

HB0453S01 compared with HB0453

~~{deleted text}~~ shows text that was in HB0453 but was deleted in HB0453S01.

inserted text shows text that was not in HB0453 but was inserted into HB0453S01.

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Representative Casey Snider proposes the following substitute bill:

GREAT SALT LAKE REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Casey Snider

Senate Sponsor: {} _____

LONG TITLE

General Description:

This bill addresses actions affecting the Great Salt Lake.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to severance taxes;
- ▶ exempts challenges to a distribution management plan from the Administrative Procedures Act;
- ▶ addresses mineral lease and royalty agreement provisions, including:

~~{~~ ~~• setting production limits;~~

- ~~}~~
- providing for the loss of certain rights for failure to use;
 - providing for royalty discounts under certain circumstances; and
 - providing for small projects;

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- ▶ enacts the Great Salt Lake Preservation Act, including:
 - defining terms;
 - addressing management responsibilities;
 - requiring certain provisions within royalty agreements;
 - providing for acquisition of property interests or mineral estates, including through eminent domain;
 - requiring payment of royalties; ~~{and}~~
 - permitting the division to acquire certain interests;
 - addressing the Great Salt Lake as a multiple mineral development area; and
 - addressing concurrent operations on the Great Salt Lake;
- ▶ enacts the Great Salt Lake Distribution Management chapter, including:
 - defining terms;
 - directing the state engineer to develop a Great Salt Lake distribution management plan related to water rights;
 - providing for challenges to a distribution management plan;
 - addressing the measurement of the volume and quality of water; and
 - addressing the scope of the chapter;
- ▶ ~~{modifies provisions related to local watershed councils and the Great Salt Lake Advisory Council}~~ amends provision regarding approval of a water right related application related to the extraction of minerals or elements;
- ▶ addresses rulemaking;
- ▶ addresses eminent domain; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2025:

- ▶ to Department of Natural Resources - Forestry, Fire, and State Lands - Project Management as a one-time appropriation:
 - from the General Fund Restricted - ~~{Great Salt Lake Account}~~ Sovereign Lands Management, One-time, \$500,000
- ▶ to Department of Natural Resources - DNR Pass Through - DNR Pass Through as a one-time appropriation;

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- from the General Fund Restricted - Sovereign Lands Management, One-time, \$300,000

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-5-202, as last amended by Laws of Utah 2023, Chapter 208

59-5-203, as last amended by Laws of Utah 2019, Chapter 466

63G-4-102, as last amended by Laws of Utah 2023, Chapter 329

65A-5-1, as last amended by Laws of Utah 2023, Chapters 205, 208 and 358

65A-6-4, as last amended by Laws of Utah 2023, Chapter 208

73-3-8, as last amended by Laws of Utah 2023, Chapter 253

~~{ **73-3-30**, as last amended by Laws of Utah 2023, Chapters 34, 253~~

~~— **73-10g-306**, as enacted by Laws of Utah 2020, Chapter 309~~

† **73-32-204**, as enacted by Laws of Utah 2023, Chapter 205

73-32-303, as last amended by Laws of Utah 2023, Chapter 208 and renumbered and amended by Laws of Utah 2023, Chapter 205

78B-6-501, as last amended by Laws of Utah 2023, Chapter 34

78B-6-502, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

65A-17-101, Utah Code Annotated 1953

65A-17-103, Utah Code Annotated 1953

65A-17-301, Utah Code Annotated 1953

65A-17-302, Utah Code Annotated 1953

65A-17-303, Utah Code Annotated 1953

65A-17-304, Utah Code Annotated 1953

73-33-101, Utah Code Annotated 1953

73-33-102, Utah Code Annotated 1953

73-33-201, Utah Code Annotated 1953

73-33-202, Utah Code Annotated 1953

73-33-203, Utah Code Annotated 1953

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RENUMBERS AND AMENDS:

65A-17-102, (Renumbered from 65A-10-202, as enacted by Laws of Utah 2023, Chapter 208)

65A-17-201, (Renumbered from 65A-10-203, as last amended by Laws of Utah 2023, Chapter 205 and renumbered and amended by Laws of Utah 2023, Chapter 208)

65A-17-202, (Renumbered from 65A-10-204, as enacted by Laws of Utah 2023, Chapter 208)

65A-17-203, (Renumbered from 65A-10-205, as enacted by Laws of Utah 2023, Chapter 208)

REPEALS:

65A-10-201, as enacted by Laws of Utah 2023, Chapter 208

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

Section 1. Section **59-5-202** is amended to read:

59-5-202. Severance tax -- Rate -- Computation -- Annual exemption.

(1) A person engaged in the business of mining or extracting metalliferous minerals in this state shall pay to the state a severance tax equal to 2.6% of the taxable value of all metals or metalliferous minerals sold or otherwise disposed of.

(2) If the metals or metalliferous minerals are shipped outside the state, this constitutes a sale, and the finished metals or the recoverable units of finished metals from the metalliferous minerals shipped are subject to the severance tax. If the metals or metalliferous minerals are stockpiled, the tax is not applicable until they are sold or shipped out of state. For purposes of the tax imposed by this chapter, uranium concentrates shall be considered to be finished metals. The owner of the metals or metalliferous minerals that are stockpiled shall report to the commission annually, in a form acceptable to the commission, the amount of metalliferous minerals so stockpiled. Metals or metalliferous minerals that are stockpiled for more than two years, however, are subject to the severance tax.

(3) An annual exemption from the payment of the tax imposed by this chapter upon the first \$50,000 in gross value of the metalliferous mineral is allowed to each mine.

(4) These taxes are in addition to all other taxes provided by law and are delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year when the metalliferous

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mineral is produced and sold or delivered.

(5) (a) As used in this Subsection (5):

(i) "Great Salt Lake extraction operator" means a person who:

(A) is engaged in the business of mining or extracting metalliferous minerals from the brine of the Great Salt Lake; and

(B) enters into a mineral lease with the Division of Forestry, Fire, and State Lands on or after May 3, 2023, or as of July 1, 2020, had a mineral lease with the Division of Forestry, Fire, and State Lands, but not a royalty agreement for a metalliferous mineral, chloride compound, or salt.

(ii) "Metalliferous compound" means a metalliferous mineral or a chloride compound or salt containing a metalliferous mineral.

(b) Notwithstanding the exclusion for chloride compounds or salts from the definition of metalliferous minerals under Section 59-5-201, beginning with calendar year 2024, a Great Salt Lake extraction operator shall pay to the state a severance tax in accordance with this part for the mining of a metalliferous compound.

(c) A Great Salt Lake extraction operator shall pay to the state a severance tax equal to 7.8% of the taxable value of the metalliferous compounds in a calendar year in which the Division of Forestry, Fire, and State Lands ~~has submitted~~ submits to the commission an order under Section 65A-17-302 indicating that the Great Salt Lake extraction operator has failed to pay a royalty rate in violation of Section 65A-17-302.

~~(c)~~ (d) This Subsection (5) may not be interpreted to:

(i) excuse a person from paying a severance tax in accordance with the other provisions of this part; or

(ii) void a mineral lease or royalty agreement.

~~(d)~~ (e) A person extracting metalliferous minerals, including a metalliferous compound, from the brine of the Great Salt Lake is subject to the payment of a royalty agreement under Section 65A-6-4 and the payment of a severance tax under this part.

Section 2. Section **59-5-203** is amended to read:

59-5-203. Determining taxable value.

(1) Except as provided in Subsection (3), the basis for computing the gross proceeds, prior to those deductions or adjustments specified in this chapter, in determining the taxable

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value of the metals or metalliferous minerals sold or otherwise disposed of, in the order of priority, is as follows:

(a) If the metals or metalliferous mineral products are actually sold, the value of those metals or metalliferous mineral products shall be the gross amount the producer receives from that sale, provided that the metals or metalliferous mineral products are sold under a bona fide contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates, gross proceeds shall be the gross amount the producer receives from the sale of processed uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a bona fide contract of sale between unaffiliated parties.

~~(b) If metals or~~ (i) For purposes of a Great Salt Lake extraction operator, as defined in Section 59-5-202, if metals, metalliferous minerals, or metalliferous compounds are not sold, but are otherwise disposed of, the gross proceeds shall be the multiple of the recoverable units of finished or unfinished metals, or of the finished or unfinished metals contained in the metalliferous minerals or metalliferous compounds shipped, and the average daily price per unit of contained metals as quoted by an established authority for market prices of metals for the period during which the tax imposed by this chapter is due.

(ii) The established authority or authorities under this Subsection (1)(b) shall be designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(b)~~ (c) If the metals or metalliferous mineral products are not actually sold but are shipped, transported, or delivered out of state, the gross proceeds shall be the multiple of the recoverable units of finished metals, or of the finished metals contained in the metalliferous minerals shipped, and the average daily price per unit of contained metals as quoted by an established authority for market prices of metals for the period during which the tax imposed by this chapter is due. The established authority or authorities shall be designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(c)~~ (d) In the case of metals or metalliferous minerals not sold, but otherwise disposed of, for which there is no established authority for market prices of metals for the period during which the tax imposed by this chapter is due, gross proceeds is determined by allocating to the state the same proportion of the producer's total sales of metals or

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metalliferous minerals sold or otherwise disposed of as the producer's total Utah costs bear to the total costs associated with sale or disposal of the metal or metalliferous mineral.

~~[(d)]~~ (e) In the event of a sale of metals or metalliferous minerals between affiliated companies which is not a bona fide sale because the value received is not proportionate to the fair market value of the metals or metalliferous minerals or in the event that Subsection ~~[(1)(a), (b), or (c)]~~ (1)(a), (b), (c), or (d) are not applicable, the commission shall determine the value of such metals or metalliferous minerals in an equitable manner by reference to an objective standard as specified in a rule adopted in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) For all metals except beryllium, the taxable value of the metalliferous mineral sold or otherwise disposed of is 30% of the gross proceeds received for the metals sold or otherwise disposed of by the producer of the metal.

