if it minimally satisfies the requirements of the
548 part; and

549 (d) notify the applicant within 30 days of receiving the application if any additional
550 information is needed to process the application.

551 (3) A contract water bank may review public comments and comments from the board
552 before a final decision is made by the board. If the contract water bank desires to make changes
553 to the contract water bank's application, the contract water bank may notify the board in writing
554 before the board takes action on the application that the contract water bank will submit a
555 revised application following the same process as filing the original application.

556 (4) Within 30 days upon receipt of a complete application, the board shall publically
557 post the application and notice.

558 (5) The notice required by Subsection (4), shall state:

559 (a) that an application to approve a contract water bank has been filed with the board;

560 and

561 (b) where a person may review the application.

562 Section 16. Section **73-31-304** is enacted to read:

563 **73-31-304. Review of contract water bank application.**

564 (1) After complying with Section 73-31-303, the board shall approve an application for
565 a contract water bank if there is reason to believe that the application satisfies the requirements
566 of Section 73-31-302, which shall be liberally interpreted by the board to facilitate the
567 objectives described in Section 73-31-103.

568 (2) In approving an application, the board shall:

569 (a) issue an order approving the contract water bank; and

570 (b) publish a summary of the information submitted by the public entity under
571 Subsection 73-31-302(1) on the water banking website.

572 (3) If the board denies an application, the board shall issue a written explanation to the
573 applicant that sets forth the reason for the denial, provided that the board's decision regarding
574 an application does not create a right of appeal.

575 Section 17. Section **73-31-401** is enacted to read:

576 **Part 4. Reporting by Water Banks**

577 **73-31-401. Annual reports.**

578 (1) (a) On or before November 30 of each year, the governing body of a water bank
579 shall submit to the board an annual report on the governing body's management of the water
580 bank's operations for the previous water year on a form provided by the board that provides the
581 information in Subsection (2).

582 (b) Proof to the satisfaction of the board that the water bank has mailed,
583 hand-delivered, or sent the annual report electronically is considered compliance with this
584 Subsection (1).

585 (2) The annual report shall include the following information for the prior water year:

586 (a) a tabulation of the volume and change application number of water rights deposited
587 in the water bank;

588 (b) the nature of use of banked water before it is deposited in the water bank and the
589 volumes of water allocated to each before being deposited;

590 (c) a tabulation of loaned water from that water bank, which includes:

- 591 (i) the change application number;
592 (ii) the volume of loaned water;
593 (iii) the nature of use of the loaned water and the volumes of water allocated to each
594 use; and
595 (iv) for a statutory water bank, the borrower;
596 (d) for a statutory water bank:
597 (i) the amounts charged for the loaned water, including a breakdown by nature of use if
598 appropriate;
599 (ii) the revenue generated by the statutory water bank, including the sources of
600 revenue;
601 (iii) the amounts paid out to depositors;
602 (iv) the statutory water bank's expenses;
603 (v) the balance at the end of the water year of the statutory water bank's bank account;
604 (vi) the accounting practices used by the statutory water bank;
605 (vii) whether there is pending or ongoing litigation involving the statutory water bank;
606 (viii) whether there are, or have been, any governmental audits of the statutory water
607 bank;
608 (iv) any proposed amendments to an approved statutory water bank's procedures for the
609 coming water year;
610 (x) a narrative explanation of any inconsistencies in the annual report or in the
611 operation of the statutory water bank; and
612 (xi) a narrative explanation of how the statutory water bank is or is not fulfilling the
613 objectives described in Section 73-31-103; and
614 (e) a signed declaration or affidavit, signed under criminal penalty under the law of
615 Utah, from at least two officials of the statutory water bank that the information in the report is
616 correct.
617 (3) The board shall deliver a copy of the prescribed form to each water bank before
618 August 30 of each year.
619 (4) If the annual report contains the information required by this section, the board
620 shall publically post the annual report.
621 (5) If the annual report does not contain the information required by this section, the

622 board shall promptly notify the reporting water bank in writing and return the report to the
623 water bank for correction, providing a written explanation to the water bank that sets forth the
624 information that needs to be corrected. The water bank shall remain in good standing if it
625 submits a corrected annual report within 60 days of the written notice of the board that satisfies
626 the requirements of this section.

627 (6) If a water bank fails to submit an annual report by November 30, or fails to submit
628 a corrected annual report within 60 days of the rejection of an annual report, the water bank
629 shall automatically be in default under this chapter.

630 Section 18. Section **73-31-402** is enacted to read:

631 **73-31-402. Default of water bank -- Revocation of application.**

632 (1) The board shall provide a water bank that is in default under this chapter a written
633 notice that:

634 (a) describes the reason for the default; and

635 (b) provides the water bank a 90-day corrective period from the date of the notice to
636 correct the cause of the default.

637 (2) The board shall:

638 (a) publically post a notice given under Section (1); and

639 (b) notify the state engineer of the default.

640 (3) If the board determines that the water bank has corrected the default within the
641 90-day corrective period, the board shall:

642 (a) provide the water bank written notice that the water bank's default has been cured;

643 (b) publically post the written notice required under Subsection (3)(a); and

644 (c) notify the state engineer that the water bank has corrected the default within the
645 90-day corrective period.

646 (4) (a) If the water bank fails to correct the default within the 90-day corrective period,
647 or if a second default occurs within the 90-day corrective period of the first default, the water
648 bank's application shall automatically be revoked at the end of the current calendar year.

649 (b) The board shall mail notice to the water bank that the water bank's application has
650 been revoked and that its operations under the application shall cease at the end of the current
651 calendar year.

652 (c) The board shall publically post the notice required under Subsection (4)(b).

