

Representative Casey Snider proposes the following substitute bill:

GREAT SALT LAKE REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: Scott D. Sandall

6	Cosponsors:	Steve Eliason	A. Cory Maloy
7	Nelson T. Abbott	Joseph Elison	Michael J. Petersen
8	Cheryl K. Acton	Matthew H. Gwynn	Thomas W. Peterson
9	Carl R. Albrecht	Katy Hall	Susan Pulsipher
10	Stewart E. Barlow	Ken Ivory	Judy Weeks Rohner
11	Kera Birkeland	Colin W. Jack	Mike Schultz
12	Bridger Bolinder	Tim Jimenez	Rex P. Shipp
13	Walt Brooks	Dan N. Johnson	Jeffrey D. Stenquist
14	Jefferson S. Burton	Marsha Judkins	Mark A. Strong
15	Kay J. Christofferson	Michael L. Kohler	R. Neil Walter
16	James Cobb	Trevor Lee	Raymond P. Ward
17	Paul A. Cutler	Anthony E. Loubet	Ryan D. Wilcox
18	Ariel Defay	Steven J. Lund	
19	James A. Dunnigan	Matt MacPherson	



LONG TITLE

General Description:

This bill addresses actions affecting the Great Salt Lake.

Highlighted Provisions:



- 25 This bill:
- 26 ▶ modifies provisions related to severance taxes;
- 27 ▶ exempts challenges to a distribution management plan from the Administrative
- 28 Procedures Act;
- 29 ▶ addresses mineral lease and royalty agreement provisions, including:
- 30 • providing for the loss of certain rights for failure to use;
- 31 • providing for royalty discounts under certain circumstances; and
- 32 • providing for small projects;
- 33 ▶ enacts the Great Salt Lake Preservation Act, including:
- 34 • defining terms;
- 35 • addressing management responsibilities;
- 36 • requiring certain provisions within royalty agreements;
- 37 • providing for acquisition of property interests or mineral estates, including
- 38 through eminent domain;
- 39 • requiring payment of royalties;
- 40 • addressing the Great Salt Lake as a multiple mineral development area;
- 41 • addressing concurrent operations on the Great Salt Lake; and
- 42 • clarifying what constitutes waste;
- 43 ▶ enacts the Great Salt Lake Distribution Management chapter, including:
- 44 • defining terms;
- 45 • directing the state engineer to develop a Great Salt Lake distribution
- 46 management plan related to water rights;
- 47 • providing for challenges to a distribution management plan;
- 48 • addressing the measurement of the volume and quality of water; and
- 49 • addressing the scope of the chapter;
- 50 ▶ amends provision regarding approval of a water right related application related to
- 51 the extraction of minerals or elements;
- 52 ▶ addresses rulemaking;
- 53 ▶ addresses eminent domain; and
- 54 ▶ makes technical and conforming changes.

55 **Money Appropriated in this Bill:**

56 This bill appropriates in fiscal year 2025:

57 ▶ to Department of Natural Resources - Forestry, Fire, and State Lands - Project
58 Management as a one-time appropriation:

59 • from the General Fund Restricted - Sovereign Lands Management, One-time,
60 \$500,000

61 ▶ to Department of Natural Resources - Water Rights - Field Services as a one-time
62 appropriation:

63 • from the General Fund Restricted - Sovereign Lands Management, One-time,
64 \$300,000

65 **Other Special Clauses:**

66 This bill provides a special effective date.

67 **Utah Code Sections Affected:**

68 AMENDS:

69 [59-5-202](#), as last amended by Laws of Utah 2023, Chapter 208

70 [59-5-203](#), as last amended by Laws of Utah 2019, Chapter 466

71 [63G-4-102](#), as last amended by Laws of Utah 2023, Chapter 329

72 [65A-5-1](#), as last amended by Laws of Utah 2023, Chapters 205, 208 and 358

73 [65A-6-4](#), as last amended by Laws of Utah 2023, Chapter 208

74 [73-3-8](#), as last amended by Laws of Utah 2023, Chapter 253

75 [73-32-204](#), as enacted by Laws of Utah 2023, Chapter 205

76 [73-32-303](#), as last amended by Laws of Utah 2023, Chapter 208 and renumbered and
77 amended by Laws of Utah 2023, Chapter 205

78 [78B-6-501](#), as last amended by Laws of Utah 2023, Chapter 34

79 [78B-6-502](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

80 ENACTS:

81 [65A-17-101](#), Utah Code Annotated 1953

82 [65A-17-103](#), Utah Code Annotated 1953

83 [65A-17-301](#), Utah Code Annotated 1953

84 [65A-17-302](#), Utah Code Annotated 1953

85 [65A-17-303](#), Utah Code Annotated 1953

86 [65A-17-304](#), Utah Code Annotated 1953

- 87 [65A-17-305](#), Utah Code Annotated 1953
- 88 [73-33-101](#), Utah Code Annotated 1953
- 89 [73-33-102](#), Utah Code Annotated 1953
- 90 [73-33-201](#), Utah Code Annotated 1953
- 91 [73-33-202](#), Utah Code Annotated 1953
- 92 [73-33-203](#), Utah Code Annotated 1953

93 RENUMBERS AND AMENDS:

94 [65A-17-102](#), (Renumbered from 65A-10-202, as enacted by Laws of Utah 2023,
95 Chapter 208)

96 [65A-17-201](#), (Renumbered from 65A-10-203, as last amended by Laws of Utah 2023,
97 Chapter 205 and renumbered and amended by Laws of Utah 2023, Chapter 208)

98 [65A-17-202](#), (Renumbered from 65A-10-204, as enacted by Laws of Utah 2023,
99 Chapter 208)

100 [65A-17-203](#), (Renumbered from 65A-10-205, as enacted by Laws of Utah 2023,
101 Chapter 208)

102 REPEALS:

103 [65A-10-201](#), as enacted by Laws of Utah 2023, Chapter 208



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

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

107 **59-5-202. Severance tax -- Rate -- Computation -- Annual exemption.**

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

111 (2) If the metals or metalliferous minerals are shipped outside the state, this constitutes
112 a sale, and the finished metals or the recoverable units of finished metals from the metalliferous
113 minerals shipped are subject to the severance tax. If the metals or metalliferous minerals are
114 stockpiled, the tax is not applicable until they are sold or shipped out of state. For purposes of
115 the tax imposed by this chapter, uranium concentrates shall be considered to be finished metals.
116 The owner of the metals or metalliferous minerals that are stockpiled shall report to the
117 commission annually, in a form acceptable to the commission, the amount of metalliferous

118 minerals so stockpiled. Metals or metalliferous minerals that are stockpiled for more than two
119 years, however, are subject to the severance tax.