(3) Notwithstanding Subsection (1) or (4), the taxable value of beryllium sold or otherwise disposed of by the producer of the beryllium is equal to 125% of the direct mining costs incurred in mining the beryllium.

(4) Except as provided in Subsection (3), if the metalliferous mineral sold or otherwise disposed of is sold or shipped out of state in the form of ore, then the taxable value is 80% of the gross proceeds.

Section 3. Section **63G-4-102** is amended to read:

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the

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issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Office of Substance Use and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

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(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);

(u) state agency action relating to water well driller licenses, water well drilling

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permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;

(v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act;

(w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action;

(x) the suspension of operations under Subsection 32B-1-304(3); [~~or~~]

(y) the issuance of a determination of violation by the Governor's Office of Economic Opportunity under Section 11-41-104[-]; or

(z) a challenge to an aspect of a distribution management plan under Section 73-33-202.

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted

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according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

(11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Section 4. Section **65A-5-1** is amended to read:

65A-5-1. Sovereign Lands Management Account.

(1) There is created within the General Fund a restricted account known as the "Sovereign Lands Management Account."

(2) The Sovereign Lands Management Account shall consist of the following:

(a) the revenues derived from sovereign lands, except for revenues deposited into the Great Salt Lake Account under Section 73-32-304;

(b) that portion of the revenues derived from mineral leases on other lands managed by the division necessary to recover management costs;

(c) revenues derived from the Great Salt Lake Preservation support special group license plate described in Sections 41-1a-418 and 41-1a-422;

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(d) fees deposited by the division; and

(e) amounts deposited into the account in accordance with Section 59-23-4.

(3) (a) The expenditures of the division relating directly to the management of sovereign lands shall be funded by appropriation by the Legislature from the Sovereign Lands Management Account or other sources.

(b) Money in the Sovereign Lands Management Account may be used only for the direct benefit of sovereign lands, including the management of sovereign lands.

(c) In appropriating money from the Sovereign Lands Management Account, the Legislature shall prefer appropriations that benefit the sovereign land from which the money is derived unless compelling circumstances require that money be appropriated for sovereign land other than the sovereign land from which the money is derived.

(4) The division shall use the amount deposited into the account under Subsection (2)(d) for the Great Salt Lake as described in Section [~~65A-10-203~~] 65A-17-201 as directed by the Great Salt Lake Advisory Council created in Section 73-32-302.

Section 5. Section ~~65A-6-4~~ is amended to read:

65A-6-4. Mineral leases -- Multiple leases on same land -- Rentals and royalties --

Lease terms -- Great Salt Lake.

(1) As used in this section:

(a) "Great Salt Lake element or mineral" means:

(i) a rare earth element;

(ii) a trace element or mineral; or

(iii) a chemical compound that includes a rare earth element or trace element or mineral.

(b) "Operator" means, for purposes of provisions applicable to the extraction of a Great Salt Lake element or mineral, a person qualified to do business in the state who is pursuing the extraction of a Great Salt Lake element or mineral.

~~(b)~~ (c) "Rare earth element" is one of the following ores, minerals, or elements located in the brines or the sovereign lands of the Great Salt Lake:

(i) lanthanum;

(ii) cerium;

(iii) praseodymium;

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- (iv) neodymium;
- (v) samarium;
- (vi) europium;
- (vii) gadolinium;
- (viii) terbium;
- (ix) dysprosium;
- (x) holmium;
- (xi) erbium;
- (xii) thulium;
- (xiii) ytterbium;
- (xiv) lutetium; and
- (xv) yttrium.

~~(c)~~ (d) "Trace element or mineral" means an element or mineral that is located in the brines or the sovereign lands of the Great Salt Lake that is not in production by July 1, 2020, and for which the state has not received a royalty payment by July 1, 2020.

(2) (a) Mineral leases, including oil, gas, and hydrocarbon leases, may be issued for prospecting, exploring, developing, and producing minerals covering any portion of state lands or the reserved mineral interests of the state.

(b) (i) Leases may be issued for different types of minerals on the same land.

(ii) If leases are issued for different types of minerals on the same land, the leases shall include stipulations for simultaneous operations, except that for leases related to the Great Salt Lake the leases shall include stipulations for simultaneous operations that will not interfere with, impede, limit, or require changes to pre-existing rights.

(c) No more than one lease may be issued for the same resource on the same land.

(d) The division shall require a separate royalty agreement for extraction of Great Salt Lake elements or minerals from brines of the Great Salt Lake when:

(i) a mineral lease, a royalty agreement, or both that are in effect before the operator seeks to extract a particular [~~mineral or mineral compound~~] Great Salt Lake element or mineral do not expressly include the right to extract the particular [~~mineral or mineral compound~~] Great Salt Lake element or mineral; or

(ii) the proposed operation will use brines from the Great Salt Lake, but will not

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occupy sovereign lands for the direct production of [~~minerals~~] Great Salt Lake elements or minerals other than for incidental structures such as pumps and intake and outflow pipelines.

(3) (a) Each mineral lease issued by the division shall provide for an annual rental of not less than \$1 per acre per year, except that a mineral lease issued by the division involving the extraction of [~~mineral~~] a Great Salt Lake element or mineral from brines in the Great Salt Lake shall provide for an annual rental of not less than \$100 per acre per year.

(b) However, a lease may provide for a rental credit, minimum rental, or minimum royalty upon commencement of production, as prescribed by rule.

(4) The primary term of a mineral lease may not exceed:

(a) 20 years for oil shale and tar sands; and

(b) 10 years for oil and gas and any other mineral.

(5) (a) [~~Subject~~] In addition to the requirements of Chapter 17, Part 3, Mineral or Element Extraction, and subject to the other provisions of this Subsection (5), for a mineral lease or royalty agreement involving the extraction of [~~minerals~~] Great Salt Lake elements and minerals from brines in the Great Salt Lake, the division shall ensure that the following terms, as applicable, are included:

(i) an extraction operation or extraction method shall adhere to commercially viable technologies that minimize water depletion;

~~[(ii) an extraction operation or extraction method shall mitigate for the total amount of water depleted {directly from the Great Salt Lake } by providing water back into the Great Salt Lake that approximates the total volume of water depleted;]~~

~~[(iii) (ii) a provision authorizing the division to curtail or limit Great Salt Lake element or mineral production at any time the condition of the Great Salt Lake reaches the emergency trigger, as defined in Section [65A-10-201] 65A-17-101;~~

~~[(iv) (iii) a provision authorizing the division to withdraw lands, operations, extraction methods, or technologies from Great Salt Lake element or mineral production or Great Salt Lake element or mineral operations; [and]~~

~~[(v) (iv) a provision allowing the division to require an existing operator to use commercially viable, innovative technologies to minimize water depletions caused by the planned mineral extraction as a condition of continued operations[.];]~~

~~[(vi) a provision authorizing the division to set and modify a production limit on the~~

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~~extraction of a Great Salt Lake element or mineral for an operator to prevent the depletion of a Great Salt Lake element or mineral in a naturally occurring reserve;~~ and

~~(vii)v~~ a provision that provides for the reductions of the following after the primary term of a mineral lease or royalty agreement:

(A) the acreage subject to the mineral lease by the acreage the operator does not use to extract a Great Salt Lake element or mineral during the primary term of the mineral lease under conditions that do not constitute waste; and

(B) the volume of water that the operator may divert from the Great Salt Lake, by the volume of water that the operator does not use during the longer of the primary term of the mineral lease or seven years if the operator fails to use the volume of water for ~~the~~^a beneficial ~~uses for which the water rights were granted~~^{use}, except if the failure to use the volume of water is as a result of a reduction of water usage under Section 73-33-201.

~~(b)~~ If as of May 3, 2023, an operator has a mineral lease but not a royalty agreement involving the extraction of ~~Great Salt Lake element or~~ minerals from brines in the Great Salt Lake, the extraction operation or extraction method shall mitigate the total water depleted as provided in Subsection (5)(a)(ii) only to the extent that the extraction operation or extraction method increases total depletions as compared to an estimated 10-year average of depletions as estimated by the Division of Water Resources' water budget model beginning on January 1, 2013, and ending on December 31, 2022.¹

~~(c)~~^{1(b)} If under Subsection ~~(5)(a)(v)~~^{1(5)(a)(iv)} the division requires an existing operator to use a commercially viable, innovative technology, the division may not require use of a technology not yet proven to be commercially viable on the Great Salt Lake and may not require implementation of the technology to begin until after a reasonable period determined by the division not to exceed [five] seven years.

~~(d)c~~ (i) If the volume of water that the operator may divert from the Great Salt Lake is reduced under Subsection (5)(a)(~~vii~~^v), the division shall pursue a judicial action to declare all or a portion of the water right forfeited under Subsection 73-1-4(2).

(ii) If the division secures the reduction ~~for forfeiture of a water right~~ under this Subsection (5)(~~d~~^c), the division shall petition the state engineer to order a reversal of the application approval in accordance with the terms of the reduction or forfeiture of the water right.

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~~(f)~~(d) The division may issue a royalty agreement for scientific, demonstration, or a small-scale pilot production facility using technology determined by the division to be commercially viable without compliance of Subsection (5)(a) if the agreement:

(i) has a term of nine months or less; and

(ii) limits use of brines from the Great Salt Lake to a maximum of five acre-feet during the term of the agreement.

(6) (a) Upon nomination from a prospective operator, the division shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a royalty rate and calculation methodology for a Great Salt Lake element or mineral that:

(i) provides for a full and fair return to the state from the production of the Great Salt Lake element or mineral;

(ii) is consistent with market royalty rates applicable to the production of the Great Salt Lake element or mineral or of the production of oil and gas;

(iii) provides a base royalty rate;

(iv) provides a reduced royalty rate from the royalty rate under Subsection (6)(a)(iii) if the royalty agreement:

(A) relates to a non-evaporative method of producing the Great Salt Lake element or mineral; or

(B) provides an incentive to use commercially viable, innovative technology to minimize water depletion and evaporation as determined by the division; ~~and~~

(v) provides a reduced royalty rate from the royalty rate under Subsection (6)(a)(iii) if the prospective operator for the extraction of lithium demonstrates to the satisfaction of the division that the prospective operator has an agreement with a person who will process or manufacture an end product in this state using the lithium extracted by the prospective operator; and

~~(v)~~ (vi) subject to Subsection (6)(e), provides for a royalty rate that is based on the highest market value prevailing at the time of the sale or disposal of the following:

(A) the Great Salt Lake element or mineral; or

(B) a product the lessee produces from the Great Salt Lake element or mineral.

