

GROUNDWATER MANAGEMENT PLAN

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Ure

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill authorizes the state engineer to create a groundwater management plan.

Highlighted Provisions:

This bill:

- ▶ authorizes the state engineer to create a groundwater management plan for any groundwater basin or aquifer;
- ▶ allows conjunctive management of hydrologically connected ground and surface water;
- ▶ describes the purpose and effect of a groundwater management plan;
- ▶ outlines the requirements for creating a groundwater management plan;
- ▶ eliminates a provision addressing administration of groundwater rights; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-5-1, as last amended by Chapter 41, Laws of Utah 2000

ENACTS:

73-5-15, Utah Code Annotated 1953

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

31 Section 1. Section **73-5-1** is amended to read:

32 **73-5-1. Appointment of water commissioners -- Procedure -- Hearing to**
33 **determine adequacy of underground water supply.**

34 (1) (a) If, in the judgment of the state engineer or the district court, it is necessary to
35 appoint a water commissioner for the distribution of water from any river system or water
36 source, the commissioner shall be appointed for a four-year term by the state engineer.

37 (b) The state engineer shall determine whether all or a part of a river system or other
38 water source shall be served by a commissioner, and if only a part is to be served, the state
39 engineer shall determine the boundaries of that part.

40 (c) The state engineer may appoint:

41 (i) more than one commissioner to distribute water from all or a part of a water source;

42 or

43 (ii) a single commissioner to distribute water from several separate and distinct water
44 sources.

45 (2) (a) The state engineer shall consult with the water users before appointing a
46 commissioner. The form of consultation and notice to be given shall be determined by the state
47 engineer so as to best suit local conditions, while providing for full expression of majority
48 opinion.

49 (b) If a majority of the water users agree upon a qualified person to be appointed as
50 water commissioner, the duties the person shall perform, and the compensation the person shall
51 receive, and they make recommendations to the state engineer on the appointment, duties, and
52 compensation, the state engineer shall act in accordance with their recommendations.

53 (c) If a majority of water users do not agree on the appointment, duties, or
54 compensation, the state engineer shall make a determination for them.

55 (3) (a) (i) The salary and expenses of the commissioner and all other expenses of
56 distribution, including printing, postage, equipment, water users' expenses, and any other
57 expenses considered necessary by the state engineer, shall be borne pro rata by the users of

58 water from the river system or water source in accordance with a schedule to be fixed by the
59 state engineer.

60 (ii) The schedule shall be based on the established rights of each water user, and the
61 pro rata share shall be paid by each water user to the state engineer on or before May 1 of each
62 year.

63 (b) The payments shall be deposited in the Water Commissioner Fund created in
64 Section 73-5-1.5.

65 (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state
66 engineer may do any or all of the following:

67 (i) create a lien upon the water right affected by filing a notice of lien in the office of
68 the county recorder in the county where the water is diverted and bring an action to enforce the
69 lien;

70 (ii) forbid the use of water by the delinquent water user or the delinquent water user's
71 successors or assignees, while the default continues; or

72 (iii) bring an action in the district court for the unpaid expense and salary.

73 (d) In any action brought to collect any unpaid assessment or to enforce any lien under
74 this section, the delinquent water user shall be liable for the amount of the assessment, interest,
75 any penalty, and for all costs of collection, including all court costs and a reasonable attorney
76 fee.

77 (4) (a) A commissioner may be removed by the state engineer for cause.

78 (b) The users of water from any river system or water source may petition the district
79 court for the removal of a commissioner and after notice and hearing, the court may order the
80 removal of the commissioner and direct the state engineer to appoint a successor.

81 ~~[(5) (a) In addition to the power granted to the state engineer to appoint water~~
82 ~~commissioners for the distribution of water, the state engineer may, at any time, hold a hearing,~~
83 ~~or upon a petition signed by not less than one-third of the users of underground waters in any~~
84 ~~area as defined by the state engineer, shall hold a hearing, to determine whether the~~
85 ~~underground water supply within such area is adequate for the existing claims.]~~

86 ~~[(b) (i) Notice of the hearing shall be given in a form and manner which, in the~~
87 ~~judgment of the state engineer, best suits local conditions.]~~

88 ~~[(ii) The state engineer may make a full investigation and provide findings for the~~
89 ~~hearing.]~~

90 ~~[(c) If the findings show that the water supply is inadequate for existing claims, the~~
91 ~~state engineer shall divide, or request that the water commissioner divide, the water supply~~
92 ~~among the claimants entitled to the water in accordance with their respective rights.]~~

93 Section 2. Section **73-5-15** is enacted to read:

94 **73-5-15. Groundwater management plan.**

95 (1) As used in this section:

96 (a) "Critical management area" means a groundwater basin in which the groundwater
97 withdrawals consistently exceed the safe yield.