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

122 (4) These taxes are in addition to all other taxes provided by law and are delinquent,
123 unless otherwise deferred, on June 1 next succeeding the calendar year when the metalliferous
124 mineral is produced and sold or delivered.

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

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

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

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

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

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

139 (c) (i) Notwithstanding Subsection (1), a Great Salt Lake extraction operator shall pay
140 to the state a severance tax equal to 7.8% of the taxable value of all metals, metalliferous
141 minerals, and metalliferous compounds sold or otherwise disposed of.

142 (ii) The commission shall deposit the revenue from the severance tax described in this
143 Subsection (5) into the Sovereign Lands Management Account created in Section [65A-5-1](#).

144 [~~e~~] (d) This Subsection (5) may not be interpreted to:

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

147 (ii) void a mineral lease or royalty agreement.

148 [~~d~~] (e) A person extracting metalliferous minerals, including a metalliferous

149 compound, from the brine of the Great Salt Lake is subject to the payment of a royalty
150 agreement under Section 65A-6-4 and the payment of a severance tax under this part.

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

152 **59-5-203. Determining taxable value.**

153 (1) Except as provided in Subsection (3), the basis for computing the gross proceeds,
154 prior to those deductions or adjustments specified in this chapter, in determining the taxable
155 value of the metals ~~[or]~~, metalliferous minerals, or metalliferous compounds, as defined in
156 Subsection 59-5-202(5), sold or otherwise disposed of, in the order of priority, is as follows:

157 (a) If the metals ~~[or]~~, metalliferous mineral products, or metalliferous compounds are
158 actually sold, the value of those metals ~~[or]~~, metalliferous mineral products, or metalliferous
159 compounds shall be the gross amount the producer receives from that sale, provided that the
160 metals ~~[or]~~, metalliferous mineral products, or metalliferous compounds are sold under a bona
161 fide contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates,
162 gross proceeds shall be the gross amount the producer receives from the sale of processed
163 uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a
164 bona fide contract of sale between unaffiliated parties.

165 (b) (i) For purposes of a Great Salt Lake extraction operator, as defined in Section
166 59-5-202, if metals, metalliferous minerals, or metalliferous compounds are not sold, but are
167 otherwise disposed of, the gross proceeds shall be the multiple of the recoverable units of
168 finished or unfinished metals, or of the finished or unfinished metals contained in the
169 metalliferous minerals or metalliferous compounds shipped, and the average daily price per
170 unit of contained metals as quoted by an established authority for market prices of metals for
171 the period during which the tax imposed by this chapter is due.

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

175 ~~[(b)]~~ (c) (i) If the metals ~~[or]~~, metalliferous mineral products, or metalliferous
176 compounds are not actually sold but are shipped, transported, or delivered out of state, the
177 gross proceeds shall be the multiple of the recoverable units of finished metals, or of the
178 finished metals contained in the metalliferous minerals or metalliferous compounds shipped,
179 and the average daily price per unit of contained metals as quoted by an established authority

180 for market prices of metals for the period during which the tax imposed by this chapter is due.

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

183 ~~[(c)]~~ (d) In the case of metals ~~[or]~~, metalliferous minerals, or metalliferous compounds
184 not sold, but otherwise disposed of, for which there is no established authority for market
185 prices of metals for the period during which the tax imposed by this chapter is due, gross
186 proceeds is determined by allocating to the state the same proportion of the producer's total
187 sales of metals ~~[or]~~, metalliferous minerals, or metalliferous compounds sold or otherwise
188 disposed of as the producer's total Utah costs bear to the total costs associated with sale or
189 disposal of the metal or metalliferous mineral.

190 ~~[(d)]~~ (e) In the event of a sale of metals ~~[or]~~, metalliferous minerals, or metalliferous
191 compounds between affiliated companies which is not a bona fide sale because the value
192 received is not proportionate to the fair market value of the metals ~~[or]~~, metalliferous minerals,
193 metalliferous compounds or in the event that Subsection ~~[(1)(a), (b), or (c)]~~ (1)(a), (b), (c), or
194 (d) are not applicable, the commission shall determine the value of such metals ~~[or]~~,
195 metalliferous minerals, or metalliferous compounds in an equitable manner by reference to an
196 objective standard as specified in a rule adopted in accordance with the provisions of Title
197 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

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

208 **63G-4-102. Scope and applicability of chapter.**

209 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
210 superseding provisions of this chapter by explicit reference to this chapter, the provisions of

211 this chapter apply to every agency of the state and govern:

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

215 (b) judicial review of the action.

216 (2) This chapter does not govern:

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

218 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
219 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
220 issuance of a tax assessment, except that this chapter governs an agency action commenced by
221 a taxpayer or by another person authorized by law to contest the validity or correctness of the
222 action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

281 (u) state agency action relating to water well driller licenses, water well drilling
282 permits, water well driller registration, or water well drilling construction standards, or judicial
283 review of the action;

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

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

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

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

291 (z) a challenge to an aspect of a distribution management plan under Section
292 [73-33-202](#).

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

294 (a) compel an agency to take action; or

295 (b) challenge an agency's rule.

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

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

299 (i) encourage settlement;

300 (ii) clarify the issues;

301 (iii) simplify the evidence;

302 (iv) facilitate discovery; or

303 (v) expedite the proceeding; or

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

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

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

311 (6) This chapter does not preclude an agency from enacting a rule affecting or
312 governing an adjudicative proceeding or from following the rule, if the rule is enacted
313 according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if
314 the rule conforms to the requirements of this chapter.

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

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

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

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

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

329 (11) Subsection (2)(w), regarding action taken based on state environmental studies
330 and policies of the Department of Transportation, applies to any claim for which a court of
331 competent jurisdiction has not issued a final unappealable judgment or order before May 14,
332 2019.

