

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

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;
- addressing fees;
- outlining how statutory water banks are established and amended;
- outlining how contract water banks are established and amended;
- requiring annual reports to the Board of Water Resources;
- addressing default of a water bank and revocation of a water bank;
- providing for the banking of water rights;
- addressing condemnation of banked water rights;
- addressing delivery request for loaned water rights in water banks;

- 29 • addressing the enforcement powers of the state engineer; and
- 30 • imposing reporting procedures on the board and the Department of Natural
- 31 Resources;
- 32 ▶ provides for a repeal date of the water banking provisions;
- 33 ▶ specifies that water rights deposited in a water bank are not subject to abandonment
- 34 or forfeiture while approved for use in a water bank; and
- 35 ▶ makes technical and conforming amendments.

36 Money Appropriated in this Bill:

37 None

38 Other Special Clauses:

39 None

40 Utah Code Sections Affected:

41 AMENDS:

42 **63I-1-273**, as last amended by Laws of Utah 2019, Chapters 96 and 246

43 **73-1-4**, as last amended by Laws of Utah 2017, Chapter 132

44 **73-10-4**, as last amended by Laws of Utah 1969, Chapter 198

45 ENACTS:

46 **73-31-101**, Utah Code Annotated 1953

47 **73-31-102**, Utah Code Annotated 1953

48 **73-31-103**, Utah Code Annotated 1953

49 **73-31-104**, Utah Code Annotated 1953

50 **73-31-105**, Utah Code Annotated 1953

51 **73-31-106**, Utah Code Annotated 1953

52 **73-31-107**, Utah Code Annotated 1953

53 **73-31-201**, Utah Code Annotated 1953

54 **73-31-202**, Utah Code Annotated 1953

55 **73-31-203**, Utah Code Annotated 1953

56 **73-31-204**, Utah Code Annotated 1953

- 57 [73-31-205](#), Utah Code Annotated 1953
- 58 [73-31-206](#), Utah Code Annotated 1953
- 59 [73-31-301](#), Utah Code Annotated 1953
- 60 [73-31-302](#), Utah Code Annotated 1953
- 61 [73-31-303](#), Utah Code Annotated 1953
- 62 [73-31-304](#), Utah Code Annotated 1953
- 63 [73-31-305](#), Utah Code Annotated 1953
- 64 [73-31-401](#), Utah Code Annotated 1953
- 65 [73-31-402](#), Utah Code Annotated 1953
- 66 [73-31-501](#), Utah Code Annotated 1953
- 67 [73-31-502](#), Utah Code Annotated 1953
- 68 [73-31-503](#), Utah Code Annotated 1953
- 69 [73-31-601](#), Utah Code Annotated 1953

70

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

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

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

74 (1) In relation to the Legislative Water Development Commission, on January 1, 2021:

75 ~~[(1)]~~ (a) in Subsection [73-10g-105\(3\)](#), the language that states "and in consultation
76 with the State Water Development Commission created in Section [73-27-102](#)" is repealed;

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

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

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

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

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

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

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

84 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**

85 **seven years -- Nonuse application.**

86 (1) As used in this section:

87 (a) "Public entity" means:

88 (i) the United States;

89 (ii) an agency of the United States;

90 (iii) the state;

91 (iv) a state agency;

92 (v) a political subdivision of the state; or

93 (vi) an agency of a political subdivision of the state.

94 (b) "Public water supplier" means an entity that:

95 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or

96 industrial use; and

97 (ii) is:

98 (A) a public entity;

99 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public

100 Service Commission;

101 (C) a community water system:

102 (I) that:

103 (Aa) supplies water to at least 100 service connections used by year-round residents; or

104 (Bb) regularly serves at least 200 year-round residents; and

105 (II) whose voting members:

106 (Aa) own a share in the community water system;

107 (Bb) receive water from the community water system in proportion to the member's

108 share in the community water system; and

109 (Cc) pay the rate set by the community water system based on the water the member

110 receives; or

111 (D) a water users association:

112 (I) in which one or more public entities own at least 70% of the outstanding shares; and

113 (II) that is a local sponsor of a water project constructed by the United States Bureau of
114 Reclamation.

