

1 **WATER CONVEYANCE FACILITIES SAFETY**

2 **ACT**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Fred R Hunsaker**

6 Senate Sponsor: Ralph Okerlund

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses management plans for water conveyance facilities.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ requires certain water conveyance facilities to have a promptly adopted
- 15 management plan as a condition of receiving state money;
- 16 ▶ establishes the requirements for a management plan;
- 17 ▶ requires the sharing of certain information with municipalities and counties;
- 18 ▶ authorizes the division to provide information and technical resources;
- 19 ▶ addresses providing information to the board or division;
- 20 ▶ provides that a management plan is a protected record under Title 63G, Chapter 2,
- 21 Government Records Access and Management Act;
- 22 ▶ requires a report by the board;
- 23 ▶ addresses scope of the section;
- 24 ▶ addresses the introduction of certain information into evidence; and
- 25 ▶ makes technical and conforming amendments.

26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121

33 ENACTS:

34 **73-10-33**, Utah Code Annotated 1953



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

37 Section 1. Section **63G-2-305** is amended to read:

38 **63G-2-305. Protected records.**

39 The following records are protected if properly classified by a governmental entity:

40 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
41 has provided the governmental entity with the information specified in Section 63G-2-309;

42 (2) commercial information or nonindividual financial information obtained from a
43 person if:

44 (a) disclosure of the information could reasonably be expected to result in unfair
45 competitive injury to the person submitting the information or would impair the ability of the
46 governmental entity to obtain necessary information in the future;

47 (b) the person submitting the information has a greater interest in prohibiting access
48 than the public in obtaining access; and

49 (c) the person submitting the information has provided the governmental entity with
50 the information specified in Section 63G-2-309;

51 (3) commercial or financial information acquired or prepared by a governmental entity
52 to the extent that disclosure would lead to financial speculations in currencies, securities, or
53 commodities that will interfere with a planned transaction by the governmental entity or cause
54 substantial financial injury to the governmental entity or state economy;

55 (4) records the disclosure of which could cause commercial injury to, or confer a
56 competitive advantage upon a potential or actual competitor of, a commercial project entity as
57 defined in Subsection 11-13-103(4);

58 (5) test questions and answers to be used in future license, certification, registration,
59 employment, or academic examinations;

60 (6) records the disclosure of which would impair governmental procurement
61 proceedings or give an unfair advantage to any person proposing to enter into a contract or
62 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
63 Subsection (6) does not restrict the right of a person to have access to, once the contract or
64 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
65 entity in response to:

66 (a) a request for bids;

67 (b) a request for proposals;

68 (c) a grant; or

69 (d) other similar document;

70 (7) records that would identify real property or the appraisal or estimated value of real
71 or personal property, including intellectual property, under consideration for public acquisition
72 before any rights to the property are acquired unless:

73 (a) public interest in obtaining access to the information outweighs the governmental
74 entity's need to acquire the property on the best terms possible;

75 (b) the information has already been disclosed to persons not employed by or under a
76 duty of confidentiality to the entity;

77 (c) in the case of records that would identify property, potential sellers of the described
78 property have already learned of the governmental entity's plans to acquire the property;

79 (d) in the case of records that would identify the appraisal or estimated value of
80 property, the potential sellers have already learned of the governmental entity's estimated value
81 of the property; or

82 (e) the property under consideration for public acquisition is a single family residence
83 and the governmental entity seeking to acquire the property has initiated negotiations to
84 acquire the property as required under Section 78B-6-505;

85 (8) records prepared in contemplation of sale, exchange, lease, rental, or other

86 compensated transaction of real or personal property including intellectual property, which, if
87 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
88 of the subject property, unless:

89 (a) the public interest in access outweighs the interests in restricting access, including
90 the governmental entity's interest in maximizing the financial benefit of the transaction; or

91 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
92 the value of the subject property have already been disclosed to persons not employed by or
93 under a duty of confidentiality to the entity;

94 (9) records created or maintained for civil, criminal, or administrative enforcement
95 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes,
96 if release of the records:

97 (a) reasonably could be expected to interfere with investigations undertaken for
98 enforcement, discipline, licensing, certification, or registration purposes;

99 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
100 proceedings;

101 (c) would create a danger of depriving a person of a right to a fair trial or impartial
102 hearing;

103 (d) reasonably could be expected to disclose the identity of a source who is not
104 generally known outside of government and, in the case of a record compiled in the course of
105 an investigation, disclose information furnished by a source not generally known outside of
106 government if disclosure would compromise the source; or

