

## **Chapter 3b Groundwater Recharge and Recovery Act**

### **Part 1 General Provisions**

#### **73-3b-101 Short title.**

This chapter is known as the "Groundwater Recharge and Recovery Act."

Enacted by Chapter 146, 1991 General Session

#### **73-3b-102 Definitions.**

As used in this chapter:

- (1) "Artificially recharge" means to place water in an aquifer:
  - (a) by means of:
    - (i) injection;
    - (ii) surface infiltration; or
    - (iii) another method; and
  - (b) for the purposes of:
    - (i) storing the water; and
    - (ii) recovering the water.
- (2) "Division" means Division of Water Rights.
- (3) "Recharge permit" means a permit issued by the state engineer to construct and operate a recharge project.
- (4) "Recharge project" means to artificially recharge water into an aquifer.
- (5) "Recovery permit" means a permit issued by the state engineer to construct and operate a recovery project.
- (6) "Recovery project" means to withdraw from an aquifer water that has been artificially recharged pursuant to a recharge permit.

Amended by Chapter 107, 2010 General Session

#### **73-3b-103 Prohibitions.**

- (1) A person may not artificially recharge an aquifer without first obtaining a recharge permit.
- (2) A person may not recover from an aquifer water that has been artificially recharged unless the person first obtains a recovery permit.
- (3) A person holding a recharge permit or recovery permit may not operate a recharge project or recovery project in a manner that is inconsistent with the permit conditions set by the state engineer.

Amended by Chapter 107, 2010 General Session

#### **73-3b-104 Rulemaking power of state engineer.**

The state engineer may make rules to administer this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**73-3b-105 Administrative procedures.**

The administrative procedures applicable to the issuance, modification, suspension, or revocation of a recharge permit or recovery permit are those set forth in Title 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and 73-3-15.

Amended by Chapter 107, 2010 General Session

**73-3b-106 Water right for recharged water -- Change of use of recovered water.**

- (1) A person proposing to artificially recharge water into an aquifer must have:
  - (a) a valid water right for the water proposed to be recharged; or
  - (b) an agreement to use the water proposed to be recharged with a person who has a valid water right for the water proposed to be recharged.
- (2) A person who holds a recovery permit may use or exchange recovered water only in the manner in which the water was permitted to be used or exchanged before the water was artificially recharged, unless a change or exchange application is filed and approved pursuant to Section 73-3-3 or 73-3-20, as applicable.

Amended by Chapter 107, 2010 General Session

**73-3b-107 Recoverable water -- State engineer to determine.**

A person who holds a recovery permit may recover the amount of water stored by the recharge project which the state engineer determines has reached the aquifer and remains within the hydrologic area of influence.

Enacted by Chapter 146, 1991 General Session

**Part 2  
Recharge and Recovery Permits**

**73-3b-201 Application for a recharge permit -- Required information -- Filing fee.**

- (1) The application for obtaining a recharge permit shall include the following information:
  - (a) the name and mailing address of the applicant;
  - (b) the name of the groundwater basin or groundwater sub-basin in which the applicant proposes to operate the recharge project;
  - (c) the name and mailing address of the owner of the land on which the applicant proposes to operate the recharge project;
  - (d) a legal description of the location of the proposed recharge project;
  - (e) the source and annual quantity of water proposed to be artificially recharged;
  - (f) evidence of a water right or an agreement to use the water proposed to be artificially recharged;
  - (g) the quality of the water proposed to be artificially recharged and the water quality of the receiving aquifer;
  - (h) evidence that the applicant has applied for all applicable water quality permits;
  - (i) a plan of operation for the proposed recharge project, which shall include:
    - (i) a description of the proposed recharge project;

- (ii) its design capacity;
  - (iii) a detailed monitoring program; and
  - (iv) the proposed duration of the recharge project;
  - (j) a copy of a study demonstrating:
    - (i) the area of hydrologic impact of the recharge project;
    - (ii) that the recharge project is hydrologically feasible;
    - (iii) that the recharge project will not:
      - (A) cause unreasonable harm to land; or
      - (B) impair any existing water right within the area of hydrologic impact; and
    - (iv) the percentage of anticipated recoverable water;
  - (k) evidence of financial and technical capability; and
  - (l) any other information that the state engineer requires.
- (2)
- (a) A filing fee must be submitted with the application.
  - (b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

**73-3b-202 Issuance of recharge permit -- Criteria -- Conditions.**

- The state engineer:
- (1) shall issue a recharge permit if:
    - (a) the applicant has:
      - (i) the technical and financial capability to construct and operate the recharge project; and
      - (ii)
        - (A) a valid water right for the use of the water proposed to be artificially recharged; or
        - (B) an agreement to use the water proposed to be artificially recharged with a person who has a valid water right for the use of the water proposed to be artificially recharged; and
    - (b) the project:
      - (i) is hydrologically feasible;
      - (ii) will not cause unreasonable harm to land;
      - (iii) will not impair any existing water right within the area of hydrologic impact; and
      - (iv) will not adversely affect the water quality of the aquifer;
  - (2) shall condition any approval on acquiring the applicable water quality permits prior to construction and operation of the recharge project; and
  - (3) may attach to the permit any condition the state engineer determines is appropriate.

