

**GROUNDWATER RECHARGE AND RECOVERY**

**ACT AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**Committee Note:**

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

The State Water Development Commission recommended this bill.

Membership: 10 legislators 14 non-legislators

Legislative Vote: 8 voting for 0 voting against 2 absent

**General Description:**

This bill amends the Groundwater Recharge and Recovery Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the state engineer to give 60 day's notice to a recharge or recovery permittee of the date to submit proof of completion;
- ▶ requires proof of completion of a recharge or recovery project;
- ▶ requires, if certain requirements are met, the state engineer to issue a certificate for a recharge or recovery project;
- ▶ authorizes the state engineer to waive certain filings;
- ▶ requires the permittee to file the certificate with the county recorder;
- ▶ establishes that a certificate is prima facie evidence of the right to the water as



28 specified in the certificate; and  
29       ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **73-3b-102**, as enacted by Laws of Utah 1991, Chapter 146

37       **73-3b-103**, as enacted by Laws of Utah 1991, Chapter 146

38       **73-3b-105**, as last amended by Laws of Utah 2008, Chapter 382

39       **73-3b-106**, as enacted by Laws of Utah 1991, Chapter 146

40       **73-3b-201**, as last amended by Laws of Utah 2009, Chapter 183

41       **73-3b-202**, as enacted by Laws of Utah 1991, Chapter 146

42       **73-3b-203**, as enacted by Laws of Utah 1991, Chapter 146

43       **73-3b-204**, as last amended by Laws of Utah 2009, Chapter 183

44       **73-3b-205**, as enacted by Laws of Utah 1991, Chapter 146

45       **73-3b-206**, as last amended by Laws of Utah 2007, Chapter 136

46       **73-3b-208**, as last amended by Laws of Utah 2008, Chapter 282



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

49       Section 1. Section **73-3b-102** is amended to read:

50       **73-3b-102. Definitions.**

51       As used in this chapter:

52       (1) "Artificially recharge" means to place water ~~underground~~ in an aquifer:

53       (a) by means of:

54       (i) injection[?];

55       (ii) surface infiltration[?]; or

56       (iii) ~~other~~ another method; and

57       (b) for the purposes of:

58       (i) storing the water; and

59 (ii) recovering the water.

60 (2) "Division" means Division of Water Rights.

61 (3) "Recharge permit" means a permit issued by the state engineer to [~~inject water into~~  
62 ~~an underground aquifer for the purpose of storing the water.~~] construct and operate a recharge  
63 project.

64 (4) "Recharge project" means to artificially recharge water into an aquifer.

65 [~~(4)~~] (5) "Recovery permit" means a permit issued by the state engineer to [~~withdraw~~  
66 ~~from an underground aquifer water that has been injected and stored in the aquifer pursuant to~~  
67 ~~a recharge permit.~~] construct and operate a recovery project.

68 (6) "Recovery project" means to withdraw from an aquifer water that has been  
69 artificially recharged pursuant to a recharge permit.

70 Section 2. Section **73-3b-103** is amended to read:

71 **73-3b-103. Prohibitions.**

72 (1) A person may not artificially recharge [~~a groundwater~~] an aquifer without first  
73 obtaining a recharge permit.

74 (2) A person may not recover from [~~a groundwater~~] an aquifer water that has been  
75 artificially recharged unless [~~he~~] the person first obtains a recovery permit.

76 (3) A person holding a recharge permit or recovery permit may not operate a  
77 [~~groundwater~~] recharge project or recovery project in a manner that is inconsistent with the  
78 permit conditions set by the state engineer.

79 Section 3. Section **73-3b-105** is amended to read:

80 **73-3b-105. Administrative procedures.**

81 The administrative procedures applicable to the issuance, modification, suspension, or  
82 revocation of a recharge [~~and~~] permit or recovery [~~permits~~] permit are those set forth in Title  
83 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and  
84 73-3-15.