107 (e) reasonably could be expected to disclose investigative or audit techniques,
108 procedures, policies, or orders not generally known outside of government if disclosure would
109 interfere with enforcement or audit efforts;

110 (10) records the disclosure of which would jeopardize the life or safety of an
111 individual;

112 (11) records the disclosure of which would jeopardize the security of governmental
113 property, governmental programs, or governmental recordkeeping systems from damage, theft,

114 or other appropriation or use contrary to law or public policy;

115 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
116 facility, or records relating to incarceration, treatment, probation, or parole, that would
117 interfere with the control and supervision of an offender's incarceration, treatment, probation,
118 or parole;

119 (13) records that, if disclosed, would reveal recommendations made to the Board of
120 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
121 Board of Pardons and Parole, or the Department of Human Services that are based on the
122 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
123 jurisdiction;

124 (14) records and audit workpapers that identify audit, collection, and operational
125 procedures and methods used by the State Tax Commission, if disclosure would interfere with
126 audits or collections;

127 (15) records of a governmental audit agency relating to an ongoing or planned audit
128 until the final audit is released;

129 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
130 litigation that are not available under the rules of discovery;

131 (17) records disclosing an attorney's work product, including the mental impressions
132 or legal theories of an attorney or other representative of a governmental entity concerning
133 litigation;

134 (18) records of communications between a governmental entity and an attorney
135 representing, retained, or employed by the governmental entity if the communications would
136 be privileged as provided in Section 78B-1-137;

137 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
138 from a member of the Legislature; and

139 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
140 legislative action or policy may not be classified as protected under this section; and

141 (b) (i) an internal communication that is part of the deliberative process in connection

142 with the preparation of legislation between:

143 (A) members of a legislative body;

144 (B) a member of a legislative body and a member of the legislative body's staff; or

145 (C) members of a legislative body's staff; and

146 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
147 legislative action or policy may not be classified as protected under this section;

148 (20) (a) records in the custody or control of the Office of Legislative Research and
149 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
150 legislation or contemplated course of action before the legislator has elected to support the
151 legislation or course of action, or made the legislation or course of action public; and

152 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
153 Office of Legislative Research and General Counsel is a public document unless a legislator
154 asks that the records requesting the legislation be maintained as protected records until such
155 time as the legislator elects to make the legislation or course of action public;

156 (21) research requests from legislators to the Office of Legislative Research and
157 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
158 in response to these requests;

159 (22) drafts, unless otherwise classified as public;

160 (23) records concerning a governmental entity's strategy about collective bargaining or
161 pending litigation;

162 (24) records of investigations of loss occurrences and analyses of loss occurrences that
163 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
164 Uninsured Employers' Fund, or similar divisions in other governmental entities;

165 (25) records, other than personnel evaluations, that contain a personal
166 recommendation concerning an individual if disclosure would constitute a clearly unwarranted
167 invasion of personal privacy, or disclosure is not in the public interest;

168 (26) records that reveal the location of historic, prehistoric, paleontological, or
169 biological resources that if known would jeopardize the security of those resources or of

170 valuable historic, scientific, educational, or cultural information;

171 (27) records of independent state agencies if the disclosure of the records would

172 conflict with the fiduciary obligations of the agency;

173 (28) records of an institution within the state system of higher education defined in

174 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,

175 retention decisions, and promotions, which could be properly discussed in a meeting closed in

176 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of

177 the final decisions about tenure, appointments, retention, promotions, or those students

178 admitted, may not be classified as protected under this section;

179 (29) records of the governor's office, including budget recommendations, legislative

180 proposals, and policy statements, that if disclosed would reveal the governor's contemplated

181 policies or contemplated courses of action before the governor has implemented or rejected

182 those policies or courses of action or made them public;

183 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,

184 revenue estimates, and fiscal notes of proposed legislation before issuance of the final

185 recommendations in these areas;

186 (31) records provided by the United States or by a government entity outside the state

187 that are given to the governmental entity with a requirement that they be managed as protected

188 records if the providing entity certifies that the record would not be subject to public

189 disclosure if retained by it;

190 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body

191 except as provided in Section 52-4-206;

192 (33) records that would reveal the contents of settlement negotiations but not

193 including final settlements or empirical data to the extent that they are not otherwise exempt

194 from disclosure;

195 (34) memoranda prepared by staff and used in the decision-making process by an

