

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 **Š→** • addressing fees; ←Š
- 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 **Ŝ→ 73-31-107, Utah Code Annotated 1953 ←Ŝ**

- 55 **73-31-201**, Utah Code Annotated 1953
- 56 **73-31-202**, Utah Code Annotated 1953
- 57 **73-31-203**, Utah Code Annotated 1953

- 58 [73-31-204](#), Utah Code Annotated 1953
- 59 [73-31-205](#), Utah Code Annotated 1953
- 60 [73-31-206](#), Utah Code Annotated 1953
- 61 [73-31-301](#), Utah Code Annotated 1953
- 62 [73-31-302](#), Utah Code Annotated 1953
- 63 [73-31-303](#), Utah Code Annotated 1953
- 64 [73-31-304](#), Utah Code Annotated 1953
- 65 [73-31-305](#), Utah Code Annotated 1953
- 66 [73-31-401](#), Utah Code Annotated 1953
- 67 [73-31-402](#), Utah Code Annotated 1953
- 68 [73-31-501](#), Utah Code Annotated 1953
- 69 [73-31-502](#), Utah Code Annotated 1953
- 70 [73-31-503](#), Utah Code Annotated 1953
- 71 [73-31-601](#), Utah Code Annotated 1953

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

74 Section 1. Section **63I-1-273** is amended to read:

75 **63I-1-273. Repeal dates, Title 73.**

76 (1) In relation to the Legislative Water Development Commission, on January 1, 2021:
 77 [~~(1)~~] (a) in Subsection [73-10g-105\(3\)](#), the language that states "and in consultation
 78 with the State Water Development Commission created in Section [73-27-102](#)" is repealed;

79 [~~(2)~~] (b) Subsection [73-10g-203\(4\)\(a\)](#) is repealed; and

80 [~~(3)~~] (c) Title 73, Chapter 27, State Water Development Commission, is repealed.

81 (2) In relation to Title 73, Chapter 31, Water Banking Act, on December 31, 2030:

82 (a) Subsection [73-1-4\(2\)\(e\)\(x\)](#) is repealed;

83 (b) Subsection [73-10-4\(1\)\(h\)](#) is repealed; and

84 (c) Title 73, Chapter 31, Water Banking Act, is repealed.

85 Section 2. Section **73-1-4** is amended to read:

86 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
 87 **seven years -- Nonuse application.**

88 (1) As used in this section:

- 89 (a) "Public entity" means:
- 90 (i) the United States;
- 91 (ii) an agency of the United States;
- 92 (iii) the state;
- 93 (iv) a state agency;
- 94 (v) a political subdivision of the state; or
- 95 (vi) an agency of a political subdivision of the state.
- 96 (b) "Public water supplier" means an entity that:
- 97 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
- 98 industrial use; and
- 99 (ii) is:
- 100 (A) a public entity;
- 101 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
- 102 Service Commission;
- 103 (C) a community water system:
- 104 (I) that:
- 105 (Aa) supplies water to at least 100 service connections used by year-round residents; or
- 106 (Bb) regularly serves at least 200 year-round residents; and
- 107 (II) whose voting members:
- 108 (Aa) own a share in the community water system;
- 109 (Bb) receive water from the community water system in proportion to the member's
- 110 share in the community water system; and
- 111 (Cc) pay the rate set by the community water system based on the water the member
- 112 receives; or
- 113 (D) a water users association:
- 114 (I) in which one or more public entities own at least 70% of the outstanding shares; and
- 115 (II) that is a local sponsor of a water project constructed by the United States Bureau of
- 116 Reclamation.
- 117 (c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.
- 118 (d) "Water company" means the same as that term is defined in Section 73-3-3.5.
- 119 (e) "Water supply entity" means an entity that supplies water as a utility service or for

120 irrigation purposes and is also:

121 (i) a municipality, water conservancy district, metropolitan water district, irrigation
122 district, or other public agency;

123 (ii) a water company regulated by the Public Service Commission; or

124 (iii) any other owner of a community water system.

125 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
126 appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a
127 water right for a period of at least seven years, the water right or the unused portion of that
128 water right is subject to forfeiture in accordance with Subsection (2)(c).

129 (b) (i) An appropriator or the appropriator's successor in interest may file an
130 application for nonuse with the state engineer.

131 (ii) A nonuse application may be filed on all or a portion of the water right, including
132 water rights held by a water company.