115 (c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

116 (d) "Water company" means the same as that term is defined in Section 73-3-3.5.

117 (e) "Water supply entity" means an entity that supplies water as a utility service or for
118 irrigation purposes and is also:

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

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

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

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

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

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

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

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

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

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

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

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

141 (C) bar a water right owner from:
142 (I) using the water under the water right as permitted under the water right; or
143 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided
144 by law.

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

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

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

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

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

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

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

166 (iii) A water right, found to be valid in a decree entered in an action for general
167 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
168 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state

169 engineer filed the related proposed determination of rights with the court, unless the decree
170 provides otherwise.

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

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

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

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

176 and

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

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

180 (i) permitted to run to waste; or

181 (ii) beneficially used by others without right with the knowledge of the water right
182 holder.

183 (e) This section does not apply to:

184 (i) the beneficial use of water according to a lease or other agreement with the
185 appropriator or the appropriator's successor in interest;

186 (ii) a water right if its place of use is contracted under an approved state agreement or
187 federal conservation following program;

188 (iii) those periods of time when a surface water or groundwater source fails to yield
189 sufficient water to satisfy the water right;

190 (iv) a water right when water is unavailable because of the water right's priority date;

191 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
192 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

193 (A) the water is stored for present or future beneficial use; or

194 (B) storage is limited by a safety, regulatory, or engineering restraint that the
195 appropriator or the appropriator's successor in interest cannot reasonably correct;

196 (vi) a water right if a water user has beneficially used substantially all of the water right

197 within a seven-year period, provided that this exemption does not apply to the adjudication of a
198 water right in a general determination of water rights under Chapter 4, Determination of Water
199 Rights;

200 (vii) except as provided by Subsection (2)(g), a water right:

201 (A) (I) owned by a public water supplier;

202 (II) represented by a public water supplier's ownership interest in a water company; or

203 (III) to which a public water supplier owns the right of beneficial use; and

204 (B) conserved or held for the reasonable future water requirement of the public, which
205 is determined according to Subsection (2)(f);

206 (viii) a supplemental water right during a period of time when another water right
207 available to the appropriator or the appropriator's successor in interest provides sufficient water
208 so as to not require beneficial use of the supplemental water right; ~~or~~

209 (ix) a period of nonuse of a water right during the time the water right is subject to an
210 approved change application where the applicant is diligently pursuing certification[-]; or

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

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

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

218 (B) other water use demand.

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

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

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

224 (g) For a water right acquired by a public water supplier on or after May 5, 2008,

225 Subsection (2)(e)(vii) applies if:

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

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

228 (3) (a) The state engineer shall furnish a nonuse application form requiring the

229 following information:

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

231 (ii) a description of the water right or a portion of the water right, including the point of

232 diversion, place of use, and priority;

233 (iii) the quantity of water;

234 (iv) the period of use;

235 (v) the extension of time applied for;

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

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

238 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the

239 application once a week for two successive weeks:

240 (A) in a newspaper of general circulation in the county in which the source of the water

241 supply is located and where the water is to be beneficially used; and

242 (B) as required in Section 45-1-101.

243 (ii) The notice shall:

244 (A) state that an application has been made; and

245 (B) specify where the interested party may obtain additional information relating to the

246 application.

247 (c) ~~[Any]~~ An interested person may file a written protest with the state engineer against

248 the granting of the application:

249 (i) within 20 days after the notice is published, if the adjudicative proceeding is

250 informal; and

251 (ii) within 30 days after the notice is published, if the adjudicative proceeding is

252 formal.

253 (d) In [~~any proceedings~~] a proceeding to determine whether the nonuse application
254 should be approved or rejected, the state engineer shall follow the procedures and requirements
255 of Title 63G, Chapter 4, Administrative Procedures Act.

256 (e) After further investigation, the state engineer may approve or reject the application.

257 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
258 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
259 for nonuse.