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

334 **65A-5-1. Sovereign Lands Management Account.**

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

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

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

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

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

344 (d) fees deposited by the division; ~~and~~

345 (e) amounts deposited into the account in accordance with Section [59-23-4](#)~~[-]~~; and

346 (f) amounts deposited into the account in accordance with Section [59-5-202](#).

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

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

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

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

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

360 **65A-6-4. Mineral leases -- Multiple leases on same land -- Rentals and royalties --**
361 **Lease terms -- Great Salt Lake.**

362 (1) As used in this section:

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

364 (i) a rare earth element;

365 (ii) a trace element or mineral; or

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

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

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

- 373 (i) lanthanum;
- 374 (ii) cerium;
- 375 (iii) praseodymium;
- 376 (iv) neodymium;
- 377 (v) samarium;
- 378 (vi) europium;
- 379 (vii) gadolinium;
- 380 (viii) terbium;
- 381 (ix) dysprosium;
- 382 (x) holmium;
- 383 (xi) erbium;
- 384 (xii) thulium;
- 385 (xiii) ytterbium;
- 386 (xiv) lutetium; and
- 387 (xv) yttrium.

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

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

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

395 (ii) If leases are issued for different types of minerals on the same land, the leases shall
396 include stipulations for simultaneous operations, except that for leases related to the Great Salt

397 Lake the leases shall include stipulations for simultaneous operations that will not interfere
398 with, impede, limit, or require changes to pre-existing rights.

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

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

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

406 (ii) the proposed operation will use brines from the Great Salt Lake, but will not
407 occupy sovereign lands for the direct production of [~~minerals~~] Great Salt Lake elements or
408 minerals other than for incidental structures such as pumps and intake and outflow pipelines.

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

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

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

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

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

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

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

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

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

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

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

437 (A) has been successfully implemented on a commercial scale in similar
438 circumstances;

439 (B) has been shown to be economically viable; and

440 (C) is reasonably compatible with the operator's overall extraction process; and

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

443 (A) the acreage subject to the mineral lease by the acreage the operator does not use to
444 extract a Great Salt Lake element or mineral during the primary term of the mineral lease under
445 conditions that do not constitute waste, as defined in Section 65A-17-101; and

446 (B) the volume of water that the operator may divert from the Great Salt Lake, by the
447 volume of water that the operator does not use during the longer of the primary term of the
448 mineral lease or seven years if the operator fails to use the volume of water for a beneficial use,
449 except if the failure to use the volume of water is as a result of a reduction of water usage under
450 Section 73-33-201.

451 ~~[(b) If as of May 3, 2023, an operator has a mineral lease but not a royalty agreement~~
452 ~~involving the extraction of minerals from brines in the Great Salt Lake, the extraction operation~~
453 ~~or extraction method shall mitigate the total water depleted as provided in Subsection (5)(a)(ii)~~
454 ~~only to the extent that the extraction operation or extraction method increases total depletions~~
455 ~~as compared to an estimated 10-year average of depletions as estimated by the Division of~~
456 ~~Water Resources' water budget model beginning on January 1, 2013, and ending on December~~
457 ~~31, 2022.]~~

458 ~~[(e)]~~ (b) If under Subsection ~~[(5)(a)(v)]~~ (5)(a)(iv) the division requires an existing

459 operator to use a commercially viable, innovative technology, the division may not require use
460 of a technology not yet proven to be commercially viable on the Great Salt Lake and may not
461 require implementation of the technology to begin until after a reasonable period determined by
462 the division not to exceed [~~five~~] seven years.

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

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

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

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

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

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

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

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

482 (iii) provides a base royalty rate;

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

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

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

489 (v) provides a reduced royalty rate from the royalty rate under Subsection (6)(a)(iii) if

490 the prospective operator for the extraction of lithium demonstrates to the satisfaction of the
491 division that the prospective operator has an agreement with a person who will process or
492 manufacture an end product in this state using the lithium extracted by the prospective
493 operator; and

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

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

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

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

500 (i) demonstrate commercial viability;

501 (ii) certify before operation begins that the operator is not negatively impacting the
502 biota or chemistry of the Great Salt Lake; and

503 (iii) obtain the approval of the division and the Department of Environmental Quality
504 that the certification supports a finding that the operation will not negatively impact the biota or
505 chemistry of the Great Salt Lake.

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

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

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

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

519 (b) An operator that, as of May 3, 2023, has an agreement to recover a Great Salt Lake
520 element or mineral from existing tailings, discarded material, end-use products, or waste

521 products produced from the evaporation and processing of Great Salt Lake brines is not subject
522 to this section, except as to the payment of royalties set by the division under Subsection (6)(a).
523 The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
524 Rulemaking Act, regarding the issuance and termination of a royalty agreement for mineral
525 extraction from tailings, discarded material, end-use products, or waste products produced from
526 the evaporation and processing of Great Salt Lake brines.

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

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

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

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

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

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

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

545 (a) the mineral covered by the lease is being produced in paying quantities from:

546 (i) the leased premises;

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

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

550 (b) (i) the lessee is engaged in diligent operations, exploration, research, or
551 development which is reasonably calculated to advance development or production of the

552 mineral covered by the lease from:

553 (A) the leased premises;

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

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

557 (ii) the lessee pays a minimum royalty.

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

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

565 (i) make the following determinations for mineral leases:

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

567 and

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

569 and

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

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

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

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

580 **CHAPTER 17. GREAT SALT LAKE PRESERVATION ACT**

581 **Part 1. General Provisions**

582 **65A-17-101. Definitions.**

583 As used in this chapter:

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

586 (2) "Commercially viable technology" means a technology that:

587 (a) has been successfully implemented on a commercial scale in similar conditions;

588 (b) is shown to be economically viable; and

589 (c) is reasonably compatible with the operator's overall extraction process.

590 (3) "Common source of supply" means the mineral or element estate contained within
591 the Great Salt Lake meander line.

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

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

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

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

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

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

609 (10) "Mineral or element" means:

610 (a) a rare earth element;

611 (b) a trace element or mineral;

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

613 or

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

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

618 (12) "Multiple mineral development area" means an area involving the management of
619 various surface and sub-surface resources so that they are used in the combination that will best
620 meet present and future needs.