133 (iii) After giving written notice to the water company, a shareholder may file a nonuse
134 application with the state engineer on the water represented by the stock.

135 (iv) (A) The approval of a nonuse application excuses the requirement of beneficial use
136 of water from the date of filing.

137 (B) The time during which an approved nonuse application is in effect does not count
138 toward the seven-year period described in Subsection (2)(a).

139 (v) The filing or approval of a nonuse application or a series of nonuse applications
140 under Subsection (3) does not:

141 (A) constitute beneficial use of a water right;

142 (B) protect a water right that is already subject to forfeiture under this section; or

143 (C) bar a water right owner from:

144 (I) using the water under the water right as permitted under the water right; or

145 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided
146 by law.

147 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the
148 water right may not be forfeited unless a judicial action to declare the right forfeited is
149 commenced:

150 (A) within 15 years from the end of the latest period of nonuse of at least seven years;

151 or

152 (B) within the combined time of 15 years from the end of the most recent period of
153 nonuse of at least seven years and the time the water right was subject to one or more nonuse
154 applications.

155 (ii) (A) The state engineer, in a proposed determination of rights filed with the court
156 and prepared in accordance with Section 73-4-11, may not assert that a water right was
157 forfeited unless the most recent period of nonuse of seven years ends or occurs:

158 (I) during the 15 years immediately preceding the day on which the state engineer files
159 the proposed determination of rights with the court; or

160 (II) during the combined time immediately preceding the day on which the state
161 engineer files the proposed determination of rights consisting of 15 years and the time the
162 water right was subject to one or more approved nonuse applications.

163 (B) After the day on which a proposed determination of rights is filed with the court a
164 person may not assert that a water right subject to that determination was forfeited before the
165 issuance of the proposed determination, unless the state engineer asserts forfeiture in the
166 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection
167 to the proposed determination that asserts forfeiture.

168 (iii) A water right, found to be valid in a decree entered in an action for general
169 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
170 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
171 engineer filed the related proposed determination of rights with the court, unless the decree
172 provides otherwise.

173 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
174 the water right is forfeited:

175 (A) the right to beneficially use the water reverts to the public; and

176 (B) the water made available by the forfeiture:

177 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

178 and

179 (II) second, may be appropriated as provided in this title.

180 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or
181 abandoned water or a portion of the water is:

- 182 (i) permitted to run to waste; or
183 (ii) beneficially used by others without right with the knowledge of the water right
184 holder.
- 185 (e) This section does not apply to:
- 186 (i) the beneficial use of water according to a lease or other agreement with the
187 appropriator or the appropriator's successor in interest;
- 188 (ii) a water right if its place of use is contracted under an approved state agreement or
189 federal conservation fallowing program;
- 190 (iii) those periods of time when a surface water or groundwater source fails to yield
191 sufficient water to satisfy the water right;
- 192 (iv) a water right when water is unavailable because of the water right's priority date;
- 193 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
194 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
- 195 (A) the water is stored for present or future beneficial use; or
196 (B) storage is limited by a safety, regulatory, or engineering restraint that the
197 appropriator or the appropriator's successor in interest cannot reasonably correct;
- 198 (vi) a water right if a water user has beneficially used substantially all of the water right
199 within a seven-year period, provided that this exemption does not apply to the adjudication of a
200 water right in a general determination of water rights under Chapter 4, Determination of Water
201 Rights;
- 202 (vii) except as provided by Subsection (2)(g), a water right:
- 203 (A) (I) owned by a public water supplier;
204 (II) represented by a public water supplier's ownership interest in a water company; or
205 (III) to which a public water supplier owns the right of beneficial use; and
206 (B) conserved or held for the reasonable future water requirement of the public, which
207 is determined according to Subsection (2)(f);
- 208 (viii) a supplemental water right during a period of time when another water right
209 available to the appropriator or the appropriator's successor in interest provides sufficient water
210 so as to not require beneficial use of the supplemental water right; [or]
- 211 (ix) a period of nonuse of a water right during the time the water right is subject to an
212 approved change application where the applicant is diligently pursuing certification[-]; or

213 (x) a water right subject to an approved change application for use within a water bank
214 that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the
215 period of time the state engineer authorizes the water right to be used within the water bank.