98 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a
99 groundwater basin over a period of time without exceeding the long-term recharge of the basin
100 or unreasonably affecting the basin's physical and chemical integrity.

101 (2) (a) The state engineer may regulate groundwater withdrawals within a specific
102 groundwater basin by adopting a groundwater management plan in accordance with this section
103 for any groundwater basin or aquifer or combination of hydrologically connected groundwater
104 basins or aquifers.

105 (b) The objectives of a groundwater management plan are to:

106 (i) limit groundwater withdrawals to safe yield;

107 (ii) protect the physical integrity of the aquifer; and

108 (iii) protect water quality.

109 (c) The state engineer shall adopt a groundwater management plan for a groundwater
110 basin if more than 1/3 of the water right owners in the groundwater basin request that the state
111 engineer adopt a groundwater management plan.

112 (3) (a) In developing a groundwater management plan, the state engineer may consider:

113 (i) the hydrology of the groundwater basin;

- 114 (ii) the physical characteristics of the groundwater basin;
- 115 (iii) the relationship between surface water and groundwater, including whether the
- 116 groundwater should be managed in conjunction with hydrologically connected surface waters;
- 117 (iv) the geographic spacing and location of groundwater withdrawals;
- 118 (v) water quality;
- 119 (vi) local well interference; and
- 120 (vii) other relevant factors.

121 (b) The state engineer shall base the provisions of a groundwater management plan on
122 the principles of prior appropriation.

123 (c) (i) The state engineer shall use the best available scientific method to determine
124 safe yield.

125 (ii) As hydrologic conditions change or additional information becomes available, safe
126 yield determinations made by the state engineer may be revised by following the procedures
127 listed in Subsection (5).

128 (4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a
129 groundwater basin shall be limited to the basin's safe yield.

130 (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer
131 shall:

132 (A) determine the groundwater basin's safe yield; and

133 (B) adopt a groundwater management plan for the groundwater basin.

134 (iii) If the state engineer determines that groundwater withdrawals in a groundwater
135 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that
136 groundwater basin based on the priority date of the water rights under the groundwater
137 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a
138 different distribution.

139 (b) When adopting a groundwater management plan for a critical management area, the
140 state engineer shall, based on economic and other impacts to an individual water user or a local
141 community caused by the implementation of safe yield limits on withdrawals, allow gradual

142 implementation of the groundwater management plan.

143 (c) (i) In consultation with the state engineer, water users in a groundwater basin may
144 agree to participate in a voluntary arrangement for managing withdrawals at any time, either
145 before or after a determination that groundwater withdrawals exceed the groundwater basin's
146 safe yield.

147 (ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other
148 law.

149 (iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than
150 all of the water users in a groundwater basin does not affect the rights of water users who do
151 not agree to the voluntary arrangement.

152 (5) To adopt a groundwater management plan, the state engineer shall:

153 (a) give notice as specified in Subsection (7) at least 30 days before the first public
154 meeting held in accordance with Subsection (5)(b):

155 (i) that the state engineer proposes to adopt a groundwater management plan;

156 (ii) describing generally the land area proposed to be included in the groundwater
157 management plan; and

158 (iii) stating the location, date, and time of each public meeting to be held in accordance
159 with Subsection (5)(b);

160 (b) hold one or more public meetings in the geographic area proposed to be included
161 within the groundwater management plan to:

162 (i) address the need for a groundwater management plan;

163 (ii) present any data, studies, or reports that the state engineer intends to consider in
164 preparing the groundwater management plan;

165 (iii) address safe yield and any other subject that may be included in the groundwater
166 management plan;

167 (iv) outline the estimated administrative costs, if any, that groundwater users are likely
168 to incur if the plan is adopted; and

169 (v) receive any public comments and other information presented at the public