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

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

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

629 (16) "Public trust assets" means the same as that term is defined in Section [65A-1-1](#).

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

633 (18) (a) Except as provided in Subsection (18)(b) and subject to Section [65A-17-305](#),
634 "waste" means:

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

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

639 (iii) imprudent and uneconomical operations.

640 (b) "Waste" does not include extraction or removal of a mineral or element that cannot
641 be extracted in paying quantities through commercially viable technology and:

642 (i) that has not been nominated under Subsection [65A-6-4\(6\)\(a\)](#); or

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

644 Section 7. Section **65A-17-102**, which is renumbered from Section 65A-10-202 is

645 renumbered and amended to read:

646 ~~[65A-10-202]~~. 65A-17-102. Legislative findings.

647 The Legislature finds that:

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

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

651 (3) the lake levels of the Great Salt Lake have reached historic lows, requiring action
652 by the state to address significant risks and minimize dangers to protect the ecological integrity
653 of the Great Salt Lake, the state's environment in general, and the welfare of the state's citizens;
654 and

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

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

659 65A-17-103. Application of chapter.

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

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

666 **Part 2. Management**

667 ~~[65A-10-203]~~. 65A-17-201. Great Salt Lake -- Management responsibilities
668 of the division.

669 The division has the following powers and duties:

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

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

- 676 (b) development of the Great Salt Lake that balances, in a manner that promotes a
677 healthy physical and ecological condition:
- 678 (i) migratory and shorebirds habitats;
 - 679 (ii) wetlands;
 - 680 (iii) brines, minerals or elements, chemicals, and petro-chemicals;
 - 681 (iv) brine shrimp;
 - 682 (v) the protection of wildlife and wildlife habitat;
 - 683 (vi) the protection of recreational access and facilities; and
 - 684 (vii) search and rescue efforts;
- 685 (c) promote water quality management for the Great Salt Lake and the Great Salt
686 Lake's tributary streams;
- 687 (d) public access to the Great Salt Lake for recreation, hunting, and fishing;
 - 688 (e) temperature moderation, a stable role in the water cycle, and dust mitigation;
 - 689 (f) maintain the Great Salt Lake's flood plain as a hazard zone;
 - 690 (g) maintain the Great Salt Lake and the marshes as important shorebirds, waterfowl,
691 and other waterbird flyway system;
 - 692 (h) promote and maintain recreation areas on and surrounding the Great Salt Lake; and
 - 693 (i) maintain and protect state, federal, and private marshlands, rookeries, and wildlife
694 refuges.
- 695 (2) (a) The division shall prepare and maintain a comprehensive management plan for
696 the Great Salt Lake that is consistent with:
- 697 (i) the ~~[public trust values]~~ management duty and public interest benefits described in
698 Subsection (1) ~~[and]~~;
 - 699 (ii) policies established by rule made under Subsection (1) ~~[:]~~; and
 - 700 (iii) the Great Salt Lake strategic plan adopted under Section [73-32-204](#).
- 701 (b) The comprehensive management plan described in this section shall integrate the
702 land within the Great Salt Lake meander line regardless of whether the land has been excluded
703 from water within the Great Salt Lake because of a berm or other infrastructure on sovereign
704 land associated with the Great Salt Lake.
- 705 (c) The division shall prepare the comprehensive management plan in consultation
706 with the Great Salt Lake commissioner.

707 (3) The division may employ personnel and purchase equipment and supplies that the
708 Legislature authorizes through appropriations for the purposes of this chapter and Chapter 10,
709 Management of Sovereign Lands.

710 (4) The division may initiate studies of the Great Salt Lake and the Great Salt Lake's
711 related resources.

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

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

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

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

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

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

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

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

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

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

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

737 (i) consider and weigh the other management objectives enumerated in this section,

738 including the preservation of Gunnison Bay;

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

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

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

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

747 (i) before modifying the adaptive management berm; and

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

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

754 [~~(15)~~] (16) The division may perform acts other than those described in Subsections (1)
755 through [~~(14)~~] (15) that are reasonably necessary to carry out this chapter and Chapter 10,
756 Management of Sovereign Lands.

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

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

763 [~~(16)~~] (19) This [~~part~~] chapter may not be interpreted to override, supersede, or modify
764 any water right within the state, or the role and authority of the state engineer.

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

767 **~~[65A-10-204].~~ 65A-17-202. Emergency management responsibilities of the**
768 **division.**

- 769 (1) When the Great Salt Lake reaches the emergency trigger, the division:
770 (a) may construct, operate, modify, and maintain the adaptive management berm;
771 (b) may construct, operate, modify, and maintain one or more additional berms, dikes,
772 structures, or management systems consistent with the authority granted in this title;
773 (c) may enter into agreements as necessary to provide for all or a portion of a berm,
774 dike, system, or structure;
775 (d) is exempt from Title 63G, Chapter 6a, Utah Procurement Code, when acting to
776 manage the Great Salt Lake under this section;
777 (e) is not liable for a third-party claim resulting from the division's actions to manage
778 the Great Salt Lake under this section;
779 (f) may decline to issue a new permit, authorization, or agreement and may curtail
780 mineral or element production for leases that contain provisions contemplating curtailment or
781 similar contractual remedies;
782 (g) may implement mineral lease withdrawal over one or more of the following:
783 (i) portions of the Great Salt Lake;
784 (ii) specific methods of extraction; or
785 (iii) specific Great Salt Lake elements or minerals as defined in Section 65A-6-4; and
786 (h) may require the implementation of one or more of the following:
787 (i) extraction methods that are non-depletive in nature;
788 (ii) mitigation to offset depletion; or
789 (iii) innovative extraction technologies.
790 (2) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
791 Administrative Rulemaking Act, providing for the procedures the division shall follow in
792 taking an action described in Subsection (1).

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

795 ~~[65A-10-205]~~. **65A-17-203. Force majeure.**

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

799 (2) In addition to the standard mechanisms whereby performance is excused by

800 invocation of a force majeure provision, the division shall include language in a contract,
801 mineral lease, or royalty agreement whereby the division may curtail or prohibit mineral or
802 element production that results in a net depletion of water.

