

Senator Evan J. Vickers proposes the following substitute bill:

GROUNDWATER USE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill addresses water uses related to groundwater.

10 **Highlighted Provisions:**

This bill:

- ▶ corrects punctuation related to storage as a beneficial use;
- ▶ modifies provisions related to recharge of an aquifer; and
- ▶ makes technical changes.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 AMENDS:

73-1-4, as last amended by Laws of Utah 2020, Chapters 60, 342

73-5-15, as last amended by Laws of Utah 2012, Chapter 97

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

25 Section 1. Section 73-1-4 is amended to read:



26 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
27 **seven years -- Nonuse application.**

28 (1) As used in this section:

29 (a) "Public entity" means:

30 (i) the United States;

31 (ii) an agency of the United States;

32 (iii) the state;

33 (iv) a state agency;

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

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

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

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

38 industrial use; and

39 (ii) is:

40 (A) a public entity;

41 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
42 Service Commission;

43 (C) a community water system:

44 (I) that:

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

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

47 (II) whose voting members:

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

49 (Bb) receive water from the community water system in proportion to the member's
50 share in the community water system; and

51 (Cc) pay the rate set by the community water system based on the water the member
52 receives; or

53 (D) a water users association:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (C) bar a water right owner from:

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

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

87 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the

88 water right may not be forfeited unless a judicial action to declare the right forfeited is
89 commenced:

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (i) permitted to run to waste; or

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

125

125 (e) This section does not apply to:

126 (i) the beneficial use of water according to a written, terminable lease or other
127 agreement with the appropriator or the appropriator's successor in interest;

128 (ii) a water right if its place of use is contracted under an approved state agreement or
129 federal conservation fallowing program;

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

132 (iv) a water right when water is unavailable because of the water right's priority date;
133 (v) a water right to store water in a surface reservoir, or an aquifer[,] in accordance

134 with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if the water is stored for
135 present or future beneficial use;

136 (vi) a water right if a water user has beneficially used substantially all of the water right
137 within a seven-year period, provided that this exemption does not apply to the adjudication of a
138 water right in a general determination of water rights under Chapter 4, Determination of Water
139 Rights;

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

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

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

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

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

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

149 (ix) a period of nonuse of a water right during the time the water right is subject to an

150 approved change application where the applicant is diligently pursuing certification;

151 (x) a water right to store water in a surface reservoir if:

152 (A) storage is limited by a safety, regulatory, or engineering restraint that the

153 appropriator or the appropriator's successor in interest cannot reasonably correct; and

154 (B) not longer than seven years have elapsed since the limitation described in

155 Subsection (2)(e)(x)(A) is imposed; or

156 (xi) a water right subject to an approved change application for use within a water bank

157 that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the

158 period of time the state engineer authorizes the water right to be used within the water bank.

159 (f) (i) The reasonable future water requirement of the public is the amount of water

160 needed in the next 40 years by:

161 (A) the persons within the public water supplier's reasonably anticipated service area

162 based on reasonably anticipated population growth; or

163 (B) other water use demand.

164 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably

165 anticipated service area:

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

167 (B) expands as the community water system expands the distribution facilities in

168 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

169 (iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4)

170 establish standards for a written plan that may be presented as evidence in conformance with

171 this Subsection (2)(f), except that before a rule establishing standards for a written plan under

172 this Subsection (2)(f) takes effect, in addition to complying with Title 63G, Chapter 3, Utah

173 Administrative Rulemaking Act, the state engineer shall present the rule to:

174 (A) if the Legislature is not in session, the Natural Resources, Agriculture, and

175 Environment Interim Committee; or

176 (B) if the Legislature is in session, the House of Representatives and Senate Natural

177 Resources, Agriculture, and Environment standing committees.

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

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

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

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

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

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

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

187 (iii) the quantity of water;

188 (iv) the period of use;

189 (v) the extension of time applied for;

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

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

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

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

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

197 (ii) The notice shall:

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

199 (B) specify where the interested party may obtain additional information relating to the
200 application.

201 (c) An interested person may file a written protest with the state engineer against the
202 granting of the application:

203 (i) within 20 days after the notice is published, if the adjudicative proceeding is
204 informal; and

205 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
206 formal.

207 (d) In a proceeding to determine whether the nonuse application should be approved or
208 rejected, the state engineer shall follow Title 63G, Chapter 4, Administrative Procedures Act.

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

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

212 for nonuse.

213 (b) A reasonable cause for nonuse includes:

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

215 (ii) a physical cause or change that renders use beyond the reasonable control of the
216 water right owner so long as the water right owner acts with reasonable diligence to resume or
217 restore the use;

218 (iii) the initiation of water conservation or an efficiency practice, or the operation of a
219 groundwater recharge recovery program approved by the state engineer;

220 (iv) operation of a legal proceeding;

221 (v) the holding of a water right or stock in a mutual water company without use by a
222 water supply entity to meet the reasonable future requirements of the public;

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

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

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

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

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

234 **73-5-15. Groundwater management plan.**

235 (1) As used in this section:

236 (a) "Critical management area" means a groundwater basin in which the groundwater
237 withdrawals consistently exceed the safe yield.

238 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a
239 groundwater basin over a period of time without exceeding the long-term recharge of the basin
240 or unreasonably affecting the basin's physical and chemical integrity.

241 (2) (a) The state engineer may regulate groundwater withdrawals within a specific
242 groundwater basin by adopting a groundwater management plan in accordance with this section

243 for any groundwater basin or aquifer or combination of hydrologically connected groundwater
244 basins or aquifers.