216 (f) (i) The reasonable future water requirement of the public is the amount of water
217 needed in the next 40 years by:

218 (A) the persons within the public water supplier's reasonably anticipated service area
219 based on reasonably anticipated population growth; or

220 (B) other water use demand.

221 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
222 anticipated service area:

223 (A) is the area served by the community water system's distribution facilities; and

224 (B) expands as the community water system expands the distribution facilities in
225 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

226 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
227 Subsection (2)(e)(vii) applies if:

228 (i) the public water supplier submits a change application under Section 73-3-3; and

229 (ii) the state engineer approves the change application.

230 (3) (a) The state engineer shall furnish a nonuse application form requiring the
231 following information:

232 (i) the name and address of the applicant;

233 (ii) a description of the water right or a portion of the water right, including the point of
234 diversion, place of use, and priority;

235 (iii) the quantity of water;

236 (iv) the period of use;

237 (v) the extension of time applied for;

238 (vi) a statement of the reason for the nonuse of the water; and

239 (vii) any other information that the state engineer requires.

240 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
241 application once a week for two successive weeks:

242 (A) in a newspaper of general circulation in the county in which the source of the water
243 supply is located and where the water is to be beneficially used; and

- 244 (B) as required in Section [45-1-101](#).
- 245 (ii) The notice shall:
- 246 (A) state that an application has been made; and
- 247 (B) specify where the interested party may obtain additional information relating to the
- 248 application.
- 249 (c) ~~[Any]~~ An interested person may file a written protest with the state engineer against
- 250 the granting of the application:
- 251 (i) within 20 days after the notice is published, if the adjudicative proceeding is
- 252 informal; and
- 253 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
- 254 formal.
- 255 (d) In ~~[any proceedings]~~ a proceeding to determine whether the nonuse application
- 256 should be approved or rejected, the state engineer shall follow the procedures and requirements
- 257 of Title 63G, Chapter 4, Administrative Procedures Act.
- 258 (e) After further investigation, the state engineer may approve or reject the application.
- 259 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
- 260 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
- 261 for nonuse.
- 262 (b) A reasonable cause for nonuse includes:
- 263 (i) a demonstrable financial hardship or economic depression;
- 264 (ii) a physical ~~[causes or changes]~~ cause or change that ~~[render]~~ renders use beyond the
- 265 reasonable control of the water right owner so long as the water right owner acts with
- 266 reasonable diligence to resume or restore the use;
- 267 (iii) the initiation of water conservation or an efficiency ~~[practices]~~ practice, or the
- 268 operation of a groundwater recharge recovery program approved by the state engineer;
- 269 (iv) operation of a legal ~~[proceedings]~~ proceeding;
- 270 (v) the holding of a water right or stock in a mutual water company without use by
- 271 ~~[any]~~ a water supply entity to meet the reasonable future requirements of the public;
- 272 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
- 273 implementing an existing, approved water management plan; or
- 274 (vii) the loss of capacity caused by deterioration of the water supply or delivery

275 equipment if the applicant submits, with the application, a specific plan to resume full use of
276 the water right by replacing, restoring, or improving the equipment.

277 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
278 notify the applicant by mail or by any form of electronic communication through which receipt
279 is verifiable, of the date when the nonuse application will expire.

280 (b) An applicant may file a subsequent nonuse application in accordance with this
281 section.

282 Section 3. Section 73-10-4 is amended to read:

283 **73-10-4. Powers and duties of board.**

284 (1) The board shall have the following powers and duties to:

285 [~~(1) To~~] (a) authorize studies, investigations, and plans for the full development, [~~and~~
286 ~~utilization~~] use, and promotion of the water and power resources of the state, including
287 preliminary surveys, stream gauging, examinations, tests, and other estimates either separately
288 or in consultation with federal, state and other agencies[-];

289 [~~(2) To~~] (b) enter into contracts subject to the provisions of this [~~act~~] chapter for the
290 construction of conservation projects [~~which~~] that in the opinion of the board will conserve and
291 [~~utilize~~] use for the best advantage of the people of this state the water and power resources of
292 the state, including projects beyond the boundaries of the state of Utah located on interstate
293 waters when the benefit of such projects accrues to the citizens of the state[-];

294 [~~(3) To~~] (c) sue and be sued in accordance with applicable law[-];

295 [~~(4) To~~] (d) supervise in cooperation with the governor and the executive director of
296 natural resources all matters affecting interstate compact negotiations and the administration of
297 [~~such~~] the compacts affecting the waters of interstate rivers, lakes and other sources of
298 supply[-];