85 Section 4. Section **73-3b-106** is amended to read:

86 **73-3b-106. Water right for recharged water -- Change of use of recovered water.**

87 (1) A person proposing to artificially recharge water into an [~~underground~~] aquifer  
88 must have:

89 (a) a valid water right for the water proposed to be recharged; or

90 (b) an agreement to use the water proposed to be recharged with a person who has a  
91 valid water right for the water proposed to be recharged.

92 (2) A person who holds a recovery permit may use or exchange recovered water only in  
93 the manner in which the water was permitted to be used or exchanged before the water was  
94 [~~stored underground~~] artificially recharged, unless a change or exchange application is filed and  
95 approved pursuant to Section 73-3-3 or 73-3-20, as applicable.

96 Section 5. Section **73-3b-201** is amended to read:

97 **73-3b-201. Application for a recharge permit -- Required information -- Filing**  
98 **fee.**

99 (1) The application for obtaining a [~~groundwater~~] recharge permit shall include the  
100 following information:

101 (a) the name and mailing address of the applicant;

102 (b) the name of the groundwater basin or groundwater sub-basin in which the applicant  
103 proposes to operate the recharge project;

104 (c) the name and mailing address of the owner of the land on which the applicant  
105 proposes to operate the recharge project;

106 (d) a legal description of the location of the proposed recharge project;

107 (e) the source and annual quantity of water proposed to be [~~stored underground~~]  
108 artificially recharged;

109 (f) evidence of a water right or an agreement to use the water proposed to be [~~stored~~  
110 ~~underground~~] artificially recharged;

111 (g) the quality of the water proposed to be [~~stored underground~~] artificially recharged  
112 and the water quality of the receiving [~~groundwater~~] aquifer;

113 (h) evidence that the applicant has applied for all applicable water quality permits;

114 (i) a plan of operation for the proposed recharge [~~and recovery~~] project, which shall  
115 include:

116 (i) a description of the proposed recharge project;

117 (ii) its design capacity;

118 (iii) a detailed monitoring program; and

119 (iv) the proposed duration of the recharge project;

120 (j) a copy of a study demonstrating:

- 121 (i) the area of hydrologic impact of the recharge project;
- 122 (ii) that the recharge project is hydrologically feasible;
- 123 (iii) that the recharge project will not:
- 124 (A) cause unreasonable harm to land; or
- 125 (B) impair any existing water right within the area of hydrologic impact; and
- 126 (iv) the percentage of anticipated recoverable water;
- 127 (k) evidence of financial and technical capability; and
- 128 (l) any other information that the state engineer requires.
- 129 (2) (a) A filing fee must be submitted with the application.
- 130 (b) The state engineer shall establish the filing fee in accordance with Section
- 131 63J-1-504.
- 132 Section 6. Section **73-3b-202** is amended to read:
- 133 **73-3b-202. Issuance of recharge permit -- Criteria -- Conditions.**
- 134 The state engineer:
- 135 (1) shall issue a [~~groundwater~~] recharge permit if:
- 136 (a) the applicant has:
- 137 (i) the technical and financial capability to construct and operate the recharge project;
- 138 and
- 139 (ii) (A) a valid water right for the use of the water proposed to be [~~stored underground~~]
- 140 artificially recharged; or
- 141 (B) an agreement to use the water proposed to be [~~stored underground~~] artificially
- 142 recharged with a person who has a valid water right for the use of the water proposed to be
- 143 artificially recharged; and
- 144 (b) the project:
- 145 (i) is hydrologically feasible;
- 146 (ii) will not cause unreasonable harm to land;
- 147 (iii) will not impair any existing water right within the area of hydrologic impact; and
- 148 (iv) will not adversely affect the water quality of the aquifer;
- 149 (2) shall condition any approval on acquiring the applicable water quality permits prior
- 150 to construction and operation of the recharge project; and
- 151 (3) may attach to the permit any [~~conditions he determines are~~] condition the state

152 engineer determines is appropriate.

153 Section 7. Section **73-3b-203** is amended to read:

154 **73-3b-203. Proof of completion, certification, or lapse of recharge permit.**

155 (1) Sixty days before the date on which the recharge permit will lapse under Subsection  
156 (3), the state engineer shall notify the applicant by mail when proof of completion is due.