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

- 246 (i) limit groundwater withdrawals to safe yield;
- 247 (ii) protect the physical integrity of the aquifer; and
- 248 (iii) protect water quality.

249 (c) The state engineer shall adopt a groundwater management plan for a groundwater
250 basin if more than one-third of the water right owners in the groundwater basin request that the
251 state engineer adopt a groundwater management plan.

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

- 253 (i) the hydrology of the groundwater basin;
- 254 (ii) the physical characteristics of the groundwater basin;
- 255 (iii) the relationship between surface water and groundwater, including whether the
256 groundwater should be managed in conjunction with hydrologically connected surface waters;
- 257 (iv) the conjunctive management of water rights to facilitate and coordinate the lease,
258 purchase, or voluntary use of water rights subject to the groundwater management plan;
- 259 (v) the geographic spacing and location of groundwater withdrawals;
- 260 (vi) water quality;
- 261 (vii) local well interference; and
- 262 (viii) other relevant factors.

263 (b) The state engineer shall base the provisions of a groundwater management plan on
264 the principles of prior appropriation.

265 (c) (i) The state engineer shall use the best available scientific method to determine
266 safe yield.

267 (ii) As hydrologic conditions change or additional information becomes available, safe
268 yield determinations made by the state engineer may be revised by following the procedures
269 listed in Subsection (5).

270 (4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a
271 groundwater basin shall be limited to the basin's safe yield.

272 (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer
273 shall:

274 (A) determine the groundwater basin's safe yield; and
275 (B) adopt a groundwater management plan for the groundwater basin.
276 (iii) If the state engineer determines that groundwater withdrawals in a groundwater
277 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that
278 groundwater basin based on the priority date of the water rights under the groundwater
279 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a
280 different distribution.

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

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

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

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

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

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

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

304 (iii) stating the location, date, and time of each public meeting to be held in accordance

305 with Subsection (5)(b);

306 (b) hold one or more public meetings in the geographic area proposed to be included

307 within the groundwater management plan to:

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

309 (ii) present any data, studies, or reports that the state engineer intends to consider in

310 preparing the groundwater management plan;

311 (iii) address safe yield and any other subject that may be included in the groundwater

312 management plan;

313 (iv) outline the estimated administrative costs, if any, that groundwater users are likely

314 to incur if the plan is adopted; and

315 (v) receive any public comments and other information presented at the public

316 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

317 (c) receive and consider written comments concerning the proposed groundwater

318 management plan from any person for a period determined by the state engineer of not less

319 than 60 days after the day on which the notice required by Subsection (5)(a) is given;

320 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,

321 publish notice:

322 (A) that a draft of the groundwater management plan has been proposed; and

323 (B) specifying where a copy of the draft plan may be reviewed; and

324 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of

325 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

326 (e) provide notice of the adoption of the groundwater management plan.

327 (6) A groundwater management plan shall become effective on the date notice of

328 adoption is completed under Subsection (7), or on a later date if specified in the plan.

329 (7) (a) A notice required by this section shall be:

330 (i) published:

331 (A) once a week for two successive weeks in a newspaper of general circulation in

332 each county that encompasses a portion of the land area proposed to be included within the

333 groundwater management plan; and

334 (B) in accordance with Section 45-1-101 for two weeks;

335 (ii) published conspicuously on the state engineer's website; and

336 (iii) mailed to each of the following that has within its boundaries a portion of the land
337 area to be included within the proposed groundwater management plan:

338 (A) county;

339 (B) incorporated city or town;

340 (C) a local district created to acquire or assess a groundwater right under Title 17B,
341 Chapter 1, Provisions Applicable to All Local Districts;

342 (D) improvement district under Title 17B, Chap

343 Act;

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

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

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

347 (H) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan
348 Water District Act;

349 (I) special service district providing water, sewer, drainage, or flood control services,
350 under Title 17D, Chapter 1, Special Service District Act;

(J) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and

353 (K) conservation district, under Title 17D, Chapter 3, Conservation District Act.

354 (b) A notice required by this section is effective upon substantial compliance with
355 Subsections (7)(a)(i) through (iii).

356 (8) A groundwater management plan may be amended in the same manner as a
357 groundwater management plan may be adopted under this section.

(9) The existence of a groundwater management plan does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.

361 (10) (a) A person aggrieved by a groundwater management plan may challenge any
362 aspect of the groundwater management plan by filing a complaint within 60 days after the
363 adoption of the groundwater management plan in the district court for any county in which the
364 groundwater basin is found.

365 (b) Notwithstanding Subsection (9), a person may challenge the components of a
366 groundwater management plan only in the manner provided by Subsection (10)(a).

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

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

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

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

377 (B) in accordance with Section [45-1-101](#) for two weeks.

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

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

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

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

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

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

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

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

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

394 (11) A groundwater management plan adopted or amended in accordance with this
395 section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative
396 Rulemaking Act.

397 (12) (a) [Recharge] Except as provided in Subsection (12)(b), recharge and recovery

398 projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted
399 from this section.

400 (b) In a critical management area, the artificial recharge of a groundwater basin that
401 uses surface water naturally tributary to the groundwater basin [by a local district created under
402 Subsection 17B-1-202(1)(a)(xiii)], in accordance with Chapter 3b, Groundwater Recharge and
403 Recovery Act, constitutes a beneficial use of the water under Section 73-1-3 if:

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

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

407 (iii) the [recharged water] water placed in the aquifer is not recovered under a recovery
408 permit; and

409 (iv) the [recharged water] water placed in the aquifer is used to replenish the
410 groundwater basin.

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

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

417 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
418 2006, remains in force and has the same legal effect as it had on the day on which it was
419 adopted by the state engineer.

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