299 [~~(5) To~~] (e) contract with federal and other agencies and with the National
300 [~~Reclamation~~] Water Resources Association and to make studies, investigations and
301 recommendations and do all other things on behalf of the state for any purpose [~~which~~] that
302 relates to the development, conservation, protection and control of the water and power
303 resources of the state[-];

304 [~~(6) To~~] (f) consult and advise with the Utah Water Users' Association and other
305 organized water users' associations in the state[-];

306 ~~[(7) To]~~ (g) consider and make recommendations on behalf of the state ~~[of Utah]~~ of
 307 reclamation projects or other water development projects for construction by any agency of the
 308 state or United States and in so doing recommend the order in which projects shall be
 309 undertaken~~[-];~~ or

310 (h) review, approve, and revoke an application to create a water bank under Chapter
 311 31, Water Banking Act, collect an annual report, maintain the water banking website, and
 312 conduct any other function related to a water bank as described in Chapter 31, Water Banking
 313 Act.

314 ~~[(8)]~~ (2) Nothing contained ~~[herein]~~ in this section shall be construed to impair or
 315 otherwise interfere with the authority of the state engineer granted by Title 73, Water and
 316 Irrigation, except as ~~[herein]~~ specifically otherwise provided in this section.

317 Section 4. Section **73-31-101** is enacted to read:

318 **CHAPTER 31. WATER BANKING ACT**

319 **Part 1. General Provisions**

320 **73-31-101. Title.**

321 This chapter is known as the "Water Banking Act."

322 Section 5. Section **73-31-102** is enacted to read:

323 **73-31-102. Definitions.**

324 As used in this chapter:

325 (1) "Applicant" means:

326 (a) a record holder of a perfected water right or a valid diligence claim applying for
 327 board approval of a statutory water bank under Part 2, Statutory Water Banks; or

328 (b) a public entity applying for board approval of a contract water bank under Part 3,
 329 Contract Water Banks.

330 (2) "Application" means an application submitted to the board to approve a water bank.

331 (3) "Approved change application" means a change application that the state engineer
 332 approves to authorize a water right holder to deposit a water right in a water bank pursuant to
 333 this chapter and Section [73-3-3](#) or [73-3-3.5](#).

334 (4) "Banked water right" means a water right, or a portion of a water right, deposited in
 335 a water bank that the state engineer has authorized for use in a water bank through an approved
 336 change application.

- 337 (5) "Board" means the Board of Water Resources.
- 338 (6) "Borrower" means a person seeking to use a banked water right within a water
339 bank's service area.
- 340 (7) "Contract water bank" means a water bank created pursuant to Part 3, Contract
341 Water Banks.
- 342 (8) "Delivery request" means a request to use a banked water right made by a borrower
343 in accordance with a water bank's policies approved under the water bank's application.
- 344 (9) "Deposit" means depositing a banked water right for use within the service area of a
345 water bank.
- 346 (10) "Depositor" means a person seeking to deposit a water right in a water bank.
- 347 (11) "Hereafter use" means the conditions of use the state engineer authorizes for a
348 banked water right during the term of an approved change application.
- 349 (12) "Heretofore use" means the authorized conditions of use that were in effect before
350 the state engineer approved a change application authorizing new conditions for the use of a
351 banked water right.
- 352 (13) "Loaned water rights" means a banked water right that is used pursuant to an
353 approved delivery request.
- 354 (14) "Perfected water right" means a water right evidenced by:
- 355 (a) a decree;
- 356 (b) a certificate of appropriation; or
- 357 (c) a proposed determination or court order issued in a general adjudication.
- 358 (15) "Public entity" means the same as that term is defined in Section [73-1-4](#) except for
359 the United States or an agency of the United States.
- 360 (16) "Reporting year" means November 1 through October 31.
- 361 (17) "Service area" means the geographic area where a water bank is approved to
362 operate and operates.
- 363 (18) "State engineer" means the state engineer appointed under Section [73-2-1](#).
- 364 (19) "Statutory water bank" means a water bank created pursuant to Part 2, Statutory
365 Water Banks.
- 366 (20) "Water bank" means a contract water bank or a statutory water bank.
- 367 (21) "Water banking website" means a website overseen by the board in accordance