(b) Before entering into a royalty agreement permitting the extraction of Great Salt Lake elements or minerals, the operator shall:

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- (i) demonstrate commercial viability;
- (ii) certify before operation begins that the operator is not negatively impacting the biota or chemistry of the Great Salt Lake; and
- (iii) obtain the approval of the division and the Department of Environmental Quality that the certification supports a finding that the operation will not negatively impact the biota or chemistry of the Great Salt Lake.

(c) A new mineral lease for a Great Salt Lake element or mineral in production in the Great Salt Lake as of May 3, 2023, is subject to new royalty rates due to emergent technologies.

(d) An operator who as of July 1, 2020, had a mineral lease with the division but not a royalty agreement and who is subject to a severance tax under Subsection 59-5-202(5) shall pay a royalty under this section in addition to the severance tax.

(e) The royalty rate described in Subsection (6)(a)(vi) may not be reassessed during the primary term of an initial royalty agreement issued under this section, but may be reassessed upon the conclusion of the primary term.

~~{ (f) The division may issue a royalty agreement for scientific, demonstration, or a small-scale pilot production facility using technology determined by the division to be commercially viable without compliance of Subsection (5)(a) if the agreement:~~

~~—— (i) has a term of nine months or less; and~~

~~—— (ii) limits use of brines from the Great Salt Lake to a maximum of five acre-feet during the term of the agreement.~~

‡ (7) (a) [An] Except as provided in Subsection (7)(b), an operator who extracts a Great Salt Lake element or mineral from tailings from the production of Great Salt Lake elements or minerals from brines in the Great Salt Lake is subject to this section to the same extent as an operator producing a Great Salt Lake element or mineral from brines in the Great Salt Lake.

(b) An operator that, as of May 3, 2023, has an agreement to recover a Great Salt Lake element or mineral from existing tailings, discarded material, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines is not subject to this section, except as to the payment of royalties set by the division under Subsection (6)(a). The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the issuance and termination of a royalty agreement for mineral

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extraction from tailings, discarded material, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines.

(c) An operator that, as of May 3, 2023, has an underlying agreement to recover a Great Salt Lake element or mineral shall obtain an additional agreement for any additional Great Salt Lake element or mineral produced from the tailings, discarded material, end-use products, or waste products newly produced under the underlying agreement. The additional agreement is subject to this section.

(8) The division shall annually report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee regarding the amount of money collected under this section from royalties provided for in Subsection (6).

(9) (a) In the issuance of royalty agreements for the extraction of lithium from the Great Salt Lake, the division shall prioritize applicants that:

~~[(a)]~~ (i) do not use evaporative concentration of Great Salt Lake brines in any stage of the extractive process; and

~~[(b)]~~ (ii) use commercially viable extractive processes.

(b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, creating a process for implementing this Subsection (9).

(10) Except in relationship to mineral leases related to the Great Salt Lake, the division shall make rules regarding the continuation of a mineral lease after the primary term has expired, which shall provide that a mineral lease shall continue so long as:

(a) the mineral covered by the lease is being produced in paying quantities, as defined in Section 65A-17-101, from:

(i) the leased premises;

(ii) lands pooled, communitized, or unitized with the leased premises; or

(iii) lands constituting an approved mining or drilling unit with respect to the leased premises; or

(b) (i) the lessee is engaged in diligent operations, exploration, research, or development which is reasonably calculated to advance development or production of the mineral covered by the lease from:

(A) the leased premises;

(B) lands pooled, communitized, or unitized with the leased premises; or

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(C) lands constituting an approved mining or drilling unit with respect to the leased premises; and

(ii) the lessee pays a minimum royalty.

(11) For the purposes of Subsection (10), diligent operations with respect to oil, gas, and other hydrocarbon leases may include cessation of operations not in excess of 90 days in duration.

(12) (a) The division shall study and analyze each mineral lease and mineral royalty agreement issued on the Great Salt Lake and compare and evaluate whether the mineral leases and royalty agreements are representative of current market conditions. As part of this study, the division shall:

(i) make the following determinations for mineral leases:

(A) whether the entire surface area described within the mineral lease is being used;

and

(B) whether the annual lease payments are representative of current market conditions;

and

(ii) for royalty agreements, perform studies and comparative analyses to determine whether the state is receiving royalty rates consistent with current market conditions.

(b) By no later than the 2023 November interim meeting, the division shall report the division's findings of the study required by this Subsection (12) to the Natural Resources, Agriculture, and Environment Interim Committee.

(13) The provisions in this section related to extraction of a Great Salt Lake element or mineral under a mineral lease or royalty agreement apply to a mineral lease or royalty agreement in effect on May 1, 2024, and any mineral lease or royalty agreement entered into after May 1, 2024.

Section 6. Section **65A-17-101** is enacted to read:

CHAPTER 17. GREAT SALT LAKE PRESERVATION ACT

Part 1. General Provisions

65A-17-101. Definitions.

As used in this chapter:

(1) "Adaptive management berm" means a berm installed in the UP causeway breach to manage salinity to protect the ecosystem of Gilbert Bay.

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(2) "Common source of supply" means the mineral or element estate contained within the ~~entirety of the Great Salt Lake within the~~ Great Salt Lake meander line.

(3) "Correlative right" means the opportunity of each commercially viable owner to extract a portion of a common source of supply, subject to the state's sovereign lands management responsibilities, without the occurrence of waste.

(4) "Emergency trigger" means the salinity levels of the Gilbert Bay of the Great Salt Lake do not satisfy the ecological conditions required for healthy brine shrimp and brine fly reproduction.

~~{~~ (5) "Great Salt Lake" means the area within the Great Salt Lake meander line.

~~†~~ (~~6~~5) "Great Salt Lake elevation" means the elevation of the Great Salt Lake as measured by the United States Geological Survey gauging station 10010000 located at Saltair Boat Harbor, Utah.

(~~7~~6) "Great Salt Lake meander line" means the official meander line, completed in 1966, of the Great Salt Lake unless otherwise established by court order or negotiated boundary settlement.

(~~8~~7) "Great Salt Lake salinity" means the salinity of the Great Salt Lake as measured by the United States Geological Survey in Gilbert Bay.

(~~9~~8) "Healthy physical and ecological condition" means that Gilbert Bay of the Great Salt Lake has sustained salinity levels that satisfy the ecological conditions required for healthy brine shrimp and brine fly reproduction.

(~~10~~9) "Mineral or element" means:

(a) a rare earth element;

(b) a trace element or mineral;

(c) a chemical compound that includes a rare earth element or trace element or mineral;

or

(d) a mineral or element that is attached, embedded to, or is a by-product of another mineral or element.

(~~11~~10) "Mitigation plan" means an agreement entered into on or after May 1, 2024, among the operators and the division for resolving issues arising from concurrent operations.

(~~12~~11) "Multiple mineral development area" means an area involving the management of various surface and sub-surface resources so that they are used in the

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combination that will best meet present and future needs.

~~(13)~~12 "Natural resources of the Great Salt Lake" means the biota, water resources, water quality, the fishery and recreational resources, the wetlands and wildlife resources, and any other naturally occurring resource on the Great Salt Lake.

~~(14)~~13 "Operator" means a person qualified ~~person~~ to do business in the state pursuing the extraction of minerals or elements from the Great Salt Lake.

(14) "Paying quantities" means the revenue generated from the sale of the mineral or element being produced exceeds the costs associated with obtaining the mineral or element, including any royalty obligation.

(15) "Public trust assets" means the same as that term is defined in Section 65A-1-1.

~~(15)~~16 "UP causeway breach" means a breach in the 21-mile Union Pacific Railroad causeway across the Great Salt Lake that separates the Great Salt Lake into Gunnison Bay and Gilbert Bay.

~~(16)~~17 (a) Except as provided in Subsection (17)(b), "Waste" means:

~~(a)~~i the failure of an operation to provide the state with a full and fair return on each separately identified mineral or element;

~~(b)~~ii an unnecessary depletion, diminishment, or reduction of the quantity or quality of a mineral or element; or

~~(c)~~iii imprudent and uneconomical operations.

(b) "Waste" does not include a mineral or element that cannot be extracted in paying quantities through commercially viable technology available at the time of extraction and:

(i) that has not been nominated under Subsection 65A-6-4(6)(a); or

(ii) for which the division has not established a royalty rate in rule.

Section 7. Section **65A-17-102**, which is renumbered from Section 65A-10-202 is renumbered and amended to read:

~~[65A-10-202].~~ **65A-17-102. Legislative findings.**

The Legislature finds that:

(1) under Section 65A-10-1 the division, as the manager of sovereign lands, has a duty to serve the public interest in managing the Great Salt Lake;

(2) the Great Salt Lake is a critical resource owned and managed by the state;

(3) the lake levels of the Great Salt Lake have reached historic lows, requiring action

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by the state to address significant risks and minimize dangers to protect the ecological integrity of the Great Salt Lake, the state's environment in general, and the welfare of the state's citizens; and

(4) the management of the Great Salt Lake under this ~~[part]~~ chapter, especially if the emergency trigger is reached, is reasonable and necessary to serve important public purposes and no reasonable alternative meets the interests described in Subsection (3).

Section 8. Section **65A-17-103** is enacted to read:

65A-17-103. Application of chapter.

This chapter applies to a mineral lease or royalty agreement in effect on May 1, 2024, or the mineral or element extraction process engaged in on May 1, 2024, and any mineral lease or royalty agreement entered into after May 1, 2024, or mineral or element extraction process engaged in after May 1, 2024.