196 administrative law judge, a member of the Board of Pardons and Parole, or a member of any

197 other body charged by law with performing a quasi-judicial function;

198 (35) records that would reveal negotiations regarding assistance or incentives offered
199 by or requested from a governmental entity for the purpose of encouraging a person to expand
200 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
201 person or place the governmental entity at a competitive disadvantage, but this section may
202 not be used to restrict access to a record evidencing a final contract;

203 (36) materials to which access must be limited for purposes of securing or maintaining
204 the governmental entity's proprietary protection of intellectual property rights including
205 patents, copyrights, and trade secrets;

206 (37) the name of a donor or a prospective donor to a governmental entity, including an
207 institution within the state system of higher education defined in Section 53B-1-102, and other
208 information concerning the donation that could reasonably be expected to reveal the identity of
209 the donor, provided that:

210 (a) the donor requests anonymity in writing;

211 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
212 classified protected by the governmental entity under this Subsection (37); and

213 (c) except for an institution within the state system of higher education defined in
214 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
215 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
216 over the donor, a member of the donor's immediate family, or any entity owned or controlled
217 by the donor or the donor's immediate family;

218 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
219 73-18-13;

220 (39) a notification of workers' compensation insurance coverage described in Section
221 34A-2-205;

222 (40) (a) the following records of an institution within the state system of higher
223 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
224 or received by or on behalf of faculty, staff, employees, or students of the institution:

225 (i) unpublished lecture notes;

226 (ii) unpublished notes, data, and information:
227 (A) relating to research; and
228 (B) of:
229 (I) the institution within the state system of higher education defined in Section
230 53B-1-102; or
231 (II) a sponsor of sponsored research;
232 (iii) unpublished manuscripts;
233 (iv) creative works in process;
234 (v) scholarly correspondence; and
235 (vi) confidential information contained in research proposals;
236 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
237 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
238 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
239 (41) (a) records in the custody or control of the Office of Legislative Auditor General
240 that would reveal the name of a particular legislator who requests a legislative audit prior to
241 the date that audit is completed and made public; and
242 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to
243 the Office of the Legislative Auditor General is a public document unless the legislator asks
244 that the records in the custody or control of the Office of Legislative Auditor General that
245 would reveal the name of a particular legislator who requests a legislative audit be maintained
246 as protected records until the audit is completed and made public;
247 (42) records that provide detail as to the location of an explosive, including a map or
248 other document that indicates the location of:
249 (a) a production facility; or
250 (b) a magazine;
251 (43) information:
252 (a) contained in the statewide database of the Division of Aging and Adult Services
253 created by Section 62A-3-311.1; or

254 (b) received or maintained in relation to the Identity Theft Reporting Information
255 System (IRIS) established under Section 67-5-22;

256 (44) information contained in the Management Information System and Licensing
257 Information System described in Title 62A, Chapter 4a, Child and Family Services;

258 (45) information regarding National Guard operations or activities in support of the
259 National Guard's federal mission;

260 (46) records provided by any pawn or secondhand business to a law enforcement
261 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
262 Secondhand Merchandise Transaction Information Act;

263 (47) information regarding food security, risk, and vulnerability assessments
264 performed by the Department of Agriculture and Food;

265 (48) except to the extent that the record is exempt from this chapter pursuant to
266 Section 63G-2-106, records related to an emergency plan or program prepared or maintained
267 by the Division of Homeland Security the disclosure of which would jeopardize:

268 (a) the safety of the general public; or
269 (b) the security of:

270 (i) governmental property;
271 (ii) governmental programs; or
272 (iii) the property of a private person who provides the Division of Homeland Security
273 information;

274 (49) records of the Department of Agriculture and Food relating to the National
275 Animal Identification System or any other program that provides for the identification, tracing,
276 or control of livestock diseases, including any program established under Title 4, Chapter 24,
277 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
278 Quarantine;

279 (50) as provided in Section 26-39-501:

280 (a) information or records held by the Department of Health related to a complaint
281 regarding a child care program or residential child care which the department is unable to

282 substantiate; and

283 (b) information or records related to a complaint received by the Department of Health
284 from an anonymous complainant regarding a child care program or residential child care;

285 (51) unless otherwise classified as public under Section 63G-2-301 and except as
286 provided under Section 41-1a-116, an individual's home address, home telephone number, or
287 personal mobile phone number, if:

288 (a) the individual is required to provide the information in order to comply with a law,
289 ordinance, rule, or order of a government entity; and