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

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

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

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

817 **Part 3. Mineral or Element Extraction**

818 **65A-17-301. General royalty agreement provisions -- State action regarding**
819 **evaporation ponds and leaseholds.**

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

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

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

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

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

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

835 (b) The division may not implement this Subsection (2) to acquire a property interest in
836 land or a mineral estate that is not sovereign land.

837 (c) Only the division may implement this Subsection (2).

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

839 **65A-17-302. Minerals or elements extracted from the Great Salt Lake subject to**
840 **royalty rate.**

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

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

849 (b) can be extracted in paying quantities through a commercially viable technology
850 after a reasonable period determined by the division, not to exceed seven years, from the day on
851 which the division determines that the technology is a commercially viable technology.

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

856 (i) state the operator's name;

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

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

861 (b) The operator shall submit the certificate on a form provided by the division.

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

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

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

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

869 (iv) orders the payment of the applicable royalty.

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

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

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

875 **65A-17-303. Multiple mineral development area -- Cooperative agreements --**

876 **Correlative right protection -- Withdrawn from or incapable of mineral development.**

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

879 (i) prevent waste;

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

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

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

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

887 (i) governing individual operations; and

888 (ii) made for the multiple mineral development area.

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

- 893 (b) After submitting an application with the division to obtain a lease or royalty
894 agreement, a person shall:
- 895 (i) obtain a list from the division of all operators existing at the time of application; and
896 (ii) notify each operator on the list of the person's intention to enter into a cooperative
897 agreement.
- 898 (c) A cooperative agreement shall meet the requirements of Subsection [65A-17-304\(1\)](#),
899 shall provide that the rights and obligations contained in the cooperative agreement are subject
900 to the division's duty to manage public trust assets, and shall address:
- 901 (i) how the operators can conduct concurrent or simultaneous operations without
902 unreasonably interfering with existing and separate operations while also preventing undue
903 waste;
- 904 (ii) recognition of other operator's vested mineral or element interests so that
905 operations may be conducted in a manner that will result in the maximum recovery of minerals
906 or elements with the minimum adverse effect on the ultimate maximum recovery of other
907 minerals or elements;
- 908 (iii) terms and conditions for establishing a mitigation plan for when one operator,
909 either intentionally or unintentionally, interferes with or damages the mineral or element rights
910 or mineral or element interests of another operator;
- 911 (iv) terms and conditions for establishing a mitigation plan with the division that would
912 limit unreasonable mineral estate interference, waste, or negative impacts to natural resources
913 of the Great Salt Lake;
- 914 (v) the protection of natural resources of the Great Salt Lake without unnecessary cost
915 to the operations of another operator, unless there is compensation for increased operational
916 costs;
- 917 (vi) the extent and limits of liability when one operator interferes with or damages the
918 mineral or element rights or mineral or element interests of another operator;
- 919 (vii) the coordination and locations of access to operations;
- 920 (viii) any assessment of costs resulting from concurrent operations within the Great
921 Salt Lake;
- 922 (ix) the mitigation of surface impacts, including:
- 923 (A) the location of a mineral or element extraction intake or discharge facility;

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

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

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

933 (xi) how any joint reclamation obligation or plan is to be achieved or coordinated;

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

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

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

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

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

947 (d) The parties to a cooperative agreement described in Subsection (2)(a) shall present
948 the cooperative agreement to the division and the director may approve the agreement if the
949 cooperative agreement:

950 (i) is in the public interest;

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

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

954 (iv) meets the requirements of Subsection [65A-17-304\(1\)](#).

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

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

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

963 (h) (i) An operator may not unreasonably delay, condition, or decline to enter into a
964 cooperative agreement.

965 (ii) A negotiation period of 60 days from the date notice is given under Subsection
966 (2)(b)(ii) is presumed to be reasonable.

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

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

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

973 **65A-17-304. Concurrent operations -- Breach, disagreement, or conflict --**

974 **Disputes.**

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

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

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

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

984 (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
985 Administrative Rulemaking Act, providing for the procedures the division and operators shall

986 follow to:

987 (a) assist in the timely resolution of disputes that may arise during the formation of a
988 cooperative agreement;

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

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

992 (3) If any dispute between operators under Subsection (2) has not been resolved
993 through an informal administrative dispute resolution process created by the division, the
994 division shall resolve the dispute by a final record of decision to be issued no more than 30
995 days after notice to the division by an aggrieved operator that informal dispute resolution has
996 been unsuccessful.

997 Section 16. Section **65A-17-305** is enacted to read:

998 **65A-17-305. Waste.**

999 An operator is considered to not waste a mineral or element if the operator implements
1000 a commercially viable technology to extract the mineral or element after a reasonable period
1001 determined by the division, not to exceed seven years, from the day on which the division
1002 determines that the technology is a commercially viable technology.

1003 Section 17. Section **73-3-8** is amended to read:

1004 **73-3-8. Approval or rejection of application -- Requirements for approval --**
1005 **Application for specified period of time -- Filing of royalty contract for removal of salt or**
1006 **minerals -- Request for agency action.**

1007 (1) (a) It shall be the duty of the state engineer to approve an application if there is
1008 reason to believe that:

1009 (i) for an application to appropriate, there is unappropriated water in the proposed
1010 source;

1011 (ii) the proposed use will not impair existing rights or interfere with the more
1012 beneficial use of the water;

1013 (iii) the proposed plan:

1014 (A) is physically and economically feasible, unless the application is filed by the
1015 United States Bureau of Reclamation; and

1016 (B) would not prove detrimental to the public welfare;