Amended by Chapter 107, 2010 General Session

**73-3b-203 Proof of completion, certification, or lapse of recharge permit.**

- (1) Sixty days before the date on which the recharge permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof of completion is due.
- (2)
  - (a) Before the date on which the recharge permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include:
    - (i) the location and description of the recharge works constructed;

- (ii) the water source for the water artificially recharged and where the water is delivered for artificial recharge;
  - (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from the water source described in Subsection (2)(a)(ii);
  - (iv) the method of artificially recharging the water; and
  - (v) any other information the state engineer requires.
- (b) The state engineer may waive the filing of a map, a profile, or drawing if in the state engineer's opinion the written proof of completion adequately describes the construction and the nature and extent of the recharge project.
- (c) The completed proof shall conform to a rule established by the state engineer.
- (3) A recharge permit will lapse if the proof of completion of the recharge project's construction is not submitted to the state engineer within five years from the date of the permit application's approval, unless:
- (a) the applicant requests an extension of time to complete the recharge project's construction; and
  - (b) the state engineer approves the extension of time.
- (4)
- (a) The state engineer shall issue a recharge certificate if the recharge permittee has demonstrated to the state engineer's satisfaction that:
    - (i) a recharge project is perfected in accordance with the recharge permit; and
    - (ii) the water is being artificially recharged.
  - (b) The recharge certificate shall include:
    - (i) the name and post office address of the recharge permittee;
    - (ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be recharged;
    - (iii) the name of the water source from which the water to be artificially recharged is diverted; and
    - (iv) other information that defines the extent and conditions of the recharge permit.
  - (c) A recharge certificate issued for a recharge permit need show no more than the facts shown in the proof of completion.
  - (d)
    - (i) The state engineer shall:
      - (A) retain and file one copy of the recharge certificate; and
      - (B) deliver one copy of the recharge certificate to the recharge permittee.
    - (ii) A recharge permittee shall file the recharge certificate with the county recorder of the county in which the water is recharged.
  - (e) The recharge certificate issued and filed under this section is prima facie evidence of the permittee's right to the artificially recharged water for the purpose, at the place, and during the time specified in the recharge certificate.

Amended by Chapter 81, 2021 General Session

**73-3b-204 Application for a recovery permit -- Required information.**

- (1) A person may file a recovery permit application with a recharge permit application.
- (2) The application for obtaining a recovery permit shall include the following information:
  - (a) the name and mailing address of the applicant;
  - (b) a legal description of the location of the existing well or proposed new well from which the applicant intends to recover artificially recharged water;

- (c) a written consent from the owner of the recharge permit, if the applicant does not hold the recharge permit;
  - (d) the name and mailing address of the owner of the land from which the applicant proposes to recover artificially recharged water;
  - (e) the name or description of the artificially recharged groundwater aquifer which is the source of supply;
  - (f) the purpose for which the artificially recharged water will be recovered;
  - (g) the depth and diameter of the existing well or proposed new well;
  - (h) a legal description of the area where the artificially recharged water is proposed to be used;
  - (i) the design pumping capacity of the existing well or proposed new well; and
  - (j) any other information including maps, drawings, and data that the state engineer requires.
- (3)
- (a) A filing fee must be submitted with the application.
  - (b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

**73-3b-205 Issuance of recovery permit -- Criteria -- Conditions.**

The state engineer:

- (1) shall issue the recovery permit if the state engineer determines that:
  - (a) the proposed recovery of artificially recharged water will not impair any existing water right;
  - (b) the applicant is the holder of an approved recharge permit or recovery permit, or if the applicant does not hold the recharge permit, has a valid agreement with the owner of the recharge permit to divert and use the recovered water; and
  - (c) the recovery point of diversion is located within the area of hydrologic impact of the recharge project, as determined by the state engineer; and
- (2) may attach to the permit any conditions the state engineer determines are appropriate.

