

1 **GROUNDWATER RECHARGE AND RECOVERY**

2 **ACT AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael E. Noel**

6 Senate Sponsor: Stephen H. Urquhart

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Groundwater Recharge and Recovery Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ requires the state engineer to give 60 days' notice to a recharge or recovery
- 15 permittee of the date to submit proof of completion;
- 16 ▶ requires proof of completion of a recharge or recovery project;
- 17 ▶ requires, if certain requirements are met, the state engineer to issue a certificate for
- 18 a recharge or recovery project;
- 19 ▶ authorizes the state engineer to waive certain filings;
- 20 ▶ requires the permittee to file the certificate with the county recorder;
- 21 ▶ establishes that a certificate is prima facie evidence of the right to the water as
- 22 specified in the certificate; and
- 23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **73-3b-102**, as enacted by Laws of Utah 1991, Chapter 146
- 31 **73-3b-103**, as enacted by Laws of Utah 1991, Chapter 146
- 32 **73-3b-105**, as last amended by Laws of Utah 2008, Chapter 382
- 33 **73-3b-106**, as enacted by Laws of Utah 1991, Chapter 146
- 34 **73-3b-201**, as last amended by Laws of Utah 2009, Chapter 183
- 35 **73-3b-202**, as enacted by Laws of Utah 1991, Chapter 146
- 36 **73-3b-203**, as enacted by Laws of Utah 1991, Chapter 146
- 37 **73-3b-204**, as last amended by Laws of Utah 2009, Chapter 183
- 38 **73-3b-205**, as enacted by Laws of Utah 1991, Chapter 146
- 39 **73-3b-206**, as last amended by Laws of Utah 2007, Chapter 136
- 40 **73-3b-208**, as last amended by Laws of Utah 2008, Chapter 282



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

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

44 **73-3b-102. Definitions.**

45 As used in this chapter:

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

47 (a) by means of:

48 (i) injection[;];

49 (ii) surface infiltration[;]; or

50 (iii) [~~other~~] another method; and

51 (b) for the purposes of:

52 (i) storing the water; and

53 (ii) recovering the water.

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

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

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

59 [~~(4)~~] (5) "Recovery permit" means a permit issued by the state engineer to [~~withdraw~~
60 from an underground aquifer water that has been injected and stored in the aquifer pursuant to
61 a recharge permit.] construct and operate a recovery project.

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

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

65 **73-3b-103. Prohibitions.**

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

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

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

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

74 **73-3b-105. Administrative procedures.**

75 The administrative procedures applicable to the issuance, modification, suspension, or
76 revocation of a recharge [~~and~~] permit or recovery [~~permits~~] permit are those set forth in Title
77 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and
78 73-3-15.

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

80 **73-3b-106. Water right for recharged water -- Change of use of recovered water.**

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

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

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

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

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

91 **73-3b-201. Application for a recharge permit -- Required information -- Filing**
92 **fee.**

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

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

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

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

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

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

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

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

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

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

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

111 (ii) its design capacity;

112 (iii) a detailed monitoring program; and

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

- 114 (j) a copy of a study demonstrating:
- 115 (i) the area of hydrologic impact of the recharge project;
- 116 (ii) that the recharge project is hydrologically feasible;
- 117 (iii) that the recharge project will not:
- 118 (A) cause unreasonable harm to land; or
- 119 (B) impair any existing water right within the area of hydrologic impact; and
- 120 (iv) the percentage of anticipated recoverable water;
- 121 (k) evidence of financial and technical capability; and
- 122 (l) any other information that the state engineer requires.
- 123 (2) (a) A filing fee must be submitted with the application.
- 124 (b) The state engineer shall establish the filing fee in accordance with Section
- 125 63J-1-504.
- 126 Section 6. Section **73-3b-202** is amended to read:
- 127 **73-3b-202. Issuance of recharge permit -- Criteria -- Conditions.**
- 128 The state engineer:
- 129 (1) shall issue a [~~groundwater~~] recharge permit if:
- 130 (a) the applicant has:
- 131 (i) the technical and financial capability to construct and operate the recharge project;
- 132 and
- 133 (ii) (A) a valid water right for the use of the water proposed to be [~~stored underground~~]
- 134 artificially recharged; or
- 135 (B) an agreement to use the water proposed to be [~~stored underground~~] artificially
- 136 recharged with a person who has a valid water right for the use of the water proposed to be
- 137 artificially recharged; and
- 138 (b) the project:
- 139 (i) is hydrologically feasible;
- 140 (ii) will not cause unreasonable harm to land;
- 141 (iii) will not impair any existing water right within the area of hydrologic impact; and

- 142 (iv) will not adversely affect the water quality of the aquifer;
- 143 (2) shall condition any approval on acquiring the applicable water quality permits
- 144 prior to construction and operation of the recharge project; and
- 145 (3) may attach to the permit any [~~conditions he determines are~~] condition the state
- 146 engineer determines is appropriate.

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

148 **73-3b-203. Proof of completion, certification, or lapse of recharge permit.**

149 (1) Sixty days before the date on which the recharge permit will lapse under

150 Subsection (3), the state engineer shall notify the applicant by mail when proof of completion

151 is due.