- 1017 (iv) the applicant has the financial ability to complete the proposed works;
- 1018 (v) the application was filed in good faith and not for purposes of speculation or
1019 monopoly; and
- 1020 (vi) if applicable, the application complies with a groundwater management plan
1021 adopted under Section 73-5-15.
- 1022 (b) If the state engineer, because of information in the state engineer's possession
1023 obtained either by the state engineer's own investigation or otherwise, has reason to believe that
1024 an application will interfere with the water's more beneficial use for irrigation, municipal and
1025 industrial, domestic or culinary, stock watering, power or mining development, or
1026 manufacturing, or will unreasonably affect public recreation or the natural stream environment,
1027 or will prove detrimental to the public welfare, the state engineer shall withhold approval or
1028 rejection of the application until the state engineer has investigated the matter.
- 1029 (c) If an application does not meet the requirements of this section, it shall be rejected.
- 1030 (2) (a) An application to appropriate water for industrial, power, mining development,
1031 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
1032 certain period from the time the water is placed to beneficial use under the application, but in
1033 no event may an application be granted for a period of time less than that ordinarily needed to
1034 satisfy the essential and primary purpose of the application or until the water is no longer
1035 available as determined by the state engineer.
- 1036 (b) At the expiration of the period fixed by the state engineer the water shall revert to
1037 the public and is subject to appropriation as provided by this title.
- 1038 (c) No later than 60 calendar days before the expiration date of the fixed time period,
1039 the state engineer shall send notice by mail or by any form of electronic communication
1040 through which receipt is verifiable, to the applicant of record.
- 1041 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited
1042 water right upon a showing that:
- 1043 (i) the essential purpose of the original application has not been satisfied;
- 1044 (ii) the need for an extension is not the result of any default or neglect by the applicant;
1045 and
- 1046 (iii) the water is still available.
- 1047 (e) An extension may not exceed the time necessary to satisfy the primary purpose of

1048 the original application.

1049 (f) A request for extension of the fixed time period must be filed in writing in the
1050 office of the state engineer on or before the expiration date of the application.

1051 (3) (a) Before the approval of any application [~~for the appropriation of~~] to divert water
1052 from navigable lakes or streams of the state that contemplates the recovery of salts and other
1053 minerals or elements, as defined in Section 65A-17-101, therefrom by precipitation or
1054 otherwise, the applicant shall file with the state engineer a copy of:

1055 (i) a contract for the payment of royalties to the state[-]; and

1056 (ii) any mineral lease.

1057 (b) The approval of an application shall be [~~revoked~~] reversed if the applicant fails to
1058 comply with terms of the royalty contract or mineral lease.

1059 (4) (a) The state engineer shall investigate all temporary change applications.

1060 (b) The state engineer shall:

1061 (i) approve the temporary change if the state engineer finds there is reason to believe
1062 that the temporary change will not impair an existing right; and

1063 (ii) deny the temporary change if the state engineer finds there is reason to believe the
1064 temporary change would impair an existing right.

1065 (5) (a) With respect to a change application for a permanent or fixed time change:

1066 (i) the state engineer shall follow the same procedures provided in this title for
1067 approving an application to appropriate water; and

1068 (ii) the rights and duties of a change applicant are the same as the rights and duties of a
1069 person who applies to appropriate water under this title.

1070 (b) The state engineer may waive notice for a permanent or fixed time change
1071 application if the application only involves a change in point of diversion of 660 feet or less.

1072 (c) The state engineer may condition approval of a change application to prevent an
1073 enlargement of the quantity of water depleted by the nature of the proposed use when compared
1074 with the nature of the currently approved use of water proposed to be changed.

1075 (d) A condition described in Subsection (5)(c) may not include a reduction in the
1076 currently approved diversion rate of water under the water right identified in the change
1077 application solely to account for the difference in depletion under the nature of the proposed
1078 use when compared with the nature of the currently approved use.

1079 (6) (a) Except as provided in Subsection (6)(b), the state engineer shall reject a
1080 permanent or fixed time change application if the person proposing to make the change is
1081 unable to meet the burden described in Subsection 73-3-3(5).

1082 (b) If otherwise proper, the state engineer may approve a change application upon one
1083 or more of the following conditions:

1084 (i) for part of the water involved;

1085 (ii) that the applicant acquire a conflicting right; or

1086 (iii) that the applicant provide and implement a plan approved by the state engineer to
1087 mitigate impairment of an existing right.

1088 (c) (i) There is a rebuttable presumption of quantity impairment, as defined in Section
1089 73-3-3, to the extent that, for a period of at least seven consecutive years, a portion of the right
1090 identified in a change application has not been:

1091 (A) diverted from the approved point of diversion; or

1092 (B) beneficially used at the approved place of use.

1093 (ii) The rebuttable presumption described in Subsection (6)(c)(i) does not apply if the
1094 beneficial use requirement is excused by:

1095 (A) Subsection 73-1-4(2)(e);

1096 (B) an approved nonuse application under Subsection 73-1-4(2)(b);

1097 (C) Subsection 73-3-30(7); or

1098 (D) the passage of time under Subsection 73-1-4(2)(c)(i).

1099 (d) The state engineer may not consider quantity impairment based on the conditions
1100 described in Subsection (6)(c) unless the issue is raised in a:

1101 (i) timely protest that identifies which of the protestant's existing rights the protestant
1102 reasonably believes will experience quantity impairment; or

1103 (ii) written notice provided by the state engineer to the applicant within 90 days after
1104 the change application is filed.

1105 (e) The written notice described in Subsection (6)(d)(ii) shall:

1106 (i) specifically identify an existing right the state engineer reasonably believes may
1107 experience quantity impairment; and

1108 (ii) be mailed to the owner of an identified right, as shown by the state engineer's
1109 records, if the owner has not protested the change application.

1110 (f) The state engineer is not required to include all rights the state engineer believes
1111 may be impaired by the proposed change in the written notice described in Subsection
1112 (6)(d)(ii).

1113 (g) The owner of a right who receives the written notice described in Subsection
1114 (6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a
1115 timely protest.

1116 (h) If a change applicant, the protestants, and the persons identified by the state
1117 engineer under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of
1118 quantity impairment shall be mitigated, the state engineer may incorporate the terms of the
1119 agreement into a change application approval.

1120 Section 18. Section **73-32-204** is amended to read:

1121 **73-32-204. Strategic plan.**

1122 (1) (a) In accordance with this section, the commissioner shall prepare a strategic plan
1123 and obtain the approval of the governor of that strategic plan.

1124 (b) A strategic plan prepared by the commissioner may not be implemented until the
1125 governor approves the strategic plan, except as provided in Subsection (5).