260 (b) A reasonable cause for nonuse includes:

261 (i) a demonstrable financial hardship or economic depression;

262 (ii) a physical [~~causes or changes~~] cause or change that [~~render~~] renders use beyond the
263 reasonable control of the water right owner so long as the water right owner acts with
264 reasonable diligence to resume or restore the use;

265 (iii) the initiation of water conservation or an efficiency [~~practices~~] practice, or the
266 operation of a groundwater recharge recovery program approved by the state engineer;

267 (iv) operation of a legal [~~proceedings~~] proceeding;

268 (v) the holding of a water right or stock in a mutual water company without use by
269 [~~any~~] a water supply entity to meet the reasonable future requirements of the public;

270 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
271 implementing an existing, approved water management plan; or

272 (vii) the loss of capacity caused by deterioration of the water supply or delivery
273 equipment if the applicant submits, with the application, a specific plan to resume full use of
274 the water right by replacing, restoring, or improving the equipment.

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

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

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

281 **73-10-4. Powers and duties of board.**

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

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

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

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

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

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

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

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

308 (h) review, approve, and revoke an application to create a water bank under Chapter

309 31, Water Banking Act, collect an annual report, maintain the water banking website, and
310 conduct any other function related to a water bank as described in Chapter 31, Water Banking
311 Act.

312 ~~[(8)]~~ (2) Nothing contained [herein] in this section shall be construed to impair or
313 otherwise interfere with the authority of the state engineer granted by Title 73, Water and
314 Irrigation, except as [herein] specifically otherwise provided in this section.

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

316 **CHAPTER 31. WATER BANKING ACT**

317 **Part 1. General Provisions**

318 **73-31-101. Title.**

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

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

321 **73-31-102. Definitions.**

322 As used in this chapter:

323 (1) "Applicant" means:

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

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

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

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

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

335 (5) "Board" means the Board of Water Resources.

336 (6) "Borrower" means a person seeking to use a banked water right within a water

337 bank's service area.

338 (7) "Contract water bank" means a water bank created pursuant to Part 3, Contract
339 Water Banks.

340 (8) "Delivery request" means a request to use a banked water right made by a borrower
341 in accordance with a water bank's policies approved under the water bank's application.

342 (9) "Deposit" means depositing a banked water right for use within the service area of a
343 water bank.

344 (10) "Depositor" means a person seeking to deposit a water right in a water bank.

345 (11) "Hereafter use" means the conditions of use the state engineer authorizes for a
346 banked water right during the term of an approved change application.

347 (12) "Heretofore use" means the authorized conditions of use that were in effect before
348 the state engineer approved a change application authorizing new conditions for the use of a
349 banked water right.

350 (13) "Loaned water rights" means a banked water right that is used pursuant to an
351 approved delivery request.

352 (14) "Perfected water right" means a water right evidenced by:

353 (a) a decree;

354 (b) a certificate of appropriation; or

355 (c) a proposed determination or court order issued in a general adjudication.

356 (15) "Public entity" means the same as that term is defined in Section [73-1-4](#) except for
357 the United States or an agency of the United States.

358 (16) "Reporting year" means November 1 through October 31.

359 (17) "Service area" means the geographic area where a water bank is approved to
360 operate and operates.

361 (18) "State engineer" means the state engineer appointed under Section [73-2-1](#).

362 (19) "Statutory water bank" means a water bank created pursuant to Part 2, Statutory
363 Water Banks.

364 (20) "Water bank" means a contract water bank or a statutory water bank.

365 (21) "Water banking website" means a website overseen by the board in accordance
366 with Section 73-31-103.

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

368 **73-31-103. Notice -- Website.**

369 (1) A notice required under this chapter shall be posted in accordance with Subsection
370 73-3-6(1) and to a water bank's website, unless otherwise specified.

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

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

374 **73-31-104. Objectives of water banks.**

375 The objectives in creating a water bank are to:

376 (1) promote:

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

378 (b) transparency and access to water markets;

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

380 (d) Utah's agricultural economy by providing access to water resources and income for

381 Utah's agricultural industry; and

382 (2) facilitate:

383 (a) robust and sustainable agricultural production while meeting growing municipal

384 and industrial water demands, such as fallowing arrangements;

385 (b) water quality improvement;

386 (c) water rights administration and distribution; and

387 (d) a healthy and resilient natural environment.