Amended by Chapter 107, 2010 General Session

**73-3b-206 Proof of completion, certification, or lapse of recovery permit.**

- (1) Sixty days before the date on which the recovery permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof of completion is due.
- (2)
  - (a) Before the date on which the recovery permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include documentation and a map prepared by a Utah licensed land surveyor or Utah licensed professional engineer that shows:
    - (i) the location and description of the recovery works constructed;
    - (ii) the method of recovering the artificially recharged water;
    - (iii) the facilities in place to recover and deliver the recovered water; and
    - (iv) the purpose and place of use of the recovered water.
  - (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state engineer's opinion the written proof of completion adequately describes the works and the nature and extent of the recovery project.
  - (c) The completed proof shall conform to a rule established by the state engineer.

- (3) A recovery permit will lapse if the recovery project is not completed within five years from the date of the recovery permit application's approval unless:
  - (a) the applicant requests an extension of time to complete the recovery project; and
  - (b) the state engineer approves the extension of time.
- (4)
  - (a) The state engineer shall issue a recovery certificate if the recovery permittee has demonstrated to the state engineer's satisfaction that:
    - (i) the recovery project is perfected in accordance with the recovery permit; and
    - (ii) water is being recovered.
  - (b) The recovery certificate shall include:
    - (i) the name and post office address of the recovery permittee;
    - (ii) the works used to recover and deliver recovered water; and
    - (iii) other information that defines the extent and conditions of the recovery permit.
  - (c) A recovery certificate issued for a recovery permit need show no more than the facts shown in the proof of completion.
  - (d) A recovery certificate issued under this section does not extend the rights described in the recovery permit.
  - (e)
    - (i) The state engineer shall:
      - (A) retain and file one copy of the recovery certificate; and
      - (B) deliver one copy of the recovery certificate to the recovery permittee.
    - (ii) A recovery permittee shall file the recovery certificate with the county recorder of the county in which the water is recovered.
  - (f) The recovery certificate issued and filed under this section is prima facie evidence of the recovery permittee's right to the recovered water for the purpose, at the place, and during the time specified in the recovery certificate.

Amended by Chapter 81, 2021 General Session

**73-3b-207 Assignment of permits.**

- (1) A person who holds a recharge or recovery permit may not assign a permit to another person without the written approval of the state engineer.
- (2) The state engineer must approve an assignment if the proposed assignee meets the requirements of Section 73-3b-202 or 73-3b-205, as applicable.

Enacted by Chapter 146, 1991 General Session

**73-3b-208 Proposed new well -- Compliance with water well construction rules.**

An applicant for a recharge permit or recovery permit who intends to construct a new well to recharge or recover artificially recharged water must comply with Sections 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of water wells.

Amended by Chapter 107, 2010 General Session

**Part 3**  
**Groundwater Recharge and Recovery Operations**

**73-3b-301 Storage account -- Monitoring and reporting required.**

- (1) The state engineer shall establish a storage account for each groundwater recharge and recovery project for which a permit has been issued.
- (2) In accordance with specifications of the state engineer, any person holding a groundwater recharge or recovery permit shall:
  - (a) monitor the operation of the project and its impact on land, the groundwater aquifer, and water rights within the project's area of hydrologic impact; and
  - (b) file reports with the state engineer regarding:
    - (i) the quantity of water stored and recovered; and
    - (ii) the water quality of the recharged water, receiving aquifer, and recovered water.

Enacted by Chapter 146, 1991 General Session

**73-3b-302 Fee.**

- (1) The state engineer shall assess an annual fee, in accordance with Section 63J-1-504, on each person who holds a groundwater recharge or recovery permit.
- (2) The fee shall reflect the division's costs to administer and monitor groundwater recharge and recovery projects.

Amended by Chapter 183, 2009 General Session

**73-3b-303 Modification of recharge or recovery permits.**

- (1) The state engineer, on his own initiative or at the request of any person holding a recharge or recovery permit, may modify the conditions of the respective permit, if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer.
- (2) Before any permit condition is modified, the state engineer may require notice to potentially impaired water users if he finds that the modification under consideration may impair existing water rights.

Enacted by Chapter 146, 1991 General Session

**Part 4  
Enforcement and Penalties**

**73-3b-401 Revocation or suspension of recharge and recovery permits.**

The state engineer may:

- (1) periodically review a project to determine if the person who holds the recharge or recovery permit is complying with the conditions of the permit; and
- (2) permanently revoke or temporarily suspend a permit for good cause after an investigation and a hearing.

Enacted by Chapter 146, 1991 General Session

**73-3b-402 Penalty.**

- (1) A person who violates Section 73-3b-103 is subject to a civil penalty in an amount not to exceed \$10,000 per day.
- (2) An action to recover damages under this section shall be brought by the state engineer in the district court in the county in which the violation occurred.

Enacted by Chapter 146, 1991 General Session