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 following arrangements;

387 (b) water quality $\hat{S} \rightarrow$ **[standards] improvement** $\leftarrow \hat{S}$;

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**

419 groundwater rights, provided that:

420 (i) a statutory water bank may not accept deposits of both surface water rights and

421 groundwater rights; and

422 (ii) the applicant's perfected water right or valid diligence claim is of the type accepted

423 by the statutory water bank;

424 (f) a copy of the statutory water bank's governing documents that specify:

425 (i) the number of members of the governing body, which may not be an even number;

426 (ii) the qualifications for governing members, including terms and election or

427 appointment procedures; and

428 (iii) the initial governing members' names, telephone numbers, and post office

429 addresses;

- 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 $\hat{S} \rightarrow$ [value] evaluate $\leftarrow \hat{S}$ 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

- 461 of review;
- 462 (H) how the statutory water bank will determine prices for the use of loaned water
- 463 rights; and
- 464 (I) how the statutory water bank will coordinate with the state engineer to facilitate
- 465 distribution of approved delivery requests;
- 466 (v) how the statutory water bank will ensure that the aggregate amount of loaned water
- 467 rights during a calendar year does not exceed the total sum of the banked water rights within
- 468 the statutory water bank; and
- 469 (vi) how the statutory water bank will resolve complaints regarding the statutory water
- 470 bank's operations;
- 471 (i) the process that the statutory water bank will follow if the statutory water bank
- 472 terminates, dissolves, or if the board revokes the statutory water bank's permission to operate
- 473 pursuant to this chapter, including how the statutory water bank will return banked water rights
- 474 to depositors and how the statute water bank will return any amounts owing to depositors; and
- 475 (j) a signed declaration or affidavit from at least two governing members of the
- 476 statutory water bank affirming that:
- 477 (i) the information submitted is correct;
- 478 (ii) as a condition for permission to operate, the statutory water bank may not
- 479 discriminate between the nature of use, depositors, or borrowers;
- 480 (iii) the statutory water bank shall comply with the conditions of an approved changed
- 481 application for a banked water right; and
- 482 (iv) the statutory water bank shall report to the state engineer known violations of
- 483 approved change applications.
- 484 (2) The board may prepare a form or online application for an applicant to use in
- 485 submitting an application to the board under this part.
- 486 Section 12. Section **73-31-203** is enacted to read:
- 487 **73-31-203. Action by board on statutory water bank applications.**
- 488 (1) Upon receipt of an application under Subsection [73-31-202](#), the board shall record
- 489 the date the board receives the application.
- 490 (2) The board shall:
- 491 (a) examine an application for completeness to determine whether the application

492 satisfies this part;

493 (b) review an application to determine whether it meets the objectives of a water bank
494 described in Section 73-31-103;

495 (c) consider an application complete if the application satisfies the requirements of this
496 part; and

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

499 (3) Within 30 days of the date the board determines that an application is complete, the
500 board shall post notice of the application pursuant to Section 73-31-103.

501 (4) The notice required by Subsection (3) shall state:

502 (a) that an application to create a statutory water bank has been filed with the board;

503 (b) where an interested party may obtain a copy of the application and any additional
504 information related to the application; and

505 (c) the date, time, and place of the public meeting required by Section 73-31-204.

506 Section 13. Section **73-31-204** is enacted to read:

507 **73-31-204. Public meeting -- Comments.**

508 (1) On the date indicated in the notice posted under Subsection 73-31-203(3), the board
509 shall hold a public meeting to:

510 (a) inform water users within the service area of the proposed statutory water bank; and

511 (b) receive comments from water users regarding the application.

512 (2) The board shall accept public comments for a period of time no less than 30 days
513 after the adjournment of the public meeting.

514 (3) The board shall review public comments when reviewing the proposed statutory
515 water bank's application, but submitting a comment does not create a right of appeal of the
516 board's decision under Title 63G, Chapter 4, Administrative Procedures Act, nor is the board
517 required to address how or whether public comments impacted the board's decision.

518 (4) A statutory water bank may review public comments and comments from the board
519 before a final decision is made by the board. If the statutory water bank desires to make
520 changes to the statutory water bank's application, the statutory water bank may notify the board
521 in writing before the board takes action on the application that the statutory water bank will
522 submit a revised application following the same process that governs the filing and review of

523 the original application for a statutory water bank under this chapter.

