

1                   **MANAGEMENT OF WATER RIGHTS AMENDMENTS**

2                                   2011 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Dennis E. Stowell**

5                   House Sponsor: Evan J. Vickers

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7 **LONG TITLE**

8 **General Description:**

9           This bill addresses the management of water rights in a critical management area.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ allows a local district to hold certain water rights for recharge;
- 13           ▶ addresses the requirements of a groundwater management plan;
- 14           ▶ provides that artificially recharging a groundwater basin is a beneficial use of water

15 in a critical management area; and

- 16           ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23           **17B-1-202**, as last amended by Laws of Utah 2010, Chapters 150 and 159

24           **73-5-15**, as last amended by Laws of Utah 2009, Chapter 388

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

27           Section 1. Section **17B-1-202** is amended to read:

28           **17B-1-202. Local district may be created -- Services that may be provided --**

29 **Limitations.**

30 (1) (a) A local district may be created as provided in this part to provide within its  
31 boundaries service consisting of:

- 32 (i) the operation of an airport;
- 33 (ii) the operation of a cemetery;
- 34 (iii) fire protection, paramedic, and emergency services;
- 35 (iv) garbage collection and disposal;
- 36 (v) health care, including health department or hospital service;
- 37 (vi) the operation of a library;
- 38 (vii) abatement or control of mosquitos and other insects;
- 39 (viii) the operation of parks or recreation facilities or services;
- 40 (ix) the operation of a sewage system;
- 41 (x) street lighting;
- 42 (xi) the construction and maintenance of a right-of-way, including:
- 43 (A) a curb;
- 44 (B) a gutter;
- 45 (C) a sidewalk;
- 46 (D) a street;
- 47 (E) a road;
- 48 (F) a water line;
- 49 (G) a sewage line;
- 50 (H) a storm drain;
- 51 (I) an electricity line;
- 52 (J) a communications line; or
- 53 (K) a natural gas line;
- 54 (xii) transportation, including public transit and providing streets and roads;
- 55 (xiii) the operation of a system, or one or more components of a system, for the  
56 collection, storage, retention, control, conservation, treatment, supplying, distribution, or  
57 reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether

58 the system is operated on a wholesale or retail level or both;

59 (xiv) in accordance with Subsection (1)(c), the development and execution of a  
60 groundwater management plan in cooperation with and approved by the state engineer in  
61 accordance with Section 73-5-15;

62 (xv) law enforcement service; or

63 (xvi) subject to Subsection (1)(b), the underground installation of an electric utility line  
64 or the conversion to underground of an existing electric utility line.

65 (b) Each local district that provides the service of the underground installation of an  
66 electric utility line or the conversion to underground of an existing electric utility line shall, in  
67 installing or converting the line, provide advance notice to and coordinate with the utility that  
68 owns the line.

69 (c) A groundwater management plan described in Subsection (1)(a)(xiv) may include  
70 the banking of groundwater rights by a local district in a critical management area as defined in  
71 Section 73-5-15 following the adoption of a groundwater management plan by the state  
72 engineer under Section 73-5-15.

73 (i) A local district may manage the groundwater rights it acquires under Subsection  
74 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan  
75 described in this Subsection (1)(c).

76 (ii) A groundwater right held by a local district to satisfy the provisions of a  
77 groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

78 (iii) (A) A local district may divest itself of a groundwater right subject to a  
79 determination that the groundwater right is not required to facilitate the groundwater  
80 management plan described in this Subsection (1)(c).

81 (B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section  
82 73-1-4 beginning on the date of divestiture.

83 (iv) Upon a determination by the state engineer that an area is no longer a critical  
84 management area, a water right held by the local district is subject to Section 73-1-4.

85 (v) A local district created in accordance with Subsection (1)(a)(xiv) to develop and

86 execute a groundwater management plan may hold or acquire a right to surface waters that are  
87 naturally tributary to the groundwater basin subject to the groundwater management plan if the  
88 surface waters are appropriated in accordance with Title 73, Water and Irrigation, and used in  
89 accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act.

90 (2) For purposes of this section:

91 (a) "Operation" means all activities involved in providing the indicated service  
92 including acquisition and ownership of property reasonably necessary to provide the indicated  
93 service and acquisition, construction, and maintenance of facilities and equipment reasonably  
94 necessary to provide the indicated service.