152 (2) (a) Before the date on which the recharge permit will lapse under Subsection (3),

153 the applicant shall file proof of completion with the state engineer on a form furnished by the

154 state engineer, which shall include:

- 155 (i) the location and description of the recharge works constructed;
- 156 (ii) the water source for the water artificially recharged and where the water is
- 157 delivered for artificial recharge;
- 158 (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from
- 159 the water source described in Subsection (2)(a)(ii);
- 160 (iv) the method of artificially recharging the water; and
- 161 (v) any other information the state engineer requires.

162 (b) The state engineer may waive the filing of a map, a profile, or drawing if in the

163 state engineer's opinion the written proof of completion adequately describes the construction

164 and the nature and extent of the recharge project.

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

166 (3) A [~~groundwater~~] recharge permit will lapse if the [~~recharge project is not~~

167 completed] proof of completion of the recharge project's construction is not submitted to the

168 state engineer within five years from the date of the permit application's approval, unless:

169 (a) the applicant requests an extension of time to complete the [~~project~~] recharge

170 project's construction; and

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

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

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

175 (ii) the water is being artificially recharged.

176 (b) The recharge certificate shall include:

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

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

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

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

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

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

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

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

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

190 (e) The recharge certificate issued and filed under this section is prima facie evidence
191 of the permittee's right to the artificially recharged water for the purpose, at the place, and
192 during the time specified in the recharge certificate.

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

194 **73-3b-204. Application for a recovery permit -- Required information.**

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

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

- 198 (2) The application for obtaining a recovery permit shall include the following
199 information:
- 200 (a) the name and mailing address of the applicant;
 - 201 (b) a legal description of the location of the existing well or proposed new well from
202 which the applicant intends to recover [~~stored~~] artificially recharged water;
 - 203 (c) a written consent from the owner of the recharge permit, if the applicant does not
204 hold the recharge permit;
 - 205 (d) the name and mailing address of the owner of the land from which the applicant
206 proposes to recover [~~stored~~] artificially recharged water;
 - 207 (e) the name or description of the artificially recharged groundwater aquifer which is
208 the source of supply;
 - 209 (f) the purpose for which the [~~stored~~] artificially recharged water will be recovered;
 - 210 (g) the depth and diameter of the existing well or proposed new well;
 - 211 (h) a legal description of the area where the [~~stored~~] artificially recharged water is
212 proposed to be used;
 - 213 (i) the design pumping capacity of the existing well or proposed new well; and
 - 214 (j) any other information including maps, drawings, and data that the state engineer
215 requires.

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

217 (b) The state engineer shall establish the filing fee in accordance with Section
218 63J-1-504.

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

220 **73-3b-205. Issuance of recovery permit -- Criteria -- Conditions.**

221 The state engineer:

- 222 (1) shall issue the recovery permit if [~~he~~] the state engineer determines that:
 - 223 (a) the proposed recovery of [~~stored~~] artificially recharged water will not impair any
224 existing water right;
 - 225 (b) the applicant [~~of the~~] is the holder of an approved recharge permit or recovery

226 permit, or if [he] the applicant does not hold the recharge permit, has a valid agreement with
 227 the owner of the recharge permit to divert and use the recovered water; and

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

230 (2) may attach to the permit any conditions ~~[he]~~ the state engineer determines are
 231 appropriate.

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

233 **73-3b-206. Proof of completion, certification, or lapse of recovery permit.**

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

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

- 241 (i) the location and description of the recovery works constructed;
- 242 (ii) the method of recovering the artificially recharged water;
- 243 (iii) the facilities in place to recover and deliver the recovered water; and
- 244 (iv) the purpose and place of use of the recovered water.

245 (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state
 246 engineer's opinion the written proof of completion adequately describes the works and the
 247 nature and extent of the recovery project.

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

249 (3) A recovery permit will lapse if the recovery project is not completed within five
 250 years from the date of the recovery permit application's approval unless:

- 251 (a) the applicant requests an extension of time to complete the recovery project; and
- 252 (b) the state engineer approves the [request] extension of time.

253 (4) (a) The state engineer shall issue a recovery certificate if the recovery permittee has

254 demonstrated to the state engineer's satisfaction that:

255 (i) the recovery project is perfected in accordance with the recovery permit; and

256 (ii) water is being recovered.

257 (b) The recovery certificate shall include:

258 (i) the name and post office address of the recovery permittee;

259 (ii) the works used to recover and deliver recovered water; and

260 (iii) other information that defines the extent and conditions of the recovery permit.

261 (c) A recovery certificate issued for a recovery permit need show no more than the

262 facts shown in the proof of completion.

263 (d) A recovery certificate issued under this section does not extend the rights described

264 in the recovery permit.

265 (e) (i) The state engineer shall:

266 (A) retain and file one copy of the recovery certificate; and

267 (B) deliver one copy of the recovery certificate to the recovery permittee.

268 (ii) A recovery permittee shall file the recovery certificate with the county recorder of

269 the county in which the water is recovered.

270 (f) The recovery certificate issued and filed under this section is prima facie evidence

271 of the recovery permittee's right to the recovered water for the purpose, at the place, and

272 during the time specified in the recovery certificate.

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

274 **73-3b-208. Proposed new well -- Compliance with water well construction rules.**

275 An applicant for a recharge permit or recovery permit who intends to construct a new

276 well to recharge or recover [~~stored~~] artificially recharged water must comply with Sections

277 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of

278 water wells.