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

389 **73-31-105. Scope.**

390 Nothing in this chapter prevents a person from entering into an agreement regarding the

391 use of a water right that differs from the requirements of this chapter, except that only a water

392 bank approved under this chapter may avail itself of the statutory provisions that apply to a

393 water bank.

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

395 **73-31-106. Board assistance.**

396 The board may direct the Division of Water Resources to assist the board in fulfilling
397 the board's responsibilities under this chapter.

398 Section 10. Section **73-31-107** is enacted to read:

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

400 (1) The board may charge fees, set pursuant to Section [63J-1-504](#), to cover the costs of
401 processing and administering:

402 (a) a statutory water bank application; or

403 (b) a contract water bank application.

404 (2) The board shall charge a uniform fee for a statutory water bank application and a
405 uniform fee for a contract water bank application.

406 (3) The board may charge a different fee for a statutory water bank application than is
407 charged for a contract water bank application.

408 (4) Fees collected under this section shall be deposited in the General Fund as a
409 dedicated credit to be used by the board to implement this chapter.

410 Section 11. Section **73-31-201** is enacted to read:

411 **Part 2. Statutory Water Banks**

412 **73-31-201. Approval of statutory water bank.**

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

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

416 Section 12. Section **73-31-202** is enacted to read:

417 **73-31-202. Statutory water bank application.**

418 (1) A record holder, other than the United States or an agency of the United States, of a
419 perfected water right or a valid diligence claim may request approval for a proposed statutory
420 water bank if the place of use and point of diversion for the applicant's water right are

421 encompassed within the proposed service area of the proposed statutory water bank and the
422 applicant files an application with the board that includes the following:

- 423 (a) the name of the statutory water bank;
- 424 (b) the mailing address for the statutory water bank;
- 425 (c) the type of legal entity recognized under Utah law that constitutes the statutory
426 water bank;
- 427 (d) a proposed service area map for the statutory water bank;
- 428 (e) whether the statutory water bank will accept deposits of surface water rights or
429 groundwater rights, provided that:
 - 430 (i) a statutory water bank may not accept deposits of both surface water rights and
431 groundwater rights; and
 - 432 (ii) the applicant's perfected water right or valid diligence claim is of the type accepted
433 by the statutory water bank;
 - 434 (f) a copy of the statutory water bank's governing documents that specify:
 - 435 (i) the number of members of the governing body, which may not be an even number;
 - 436 (ii) the qualifications for governing members, including terms and election or
437 appointment procedures; and
 - 438 (iii) the initial governing members' names, telephone numbers, and post office
439 addresses;
 - 440 (g) a confirmation that the applicant satisfies the criteria listed in Subsection (1)(e)(ii);
 - 441 (h) procedures that describe how the statutory water bank will:
 - 442 (i) determine and fund the water bank's administrative costs;
 - 443 (ii) design, facilitate, and conduct transactions between borrowers and depositors for
444 the use of a banked water right; and
 - 445 (iii) accept, reject, and manage banked water rights, including:
 - 446 (A) what information a depositor shall provide to inform the statutory water bank, the
447 state engineer, or any other distributing entity regarding the feasibility of using the water right
448 within the statutory water bank's designated service area;

449 (B) how a potential depositor is to work with the statutory water bank to jointly file a
450 change application seeking authorization from the state engineer to deposit a water right within
451 the statutory water bank;

452 (C) conditions for depositing a water right with the statutory water bank;

453 (D) how payments to depositors are determined; and

454 (E) under what conditions a depositor may use a water right at the heretofore place of
455 use pursuant to Subsection 73-31-501(4);

456 (iv) accept, review, and approve delivery requests, including:

457 (A) deadlines for submitting a delivery request to the statutory water bank;

458 (B) a cost or fee associated with submitting a delivery request and how that cost or fee
459 is to be applied or used by the statutory water bank;

460 (C) what information a borrower is to include on a delivery request to sufficiently
461 inform the statutory water bank, state engineer, or another distributing entity whether the
462 delivery request is feasible within the statutory water bank's designated service area;