170 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
171 (c) receive and consider written comments concerning the proposed groundwater
172 management plan from any person for a period determined by the state engineer of not less
173 than 60 days after the day on which the notice required by Subsection (5)(a) is given;
174 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,
175 publish notice:
176 (A) that a draft of the groundwater management plan has been proposed; and
177 (B) specifying where a copy of the draft plan may be reviewed; and
178 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of
179 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
180 (e) provide notice of the adoption of the groundwater management plan.
181 (6) A groundwater management plan shall become effective on the date notice of
182 adoption is completed under Subsection (7), or on a later date if specified in the plan.
183 (7) (a) A notice required by this section shall be:
184 (i) published once a week for two successive weeks in a newspaper of general
185 circulation in each county that encompasses a portion of the land area proposed to be included
186 within the groundwater management plan;
187 (ii) published conspicuously on the state engineer's Internet website; and
188 (iii) mailed to each of the following that has within its boundaries a portion of the land
189 area to be included within the proposed groundwater management plan:
190 (A) county;
191 (B) incorporated city or town;
192 (C) any of the following type of independent special districts operating under Title
193 17A, Special Districts:
194 (I) county improvement district providing water, sewerage, or flood control;
195 (II) county service area;
196 (III) drainage district;
197 (IV) irrigation district;

198 (V) metropolitan water district;
199 (VI) special service district providing water, sewer, drainage, or flood control services;
200 and
201 (VII) water conservancy district; and
202 (D) soil conservation district.
203 (b) A notice required by this section is effective upon substantial compliance with
204 Subsections (7)(a)(i) through (iii).
205 (8) A groundwater management plan may be amended in the same manner as a
206 groundwater management plan may be adopted under this section.
207 (9) The existence of a groundwater management plan does not preclude any otherwise
208 eligible person from filing any application or challenging any decision made by the state
209 engineer within the affected groundwater basin.
210 (10) (a) A person aggrieved by a groundwater management plan may challenge any
211 aspect of the groundwater management plan by filing a complaint within 60 days after the
212 adoption of the groundwater management plan in the district court for any county in which the
213 groundwater basin is found.
214 (b) Notwithstanding Subsection (9), a person may challenge the components of a
215 groundwater management plan only in the manner provided by Subsection (10)(a).
216 (c) An action brought under this Subsection (10) is reviewed de novo by the district
217 court.
218 (d) A person challenging a groundwater management plan under this Subsection (10)
219 shall join the state engineer as a defendant in the action challenging the groundwater
220 management plan.
221 (e) (i) Within 30 days after the day on which a person files an action challenging any
222 aspect of a groundwater management plan under Subsection (10)(a), the person filing the action
223 shall publish notice of the action in a newspaper of general circulation in the county in which
224 the district court is located.
225 (ii) The notice required by Subsection (10)(e)(i) shall be published once a week for two

226 consecutive weeks.

227 (iii) The notice required by Subsection (10)(e)(i) shall:

228 (A) identify the groundwater management plan the person is challenging;

229 (B) identify the case number assigned by the district court;

230 (C) state that a person affected by the groundwater management plan may petition the
231 district court to intervene in the action challenging the groundwater management plan; and

232 (D) list the address for the clerk of the district court in which the action is filed.

233 (iv) (A) Any person affected by the groundwater management plan may petition to
234 intervene in the action within 60 days after the day on which notice is last published under
235 Subsections (10)(e)(i) and (ii).

236 (B) The district court's treatment of a petition to intervene under this Subsection
237 (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

238 (v) A district court in which an action is brought under Subsection (10)(a) shall
239 consolidate all actions brought under that subsection and include in the consolidated action any
240 person whose petition to intervene is granted.

241 (11) A groundwater management plan adopted or amended in accordance with this
242 section is exempt from the requirements in Title 63, Chapter 46a, Utah Administrative
243 Rulemaking Act.

244 (12) Recharge and recovery projects permitted under Chapter 3b, Groundwater
245 Recharge and Recovery Act, are exempted from this section.

246 (13) Nothing in this section may be interpreted to require the development,
247 implementation, or consideration of a groundwater management plan as a prerequisite or
248 condition to the exercise of the state engineer's enforcement powers under other law, including
249 powers granted under Section 73-2-25.

250 (14) A groundwater management plan adopted in accordance with this section may not
251 apply to the dewatering of a mine.

252 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
253 2006, remains in force and has the same legal effect as it had on the day on which it was

254 adopted by the state engineer.

255 (b) If a groundwater management plan that existed before May 1, 2006, is amended on

256 or after May 1, 2006, the amendment is subject to this section's provisions.