524 Section 14. Section **73-31-205** is enacted to read:

525 **73-31-205. Review of statutory bank application.**

526 (1) After complying with Sections 73-31-203 and 73-31-204, the board shall approve
527 an application if the application satisfies Section 73-31-202, which is to be liberally interpreted
528 by the board to facilitate the objectives described in Section 73-31-104.

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

530 (a) issue an order approving the statutory water bank;

531 (b) approve persons to serve as the initial members of the governing body in
532 accordance with the proposed statutory water bank's structure and Section 73-31-202; and

533 (c) publish the approved application on the water banking website.

534 (3) If the board denies an application, the board shall issue a written explanation to the
535 applicant that sets forth the reason for denial, provided that the board's decision regarding an
536 application does not create a right of appeal under Title 63G, Chapter 4, Administrative
537 Procedures Act.

538 Section 15. Section **73-31-206** is enacted to read:

539 **73-31-206. Amending application.**

540 (1) After the board approves a statutory water bank's application under this part, the
541 statutory water bank may seek to amend the statutory water bank's application by filing a
542 description of the proposed amendment with the board. The board shall follow the procedures
543 of Sections 73-31-201, 73-31-204, and 73-31-205 to approve an amendment to a statutory
544 water bank's application.

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

547 Section 16. Section **73-31-301** is enacted to read:

548 **Part 3. Contract Water Banks**

549 **73-31-301. Approval of contract water bank.**

550 (1) The board shall approve an application to create a contract water bank that satisfies
551 this part.

552 (2) As a condition of approval, a contract water bank is subject to this chapter.

553 Section 17. Section **73-31-302** is enacted to read:

554 **73-31-302. Contract water bank application.**

555 (1) A public entity may seek to have a contract for water use approved as a contract
556 water bank under this chapter by submitting an application to the board that meets the
557 following criteria:

558 (a) the name of the contract water bank;

559 (b) the mailing address for the contract water bank;

560 (c) the proposed service area map for the contract water bank;

561 (d) a description of how the contract water bank's governing body will be structured
562 and operate;

563 (e) a description for how water delivery requests and loaned water rights are to be
564 administered;

565 (f) criteria for the participation, if any, of non-public entities;

566 (g) includes a copy of the contract, provided that a public entity may redact any
567 information that is private, controlled, protected, or otherwise restricted under Title 63G,
568 Chapter 2, Government Records Access and Management Act;

569 (h) information regarding how the public can learn when the submittal of an
570 application or contract that is the basis of the contract water bank is on the agenda of a public
571 meeting of the public entity under Title 52, Chapter 4, Open and Public Meetings Act;

572 (i) whether the contract water bank will accept deposits of surface water rights or
573 groundwater rights, provided that a contract water bank may not accept deposits of both surface
574 water rights and groundwater rights; and

575 (j) the process the contract water bank will follow if the contract water bank
576 terminates, dissolves, or the board revokes the contract water bank's approval to operate
577 pursuant to this chapter, including how the contract water bank will return banked water rights
578 to depositors and how the contract water bank will return any amounts owing to depositors.

579 (2) The board may prepare a form or online application for an applicant to use in
580 submitting an application to the board under this part.

581 Section 18. Section **73-31-303** is enacted to read:

582 **73-31-303. Action by board on contract water bank application.**

583 (1) Upon receipt of an application for a proposed contract water bank, the board shall
584 record the day on which the board receives the application.

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 **Ŝ→ (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. ←Ŝ**

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:

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;

- 647 (iii) the nature of use of the loaned water rights and the volumes of water allocated to
648 each use; and
- 649 (iv) for a statutory water bank, the borrower;
650 (d) for a statutory water bank:
- 651 (i) the amounts charged for the loaned water rights, including a breakdown by nature of
652 use if appropriate;
- 653 (ii) the revenue generated by the statutory water bank, including the sources of
654 revenue;
- 655 (iii) the amounts paid out to depositors;
656 (iv) the statutory water bank's expenses;
657 (v) the balance at the end of the reporting year of the statutory water bank's bank
658 account;
- 659 (vi) the accounting practices used by the statutory water bank;
660 (vii) whether there is pending or ongoing litigation involving the statutory water bank;
661 (viii) whether there are, or have been, any governmental audits of the statutory water
662 bank;
- 663 (ix) any proposed amendments to an approved statutory water bank's procedures for the
664 coming reporting year;
- 665 (x) a narrative explanation of any inconsistencies in the annual report or in the
666 operation of the statutory water bank; and
- 667 (xi) a narrative explanation of how the statutory water bank is or is not fulfilling the
668 objectives described in Section [73-31-104](#); and
- 669 (e) a declaration or affidavit signed by at least two governing members of the statutory
670 water bank stating that the information in the report is correct.
- 671 (3) The board shall deliver a copy of the prescribed form to each water bank before
672 August 30 of each year.
- 673 (4) If the annual report contains the information required by this section, the board
674 shall post notice of the annual report in accordance with Section [73-31-103](#).
- 675 (5) If the annual report does not contain the information required by this section, the
676 board shall promptly notify the reporting water bank in writing and return the report to the
677 water bank for correction, providing a written explanation to the water bank that sets forth the