463 (D) any notice and comment procedures for notifying other water users of the delivery
464 request;

465 (E) the criteria the statutory water bank will use to evaluate delivery requests;

466 (F) how the statutory water bank will inform water users who have submitted a
467 delivery request if the delivery request is approved or denied, the reasons for denial if denied,
468 and any applicable conditions if approved;

469 (G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial
470 of a delivery request, including identifying who has the burden in an appeal and the standards
471 of review;

472 (H) how the statutory water bank will determine prices for the use of loaned water
473 rights; and

474 (I) how the statutory water bank will coordinate with the state engineer to facilitate
475 distribution of approved delivery requests;

476 (v) how the statutory water bank will ensure that the aggregate amount of loaned water

477 rights during a calendar year does not exceed the total sum of the banked water rights within
478 the statutory water bank; and

479 (vi) how the statutory water bank will resolve complaints regarding the statutory water
480 bank's operations;

481 (i) the process that the statutory water bank will follow if the statutory water bank
482 terminates, dissolves, or if the board revokes the statutory water bank's permission to operate
483 pursuant to this chapter, including how the statutory water bank will return banked water rights
484 to depositors and how the statute water bank will return any amounts owing to depositors; and

485 (j) a signed declaration or affidavit from at least two governing members of the
486 statutory water bank affirming that:

487 (i) the information submitted is correct;

488 (ii) as a condition for permission to operate, the statutory water bank may not
489 discriminate between the nature of use, depositors, or borrowers;

490 (iii) the statutory water bank shall comply with the conditions of an approved changed
491 application for a banked water right; and

492 (iv) the statutory water bank shall report to the state engineer known violations of
493 approved change applications.

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

496 Section 13. Section **73-31-203** is enacted to read:

497 **73-31-203. Action by board on statutory water bank applications.**

498 (1) Upon receipt of an application under Subsection [73-31-202](#), the board shall record
499 the date the board receives the application.

500 (2) The board shall:

501 (a) examine an application for completeness to determine whether the application
502 satisfies this part;

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

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

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

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

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

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

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

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

516 Section 14. Section **73-31-204** is enacted to read:

517 **73-31-204. Public meeting -- Comments.**

518 (1) On the date indicated in the notice posted under Subsection [73-31-203](#)(3), the board
519 shall hold a public meeting to:

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

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

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

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

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

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

534 Section 15. Section **73-31-205** is enacted to read:

535 **73-31-205. Review of statutory bank application.**

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

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

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

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

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

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

548 Section 16. Section **73-31-206** is enacted to read:

549 **73-31-206. Amending application.**

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

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

557 Section 17. Section **73-31-301** is enacted to read:

558 **Part 3. Contract Water Banks**

559 **73-31-301. Approval of contract water bank.**

560 (1) The board shall approve an application to create a contract water bank that satisfies

561 this part.

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

563 Section 18. Section **73-31-302** is enacted to read:

564 **73-31-302. Contract water bank application.**

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

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

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

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

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

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

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

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

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

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

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

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

591 Section 19. Section **73-31-303** is enacted to read:

592 **73-31-303. Action by board on contract water bank application.**

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

595 (2) The board shall:

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

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

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

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

603 (3) Within 30 days of the date the board determines that an application is complete, the
604 board shall post notice of the application in accordance with Section [73-31-103](#).

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

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

607 and

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

609 Section 20. Section **73-31-304** is enacted to read:

610 **73-31-304. Review of contract water bank application.**

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

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

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

616 (b) publish a summary of the information submitted by the public entity under

617 Subsection 73-31-302(1) on the water banking website.

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

622 (4) A contract water bank may review public comments and comments from the board
623 before a final decision is made by the board. If the contract water bank desires to make changes
624 to the contract water bank's application, the contract water bank may notify the board in writing
625 before the board takes action on the application that the contract water bank will submit a
626 revised application following the same process that governs the filing of an original
627 application.