290 (b) the subject of the record has a reasonable expectation that this information will be
291 kept confidential due to:

292 (i) the nature of the law, ordinance, rule, or order; and

293 (ii) the individual complying with the law, ordinance, rule, or order;

294 (52) the name, home address, work addresses, and telephone numbers of an individual
295 that is engaged in, or that provides goods or services for, medical or scientific research that is:

296 (a) conducted within the state system of higher education, as defined in Section
297 53B-1-102; and

298 (b) conducted using animals;

299 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
300 Private Proposal Program, to the extent not made public by rules made under that chapter;

301 (54) information collected and a report prepared by the Judicial Performance
302 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
303 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
304 the information or report;

305 (55) (a) records of the Utah Educational Savings Plan Trust created under Section
306 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

307 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

308 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related
309 payments;

310 (56) records contained in the Management Information System created in Section
311 62A-4a-1003;

312 (57) records provided or received by the Public Lands Policy Coordinating Office in
313 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
314 [and]

315 (58) information requested by and provided to the Utah State 911 Committee under
316 Section 53-10-602[-]; and

317 (59) in accordance with Section 73-10-33:

318 (a) a management plan for a water conveyance facility in the possession of the
319 Division of Water Resources or the Board of Water Resources; or

320 (b) an outline of an emergency response plan in possession of the state or a county or
321 municipality.

322 Section 2. Section **73-10-33** is enacted to read:

323 **73-10-33. Management plan for water conveyance facilities.**

324 (1) As used in this section:

325 (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.

326 (b) "Conservation district" means a conservation district created under Title 17D,
327 Chapter 3, Conservation District Act.

328 (c) "Division" means the Division of Water Resources created by Section 73-10-18.

329 (d) "Facility owner or operator" means:

330 (i) a water company as defined in Subsection 73-3-3.5(1)(b); or

331 (ii) an owner or operator of a water conveyance facility.

332 (e) "Management plan" means a written document meeting the requirements of
333 Subsection (3).

334 (f) "Potential risk" means a condition where, if a water conveyance facility fails, the
335 failure would create a high probability of:

336 (i) causing loss of human life; or

337 (ii) causing extensive economic loss, including damage to critical transportation

338 facilities, utility facilities, or public buildings.

339 (g) "Potential risk location" means a segment of a water conveyance facility that
340 constitutes a potential risk due to:

341 (i) location;

342 (ii) elevation;

343 (iii) soil conditions;

344 (iv) structural instability;

345 (v) water volume or pressure; or

346 (vi) other conditions.

347 (h) (i) "Water conveyance facility" means a water conveyance defined in Section
348 57-13a-101.

349 (ii) "Water conveyance facility" does not include:

350 (A) a pipeline conveying water for industrial use, or municipal use, within a public
351 water system as defined in Section 19-4-102;

352 (B) a natural channel used to convey water for use within a water conveyance facility;

353 or

354 (C) a fully piped, pressurized irrigation system.

355 (2) (a) For a water conveyance facility that has a potential risk location, the board or
356 division may issue a grant or loan to the facility owner or operator, and the facility owner or
357 operator may receive state money for water development or water conveyance facility repair or
358 improvements, only if the facility owner or operator promptly adopts a management plan in
359 accordance with this section.

360 (b) For a management plan to be considered to be promptly adopted for purposes of
361 this Subsection (2), the facility owner or operator shall:

362 (i) adopt the management plan by an affirmative vote of the facility owner or
363 operator's board of directors, or persons occupying a similar status or performing similar
364 functions before receiving money under Subsection (2)(a);

365 (ii) (A) adopt the management plan as described in Subsection (2)(b)(i) by no later

366 than:

367 (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or

368 (II) for a water conveyance facility that begins operation after May 11, 2011, one year

369 after the day on which the water conveyance facility begins operation; or

370 (B) (I) adopt the management plan as described in Subsection (2)(b)(i); and

371 (II) provide written justification satisfactory to the board as to why the facility owner

372 or operator was unable to adopt a management plan during the time period provided in

373 Subsection (2)(b)(ii)(A); and

374 (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently

375 than every 10 years.