157 (2) (a) Before the date on which the recharge permit will lapse under Subsection (3),  
158 the applicant shall file proof of completion with the state engineer on a form furnished by the  
159 state engineer, which shall include:

160 (i) the location and description of the recharge works constructed;

161 (ii) the water source for the water artificially recharged and where the water is  
162 delivered for artificial recharge;

163 (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from  
164 the water source described in Subsection (2)(a)(ii);

165 (iv) the method of artificially recharging the water; and

166 (v) any other information the state engineer requires.

167 (b) The state engineer may waive the filing of a map, a profile, or drawing if in the  
168 state engineer's opinion the written proof of completion adequately describes the construction  
169 and the nature and extent of the recharge project.

170 (c) The completed proof shall conform to a rule established by the state engineer.

171 (3) A [groundwater] recharge permit will lapse if the [recharge project is not  
172 completed] proof of completion of the recharge project's construction is not submitted to the  
173 state engineer within five years from the date of the permit application's approval, unless;

174 (a) the applicant requests an extension of time to complete the [project] recharge  
175 project's construction; and

176 (b) the state engineer approves the [request] extension of time.

177 (4) (a) The state engineer shall issue a recharge certificate if the recharge permittee has  
178 demonstrated to the state engineer's satisfaction that:

179 (i) a recharge project is perfected in accordance with the recharge permit; and

180 (ii) the water is being artificially recharged.

181 (b) The recharge certificate shall include:

182 (i) the name and post office address of the recharge permittee;

183 (ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be  
 184 recharged;

185 (iii) the name of the water source from which the water to be artificially recharged is  
 186 diverted; and

187 (iv) other information that defines the extent and conditions of the recharge permit.

188 (c) A recharge certificate issued for a recharge permit need show no more than the facts  
 189 shown in the proof of completion.

190 (d) (i) The state engineer shall:

191 (A) retain and file one copy of the recharge certificate; and

192 (B) deliver one copy of the recharge certificate to the recharge permittee.

193 (ii) A recharge permittee shall file the recharge certificate with the county recorder of  
 194 the county in which the water is recharged.

195 (e) The recharge certificate issued and filed under this section is prima facie evidence  
 196 of the ~~H~~→ [recharge] ←~~H~~ permittee's right to the artificially recharged water for the purpose,  
 196a at the place,

197 and during the time specified in the recharge certificate.

198 Section 8. Section **73-3b-204** is amended to read:

199 **73-3b-204. Application for a recovery permit -- Required information.**

200 ~~[(1) If a person intends to recharge and recover water, the recovery application and~~  
 201 ~~permit may be filed and processed with the groundwater recharge application and permit.]~~

202 (1) A person may file a recovery permit application with a recharge permit application.

203 (2) The application for obtaining a recovery permit shall include the following  
 204 information:

205 (a) the name and mailing address of the applicant;

206 (b) a legal description of the location of the existing well or proposed new well from  
 207 which the applicant intends to recover ~~[stored]~~ artificially recharged water;

208 (c) a written consent from the owner of the recharge permit, if the applicant does not  
 209 hold the recharge permit;

210 (d) the name and mailing address of the owner of the land from which the applicant  
 211 proposes to recover ~~[stored]~~ artificially recharged water;

212 (e) the name or description of the artificially recharged groundwater aquifer which is  
 213 the source of supply;

- 214 (f) the purpose for which the ~~stored~~ artificially recharged water will be recovered;
- 215 (g) the depth and diameter of the existing well or proposed new well;
- 216 (h) a legal description of the area where the ~~stored~~ artificially recharged water is
- 217 proposed to be used;
- 218 (i) the design pumping capacity of the existing well or proposed new well; and
- 219 (j) any other information including maps, drawings, and data that the state engineer
- 220 requires.

221 (3) (a) A filing fee must be submitted with the application.

222 (b) The state engineer shall establish the filing fee in accordance with Section  
223 63J-1-504.