628 Section 21. Section **73-31-305** is enacted to read:

629 **73-31-305. Amending application.**

630 (1) After the board approves a contract water bank's application under this part, the
631 contract water bank may seek to amend the contract water bank's application by filing a
632 description of the proposed amendment with the board. The board shall follow the procedures
633 of Sections 73-31-303 and 73-31-304 to approve an amendment to a contract water bank's
634 application.

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

637 Section 22. Section **73-31-401** is enacted to read:

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

639 **73-31-401. Annual reports.**

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

644 (b) Proof to the satisfaction of the board that the water bank has mailed,

645 hand-delivered, or sent the annual report electronically is considered compliance with this
646 Subsection (1).

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

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

651 (b) the nature of use of each banked water right before the banked water right was
652 deposited in the water bank and the volumes of water allocated to each use before being
653 deposited;

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

655 (i) the change application number;

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

657 (iii) the nature of use of the loaned water rights and the volumes of water allocated to
658 each use; and

659 (iv) for a statutory water bank, the borrower;

660 (d) for a statutory water bank:

661 (i) the amounts charged for the loaned water rights, including a breakdown by nature of
662 use if appropriate;

663 (ii) the revenue generated by the statutory water bank, including the sources of
664 revenue;

665 (iii) the amounts paid out to depositors;

666 (iv) the statutory water bank's expenses;

667 (v) the balance at the end of the reporting year of the statutory water bank's bank
668 account;

669 (vi) the accounting practices used by the statutory water bank;

670 (vii) whether there is pending or ongoing litigation involving the statutory water bank;

671 (viii) whether there are, or have been, any governmental audits of the statutory water
672 bank;

673 (ix) any proposed amendments to an approved statutory water bank's procedures for the
674 coming reporting year;

675 (x) a narrative explanation of any inconsistencies in the annual report or in the
676 operation of the statutory water bank; and

677 (xi) a narrative explanation of how the statutory water bank is or is not fulfilling the
678 objectives described in Section [73-31-104](#); and

679 (e) a declaration or affidavit signed by at least two governing members of the statutory
680 water bank stating that the information in the report is correct.

681 (3) The board shall deliver a copy of the prescribed form to each water bank before
682 August 30 of each year.

683 (4) If the annual report contains the information required by this section, the board
684 shall post notice of the annual report in accordance with Section [73-31-103](#).

685 (5) If the annual report does not contain the information required by this section, the
686 board shall promptly notify the reporting water bank in writing and return the report to the
687 water bank for correction, providing a written explanation to the water bank that sets forth the
688 information that needs to be corrected. The water bank shall remain in good standing if the
689 water bank submits a corrected annual report that satisfies this section within 90 days of the
690 written notice of the board.

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

694 Section 23. Section **73-31-402** is enacted to read:

695 **73-31-402. Water bank noncompliance -- Revocation of application.**

696 (1) If a water bank is in noncompliance with this chapter pursuant to Section
697 [73-31-401](#), the board shall give the water bank a written notice of noncompliance that:

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

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

- 701 (2) The board shall:
- 702 (a) post a notice given under Subsection (1) pursuant to Section 73-31-103; and
- 703 (b) notify the state engineer of the water bank's noncompliance.
- 704 (3) If the board determines that the water bank has corrected the noncompliance within
- 705 the 90-day corrective period, the board shall:
- 706 (a) provide the water bank written notice that the water bank's noncompliance has been
- 707 cured;
- 708 (b) post the written notice required under Subsection (3)(a) pursuant to Section
- 709 73-31-103; and
- 710 (c) notify the state engineer that the water bank has corrected the noncompliance within
- 711 the 90-day corrective period.
- 712 (4) (a) If the water bank fails to correct the noncompliance within the 90-day corrective
- 713 period, the water bank's approval to operate terminates at the end of the current calendar year.
- 714 (b) The board shall mail notice to the water bank that the water bank's approval to
- 715 operate has terminated and that the water bank's operations under the application shall cease at
- 716 the end of the current calendar year.
- 717 (c) The board shall post the notice required under Subsection (4)(b) pursuant to Section
- 718 73-31-103.
- 719 (d) A water bank shall notify the water bank's depositors and borrowers of the
- 720 dissolution within 60 days of receiving a notice under this Subsection (4) and shall enact the
- 721 procedures set forth in the water bank's application ceasing the water bank's operations.
- 722 (5) The state engineer may not approve a change application that seeks to deposit a
- 723 water right into a water bank that the board determines to be in noncompliance under this
- 724 chapter.
- 725 (6) A depositor retains title to deposited water rights and the water bank retains no
- 726 ownership in the deposited water rights.