95 (b) "System" means the aggregate of interrelated components that combine together to  
96 provide the indicated service including, for a sewage system, collection and treatment.

97 (3) (a) A local district may not be created to provide and may not after its creation  
98 provide more than four of the services listed in Subsection (1).

99 (b) Subsection (3)(a) may not be construed to prohibit a local district from providing  
100 more than four services if, before April 30, 2007, the local district was authorized to provide  
101 those services.

102 (4) (a) Except as provided in Subsection (4)(b), a local district may not be created to  
103 provide and may not after its creation provide to an area the same service already being  
104 provided to that area by another political subdivision, unless the other political subdivision  
105 gives its written consent.

106 (b) For purposes of Subsection (4)(a), a local district does not provide the same service  
107 as another political subdivision if it operates a component of a system that is different from a  
108 component operated by another political subdivision but within the same:

109 (i) sewage system; or

110 (ii) water system.

111 (5) (a) Except for a local district in the creation of which an election is not required  
112 under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the  
113 unincorporated area of one or more counties and all or part of one or more municipalities.

- 114 (b) The area of a local district need not be contiguous.
- 115 (6) For a local district created before May 5, 2008, the authority to provide fire
- 116 protection service also includes the authority to provide:
- 117 (a) paramedic service; and
- 118 (b) emergency service, including hazardous materials response service.
- 119 (7) A local district created before May 11, 2010, authorized to provide the construction
- 120 and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection
- 121 (1)(a)(xi) on or after May 11, 2010.

122 Section 2. Section **73-5-15** is amended to read:

123 **73-5-15. Groundwater management plan.**

124 (1) As used in this section:

125 (a) "Critical management area" means a groundwater basin in which the groundwater

126 withdrawals consistently exceed the safe yield.

127 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a

128 groundwater basin over a period of time without exceeding the long-term recharge of the basin

129 or unreasonably affecting the basin's physical and chemical integrity.

130 (2) (a) The state engineer may regulate groundwater withdrawals within a specific

131 groundwater basin by adopting a groundwater management plan in accordance with this section

132 for any groundwater basin or aquifer or combination of hydrologically connected groundwater

133 basins or aquifers.

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

- 135 (i) limit groundwater withdrawals to safe yield;
- 136 (ii) protect the physical integrity of the aquifer; and
- 137 (iii) protect water quality.

138 (c) The state engineer shall adopt a groundwater management plan for a groundwater

139 basin if more than [~~1/3~~] one-third of the water right owners in the groundwater basin request

140 that the state engineer adopt a groundwater management plan.

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

- 142 (i) the hydrology of the groundwater basin;
- 143 (ii) the physical characteristics of the groundwater basin;
- 144 (iii) the relationship between surface water and groundwater, including whether the
- 145 groundwater should be managed in conjunction with hydrologically connected surface waters;
- 146 (iv) the conjunctive management of water rights to facilitate and coordinate the lease,
- 147 purchase, or voluntary use of water rights subject to the groundwater management plan;
- 148 [~~(iv)~~] (v) the geographic spacing and location of groundwater withdrawals;
- 149 [~~(v)~~] (vi) water quality;
- 150 [~~(vi)~~] (vii) local well interference; and
- 151 [~~(vii)~~] (viii) other relevant factors.

152 (b) The state engineer shall base the provisions of a groundwater management plan on

153 the principles of prior appropriation.

154 (c) (i) The state engineer shall use the best available scientific method to determine

155 safe yield.

156 (ii) As hydrologic conditions change or additional information becomes available, safe

157 yield determinations made by the state engineer may be revised by following the procedures

158 listed in Subsection (5).

159 (4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a

160 groundwater basin shall be limited to the basin's safe yield.

161 (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer

162 shall:

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

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

165 (iii) If the state engineer determines that groundwater withdrawals in a groundwater

166 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that

167 groundwater basin based on the priority date of the water rights under the groundwater

168 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a

169 different distribution.

170           (iv) A groundwater management plan shall include a list of each groundwater right in  
171 the proposed groundwater management area known to the state engineer identifying the water  
172 right holder, the land to which the groundwater right is appurtenant, and any identification  
173 number the state engineer uses in the administration of water rights.