Section 9. Section **65A-17-201**, which is renumbered from Section 65A-10-203 is renumbered and amended to read:

Part 2. Management

~~[65A-10-203].~~ **65A-17-201. Great Salt Lake -- Management responsibilities of the division.**

The division has the following powers and duties:

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the management of the Great Salt Lake that recognize the division's duty to manage public trust ~~{responsibility}~~ assets and balance the following ~~[public trust values and]~~ public interest benefits and policies:

(a) strategies to effectively and efficiently manage the Great Salt Lake based on the Great Salt Lake's fluctuating lake levels;

(b) development of the Great Salt Lake that balances, in a manner that promotes a healthy physical and ecological condition:

(i) migratory and shorebirds habitats;

(ii) wetlands;

(iii) brines, minerals or elements, chemicals, and petro-chemicals;

(iv) brine shrimp;

(v) the protection of wildlife and wildlife habitat;

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- (vi) the protection of recreational access and facilities; and
- (vii) search and rescue efforts;
- (c) promote water quality management for the Great Salt Lake and the Great Salt Lake's tributary streams;
- (d) public access to the Great Salt Lake for recreation, hunting, and fishing;
- (e) temperature moderation, a stable role in the water cycle, and dust mitigation;
- (f) maintain the Great Salt Lake's flood plain as a hazard zone;
- (g) maintain the Great Salt Lake and the marshes as important shorebirds, waterfowl, and other waterbird flyway system;
- (h) promote and maintain recreation areas on and surrounding the Great Salt Lake; ~~{}~~and~~{}~~
- (i) maintain and protect state, federal, and private marshlands, rookeries, and wildlife refuges ~~{}~~. ~~{}~~; and~~{}~~
- ~~{~~ ~~——~~ ~~(j) work to improve the conditions of wetlands and protect wildlife habitat.~~
- † (2) (a) The division shall prepare and maintain a comprehensive management plan for the Great Salt Lake that is consistent with:
 - (i) the ~~[public trust values]~~ management duty and public interest benefits described in Subsection (1) ~~[and]~~;
 - (ii) policies established by rule made under Subsection (1) ~~[]~~; and
 - (iii) the Great Salt Lake strategic plan adopted under Section 73-32-204. ~~{}~~
- (b) The comprehensive management plan described in this section shall integrate the land within the Great Salt Lake meander line regardless of whether the land has been excluded from water within the Great Salt Lake because of a berm or other infrastructure on sovereign land associated with the Great Salt Lake.
- (c) The division shall prepare the comprehensive management plan in consultation with the Great Salt Lake commissioner.
- (3) The division may employ personnel and purchase equipment and supplies that the Legislature authorizes through appropriations for the purposes of this chapter and Chapter 10, Management of Sovereign Lands.
- (4) The division may initiate studies of the Great Salt Lake and the Great Salt Lake's related resources.

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(5) The division may publish scientific and technical information concerning the Great Salt Lake.

(6) The division shall define the Great Salt Lake's flood plain.

(7) The division may qualify for, accept, and administer grants, gifts, or other funds from the federal government and other sources, for carrying out any functions under this chapter and Chapter 10, Management of Sovereign Lands.

(8) The division shall determine the need for public works and utilities for the lake area.

(9) The division may implement the comprehensive plan described in Subsection (2) through state and local entities or agencies.

(10) The division shall coordinate the activities of the various divisions within the Department of Natural Resources with respect to the Great Salt Lake.

(11) The division shall retain and encourage the continued activity of the Great Salt Lake technical team.

(12) The division shall administer Chapter 16, Great Salt Lake Watershed Enhancement Program.

(13) The division shall administer Section [~~65A-10-204~~] 65A-17-202 when the Great Salt Lake emergency trigger is reached.

(14) (a) The division shall manage the adaptive management berm in the UP causeway breach to [~~manage salinity to protect the ecosystem of Gilbert Bay. Unless salinity conditions in Gilbert Bay warrant raising the adaptive management berm, the policy of the state is to keep the UP causeway breach open so as to allow the exchange of water between Gilbert and Gunnison Bays.~~] keep salinity of Gilbert Bay within target ranges, raising and lowering the adaptive management berm as needed to achieve that goal.

(b) In pursuing the goal described in Subsection (14)(a), the division shall:

(i) consider and weigh the other management objectives enumerated in this section, including the preservation of Gunnison Bay;

(ii) raise the adaptive management berm if the Great Salt Lake elevation is 4,190 feet or lower; and

(iii) comply with a plan and schedule required by Subsection (14)(c).

(c) Before raising the adaptive management berm {in the UP causeway breach}, the

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division shall have a plan and schedule to lower the adaptive management berm by no later than nine months after raising the adaptive management berm, with an objective of equalizing the elevations of Gilbert Bay and Gunnison Bay to be within six feet of each other.

(d) The division will consult with the Great Salt Lake commissioner:

(i) before modifying the adaptive management berm; and

(ii) concerning the adoption of the plan and schedule described in Subsection (14)(c).

(15) Notwithstanding a statute to the contrary and except for activities that interfere with the authority granted the state engineer under Title 73, Water and Irrigation, the division may construct, operate, modify, or maintain infrastructure related to protecting the Great Salt Lake and may engage in planning and provide staff to manage the infrastructure.

~~[(15)]~~ (16) The division may perform acts other than those described in Subsections (1) through ~~[(14)]~~ (15) that are reasonably necessary to carry out this chapter and Chapter 10, Management of Sovereign Lands.

(17) The division shall complete an analysis to determine the infrastructure and engineering needs related to salinity management and the improvement of hydrology within the Great Salt Lake meander line.

(18) The division shall consult with the Division of Wildlife Resources to identify projects on sovereign lands that benefit wildlife habitat through the improved flow of water and management of both native and invasive plant species.

~~[(16)]~~ (19) This ~~[part]~~ chapter may not be interpreted to override, supersede, or modify any water right within the state, or the role and authority of the state engineer.

Section 10. Section **65A-17-202**, which is renumbered from Section 65A-10-204 is renumbered and amended to read:

~~[65A-10-204].~~ **65A-17-202. Emergency management responsibilities of the division.**

(1) When the Great Salt Lake reaches the emergency trigger, the division:

(a) may construct, operate, modify, and maintain the adaptive management berm;

(b) may construct, operate, modify, and maintain one or more additional berms, dikes, structures, or management systems consistent with the authority granted in this title;

(c) may enter into agreements as necessary to provide for all or a portion of a berm, dike, system, or structure;

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(d) is exempt from Title 63G, Chapter 6a, Utah Procurement Code, when acting to manage the Great Salt Lake under this section;

(e) is not liable for a third-party claim resulting from the division's actions to manage the Great Salt Lake under this section;

(f) may decline to issue a new permit, authorization, or agreement and may curtail mineral or element production for leases that contain provisions contemplating curtailment or similar contractual remedies;

(g) may implement mineral lease withdrawal over one or more of the following:

(i) portions of the Great Salt Lake;

(ii) specific methods of extraction; or

(iii) specific Great Salt Lake elements or minerals as defined in Section 65A-6-4; and

(h) may require the implementation of one or more of the following:

(i) extraction methods that are non-depletive in nature;

(ii) mitigation to offset depletion; or

(iii) innovative extraction technologies.

(2) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for the procedures the division shall follow in taking an action described in Subsection (1).

Section 11. Section **65A-17-203**, which is renumbered from Section 65A-10-205 is renumbered and amended to read:

~~[65A-10-205].~~ **65A-17-203. Force majeure.**

(1) For purposes of managing the Great Salt Lake, the division may treat the fact that the Great Salt Lake has reached the emergency trigger as a triggering event for the purposes of invoking a force majeure provision in a contract, mineral lease, or royalty agreement.

(2) In addition to the standard mechanisms whereby performance is excused by invocation of a force majeure provision, the division shall include language in a contract, mineral lease, or royalty agreement whereby the division may curtail or prohibit mineral or element production that results in a net depletion of water.

(3) The division shall allow an operator to continue processing brines that have already been extracted from the Great Salt Lake that are residing in the operator's process, and selling products derived from brines that have already been extracted at the time the force majeure is

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invoked.

(4) The division shall include standard mechanisms to promptly waive force majeure once salinity conditions improve by declining below the emergency trigger threshold.

(5) If the division invokes a force majeure provision in a contract, mineral lease, or royalty agreement, the effected operator is relieved from performance of any contractual provision requiring production to hold the contract, mineral lease, or royalty agreement for a maximum of two years. If the conditions creating the emergency trigger persist beyond a two-year period, the division shall terminate the contract, mineral lease, or royalty agreement and require the operator to engage in new contractual agreements whereby the operator represents and warrants that future operations will not amount to a net depletion of water.

Section 12. Section **65A-17-301** is enacted to read:

Part 3. Mineral or Element Extraction

65A-17-301. General royalty agreement provisions -- State action regarding evaporation ponds and leaseholds.

(1) In addition to the requirements of Section 65A-6-4, the division shall ensure that a royalty agreement:

(a) obligates the lessee to prevent waste to the common source of supply;

(b) obligates the lessee to extract minerals or elements in a manner that avoids waste to any natural resources of the Great Salt Lake;

(c) contains terms and conditions wherein the lessee agrees to preserve and conserve ecological integrity and healthy salinity levels; and

(d) contains terms and conditions wherein the lessee represents and warrants full compliance, at the lessee's sole expense, with the management decisions and instructions of the division and director for preservation of minerals or elements and natural resources of the Great Salt Lake.

(2) The division may acquire the property interest in land or a mineral estate for a solar evaporation pond on sovereign lands and an improvement, property, easement, or right-of-way appurtenant to the solar evaporation pond by any lawful means, including eminent domain, as described in Sections 78B-6-501 and 78B-6-502.

Section 13. Section **65A-17-302** is enacted to read:

65A-17-302. Minerals or elements extracted from the Great Salt Lake subject to

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royalty rate.

