

WATER BANKING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Timothy D. Hawkes

Cosponsors: Ralph Okerlund

David P. Hinkins

LONG TITLE

Committee Note:

The Legislative Water Development Commission recommended this bill.

Membership: 13 legislators 11 non-legislators

Legislative Vote: 8 voting for 1 voting against 4 absent

General Description:

This bill addresses transactional water right banking.

Highlighted Provisions:

This bill:

▶ authorizes the Board of Water Resources, the state engineer, and the Division of Water Resources to implement water banking;

▶ enacts the Water Banking Act, including:

- defining terms;
- outlining the objectives of a water right banking system;
- providing the scope of the chapter;
- addressing assistance by the Division of Water Resources;

24a **§→** • addressing fees; ←**§**

• outlining how statutory water banks are established and amended;

• outlining how contract water banks are established and amended;



- 27 • requiring annual reports to the Board of Water Resources;
- 28 • addressing default of a water bank and revocation of a water bank;
- 29 • providing for the banking of water rights;
- 30 • addressing condemnation of banked water rights;
- 31 • addressing delivery request for loaned water rights in water banks;
- 32 • addressing the enforcement powers of the state engineer; and
- 33 • imposing reporting procedures on the board and the Department of Natural
- 34 Resources;
- 35 ▶ provides for a repeal date of the water banking provisions;
- 36 ▶ specifies that water rights deposited in a water bank are not subject to abandonment
- 37 or forfeiture while approved for use in a water bank; and
- 38 ▶ makes technical and conforming amendments.

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

45 **63I-1-273**, as last amended by Laws of Utah 2019, Chapters 96 and 246

46 **73-1-4**, as last amended by Laws of Utah 2017, Chapter 132

47 **73-10-4**, as last amended by Laws of Utah 1969, Chapter 198

48 ENACTS:

49 **73-31-101**, Utah Code Annotated 1953

50 **73-31-102**, Utah Code Annotated 1953

51 **73-31-103**, Utah Code Annotated 1953

52 **73-31-104**, Utah Code Annotated 1953

53 **73-31-105**, Utah Code Annotated 1953

54 **73-31-106**, Utah Code Annotated 1953

54a **§→ 73-31-107, Utah Code Annotated 1953 ←§**

55 **73-31-201**, Utah Code Annotated 1953

56 **73-31-202**, Utah Code Annotated 1953

57 **73-31-203**, Utah Code Annotated 1953

368 with Section 73-31-103.

369 Section 6. Section **73-31-103** is enacted to read:

370 **73-31-103. Notice -- Website.**

371 (1) A notice required under this chapter shall be posted in accordance with Subsection
372 73-3-6(1) and to a water bank's website, unless otherwise specified.

373 (2) The board may create and oversee a website for the purpose of making water
374 banking information available to the public.

375 Section 7. Section **73-31-104** is enacted to read:

376 **73-31-104. Objectives of water banks.**

377 The objectives in creating a water bank are to:

378 (1) promote:

379 (a) the optimal use of the public's water;

380 (b) transparency and access to water markets;

381 (c) temporary, flexible, and low cost water transactions between water users; and

382 (d) Utah's agricultural economy by providing access to water resources and income for
383 Utah's agricultural industry; and

384 (2) facilitate:

385 (a) robust and sustainable agricultural production while meeting growing municipal
386 and industrial water demands, such as fallowing arrangements;

387 (b) water quality ~~§~~ → [standards] improvement ← ~~§~~ ;

388 (c) water rights administration and distribution; and

389 (d) a healthy and resilient natural environment.

390 Section 8. Section **73-31-105** is enacted to read:

391 **73-31-105. Scope.**

392 Nothing in this chapter prevents a person from entering into an agreement regarding the
393 use of a water right that differs from the requirements of this chapter, except that only a water
394 bank approved under this chapter may avail itself of the statutory provisions that apply to a
395 water bank.