376 (3) A management plan described in Subsection (2) shall include at least the

377 following:

378 (a) a GIS coverage or drawing of each potential risk location of a water conveyance

379 facility identifying any:

380 (i) existing canal and lateral alignment of the canal facility;

381 (ii) point of diversion;

382 (iii) bridge;

383 (iv) culvert;

384 (v) screen or trash rack; and

385 (vi) spill point;

386 (b) an evaluation of any potential slope instability that may cause a potential risk,

387 including:

388 (i) failure of the facility;

389 (ii) land movement that might result in failure of the facility; or

390 (iii) land movement that might result from failure of the facility;

391 (c) proof of insurance coverage or other means of financial responsibility against

392 liability resulting from failure of the water conveyance facility;

393 (d) a maintenance and improvement plan;

394 (e) a schedule for implementation of a maintenance and improvement plan;
395 (f) an emergency response plan that:
396 (i) is developed after consultation with local emergency response officials;
397 (ii) is updated annually; and
398 (iii) includes, in the case of an emergency, how a first responder can:
399 (A) contact the facility owner or operator; and
400 (B) obtain information described in Subsection (3)(a);
401 (g) any potential source of financing for maintenance and improvements under a
402 maintenance and improvement plan;
403 (h) identification of each municipality or county through which water is conveyed or
404 delivered by the water conveyance facility;
405 (i) a statement concerning whether storm water enters the water conveyance facility;
406 and
407 (j) if storm water enters the water conveyance facility:
408 (i) an estimate of the maximum volume and flow of all water present in the water
409 conveyance facility as a result of a six-hour, 25-year storm event;
410 (ii) on the basis of information provided in accordance with Subsection (4),
411 identification of the points at which any storm structures introduce water into the water
412 conveyance facility and the anticipated flow that may occur at each structure; and
413 (iii) the name of each governmental agency that has responsibility for storm water
414 management within the area from which storm water drains into the water conveyance facility.
415 (4) A private or public entity that introduces storm water into a water conveyance
416 facility shall provide the facility owner or operator with an estimate of the maximum volume
417 and flow of water that may occur at each structure that introduces storm water into the water
418 conveyance facility.
419 (5) (a) A facility owner or operator of a water conveyance facility shall provide a
420 municipality or county in which is located a potential risk location of the water conveyance
421 facility an outline of the information provided in Subsection (3)(f).

422 (b) A facility owner or operator shall give notice to the planning and zoning
423 department of each municipality and county identified in Subsection (3)(h) outlining the
424 information provided in Subsections (3)(f), (i), and (j).

425 (c) An outline of information provided under this Subsection (5) is a protected record
426 under Section 63G-2-305.

427 (6) (a) The division may provide information and technical resources to a facility
428 owner or operator of a water conveyance facility, regardless of whether the water conveyance
429 facility has a potential risk location.

430 (b) In providing the information and resources described in Subsection (5)(a), the
431 division may coordinate with efforts of any association of conservation districts that may
432 provide similar information and technical resources.

433 (c) The information and technical resources described in Subsection (5)(a) include:

434 (i) engaging state and local water users in voluntary completion of a management
435 plan;

436 (ii) developing standard guidelines, checklists, or templates that may be used by a
437 facility owner or operator;

438 (iii) using conservation districts as points of contact with a facility owner or operator;

439 (iv) providing training to help a facility owner or operator to adopt a management
440 plan; and

441 (v) assisting, at the request and under the direction of, a facility owner or operator with
442 efforts to adopt or implement a management plan.

443 (7) (a) A facility owner or operator of a water conveyance facility that has a potential
444 risk location shall provide the board or division upon request:

445 (i) written certification signed under oath by a person authorized to act for the board of
446 directors or persons occupying a similar status or performing similar functions, certifying that
447 the management plan complies with this section; and

448 (ii) an opportunity to review a management plan.

449 (b) A management plan received by the board or division under this section is a

450 protected record under Section 63G-2-305.

451 (8) The board shall report concerning compliance with this section to the Natural
452 Resources, Agriculture, and Environment Interim Committee of the Legislature before
453 November 30, 2013.

454 (9) The division and board may make rules, in accordance with Title 63G, Chapter 3,
455 Utah Administrative Rulemaking Act, concerning the requirements of this section.

456 (10) This section does not:

457 (a) create a private right of action for a violation of this section; or

458 (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility
459 owner or operator in a civil action for a cause of action that is not based on a violation of this
460 section.

461 (11) The following may not be introduced as evidence in any civil litigation on the
462 issue of negligence, injury, or the calculation of damages:

463 (a) a management plan prepared in accordance with this section;

464 (b) the failure to prepare or adopt a management plan in accordance with this section;

465 or

466 (c) the failure to update a management plan in accordance with this section.