(1) An operator who removes or extracts a mineral or element from the Great Salt Lake and does not return the mineral or element to the Great Salt Lake shall compensate the division for the value of the mineral or element at the royalty rate established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if a royalty rate has been established, except that this Subsection (1) only applies to the extent that the mineral or element ~~could~~:

(a) has been nominated under Subsection 65A-6-4(6)(a) or for which the division has established a royalty rate in rule; and

(b) can be extracted in paying quantities through a commercially viable technology available at the time of extraction.

(2) (a) The division shall require an operator that removes or extracts a mineral or element from the Great Salt Lake to annually certify to the division by no later than May 1 whether the operator is in compliance with Subsection (1). The certification by the operator shall:

(i) state the operator's name and taxpayer identification number;

(ii) list the amount of each mineral or element that the operator has removed or extracted from the Great Salt Lake in the previous calendar year; and

(iii) include other information as determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The operator shall submit the certificate on a form provided by the division and approved by the State Tax Commission.

(3) (a) If the division finds that an operator has violated Subsection (1), the division shall issue the operator an order that:

(i) finds that the operator is in violation of Subsection (1);

(ii) states the mineral or element for which the operator has failed to pay the royalty rate;

(iii) states the amount of the mineral or element that was removed or extracted but for which the operator failed to pay the royalty rate;

(iv) orders the payment of the applicable royalty; and

(v) provides the taxable value of the mineral or element, as described in Subsection

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59-5-203(1)(b).

(b) The operator may appeal an order issued under this Subsection (3) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) ~~Within 15 days of the day on which the division issues an order described in Subsection (3).~~ By no later than August 1 the division shall submit a copy of ~~the~~ an order issued under Subsection (3) to the State Tax Commission.

~~(5) The division may withdraw an order if the division finds that the operator is in compliance with this section.~~

~~(6), which applies to the calendar year in which the order is issued.~~

(5) The division may take an enforcement action against an operator in violation of this section.

Section 14. Section **65A-17-303** is enacted to read:

65A-17-303. Multiple mineral development area -- Cooperative agreements -- Correlative right protection -- Withdrawn from or incapable of mineral development.

(1) (a) The division shall manage the Great Salt Lake below the Great Salt Lake meander line as a multiple mineral development area to:

(i) prevent waste;

(ii) ensure the greatest ultimate recovery of minerals or elements;

(iii) protect correlative rights of owners having rights to a common source of supply and the ~~state's~~ division's duty to manage public trust assets; and

(iv) encourage new and emergent technologies to protect the Great Salt Lake's overall ecological integrity while ensuring the greatest possible recovery for operators and the state.

(b) An operator shall conduct operations to comply with rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) governing individual operations; and

(ii) made for the multiple mineral development area.

(2) (a) As a condition of the division issuing a lease or royalty agreement and of continued operations, the division shall require an operator to enter into and maintain a cooperative agreement with the persons with correlative rights in a common source of supply for a mineral or element in the Great Salt Lake.

(b) After submitting an application with the division to obtain a lease or royalty

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agreement, a person shall:

(i) obtain a list from the division of all operators existing at the time of application; and

(ii) notify each operator on the list of the person's intention to enter into a cooperative

agreement.

(c) A cooperative agreement shall meet the requirements of Subsection 65A-17-304(1), shall provide that the rights and obligations contained in the cooperative agreement are subject to the division's duty to manage public trust assets, and shall address:

(i) how the operators can conduct concurrent or simultaneous operations without unreasonably interfering with existing and separate operations while also preventing undue waste;

(ii) recognition of other operator's vested mineral or element interests so that operations may be conducted in a manner that will result in the maximum recovery of minerals or elements with the minimum adverse effect on the ultimate maximum recovery of other minerals or elements;

(iii) terms and conditions for establishing a mitigation plan for when one operator, either intentionally or unintentionally, interferes with or damages the mineral or element rights or mineral or element interests of another operator;

~~{ — (iv) terms and conditions for establishing a mitigation plan with the division for when one operator, either intentionally or unintentionally, interferes with or damages the mineral or element rights or mineral or element interests of another operator;~~

‡ ~~{v}~~ (iv) terms and conditions for establishing a mitigation plan with the division that would limit unreasonable mineral estate interference, waste, or negative impacts to ~~{Great Salt Lake }~~ of the Great Salt Lake;

~~{vi}~~ v the protection of ~~{the}~~ natural resources of the Great Salt Lake without unnecessary cost to the operations of another operator, unless there is compensation for increased operational costs;

~~{vii}~~ vi the extent and limits of liability when one operator interferes with or damages the mineral or element rights or mineral or element interests of another operator;

~~{viii}~~ vii the coordination and locations of access to operations;

~~{ix}~~ viii any assessment of costs resulting from concurrent operations within the Great Salt Lake;

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~~(ix)~~ the mitigation of surface impacts, including:

(A) the location of a mineral or element extraction intake or discharge facility;

(B) phased or coordinated surface occupancy to each operator to access and develop the operator's respective mineral or element estate or mineral or element interest with the least disruption of operations and damage to minerals or elements or natural resources directly, indirectly, or through waste; and

(C) limitations of mineral or element operations in areas where impacts to correlative rights or to natural resources of the Great Salt Lake are significant or most acute, as determined by the operators or the division;

~~(xix)~~ the mitigation of impacts to a subsurface or hydrologically connected aquifer including, use of any underground well or aquifer in any portion of extraction or processing;

~~(xix)~~ the scope and extent of how geological, engineering, product, and water use data is disclosed or exchanged;

~~(xx)~~ how any joint reclamation obligation or plan is to be achieved or coordinated;

~~(xx)~~ how bonding will be obtained and coordinated on any lands impacted, disturbed, or developed in relation to mineral or element extraction and processing activities;

~~(xx)~~ terms and conditions indemnifying the state, the division, and any of the state's or division's directors, officers, agents, or employees from any and all damage or liability of any kind resulting from any stage or mineral or element extraction operations or any stage of mineral or element processing;

~~(xx)~~ terms and conditions obligating the operators to plan and implement the plan for the protection of the ecological integrity and healthy salinity levels of the Great Salt Lake;

~~(xx)~~ terms and conditions for the full compliance with a royalty rate reduction to which an operator is entitled;

~~(xx)~~ a schedule of how the operators plan to collectively curtail production if the emergency trigger is reached and a curtailment of production is required; and

~~(xx)~~ any other term or condition outlining cooperative efforts consistent with the multiple mineral development area and plans or rules of the division, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) The parties to a cooperative agreement described in Subsection (2)(a) shall present

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the cooperative agreement to the division and the director may approve the agreement if the cooperative agreement:

(i) is in the public interest;

(ii) increases ultimate recovery of minerals or elements and prevention of waste of minerals or elements;

(iii) protects the correlative rights of each owner; and

(iv) meets the requirements of Subsection 65A-17-304(1).

(e) On the director's approval of the cooperative agreement, the division becomes a signator to the cooperative agreement.

(f) A cooperative agreement described in this Subsection (2) may not be held or construed to violate a statute relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the director.

(g) The failure to submit an agreement to the division for approval may not for that reason imply or constitute evidence that the agreement or operations conducted pursuant to the agreement are in violation of laws relating to trusts, monopolies, or restraint of trade.

(h) An operator may not obstruct the ability of another operator to enter into a cooperative agreement.

(i) A mitigation plan with the division shall be implemented in conjunction with the Division of Water Rights.

(3) The division may at any time determine that certain areas within the multiple mineral development area are withdrawn from mineral development or incapable of mineral development.

Section 15. Section **65A-17-304** is enacted to read:

65A-17-304. Concurrent operations -- Breach, disagreement, or conflict --

Disputes.

(1) Two or more operators may conduct concurrent operations on the Great Salt Lake under a cooperative agreement upon stipulation and agreement that the operations can be:

(a) conducted simultaneously without unreasonably interfering with the value of the resources being produced;

(b) conducted simultaneously without unreasonably interfering with natural resources of the Great Salt Lake; and

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(c) conducted without unreasonably interfering with, or unnecessarily raising the cost of operations of another operator, unless the other affected operator is compensated for increased costs or diminished returns.

(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for the procedures the division and ~~parties to~~ operators shall follow to:

(a) assist in the resolution of disputes that may arise during the formation of a cooperative agreement; ~~shall follow in the case of~~;

(b) cure a breach of a mitigation plan; or

(c) resolve a continued disagreement or conflict regarding continued negative impacts to biota or chemistry due to continuing concurrent operations.

~~(3) The division may resolve disputes between operators with respect to concurrent operations.~~

Section 16. Section 73-3-8 is amended to read:

73-3-8. Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals -- Request for agency action.

(1) (a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:

(i) for an application to appropriate, there is unappropriated water in the proposed source;

(ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;

(iii) the proposed plan:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works;

(v) the application was filed in good faith and not for purposes of speculation or monopoly; and

(vi) if applicable, the application complies with a groundwater management plan

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adopted under Section 73-5-15.

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) If an application does not meet the requirements of this section, it shall be rejected.

(2) (a) An application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may an application be granted for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application or until the water is no longer available as determined by the state engineer.

(b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.

(c) No later than 60 calendar days before the expiration date of the fixed time period, the state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.

(d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water right upon a showing that:

(i) the essential purpose of the original application has not been satisfied;

(ii) the need for an extension is not the result of any default or neglect by the applicant;

and

(iii) the water is still available.

(e) An extension may not exceed the time necessary to satisfy the primary purpose of the original application.

(f) A request for extension of the fixed time period must be filed in writing in the office of the state engineer on or before the expiration date of the application.

(3) (a) Before the approval of any application [~~for the appropriation of~~] to divert water

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from navigable lakes or streams of the state that contemplates the recovery of salts and other minerals or elements, as defined in Section 65A-17-101, therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of:

(i) a contract for the payment of royalties to the state~~[-];~~ and

(ii) any mineral lease.

(b) The approval of an application shall be ~~[revoked]~~ reversed if the applicant fails to comply with terms of the royalty contract or mineral lease.

(4) (a) The state engineer shall investigate all temporary change applications.