396 Section 9. Section **73-31-106** is enacted to read:

397 **73-31-106. Board assistance.**

398 The board may direct the Division of Water Resources to assist the board in fulfilling

399 the board's responsibilities under this chapter.

399a **§→ Section 10. Section 73-31-107 is enacted to read:**

399b **73-31-107. Fees**

399c **(1) The board may charge fees, set pursuant to Section 63J-1-504, to cover the costs of**
 399d **processing and administering:**

399e **(a) a statutory water bank application; or**

399f **(b) a contract water bank application.**

399g **(2) The board shall charge a uniform fee for a statutory water bank application and a**
 399h **uniform fee for a contract water bank application.**

399i **(3) The board may charge a different fee for a statutory water bank application than is**
 399j **charged for a contract water bank application.**

399k **(4) Fees collected under this section shall be deposited in the General Fund as a**
 399l **dedicated credit to be used by the board to implement this chapter. ←§**

400 Section **§→ [H] 11 ←§** . Section 73-31-201 is enacted to read:

401 **Part 2. Statutory Water Banks**

402 **73-31-201. Approval of statutory water bank.**

403 **(1) The board shall approve an application to create a statutory water bank that satisfies**
 404 **this part.**

405 **(2) As a condition of approval, a statutory water bank is subject to this chapter.**

406 Section **§→ [H] 12 ←§** . Section 73-31-202 is enacted to read:

407 **73-31-202. Statutory water bank application.**

408 **(1) A record holder, other than the United States or an agency of the United States, of a**
 409 **perfected water right or a valid diligence claim may request approval for a proposed statutory**
 410 **water bank if the place of use and point of diversion for the applicant's water right are**
 411 **encompassed within the proposed service area of the proposed statutory water bank and the**
 412 **applicant files an application with the board that includes the following:**

413 **(a) the name of the statutory water bank;**

414 **(b) the mailing address for the statutory water bank;**

415 **(c) the type of legal entity recognized under Utah law that constitutes the statutory**
 416 **water bank;**

417 **(d) a proposed service area map for the statutory water bank;**

418 **(e) whether the statutory water bank will accept deposits of surface water rights or**

- 430 (g) a confirmation that the applicant satisfies the criteria listed in Subsection (1)(e)(ii);
 431 (h) procedures that describe how the statutory water bank will:
 432 (i) determine and fund the water bank's administrative costs;
 433 (ii) design, facilitate, and conduct transactions between borrowers and depositors for
 434 the use of a banked water right; and
 435 (iii) accept, reject, and manage banked water rights, including:
 436 (A) what information a depositor shall provide to inform the statutory water bank, the
 437 state engineer, or any other distributing entity regarding the feasibility of using the water right
 438 within the statutory water bank's designated service area;
 439 (B) how a potential depositor is to work with the statutory water bank to jointly file a
 440 change application seeking authorization from the state engineer to deposit a water right within
 441 the statutory water bank;
 442 (C) conditions for depositing a water right with the statutory water bank;
 443 (D) how payments to depositors are determined; and
 444 (E) under what conditions a depositor may use a water right at the heretofore place of
 445 use pursuant to Subsection 73-31-501(4);
 446 (iv) accept, review, and approve delivery requests, including:
 447 (A) deadlines for submitting a delivery request to the statutory water bank;
 448 (B) a cost or fee associated with submitting a delivery request and how that cost or fee
 449 is to be applied or used by the statutory water bank;
 450 (C) what information a borrower is to include on a delivery request to sufficiently
 451 inform the statutory water bank, state engineer, or another distributing entity whether the
 452 delivery request is feasible within the statutory water bank's designated service area;
 453 (D) any notice and comment procedures for notifying other water users of the delivery
 454 request;
 455 (E) the criteria the statutory water bank will use to ~~value~~ evaluate delivery
 455a requests;
 456 (F) how the statutory water bank will inform water users who have submitted a
 457 delivery request if the delivery request is approved or denied, the reasons for denial if denied,
 458 and any applicable conditions if approved;
 459 (G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial
 460 of a delivery request, including identifying who has the burden in an appeal and the standards

585 (2) The board shall:

586 (a) examine the application to determine whether changes are required for the board to
587 process the application in accordance with this part;

588 (b) review the application to determine whether it meets the objectives of a water bank
589 described in Section [73-31-103](#);

590 (c) consider the application complete if the application satisfies this part; and

591 (d) notify the applicant of any additional information or changes needed to process the
592 application.