678 information that needs to be corrected. The water bank shall remain in good standing if the
679 water bank submits a corrected annual report that satisfies this section within 90 days of the
680 written notice of the board.

681 (6) If a water bank fails to submit an annual report by November 30, or fails to submit
682 a corrected annual report within 90 days of the rejection of an annual report, the water bank is
683 considered in noncompliance under this chapter.

684 Section 22. Section **73-31-402** is enacted to read:

685 **73-31-402. Water bank noncompliance -- Revocation of application.**

686 (1) If a water bank is in noncompliance with this chapter pursuant to Section
687 73-31-401, the board shall give the water bank a written notice of noncompliance that:

688 (a) explains why the water bank is in noncompliance; and

689 (b) gives the water bank a 90-day corrective period from the date of the notice to
690 correct the cause of the noncompliance.

691 (2) The board shall:

692 (a) post a notice given under Subsection (1) pursuant to Section 73-31-103; and

693 (b) notify the state engineer of the water bank's noncompliance.

694 (3) If the board determines that the water bank has corrected the noncompliance within
695 the 90-day corrective period, the board shall:

696 (a) provide the water bank written notice that the water bank's noncompliance has been
697 cured;

698 (b) post the written notice required under Subsection (3)(a) pursuant to Section
699 73-31-103; and

700 (c) notify the state engineer that the water bank has corrected the noncompliance within
701 the 90-day corrective period.

702 (4) (a) If the water bank fails to correct the noncompliance within the 90-day corrective
703 period, the water bank's approval to operate terminates at the end of the current calendar year.

704 (b) The board shall mail notice to the water bank that the water bank's approval to
705 operate has terminated and that the water bank's operations under the application shall cease at
706 the end of the current calendar year.

707 (c) The board shall post the notice required under Subsection (4)(b) pursuant to Section
708 73-31-103.

709 (d) A water bank shall notify the water bank's depositors and borrowers of the
710 dissolution within 60 days of receiving a notice under this Subsection (4) and shall enact the
711 procedures set forth in the water bank's application ceasing the water bank's operations.

712 (5) The state engineer may not approve a change application that seeks to deposit a
713 water right into a water bank that the board determines to be in noncompliance under this
714 chapter.

715 (6) A depositor retains title to deposited water rights and the water bank retains no
716 ownership in the deposited water rights.

717 Section 23. Section **73-31-501** is enacted to read:

718 **Part 5. Deposits**

719 **73-31-501. Banking water.**

720 (1) A water right may be deposited with a water bank pursuant to an approved change
721 application filed under Section [73-3-3](#) or [73-3-3.5](#).

722 (2) The state engineer may not approve a change application that authorizes the use of
723 a water right within a water bank for any period of time that exceeds December 31, 2030.

724 (3) A banked water right is excused from beneficial use requirements pursuant to
725 Subsection [73-1-4](#) (2)(e)(x).

726 (4) A depositor of a banked water right may use the banked water right in its heretofore
727 use if:

728 (a) the depositor does so under the authority, control, and accounting of the water bank;

729 (b) the water bank informs the state engineer that the depositor's heretofore use is
730 consistent with the water bank's operating procedures for loaned water rights; and

731 (c) during the time the depositor uses the banked water right in its heretofore use, the
732 water bank does not allow the banked water right to be used for other uses within the water
733 bank.

734 (5) If an entity authorized to condemn a water right leases a water right under this
735 chapter, the entity may not begin the process of condemning the water right:

736 (a) while the entity leases the water right under this chapter; or

737 (b) within five years after the day on which the entity's lease of the water right under
738 this chapter ends.