(b) The state engineer shall:

(i) approve the temporary change if the state engineer finds there is reason to believe that the temporary change will not impair an existing right; and

(ii) deny the temporary change if the state engineer finds there is reason to believe the temporary change would impair an existing right.

(5) (a) With respect to a change application for a permanent or fixed time change:

(i) the state engineer shall follow the same procedures provided in this title for approving an application to appropriate water; and

(ii) the rights and duties of a change applicant are the same as the rights and duties of a person who applies to appropriate water under this title.

(b) The state engineer may waive notice for a permanent or fixed time change application if the application only involves a change in point of diversion of 660 feet or less.

(c) The state engineer may condition approval of a change application to prevent an enlargement of the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use of water proposed to be changed.

(d) A condition described in Subsection (5)(c) may not include a reduction in the currently approved diversion rate of water under the water right identified in the change application solely to account for the difference in depletion under the nature of the proposed use when compared with the nature of the currently approved use.

(6) (a) Except as provided in Subsection (6)(b), the state engineer shall reject a permanent or fixed time change application if the person proposing to make the change is unable to meet the burden described in Subsection 73-3-3(5).

(b) If otherwise proper, the state engineer may approve a change application upon one

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or more of the following conditions:

- (i) for part of the water involved;
- (ii) that the applicant acquire a conflicting right; or
- (iii) that the applicant provide and implement a plan approved by the state engineer to mitigate impairment of an existing right.

(c) (i) There is a rebuttable presumption of quantity impairment, as defined in Section 73-3-3, to the extent that, for a period of at least seven consecutive years, a portion of the right identified in a change application has not been:

- (A) diverted from the approved point of diversion; or
- (B) beneficially used at the approved place of use.

(ii) The rebuttable presumption described in Subsection (6)(c)(i) does not apply if the beneficial use requirement is excused by:

- (A) Subsection 73-1-4(2)(e);
- (B) an approved nonuse application under Subsection 73-1-4(2)(b);
- (C) Subsection 73-3-30(7); or
- (D) the passage of time under Subsection 73-1-4(2)(c)(i).

(d) The state engineer may not consider quantity impairment based on the conditions described in Subsection (6)(c) unless the issue is raised in a:

(i) timely protest that identifies which of the protestant's existing rights the protestant reasonably believes will experience quantity impairment; or

(ii) written notice provided by the state engineer to the applicant within 90 days after the change application is filed.

(e) The written notice described in Subsection (6)(d)(ii) shall:

(i) specifically identify an existing right the state engineer reasonably believes may experience quantity impairment; and

(ii) be mailed to the owner of an identified right, as shown by the state engineer's records, if the owner has not protested the change application.

(f) The state engineer is not required to include all rights the state engineer believes may be impaired by the proposed change in the written notice described in Subsection (6)(d)(ii).

(g) The owner of a right who receives the written notice described in Subsection

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(6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a timely protest.

(h) If a change applicant, the protestants, and the persons identified by the state engineer under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of quantity impairment shall be mitigated, the state engineer may incorporate the terms of the agreement into a change application approval.

Section 17. Section ~~{73-3-30}~~; 73-32-204 is amended to read:

~~{~~ **73-3-30. Change application for an instream flow -- Change application for delivery to a reservoir.**

~~_____ (1) As used in this section:~~

~~_____ (a) "Colorado River System" means the same as that term is defined in Sections 73-12a-2 and 73-13-10.~~

~~_____ (b) "Division" means the Division of Wildlife Resources created in Section 23A-2-201, the Division of State Parks created in Section 79-4-201, or the Division of Forestry, Fire, and State Lands created in Section 65A-1-4.~~

~~_____ (c) "Person entitled to the use of water" means the same as that term is defined in Section 73-3-3.~~

~~_____ (d) "Sovereign lands" means the same as that term is defined in Section 65A-1-1.~~

~~_____ (e) "Wildlife" means species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, that are protected or regulated by a statute, law, regulation, ordinance, or administrative rule.~~

~~_____ (2) (a) Pursuant to Section 73-3-3, a division may file a permanent change application, a fixed time change application, or a temporary change application, or a person entitled to the use of water may file a fixed time change application or a temporary change application, to provide water within the state for:~~

~~_____ (i) an instream flow within a specified section of a natural or altered stream; or~~

~~_____ (ii) use on sovereign lands.~~

~~_____ (b) The state engineer may not approve a change application filed under this Subsection (2) unless the proposed instream flow or use on sovereign lands will contribute to:~~

~~_____ (i) the propagation or maintenance of wildlife;~~

~~_____ (ii) the management of state parks; or~~

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- ~~—— (iii) the reasonable preservation or enhancement of the natural aquatic environment.~~
- ~~—— (c) A division may file a change application on:~~
 - ~~—— (i) a perfected water right:~~
 - ~~—— (A) presently owned by the division;~~
 - ~~—— (B) purchased by the division for the purpose of providing water for an instream flow or use on sovereign lands, through funding provided for that purpose by legislative appropriation; or~~
 - ~~—— (C) secured by lease, agreement, gift, exchange, or contribution; or~~
 - ~~—— (ii) an appurtenant water right acquired with the acquisition of real property by the division:~~
 - ~~—— (d) A division may:~~
 - ~~—— (i) purchase a water right for the purposes described in Subsection (2)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or~~
 - ~~—— (ii) accept a donated water right without legislative approval.~~
- ~~—— (e) A division may not acquire water rights by eminent domain for an instream flow, use on sovereign lands, or for any other purpose except as provided in Section 65A-17-301.~~
- ~~—— (3) (a) A person entitled to the use of water shall obtain a division director's approval of the proposed change before filing a fixed time change application or a temporary change application with the state engineer.~~
 - ~~—— (b) By approving a proposed fixed time change application or temporary change application, a division director attests that the water that is the subject of the application can be used consistent with the statutory mandates of the director's division.~~
- ~~—— (4) (a) Pursuant to Section 73-3-3, a person entitled to the use of water may file a fixed time change application or a temporary change application for a project to deliver water to a reservoir located partially or entirely within the Colorado River System in the state in accordance with:~~
 - ~~—— (i) Colorado River Drought Contingency Plan Authorization Act, Public Law 116-14;~~
 - ~~—— (ii) a water conservation program funded by the Bureau of Reclamation; or~~
 - ~~—— (iii) a water conservation program authorized by the state.~~
- ~~—— (b) Before filing a change application under this Subsection (4), a person entitled to the use of water shall obtain the approval from the executive director of the Colorado River~~

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~~Authority of Utah, appointed under Section 63M-14-401.~~

~~—— (c) By approving a proposed fixed time change application or temporary change application, the executive director of the Colorado River Authority of Utah attests that the water that is the subject of the application can be used consistent with this section.~~

~~—— (5) In addition to the requirements of Section 73-3-3, an application authorized by this section shall include:~~

~~—— (a) a legal description of:~~

~~—— (i) the segment of the natural or altered stream that will be the place of use for an instream flow;~~

~~—— (ii) the location where the water will be used on sovereign lands; or~~

~~—— (iii) the reservoir located partially or entirely within the Colorado River System in the state that the water will be delivered to; and~~

~~—— (b) appropriate studies, reports, or other information required by the state engineer demonstrating:~~

~~—— (i) the projected benefits to the public resulting from the change; and~~

~~—— (ii) the necessity for the proposed instream flow or use on sovereign lands.~~

~~—— (6) A person may not appropriate unappropriated water under Section 73-3-2 for the purpose of providing an instream flow or use on sovereign lands.~~

~~—— (7) Water used in accordance with this section is considered to be beneficially used, as required by Section 73-3-1.~~

~~—— (8) A physical structure or physical diversion from the stream is not required to implement a change under this section.~~

~~—— (9) An approved change application described in this section does not create a right of access across private property or allow any infringement of a private property right.~~

~~—— Section 18. Section 73-10g-306 is amended to read:~~

~~—— **73-10g-306. Local watershed councils -- Creation.**~~

~~—— (1) A proposed local watershed council may be certified by the Utah Watersheds Council under Subsection 73-10g-305(1)(c) if:~~

~~—— (a) the organizing documents and policies of the proposed local watershed council:~~

~~—— (i) provide for an open and equitable system of governance;~~

~~—— (ii) encourage participation by a water user or group of water users, other watershed~~

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~~groups, mutual irrigation companies, distribution system committees, and other stakeholders within the watershed; and~~

~~—— (iii) require that:~~

~~—— (A) a majority of the members of the local council constitutes a quorum; and~~

~~—— (B) an action of the local council be approved by no less than a majority of the members of the local council; and~~

~~—— (b) in a balance appropriate for the watershed, the proposed local council membership includes watershed stakeholders who reside or work within the watershed or own or control the right to divert or use water within the watershed and is representative, where feasible, of at least these interests:~~

~~—— (i) agriculture;~~

~~—— (ii) industry;~~

~~—— (iii) Indian tribes;~~

~~—— (iv) public water suppliers, as defined in Section 73-1-4;~~

~~—— (v) water planning and research institutions;~~

~~—— (vi) water quality;~~

~~—— (vii) fish and wildlife;~~

~~—— (viii) water dependent habitat and environments;~~

~~—— (ix) watershed management, such as distribution system committees functioning within the watershed;~~

~~—— (x) mutual irrigation companies; and~~

~~—— (xi) local sponsors of reclamation projects[;];~~

~~—— [(c) for each of the five watersheds that drain into Great Salt Lake, the proposed local council includes a person designated by the Great Salt Lake local watershed council, if the Great Salt Lake local watershed council is certified; and]~~

~~—— [(d) for the Great Salt Lake watershed, the proposed local council includes a person designated by each of the five watersheds that drain into Great Salt Lake that has a certified local watershed council.]~~

~~—— (2) A local council may invite state and federal agencies to name representatives as liaisons to the local council.~~

~~—— (3) (a) Notwithstanding Subsection (1), the state council shall certify the Great Salt~~

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~~Lake Advisory Council, created in Section 73-32-302, as the local council for the Great Salt Lake Watershed.~~

~~— (b) The structure and activities of the Great Salt Lake Advisory Council are subject to Sections 73-32-302 and 73-32-303.~~

~~— (c) The local council for each of the five watersheds that drain into the Great Salt Lake may appoint one liaison to the Great Salt Lake Advisory Council. A liaison appointed by a watershed shall communicate and coordinate with the Great Salt Lake Advisory Council on issues of mutual interest and concern.~~

~~— Section 19. Section 73-32-204 is amended to read:~~

‡ **73-32-204. Strategic plan.**

(1) (a) In accordance with this section, the commissioner shall prepare a strategic plan and obtain the approval of the governor of that strategic plan.