1126 (2) The commissioner shall base the strategic plan on a holistic approach that balances
1127 the diverse interests related to the health of the Great Salt Lake, and includes provisions
1128 concerning:

1129 (a) coordination of efforts related to the Great Salt Lake;

1130 (b) a sustainable water supply for the Great Salt Lake, while balancing competing
1131 needs;

1132 (c) human health and quality of life;

1133 (d) a healthy ecosystem;

1134 (e) economic development;

1135 (f) water conservation, including municipal and industrial uses and agricultural uses;

1136 (g) water and land use planning;

1137 (h) regional water sharing; and

1138 (i) other provisions that the commissioner determines would be for the benefit of the
1139 Great Salt Lake.

1140 (3) (a) The commissioner shall obtain the approval of the governor of an initial

1141 strategic plan by no later than December 31, 2023.

1142 (b) On or before November 30, 2023, the commissioner shall submit an initial strategic
1143 plan to the governor, speaker of the House of Representatives, and the president of the Senate.

1144 (c) The governor shall approve the strategic plan by no later than December 31, 2023,
1145 if the governor determines that the initial strategic plan satisfies this chapter.

1146 (d) By no later than January 15, 2024, the commissioner shall provide the following a
1147 copy of the initial strategic plan approved by the governor under Subsection (3)(c):

1148 (i) the Natural Resources, Agriculture, and Environment Interim Committee;

1149 (ii) the department;

1150 (iii) the Department of Environmental Quality; and

1151 (iv) the Department of Agriculture and Food.

1152 (4) The governor may approve a strategic plan only after consulting with the speaker of
1153 the House of Representatives and the president of the Senate.

1154 (5) Once a strategic plan is approved by the governor, the commissioner may make
1155 substantive changes to the strategic plan without the approval of the governor, except that the
1156 commissioner shall:

1157 (a) inform the governor, the speaker of the House of Representatives, and the president
1158 of the Senate of a substantive change to the strategic plan; and

1159 (b) submit the strategic plan every five years for the approval of the governor in a
1160 process that is consistent with Subsection (3).

1161 (6) The commissioner may work with the Division of Forestry, Fire, and State Lands in
1162 coordinating the comprehensive management plan created under Section [~~65A-10-203~~]
1163 [65A-17-201](#) with the strategic plan.

1164 Section 19. Section **73-32-303** is amended to read:

1165 **73-32-303. Duties of the council.**

1166 (1) (a) The council shall advise the persons listed in Subsection (1)(b) on the
1167 sustainable use, protection, and development of the Great Salt Lake in terms of balancing:

1168 (i) sustainable use;

1169 (ii) environmental health; and

1170 (iii) reasonable access for existing and future development.

1171 (b) The council shall advise, as provided in Subsection (1)(a):

- 1172 (i) the governor;
- 1173 (ii) the Department of Natural Resources;
- 1174 (iii) the Department of Environmental Quality; and
- 1175 (iv) the commissioner.

1176 (2) The council shall assist the Division of Forestry, Fire, and State Lands in the
 1177 Division of Forestry, Fire, and State Land's responsibilities for the Great Salt Lake described in
 1178 Sections [~~65A-10-203 and 65A-10-204~~] [65A-17-201](#) and [65A-17-202](#).

1179 (3) The council:

1180 (a) may recommend appointments to the Great Salt Lake technical team created by the
 1181 Division of Forestry, Fire, and State Lands; and

1182 (b) shall receive and use technical support from the Great Salt Lake technical team.

1183 (4) The council shall assist the department, the Department of Environmental Quality,
 1184 and their applicable boards in accomplishing their responsibilities for the Great Salt Lake.

1185 (5) The council shall report annually to the Natural Resources, Agriculture, and
 1186 Environmental Quality Appropriations Subcommittee on the council's activities.

1187 Section 20. Section **73-33-101** is enacted to read:

1188 **CHAPTER 33. GREAT SALT LAKE DISTRIBUTION MANAGEMENT**

1189 **Part 1. General Provisions**

1190 **73-33-101. Definitions.**

1191 As used in this chapter:

1192 (1) "Distribution management plan" means a plan adopted by the state engineer in
 1193 accordance with Section [73-33-201](#).

1194 (2) "Great Salt Lake Comprehensive Management Plan" means the plan adopted by a
 1195 record of decision by the Division of Forestry, Fire, and State Lands for the management of the
 1196 Great Salt Lake.

1197 (3) "Great Salt Lake meander line" means the same as that term is defined in Section
 1198 [65A-17-101](#).

1199 (4) "Great Salt Lake water right" means a water right that allows for the diversion of
 1200 surface water or groundwater from a point below the Great Salt Lake meander line and that
 1201 contemplates the recovery of salts or another mineral or element, as defined in Section
 1202 [65A-17-101](#), from the water resource by precipitation or otherwise.

1203 (5) "Great Salt Lake watershed" means the drainage area for the Great Salt Lake, the
1204 Bear River watershed, the Jordan River watershed, the Utah Lake watershed, the Weber River
1205 watershed, and the West Desert watershed.

1206 Section 21. Section **73-33-102** is enacted to read:

1207 **73-33-102. Scope of chapter.**

1208 (1) A person may not interpret this chapter as requiring the development,
1209 implementation, or consideration of a distribution management plan as a prerequisite or
1210 condition to the exercise of the state engineer's enforcement powers under other law, including
1211 powers granted under Section [73-2-25](#).

1212 (2) This chapter applies to Great Salt Lake water rights that were approved or perfected
1213 on or before May 1, 2024, and Great Salt Lake water rights approved or perfected after May 1,
1214 2024, including use under a Great Salt Lake water right of water for the mineral or element
1215 extraction process.

1216 Section 22. Section **73-33-201** is enacted to read:

1217 **Part 2. Distribution Management Plan**

1218 **73-33-201. Great Salt Lake distribution management plan.**

1219 (1) The state engineer shall regulate the measurement, appropriation, apportionment,
1220 and distribution of water within the Great Salt Lake meander line by adopting a distribution
1221 management plan by no later than October 1, 2025, that establishes:

1222 (a) consistent with Section [73-33-203](#), requirements for the measurement,
1223 quantification, and reporting of diversions, depletions, and return flows associated with Great
1224 Salt Lake water rights; and

1225 (b) procedures for the apportionment and distribution of Great Salt Lake water rights.