Section 24. Section 73-31-501 is enacted to read:

Part 5. Deposits

729 **73-31-501. Banking water.**

730 (1) A water right may be deposited with a water bank pursuant to an approved change
731 application filed under Section 73-3-3 or 73-3-3.5.

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

734 (3) A banked water right is excused from beneficial use requirements pursuant to
735 Subsection 73-1-4 (2)(e)(x).

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

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

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

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

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

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

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

749 Section 25. Section **73-31-502** is enacted to read:

750 **73-31-502. Delivery request for loaned water rights in water bank.**

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

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

756 (3) The state engineer administratively supervises delivery of water to a borrower. The

757 state engineer may:

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

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

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

764 (5) A water bank shall refer known illegal water use actions to the state engineer's
765 enforcement program pursuant to Section [73-2-25](#).

766 (6) A water bank is responsible for the payment of all distribution costs assessed for
767 the delivery of a banked water right under Section [73-5-1](#).

768 Section 26. Section **73-31-503** is enacted to read:

769 **73-31-503. State engineer enforcement.**

770 This chapter does not limit or impair the state engineer's enforcement powers set forth
771 in Section [73-2-25](#).

772 Section 27. Section **73-31-601** is enacted to read:

773 **Part 6. Board Reports**

774 **73-31-601. Reports.**

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

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

781 (a) remove or extend the repeal date in Section [63I-1-273](#);

782 (b) amend the chapter, a provision in the chapter, or a provision in the Utah Code; or

783 (c) take no action and allow the chapter to repeal under Section [63I-1-273](#).

784 (3) At a minimum, the written report described under Subsection (2) shall include the

785 following:

786 (a) a summary of the implementation of the chapter;

787 (b) a statement describing and justifying the recommendation; and

788 (c) a description of the positive and negative aspects of the recommendation.

789 (4) Before the board's submission of the written report described in Subsection (2), the

790 Department of Natural Resources shall prepare and submit a draft report to the board for the

791 board's review, provided that the executive director of the Department of Natural Resources

792 may consult with another state agency or person that the executive director considers necessary

793 to prepare the draft report.

794 (5) (a) Upon receipt of the draft report described in Subsection (4), the board shall

795 review the draft report and solicit public comment on the draft report by:

796 (i) requesting written comments; and

797 (ii) holding no less than one public hearing at which:

798 (A) the Department of Natural Resources shall explain and justify the draft report's

799 recommendation; and

800 (B) an interested person may comment on or speak for or against the draft report's

801 recommendations.

802 (b) The board shall give notice of the opportunities to provide public comment under

803 this Subsection (5) by:

804 (i) mailing notice to the address of record for each water bank;

805 (ii) publishing notice in a newspaper of general circulation in the state; and

806 (iii) publishing notice as required in Section [45-1-101](#).

807 (c) The board may give separate notices for any public hearings the board may hold

808 pursuant to Subsection [73-31-601\(5\)\(a\)\(ii\)](#).

809 (d) The notice described in Subsection (5)(b) shall state:

810 (i) that the board is soliciting public comment on the draft report and shall hold a

811 public hearing on a certain day, time, and place fixed in the notice, which shall not be less than

812 30 days after the day the first notice is published, for the purpose of hearing comments

813 regarding the draft report;

814 (ii) that the board shall accept written comments on the draft report for a period of no
815 less than 30 days after the day the first notice is published, and include instructions for how the
816 public may submit comments; and

817 (iii) how the public may obtain a copy of the draft report.

818 (6) The board shall consider timely public comments submitted under this section, and
819 may require the Department of Natural Resources to make revisions the board considers
820 necessary before approving and submitting the final written report required in Subsection (2).