(b) A strategic plan prepared by the commissioner may not be implemented until the governor approves the strategic plan, except as provided in Subsection (5).

(2) The commissioner shall base the strategic plan on a holistic approach that balances the diverse interests related to the health of the Great Salt Lake, and includes provisions concerning:

- (a) coordination of efforts related to the Great Salt Lake;
- (b) a sustainable water supply for the Great Salt Lake, while balancing competing needs;
- (c) human health and quality of life;
- (d) a healthy ecosystem;
- (e) economic development;
- (f) water conservation, including municipal and industrial uses and agricultural uses;
- (g) water and land use planning;
- (h) regional water sharing; and
- (i) other provisions that the commissioner determines would be for the benefit of the Great Salt Lake.

(3) (a) The commissioner shall obtain the approval of the governor of an initial strategic plan by no later than December 31, 2023.

(b) On or before November 30, 2023, the commissioner shall submit an initial strategic

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plan to the governor, speaker of the House of Representatives, and the president of the Senate.

(c) The governor shall approve the strategic plan by no later than December 31, 2023, if the governor determines that the initial strategic plan satisfies this chapter.

(d) By no later than January 15, 2024, the commissioner shall provide the following a copy of the initial strategic plan approved by the governor under Subsection (3)(c):

- (i) the Natural Resources, Agriculture, and Environment Interim Committee;
- (ii) the department;
- (iii) the Department of Environmental Quality; and
- (iv) the Department of Agriculture and Food.

(4) The governor may approve a strategic plan only after consulting with the speaker of the House of Representatives and the president of the Senate.

(5) Once a strategic plan is approved by the governor, the commissioner may make substantive changes to the strategic plan without the approval of the governor, except that the commissioner shall:

(a) inform the governor, the speaker of the House of Representatives, and the president of the Senate of a substantive change to the strategic plan; and

(b) submit the strategic plan every five years for the approval of the governor in a process that is consistent with Subsection (3).

(6) The commissioner may work with the Division of Forestry, Fire, and State Lands in coordinating the comprehensive management plan created under Section [~~65A-10-203~~] 65A-17-201 with the strategic plan.

Section ~~{20}~~18. Section **73-32-303** is amended to read:

73-32-303. Duties of the council.

(1) (a) The council shall advise the persons listed in Subsection (1)(b) on the sustainable use, protection, and development of the Great Salt Lake in terms of balancing:

- (i) sustainable use;
- (ii) environmental health; and
- (iii) reasonable access for existing and future development.

(b) The council shall advise, as provided in Subsection (1)(a):

- (i) the governor;
- (ii) the Department of Natural Resources;

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(iii) the Department of Environmental Quality; and

(iv) the commissioner.

(2) The council shall assist the Division of Forestry, Fire, and State Lands in the Division of Forestry, Fire, and State Land's responsibilities for the Great Salt Lake described in Sections ~~[65A-10-203 and 65A-10-204]~~ 65A-17-201 and 65A-17-202.

(3) The council:

(a) may recommend appointments to the Great Salt Lake technical team created by the Division of Forestry, Fire, and State Lands; and

(b) shall receive and use technical support from the Great Salt Lake technical team.

(4) The council shall assist the department, the Department of Environmental Quality, and their applicable boards in accomplishing their responsibilities for the Great Salt Lake.

(5) The council shall report annually to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee on the council's activities.

~~{ (6) The council shall communicate and coordinate with a liaison appointed by a local watershed council under Subsection 73-10g-306(3)(b) on issues of mutual interest and concern.~~

† Section ~~{21}~~19. Section **73-33-101** is enacted to read:

CHAPTER 33. GREAT SALT LAKE DISTRIBUTION MANAGEMENT

Part 1. General Provisions

73-33-101. Definitions.

As used in this chapter:

(1) "Distribution management plan" means a plan adopted by the state engineer in accordance with Section 73-33-201.

~~{ (2) "Great Salt Lake" means the same as that term is defined in Section 65A-17-101.~~

† ~~{3}~~2 "Great Salt Lake Comprehensive Management Plan" means the plan adopted by a record of decision by the Division of Forestry, Fire, and State Lands for the management of the Great Salt Lake.

~~{4}~~3 "Great Salt Lake meander line" means the same as that term is defined in Section 65A-17-101.

~~{5}~~4 "Great Salt Lake water right" means a water right that ~~{diverts}~~allows for the diversion of surface water or groundwater from a point below the Great Salt Lake meander line and that contemplates the recovery of salts or another mineral or element, as defined in Section

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65A-17-101, from the water resource by precipitation or otherwise.

~~{6}5~~ "Great Salt Lake watershed" means the drainage area for the Great Salt Lake, the Bear River watershed, the Jordan River watershed, the Utah Lake watershed, the Weber River watershed, and the West Desert watershed.

Section ~~{22}20~~. Section **73-33-102** is enacted to read:

73-33-102. Scope of chapter.

(1) A person may not interpret this chapter as requiring the development, implementation, or consideration of a distribution 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.

(2) This chapter applies to Great Salt Lake water rights ~~in effect~~that were approved or perfected on or before May 1, 2024, and Great Salt Lake water rights ~~issued~~approved or perfected after May 1, 2024, including use under a Great Salt Lake water right of water for the mineral or element extraction process.

Section ~~{23}21~~. Section **73-33-201** is enacted to read:

Part 2. Distribution Management Plan

73-33-201. Great Salt Lake distribution management plan.

(1) The state engineer shall regulate the measurement, appropriation, apportionment, and distribution of water within the Great Salt Lake meander line by adopting a distribution management plan by no later than ~~{May}~~October 1, 2025, that establishes:

(a) consistent with Section 73-33-203, requirements for the measurement, quantification, and reporting of diversions, depletions, and return flows associated with Great Salt Lake water rights; and

(b) procedures for the apportionment and distribution of Great Salt Lake water rights.

(2) (a) In developing a distribution management plan under this section, the state engineer may consider:

(i) the hydrology of the Great Salt Lake watershed as it affects Great Salt Lake water rights;

(ii) the physical characteristics of the Great Salt Lake;

(iii) the Great Salt Lake elevation;

(iv) the Great Salt Lake salinity;

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(v) the strategic plan prepared by the Great Salt Lake commissioner and approved by the governor under Section 73-32-204;

(vi) the measurement, appropriation, apportionment, and distribution of Great Salt Lake water rights;

(vii) the quantity of water approved for beneficial use within the Great Salt Lake **meander line** by a division as defined in Section 73-3-30;

(viii) the quantity of water within the Great Salt Lake;

(ix) the Great Salt Lake Comprehensive Management Plan;

(x) the different types of beneficial uses of Great Salt Lake water rights; and

(xi) other relevant factors **such as the economic viability impacts**.

(b) The state engineer shall base the distribution management plan on the principles of prior appropriation and ~~{multiple-use}~~**multiple use** sustained yield, **with multiple use defined in Section 65A-1-1**, as ~~{they}~~**the principles** relate to the reasonable preservation or enhancement of the Great Salt Lake's natural aquatic environment.

(c) The state engineer shall use the best available information to administer Great Salt Lake water rights to achieve the objectives of the distribution management plan.

(d) As hydrologic conditions change or additional information becomes available, the state engineer may revise the distribution management plan by following the procedures of Subsection (3).

(3) (a) To adopt or amend a distribution management plan **for the Great Salt Lake**, the state engineer shall:

(i) give notice pursuant to Subsection (3)(b) at least 30 days before the first public meeting held in accordance with Subsection (3)(a)(ii):

(A) that the state engineer proposes to adopt or amend a distribution management plan ~~{ for the Great Salt Lake }~~; and

(B) stating the location, date, and time of each public meeting to be held in accordance with Subsection (3)(a)(ii):

(ii) hold one or more public meetings to:

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

(B) address items that may be included in the distribution management plan; and

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- (C) receive public comments and other information presented at the public meeting;
- (iii) receive and consider written comments concerning the proposed distribution 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 (3)(a)(i) is given;
- (iv) at least 60 days before final adoption of the distribution management plan, publish notice:
- (A) that a draft of the distribution management plan has been proposed; and
- (B) specifying where a copy of the draft distribution management plan may be reviewed;
- (v) promptly provide a copy of the draft distribution management plan in printed or electronic form to each entity listed in Subsection (3)(b)(iii) that requests a copy in writing; and
- (vi) provide notice of the adoption of the distribution management plan.
- (b) The state engineer shall ensure that a notice required by this section:
- (i) is published:
- (A) once a week for two consecutive weeks in a newspaper of general circulation in each county that ~~encompasses~~ includes any land below the Great Salt Lake meander line; and
- (B) for two weeks in accordance with Section 45-1-101;
- (ii) is published conspicuously on the state engineer's website; and
- (iii) is mailed to water right ~~holders~~ owners of record in the state engineer's office of Great Salt Lake water rights.
- (c) A notice required by this section is effective upon substantial compliance with Subsection (3)(b).
- (d) A distribution management plan takes effect on the date notice of adoption is completed under Subsection (3)(b) or on a later date when specified in the distribution management plan.
- (4) (a) In accordance with the distribution management plan, the state engineer shall ~~;~~
- ~~(i)~~ establish a priority schedule that apportions Great Salt Lake water rights based on ~~;~~
- ~~(A)~~ relative priority among Great Salt Lake water rights ~~;~~
- ~~(B)~~ and:
- (i) develop an apportionment schedule and distribution accounting tool that accounts

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for:

(A) Great Salt Lake elevations;~~{ and;~~

~~{(C)}~~B) Great Salt Lake salinity;

~~{~~ (ii) develop a distribution accounting model that accounts for:

~~{~~ (A)~~C) Great Salt Lake water rights;~~

~~{B}~~D) the quantity of water in the Great Salt Lake; and

~~{C}~~E) the quantity of water delivered to the Great Salt Lake under water rights

approved for beneficial use by a division as defined in Section 73-3-30;

(iii) ii) prohibit Great Salt Lake water rights from diverting the quantity of water accounted for under Subsection (4)(a)(i)C); and

(iv) iii) require physical measurement and annual reporting of diversion, depletion, and return flow quantities of Great Salt Lake water rights.