653 (d) A water bank shall notify the water bank's depositors and borrowers of the
654 dissolution within 60 days of receiving a notice under this Subsection (4) and shall enact the
655 procedures set forth in its application for ending its transactions and returning depositor's water
656 rights.

657 (5) The state engineer may not approve a change application that seeks to deposit a
658 water right into a water bank that is in default under this chapter.

659 Section 19. Section **73-31-501** is enacted to read:

660 **Part 5. Deposits**

661 **73-31-501. Banking water.**

662 (1) A water right may be deposited with a water bank pursuant to an approved change
663 application filed under Section 73-3-3 or 73-3-3.5.

664 (2) The state engineer may not approve a change application that authorizes the use of
665 a water right within a water bank for any period of time that exceeds December 31, 2030.

666 (3) Under Section 73-1-4(2)(e)(x) banked water is excused from beneficial use
667 requirements while approved for use in the water bank.

668 (4) The holder of a change application that authorizes the holder to deposit a water
669 right within a water bank may exercise the water right in its heretofore use if:

670 (a) the water right holder does so under the authority, control, and accounting of the
671 water bank;

672 (b) the water bank provides notice to the state engineer that describes the use consistent
673 with the loaned water operating procedures of the water bank; and

674 (c) the water right holder does not, in any case, simultaneously use the water for both
675 the heretofore use and hereafter use.

676 (5) If an entity authorized to condemn a water right leases a water right under this
677 chapter, the entity may not begin the process of condemning the water right:

678 (a) while the entity leases the water right under this chapter; or

679 (b) within five years after the day on which the entity's lease of the water right under
680 this chapter ends.

681 Section 20. Section **73-31-502** is enacted to read:

682 **73-31-502. Delivery request for loaned water in water bank.**

683 (1) A borrower may use water from a water bank for any use within the water bank's

684 service area consistent with the objectives described in Section 73-31-103.

685 (2) A borrower shall make use of banked water by submitting a delivery request to use
686 banked water from a water bank.

687 (3) The state engineer administratively supervises delivery of water to a borrower. The
688 state engineer may:

689 (a) review an approved delivery request at any point in time to ensure the delivery
690 request complies with a state engineer order approving water rights for use in the water bank,
691 established distribution procedures based on priority, or both; and

692 (b) restrict delivery of loaned water if the approved delivery request causes impairment
693 to other water users.

694 (4) A water bank shall keep a daily accounting of loaned water.

695 (5) A water bank shall refer known illegal water use actions to the state engineer's
696 enforcement program pursuant to Section 73-2-25.

697 (6) A water bank is responsible for the payment of all distribution costs assessed for
698 the delivery of banked water as provided in Section 73-5-1.

699 Section 21. Section **73-31-503** is enacted to read:

700 **73-31-503. State engineer enforcement.**

701 This chapter does not limit or impair the enforcement powers of the state engineer set
702 forth in Section 73-2-25.

703 Section 22. Section **73-31-601** is enacted to read:

704 **Part 6. Board Reports**

705 **73-31-601. Reports.**

706 (1) In accordance with Section 68-3-14, the board shall report annually by no later than
707 the November interim meeting of the Natural Resources, Agriculture, and Environment Interim
708 Committee regarding the implementation of this chapter.

709 (2) The board shall submit a written report to the Natural Resources, Agriculture, and
710 Environment Interim Committee by October 31, 2029, recommending whether the Legislature
711 should take one or more of the following actions:

712 (a) remove or extend the repeal date in Section 63I-1-273;

713 (b) amend the chapter, a provision in the chapter, or a provision in the Utah Code; or

714 (c) take no action and allow the chapter to repeal under Section 63I-1-273.

715 (3) At a minimum, the written report described under Subsection (2) shall include the
716 following:

717 (a) a summary of the implementation of the chapter;

718 (b) a statement describing and justifying the recommendation; and

719 (c) a description of the positive and negative aspects of the recommendation.

720 (4) Before the board's submission of the written report described in Subsection (2), the
721 Department of Natural Resources shall prepare and submit a draft report to the board for the
722 board's review, provided that the executive director of the Department of Natural Resources
723 may consult with another state agency or person that the executive director considers necessary
724 to prepare the draft report.

725 (5) (a) Upon receipt of the draft report described in Subsection (4), the board shall
726 review the draft report and solicit public comment on the draft report by:

727 (i) requesting written comments; and

728 (ii) holding no less than one public hearing at which:

729 (A) the Department of Natural Resources shall explain and justify the draft report's
730 recommendation; and

731 (B) an interested person may comment on or speak for or against the draft report's
732 recommendations.

733 (b) The board shall give notice of the opportunity for public comments described under
734 this Subsection (5) by:

735 (i) mailing notice to each water bank to the water bank's address of record;

736 (ii) publishing notice in a newspaper of general circulation in the state; and

737 (iii) publishing notice as required in Section 45-1-101.

738 (c) The notice described in Subsection (5)(b) shall state:

739 (i) that the board is soliciting public comment on the draft report and shall hold a
740 public hearing on a certain day, time, and place fixed in the notice, which shall not be less than
741 30 days after the day the first notice is published, for the purpose of hearing comments
742 regarding the draft report;

743 (ii) that the board shall accept written comments on the draft report for a period of no
744 less than 30 days after the day the first notice is published, and include instructions for how the
745 public may submit comments; and

746 (iii) how the public may obtain a copy of the draft report.
747 (6) The board shall consider timely public comments submitted under this section, and
748 may require the Department of Natural Resources to make revisions the board considers
749 necessary before approving and submitting the final written report required in Subsection (2).