739 Section 24. Section **73-31-502** is enacted to read:

740 **73-31-502. Delivery request for loaned water rights in water bank.**

741 (1) A borrower may use water from a water bank for any use within the water bank's
742 service area consistent with the objectives in Section 73-31-104 and the conditions, if any, of
743 the underlying approved change application.

744 (2) A borrower shall make use of a banked water right by submitting a delivery request
745 to the water bank that complies with the water bank's requirements.

746 (3) The state engineer administratively supervises delivery of water to a borrower. The
747 state engineer may:

748 (a) review an approved delivery request at any point in time to ensure the delivery
749 request complies with a state engineer order approving water rights for use in the water bank,
750 established distribution procedures based on priority, or both; and

751 (b) restrict delivery of loaned water rights if the approved delivery request causes
752 impairment to other water users.

753 (4) A water bank shall keep a daily accounting of loaned water rights.

754 (5) A water bank shall refer known illegal water use actions to the state engineer's
755 enforcement program pursuant to Section 73-2-25.

756 (6) A water bank is responsible for the payment of all distribution costs assessed for
757 the delivery of a banked water right under Section 73-5-1.

758 Section 25. Section 73-31-503 is enacted to read:

759 **73-31-503. State engineer enforcement.**

760 This chapter does not limit or impair the state engineer's enforcement powers set forth
761 in Section 73-2-25.

762 Section 26. Section 73-31-601 is enacted to read:

763 **Part 6. Board Reports**

764 **73-31-601. Reports.**

765 (1) In accordance with Section 68-3-14, the board shall report annually by no later than
766 the November interim meeting of the Natural Resources, Agriculture, and Environment Interim
767 Committee regarding the implementation of this chapter.

768 (2) The board shall submit a written report to the Natural Resources, Agriculture, and
769 Environment Interim Committee by October 31, 2029, recommending whether the Legislature
770 should take one or more of the following actions:

- 771 (a) remove or extend the repeal date in Section [63I-1-273](#);
772 (b) amend the chapter, a provision in the chapter, or a provision in the Utah Code; or
773 (c) take no action and allow the chapter to repeal under Section [63I-1-273](#).
774 (3) At a minimum, the written report described under Subsection (2) shall include the
775 following:
776 (a) a summary of the implementation of the chapter;
777 (b) a statement describing and justifying the recommendation; and
778 (c) a description of the positive and negative aspects of the recommendation.
779 (4) Before the board's submission of the written report described in Subsection (2), the
780 Department of Natural Resources shall prepare and submit a draft report to the board for the
781 board's review, provided that the executive director of the Department of Natural Resources
782 may consult with another state agency or person that the executive director considers necessary
783 to prepare the draft report.
784 (5) (a) Upon receipt of the draft report described in Subsection (4), the board shall
785 review the draft report and solicit public comment on the draft report by:
786 (i) requesting written comments; and
787 (ii) holding no less than one public hearing at which:
788 (A) the Department of Natural Resources shall explain and justify the draft report's
789 recommendation; and
790 (B) an interested person may comment on or speak for or against the draft report's
791 recommendations.
792 (b) The board shall give notice of the opportunities to provide public comment under
793 this Subsection (5) by:
794 (i) mailing notice to the address of record for each water bank;
795 (ii) publishing notice in a newspaper of general circulation in the state; and
796 (iii) publishing notice as required in Section [45-1-101](#).
797 (c) The board may give separate notices for any public hearings the board may hold
798 pursuant to Subsection [73-31-601\(5\)\(a\)\(ii\)](#).
799 (d) The notice described in Subsection (5)(b) shall state:
800 (i) that the board is soliciting public comment on the draft report and shall hold a
801 public hearing on a certain day, time, and place fixed in the notice, which shall not be less than

802 30 days after the day the first notice is published, for the purpose of hearing comments
803 regarding the draft report;
804 (ii) that the board shall accept written comments on the draft report for a period of no
805 less than 30 days after the day the first notice is published, and include instructions for how the
806 public may submit comments; and
807 (iii) how the public may obtain a copy of the draft report.
808 (6) The board shall consider timely public comments submitted under this section, and
809 may require the Department of Natural Resources to make revisions the board considers
810 necessary before approving and submitting the final written report required in Subsection (2).