(b) Under a distribution management plan the state engineer may reduce the quantity of water that an owner of a Great Salt Lake water right may divert from the Great Salt Lake in accordance with the principles of prior appropriation.

(5) (a) When adopting a distribution management plan, the state engineer may allow water users to participate in a voluntary arrangement that compensates or otherwise mitigates for the use of Great Salt Lake water rights.

(b) The participants in a voluntary arrangement under this Subsection (5) shall implement the voluntary arrangement consistent with other law.

(c) The adoption of a voluntary arrangement under this Subsection (5) by less than all of the owners of Great Salt Lake water rights does not affect the rights of those owners of Great Salt Lake water rights who do not agree to the voluntary arrangement.

(6) The existence of a distribution management plan does not preclude an otherwise eligible person from filing an application or challenging a decision made by the state engineer ~~{about a matter }~~ within the Great Salt Lake meander line, except that a person may challenge the components of a distribution management plan only in a manner provided in Section 73-33-202.

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

Section ~~{24}~~22. Section **73-33-202** is enacted to read:

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73-33-202. Challenges to a distribution management plan.

(1) A person aggrieved by a distribution management plan may challenge any aspect of the distribution management plan by filing a complaint within 60 days after the distribution management plan takes effect in a court with jurisdiction:

(a) under Title 78A, Judiciary and Judicial Administration; and

(b) notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, over a geographic area bordering the Great Salt Lake.

(2) In an action filed under this section, a court shall review de novo the distribution management plan.

(3) A person challenging a distribution management plan under this section shall join the state engineer as a defendant in that action.

(4) (a) No later than 30 days after the day on which a person files an action challenging any aspect of a distribution management plan, the person filing the action shall publish notice of the action:

(i) once a week for two consecutive weeks in a newspaper of general circulation in the county in which the court is located; and

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

(b) The notice required by Subsection (4)(a) shall:

(i) identify the distribution management plan that the person is challenging;

(ii) identify the case number assigned by the court;

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

(iv) list the address of the clerk of the court in which the action is filed.

(c) A person affected by a distribution management plan that is being challenged under this section may petition to intervene in the action in accordance with Utah Rules of Civil Procedure, Rule 24.

Section ~~{25}~~23. Section 73-33-203 is enacted to read:

73-33-203. Measuring volume and quality of water.

(1) (a) ~~{An operator}~~ A person diverting water under a Great Salt Lake water right shall:

(i) measure through the use of a physical measurement and not estimate or calculate the

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water or brine ~~the operator diverts~~ diverted from the Great Salt Lake as part of the mineral or element extraction process;

(ii) keep a record of the measurements described in Subsection (1)(a)(i); and

(iii) report the measurements described in Subsection (1)(a)(i) to the Division of Water Rights in accordance with rules made by the Division of ~~Forestry, Fire, and State Lands~~ Water Rights under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) A duty described in Subsection (1)(a) does not replace or modify any other duty to measure water under this title or rules made under this title.

(2) ~~An operator~~ A person diverting water under a Great Salt Lake water right shall:

(a) measure the salinity of any discharge of water or brine from the ~~operator's~~ person's operations into the Great Salt Lake in accordance with rules made by the Division of Forestry, Fire, and State Lands in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) keep a record of the measurements described in Subsection (2)(a); and

(c) report the measurements described in Subsection (2)(a) to the Division of Forestry, Fire, and State Lands in accordance with rules made by the Division of Forestry, Fire, and State Lands under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) After consulting with the Division of Water Quality, the Division of Forestry, Fire, and State Lands shall make a rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, setting a standard for the salinity of water or brine that ~~an operator~~ a person may discharge into the Great Salt Lake as part of the mineral or element extraction process.

(b) If ~~an operator~~ a person discharges water or brine that exceeds the standard imposed under Subsection (3)(a), the Division of Water Quality may revoke any permit issued ~~to the operator~~ by the Division of Water Quality related to the discharge.

(4) ~~An operator~~ A person shall keep a record required under this section for a period of at least five years from the day on which the record is made.

Section ~~26~~ 24. Section **78B-6-501** is amended to read:

78B-6-501. Eminent domain -- Uses for which right may be exercised --

Limitations on eminent domain.

(1) As used in this section[~~7~~]:

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(a) [~~"century farm"~~] "Century farm" means real property that is:

~~[(a)]~~ (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

~~[(b)]~~ (ii) owned or held by the same family for a continuous period of 100 years or

more.

(b) "Mineral or element" means the same as that term is defined in Section

65A-17-101.

(2) Except as provided in Subsections (3) and (4) and subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:

(a) all public uses authorized by the federal government;

(b) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;

(c) (i) public buildings and grounds for the use of any county, city, town, or board of education;

(ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;

(iii) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;

(iv) bicycle paths and sidewalks adjacent to paved roads;

(v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development; and

(vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;

(d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;

(e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of minerals or elements in solution;

(f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places

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to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals or elements in solution;

(ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals or elements in solution;

(iii) mill dams;

(iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

(v) solar evaporation ponds and other facilities for the recovery of minerals in solution, which for the Great Salt Lake includes construction, removal, or extinguishment, in whole or in part, by a state entity of:

(A) a solar evaporation pond;

(B) improvements, property, easements, or rights-of-way appurtenant to a solar evaporation pond, including a lease hold; or

(C) other facilities for the recovery of minerals or elements in solution; and

(vi) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;

(g) byroads leading from a highway to:

(i) a residence; or

(ii) a farm;

(h) telecommunications, electric light and electric power lines, sites for electric light and power plants, or sites for the transmission of broadcast signals from a station licensed by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that provides emergency broadcast services;

(i) sewage service for:

(i) a city, a town, or any settlement of not fewer than 10 families;

(ii) a public building belonging to the state; or

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(iii) a college or university;

(j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;

(k) cemeteries and public parks; and

(l) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

(3) The right of eminent domain may not be exercised on behalf of the following uses:

(a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway;

(b) (i) a public park whose primary purpose is:

(A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

(B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use; or

(ii) a public park established on real property that is:

(A) a century farm; and

(B) located in a county of the first class.

(4) (a) The right of eminent domain may not be exercised within a migratory bird production area created on or before December 31, 2020, under Title 23A, Chapter 13,

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Migratory Bird Production Area, except as follows:

(i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory bird production area located in a county of the first class only for the purpose of installing buried power lines;

(ii) an electric utility may condemn land within a migratory bird production area in a county other than a county of the first class to install:

(A) buried power lines; or

(B) a new overhead transmission line that is parallel to and abutting an existing overhead transmission line or collocated within an existing overhead transmission line right of way; or

(iii) the Department of Transportation may exercise eminent domain for the purpose of the construction of the West Davis Highway.

(b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric utility shall demonstrate that:

(i) the proposed condemnation would not have an unreasonable adverse effect on the preservation, use, and enhancement of the migratory bird production area; and

(ii) there is no reasonable alternative to constructing the power line within the boundaries of a migratory bird production area.

Section ~~27~~25. Section **78B-6-502** is amended to read:

78B-6-502. Estates and rights that may be taken.

The following estates and rights in lands are subject to being taken for public use:

(1) a fee simple, when taken for:

(a) public buildings or grounds;

(b) permanent buildings;

(c) reservoirs and dams, and permanent flooding occasioned by them;

(d) any permanent flood control structure affixed to the land;

(e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and

(f) solar evaporation ponds and other facilities for the recovery of minerals in solution[;];

(i) except when the surface ground is overlaid with minerals, coal, or other deposits

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sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits; and

(ii) which for the Great Salt Lake includes construction, removal, or extinguishment, in whole or in part, by a state entity of:

(A) a solar evaporation pond;

(B) improvements, property, easements, or rights-of-way appurtenant to a solar evaporation pond, including a lease hold; or

(C) other facilities for the recovery of minerals or elements in solution;

(2) an easement, when taken for any other use; and

(3) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.

Section ~~{28}~~26. **Repealer.**

This bill repeals:

Section **65A-10-201, Definitions.**

Section ~~{29}~~27. **FY 2025 Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2024, and ending June 30, 2025. These are additions to amounts previously appropriated for fiscal year 2025.

Subsection ~~{29}~~27(a). **Operating and Capital Budgets.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1 To Department of Natural Resources - ~~{Forestry, Fire, and State Lands}~~DNR
Pass Through

From General Fund Restricted - ~~{Great Salt Lake~~ \$300,000

~~Account}~~Sovereign Lands Management, One-time

= Schedule of Programs:

= DNR Pass Through \$300,000

The Legislature intends that the money appropriated in this item pass through to the Division of Water Rights to pay for initial costs of developing a distribution management plan. The

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Legislature intends that the appropriation be nonlapsing.ITEM 2 To Department of Natural Resources - Forestry, Fire, and State Lands

= From General Fund Restricted - Sovereign Lands Management, \$500,000

One-time

Schedule of Programs:

Project Management	\$500,000
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The Legislature intends that the money appropriated under this item be used to fund the analysis required by Subsection 65A-17-201(17), renumbered and amended by this bill. The Legislature intends that the appropriation be nonlapsing.

Section ~~{30}~~28. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

(2) The actions affecting Sections 59-5-202 (Effective 01/01/25), and 59-5-203 (Effective 01/01/25), take effect on January 1, 2025.