

SB0053S01 compared with SB0053

~~text~~ shows text that was in SB0053 but was deleted in SB0053S01.

text shows text that was not in SB0053 but was inserted into SB0053S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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.

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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

SB0053S01 compared with SB0053

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

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

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

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

(1) As used in this section:

(a) "Public entity" means:

(i) the United States;

(ii) an agency of the United States;

(iii) the state;

(iv) a state agency;

(v) a political subdivision of the state; or

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

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

(i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and

(ii) is:

(A) a public entity;

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

(C) a community water system:

(I) that:

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

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

(II) whose voting members:

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

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

SB0053S01 compared with SB0053

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

(D) a water users association:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) constitute beneficial use of a water right;

SB0053S01 compared with SB0053

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

(C) bar a water right owner from:

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

(II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided

by law.

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

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

or

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

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

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

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

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

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

SB0053S01 compared with SB0053

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

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

(B) the water made available by the forfeiture:

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

and

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

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

(i) permitted to run to waste; or

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

(e) This section does not apply to:

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

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

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

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

(v) a water right to store water in a surface reservoir, or an aquifer[;] in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if the water is stored for present or future beneficial use;

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

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

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

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

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

SB0053S01 compared with SB0053

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

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

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

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

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

(B) not longer than seven years have elapsed since the limitation described in Subsection (2)(e)(x)(A) is imposed; or

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

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

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

(B) other water use demand.

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

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

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

(iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4) establish standards for a written plan that may be presented as evidence in conformance with this Subsection (2)(f), except that before a rule establishing standards for a written plan under this Subsection (2)(f) takes effect, in addition to complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall present the rule to:

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

SB0053S01 compared with SB0053

Environment Interim Committee; or

(B) if the Legislature is in session, the House of Representatives and Senate Natural Resources, Agriculture, and Environment standing committees.

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

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

(ii) the state engineer approves the change application.

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

(i) the name and address of the applicant;

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

(iii) the quantity of water;

(iv) the period of use;

(v) the extension of time applied for;

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

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

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

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

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

(ii) The notice shall:

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

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

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

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

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

SB0053S01 compared with SB0053

formal.

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

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

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

(b) A reasonable cause for nonuse includes:

(i) a demonstrable financial hardship or economic depression;

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

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

(iv) operation of a legal proceeding;

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

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

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

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

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

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

73-5-15. Groundwater management plan.

(1) As used in this section:

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

SB0053S01 compared with SB0053

withdrawals consistently exceed the safe yield.

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

(2) (a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.

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

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

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

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

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

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

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

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

SB0053S01 compared with SB0053

yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).

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

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

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

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

(iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.

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

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

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

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

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

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

SB0053S01 compared with SB0053

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

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

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

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

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

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

(ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;

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

(iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and

(v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

(c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;

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

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

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

(ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

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

(6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.

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

SB0053S01 compared with SB0053

(i) published:

(A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and

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

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

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

(A) county;

(B) incorporated city or town;

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

(D) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;

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

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

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

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

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

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

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

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

SB0053S01 compared with SB0053

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) A district court in which an action is brought under Subsection (10)(a) shall

SB0053S01 compared with SB0053

consolidate all actions brought under that subsection and include in the consolidated action any person whose petition to intervene is granted.

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

(12) (a) [~~Recharge~~] Except as provided in Subsection (12)(b), recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.

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

- (i) the recharge is done during the time the area is designated as a critical management area;
- (ii) the recharge is done with a valid recharge permit;
- (iii) the [~~recharged water~~] water placed in the aquifer is not recovered under a recovery permit; and
- (iv) the [~~recharged water~~] water placed in the aquifer is used to replenish the groundwater basin.

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

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

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

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

SB0053S01 compared with SB0053