593 ~~**§** **(3)** **A contract water bank may review public comments and comments from the board**~~
594 ~~**before a final decision is made by the board. If the contract water bank desires to make changes**~~
595 ~~**to the contract water bank's application, the contract water bank may notify the board in writing**~~
596 ~~**before the board takes action on the application that the contract water bank will submit a**~~
597 ~~**revised application following the same process that governs the filing of an original**~~
598 ~~**application.**~~

599 ~~**(4)** **(3)** **←§** Within 30 days of the date the board determines that an application is complete,~~
the

600 board shall post notice of the application in accordance with Section [73-31-103](#).

601 ~~**§** **(5)** **4** **←§** The notice required by Subsection ~~**§** **(4)** **(3)** **←§**~~, shall state:~~

602 (a) that an application to approve a contract water bank has been filed with the board;
603 and

604 (b) where a person may review the application.

605 Section 19. Section **73-31-304** is enacted to read:

606 **73-31-304. Review of contract water bank application.**

607 (1) After complying with Section [73-31-303](#), the board shall approve an application for
608 a contract water bank if the application satisfies Section [73-31-302](#), which is to be liberally
609 interpreted by the board to facilitate the objectives described in Section [73-31-104](#).

610 (2) In approving an application, the board shall:

611 (a) issue an order approving the contract water bank; and

612 (b) publish a summary of the information submitted by the public entity under
613 Subsection [73-31-302](#)(1) on the water banking website.

614 (3) If the board denies an application, the board shall issue a written explanation to the
615 applicant that sets forth the reason for the denial, provided that the board's decision regarding

616 an application does not create a right of appeal under Title 63G, Chapter 4, Administrative
 617 Procedures Act.

617a **§→ (4) A contract water bank may review public comments and comments from the board**
 617b **before a final decision is made by the board. If the contract water bank desires to make changes**
 617c **to the contract water bank's application, the contract water bank may notify the board in writing**
 617d **before the board takes action on the application that the contract water bank will submit a revised**
 617e **application following the same process that governs the filing of an original application. ←§**

618 Section 20. Section **73-31-305** is enacted to read:

619 **73-31-305. Amending application.**

620 (1) After the board approves a contract water bank's application under this part, the
 621 contract water bank may seek to amend the contract water bank's application by filing a
 622 description of the proposed amendment with the board. The board shall follow the procedures
 623 of Sections [73-31-303](#) and [73-31-304](#) to approve an amendment to a contract water bank's
 624 application.

625 (2) An amendment approved by the board becomes effective on the first day of the next
 626 reporting year.

627 Section 21. Section **73-31-401** is enacted to read:

628 **Part 4. Reporting by Water Banks**

629 **73-31-401. Annual reports.**

630 (1) (a) On or before November 30 of each year, the governing body of a water bank
 631 shall submit to the board an annual report on the governing body's management of the water
 632 bank's operations for the previous reporting year on a form provided by the board that provides
 633 the information in Subsection (2).

634 (b) Proof to the satisfaction of the board that the water bank has mailed,
 635 hand-delivered, or sent the annual report electronically is considered compliance with this
 636 Subsection (1).

637 (2) The annual report shall include the following information for the prior reporting
 638 year:

639 (a) a tabulation of the volume and change application number of water rights deposited
 640 in the water bank;

641 (b) the nature of use of each banked water right before the banked water right was
 642 deposited in the water bank and the volumes of water allocated to each use before being
 643 deposited;

644 (c) a tabulation of loaned water rights from that water bank, which includes:

645 (i) the change application number;

646 (ii) the volume of water derived from the loaned water rights;