224 Section 9. Section **73-3b-205** is amended to read:

225 **73-3b-205. Issuance of recovery permit -- Criteria -- Conditions.**

226 The state engineer:

227 (1) shall issue the recovery permit if ~~he~~ the state engineer determines that:

228 (a) the proposed recovery of ~~stored~~ artificially recharged water will not impair any  
229 existing water right;

230 (b) the applicant ~~of the~~ is the holder of an approved recharge permit or recovery  
231 permit, or if ~~he~~ the applicant does not hold the recharge permit, has a valid agreement with  
232 the owner of the recharge permit to divert and use the recovered water; and

233 (c) the recovery point of diversion is located within the area of hydrologic impact of  
234 the recharge project, as determined by the state engineer; and

235 (2) may attach to the permit any conditions ~~he~~ the state engineer determines are  
236 appropriate.

237 Section 10. Section **73-3b-206** is amended to read:

238 **73-3b-206. Proof of completion, certification, or lapse of recovery permit.**

239 (1) Sixty days before the date on which the recovery permit will lapse under Subsection  
240 (3), the state engineer shall notify the applicant by mail when proof of completion is due.

241 (2) (a) Before the date on which the recovery permit will lapse under Subsection (3),  
242 the applicant shall file proof of completion with the state engineer on a form furnished by the  
243 state engineer, which shall include documentation and a map prepared by a Utah licensed land  
244 surveyor or Utah licensed professional engineer that shows:



- 245 (i) the location and description of the recovery works constructed;  
246 (ii) the method of recovering the artificially recharged water;  
247 (iii) the facilities in place to recover and deliver the recovered water; and  
248 (iv) the purpose and place of use of the recovered water.  
249 (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state  
250 engineer's opinion the written proof of completion adequately describes the works and the  
251 nature and extent of the recovery project.  
252 (c) The completed proof shall conform to a rule established by the state engineer.  
253 (3) A recovery permit will lapse if the recovery project is not completed within five  
254 years from the date of the recovery permit application's approval unless;  
255 (a) the applicant requests an extension of time to complete the recovery project; and  
256 (b) the state engineer approves the [request] extension of time.  
257 (4) (a) The state engineer shall issue a recovery certificate if the recovery permittee has  
258 demonstrated to the state engineer's satisfaction that:  
259 (i) the recovery project is perfected in accordance with the recovery permit; and  
260 (ii) water is being recovered.  
261 (b) The ~~H~~→ [recharge] recovery ←~~H~~ certificate shall include:  
262 (i) the name and post office address of the ~~H~~→ [recharge] recovery ←~~H~~ permittee;  
263 (ii) the works used to recover and deliver recovered water; and  
264 (iii) other information that defines the extent and conditions of the recovery permit.  
265 (c) A recovery certificate issued for a recovery permit need show no more than the  
266 facts shown in the proof of completion.  
267 (d) A recovery certificate issued under this section does not extend the rights described  
268 in the recovery permit.  
269 (e) (i) The state engineer shall:  
270 (A) retain and file one copy of the recovery certificate; and  
271 (B) deliver one copy of the recovery certificate to the recovery permittee.  
272 (ii) A recovery permittee shall file the recovery certificate with the county recorder of  
273 the county in which the water is recovered.  
274 (f) The recovery certificate issued and filed under this section is prima facie evidence  
275 of the recovery permittee's right to the recovered water for the purpose, at the place, and during

276 the time specified in the recovery certificate.

277 Section 11. Section **73-3b-208** is amended to read:

278 **73-3b-208. Proposed new well -- Compliance with water well construction rules.**

279 An applicant for a recharge permit or recovery permit who intends to construct a new  
280 well to recharge or recover [~~stored~~] artificially recharged water must comply with Sections  
281 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of  
282 water wells.

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**Legislative Review Note**  
**as of 10-22-09 1:40 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 33 - Groundwater Recharge and Recovery Act Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Water Rights estimates the cost to process an application at \$1,200. The Division estimates that costs can be covered with its existing budget.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$1,200	\$1,200	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$1,200</b>	<b>\$1,200</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

A proof on a recharge and recovery project must be prepared by a licensed engineer or surveyor and could cost up to \$10,000.