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

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

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

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

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

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

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

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

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

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

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

- 198 (ii) present any data, studies, or reports that the state engineer intends to consider in  
199 preparing the groundwater management plan;
- 200 (iii) address safe yield and any other subject that may be included in the groundwater  
201 management plan;
- 202 (iv) outline the estimated administrative costs, if any, that groundwater users are likely  
203 to incur if the plan is adopted; and
- 204 (v) receive any public comments and other information presented at the public  
205 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
- 206 (c) receive and consider written comments concerning the proposed groundwater  
207 management plan from any person for a period determined by the state engineer of not less  
208 than 60 days after the day on which the notice required by Subsection (5)(a) is given;
- 209 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,  
210 publish notice:
- 211 (A) that a draft of the groundwater management plan has been proposed; and  
212 (B) specifying where a copy of the draft plan may be reviewed; and
- 213 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of  
214 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
- 215 (e) provide notice of the adoption of the groundwater management plan.
- 216 (6) A groundwater management plan shall become effective on the date notice of  
217 adoption is completed under Subsection (7), or on a later date if specified in the plan.
- 218 (7) (a) A notice required by this section shall be:
- 219 (i) published:
- 220 (A) once a week for two successive weeks in a newspaper of general circulation in  
221 each county that encompasses a portion of the land area proposed to be included within the  
222 groundwater management plan; and
- 223 (B) in accordance with Section 45-1-101 for two weeks;
- 224 (ii) published conspicuously on the state engineer's [~~Internet~~] website; and
- 225 (iii) mailed to each of the following that has within its boundaries a portion of the land



226 area to be included within the proposed groundwater management plan:

227 (A) county;

228 (B) incorporated city or town;

229 (C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District

230 Act;

231 (D) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

232 (E) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

233 (F) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

234 (G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan

235 Water District Act;

236 (H) special service district providing water, sewer, drainage, or flood control services,

237 under Title 17D, Chapter 1, Special Service District Act;

238 (I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water

239 Conservancy District Act; and

240 (J) conservation district, under Title 17D, Chapter 3, Conservation District Act.

241 (b) A notice required by this section is effective upon substantial compliance with

242 Subsections (7)(a)(i) through (iii).

243 (8) A groundwater management plan may be amended in the same manner as a

244 groundwater management plan may be adopted under this section.

245 (9) The existence of a groundwater management plan does not preclude any otherwise

246 eligible person from filing any application or challenging any decision made by the state

247 engineer within the affected groundwater basin.

248 (10) (a) A person aggrieved by a groundwater management plan may challenge any

249 aspect of the groundwater management plan by filing a complaint within 60 days after the

250 adoption of the groundwater management plan in the district court for any county in which the

251 groundwater basin is found.

252 (b) Notwithstanding Subsection (9), a person may challenge the components of a

253 groundwater management plan only in the manner provided by Subsection (10)(a).

254 (c) An action brought under this Subsection (10) is reviewed de novo by the district  
255 court.

256 (d) A person challenging a groundwater management plan under this Subsection (10)  
257 shall join the state engineer as a defendant in the action challenging the groundwater  
258 management plan.

259 (e) (i) Within 30 days after the day on which a person files an action challenging any  
260 aspect of a groundwater management plan under Subsection (10)(a), the person filing the action  
261 shall publish notice of the action:

262 (A) in a newspaper of general circulation in the county in which the district court is  
263 located; and

264 (B) in accordance with Section 45-1-101 for two weeks.

265 (ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for  
266 two consecutive weeks.

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

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

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

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

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

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

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

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

281 (11) A groundwater management plan adopted or amended in accordance with this

282 section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative  
283 Rulemaking Act.

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

286 (b) In a critical management area, the artificial recharge of a groundwater basin that  
287 uses surface water naturally tributary to the groundwater basin by a local district created under  
288 Subsection 17B-1-202(1)(a)(xiv), in accordance with Title 73, Chapter 3b, Groundwater  
289 Recharge and Recovery Act, constitutes a beneficial use of the water under Section 73-1-3 if:

290 (i) the recharge is done during the time the area is designated as a critical management  
291 area;

292 (ii) the recharge is done with a valid recharge permit;

293 (iii) the recharged water is not recovered under a recovery permit; and

294 (iv) the recharged water is used to replenish the groundwater basin.

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

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

301 (15) (a) A groundwater management plan adopted by the state engineer before May 1,  
302 2006, remains in force and has the same legal effect as it had on the day on which it was  
303 adopted by the state engineer.

304 (b) If a groundwater management plan that existed before May 1, 2006, is amended on  
305 or after May 1, 2006, the amendment is subject to this section's provisions.