1226 (2) (a) In developing a distribution management plan under this section, the state
1227 engineer may consider:

1228 (i) the hydrology of the Great Salt Lake watershed as it affects Great Salt Lake water
1229 rights;

1230 (ii) the physical characteristics of the Great Salt Lake;

1231 (iii) the Great Salt Lake elevation;

1232 (iv) the Great Salt Lake salinity;

1233 (v) the strategic plan prepared by the Great Salt Lake commissioner and approved by

1234 the governor under Section 73-32-204;

1235 (vi) the measurement, appropriation, apportionment, and distribution of Great Salt
1236 Lake water rights;

1237 (vii) the quantity of water approved for beneficial use within the Great Salt Lake
1238 meander line by a division as defined in Section 73-3-30;

1239 (viii) the quantity of water within the Great Salt Lake;

1240 (ix) the Great Salt Lake Comprehensive Management Plan;

1241 (x) the different types of beneficial uses of Great Salt Lake water rights; and

1242 (xi) other relevant factors such as the economic viability impacts.

1243 (b) The state engineer shall base the distribution management plan on the principles of
1244 prior appropriation and multiple use sustained yield, with multiple use defined in Section
1245 65A-1-1, as the principles relate to the reasonable preservation or enhancement of the Great
1246 Salt Lake's natural aquatic environment.

1247 (c) The state engineer shall use the best available information to administer Great Salt
1248 Lake water rights to achieve the objectives of the distribution management plan.

1249 (d) As hydrologic conditions change or additional information becomes available, the
1250 state engineer may revise the distribution management plan by following the procedures of
1251 Subsection (3).

1252 (3) (a) To adopt or amend a distribution management plan for the Great Salt Lake, the
1253 state engineer shall:

1254 (i) give notice pursuant to Subsection (3)(b) at least 30 days before the first public
1255 meeting held in accordance with Subsection (3)(a)(ii):

1256 (A) that the state engineer proposes to adopt or amend a distribution management plan;
1257 and

1258 (B) stating the location, date, and time of each public meeting to be held in accordance
1259 with Subsection (3)(a)(ii);

1260 (ii) hold one or more public meetings to:

1261 (A) present data, studies, or reports that the state engineer intends to consider in
1262 preparing the distribution management plan;

1263 (B) address items that may be included in the distribution management plan; and

1264 (C) receive public comments and other information presented at the public meeting;

1265 (iii) receive and consider written comments concerning the proposed distribution
1266 management plan from any person for a period determined by the state engineer of not less
1267 than 60 days after the day on which the notice required by Subsection (3)(a)(i) is given;
1268 (iv) at least 60 days before final adoption of the distribution management plan, publish
1269 notice:
1270 (A) that a draft of the distribution management plan has been proposed; and
1271 (B) specifying where a copy of the draft distribution management plan may be
1272 reviewed;
1273 (v) promptly provide a copy of the draft distribution management plan in printed or
1274 electronic form to each entity listed in Subsection (3)(b)(iii) that requests a copy in writing; and
1275 (vi) provide notice of the adoption of the distribution management plan.
1276 (b) The state engineer shall ensure that a notice required by this section:
1277 (i) is published:
1278 (A) once a week for two consecutive weeks in a newspaper of general circulation in
1279 each county that includes any land below the Great Salt Lake meander line; and
1280 (B) for two weeks in accordance with Section [45-1-101](#);
1281 (ii) is published conspicuously on the state engineer's website; and
1282 (iii) is mailed to water right owners of record in the state engineer's office of Great Salt
1283 Lake water rights.
1284 (c) A notice required by this section is effective upon substantial compliance with
1285 Subsection (3)(b).
1286 (d) A distribution management plan takes effect on the date notice of adoption is
1287 completed under Subsection (3)(b) or on a later date when specified in the distribution
1288 management plan.
1289 (4) (a) In accordance with the distribution management plan, the state engineer shall
1290 establish a priority schedule that apportions Great Salt Lake water rights based on relative
1291 priority among Great Salt Lake water rights and:
1292 (i) develop an apportionment schedule and distribution accounting tool that accounts
1293 for:
1294 (A) Great Salt Lake elevations;
1295 (B) Great Salt Lake salinity;

- 1296 (C) Great Salt Lake water rights;
1297 (D) the quantity of water in the Great Salt Lake; and
1298 (E) the quantity of water delivered to or in the Great Salt Lake under water rights
1299 approved for beneficial use by a division as defined in Section 73-3-30;
1300 (ii) prohibit Great Salt Lake water rights from diverting the quantity of water accounted
1301 for under Subsection (4)(a)(i)(E); and
1302 (iii) require physical measurement and annual reporting of diversion, depletion, and
1303 return flow quantities of Great Salt Lake water rights.
1304 (b) Under a distribution management plan the state engineer may reduce the quantity of
1305 water that an owner of a Great Salt Lake water right may divert from the Great Salt Lake in
1306 accordance with the principles of prior appropriation.
1307 (5) (a) When adopting a distribution management plan, the state engineer may allow
1308 water users to participate in a voluntary arrangement that compensates or otherwise mitigates
1309 for the use of Great Salt Lake water rights.
1310 (b) The participants in a voluntary arrangement under this Subsection (5) shall
1311 implement the voluntary arrangement consistent with other law.
1312 (c) The adoption of a voluntary arrangement under this Subsection (5) by less than all
1313 of the owners of Great Salt Lake water rights does not affect the rights of those owners of Great
1314 Salt Lake water rights who do not agree to the voluntary arrangement.
1315 (6) The existence of a distribution management plan does not preclude an otherwise
1316 eligible person from filing an application or challenging a decision made by the state engineer
1317 within the Great Salt Lake meander line, except that a person may challenge the components of
1318 a distribution management plan only in a manner provided in Section 73-33-202.
1319 (7) A distribution management plan adopted or amended in accordance with this
1320 section is exempt from Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
1321 Section 23. Section **73-33-202** is enacted to read:
1322 **73-33-202. Challenges to a distribution management plan.**
1323 (1) A person aggrieved by a distribution management plan may challenge any aspect of
1324 the distribution management plan by filing a complaint within 60 days after the distribution
1325 management plan takes effect in a court with jurisdiction:
1326 (a) under Title 78A, Judiciary and Judicial Administration; and

1327 (b) notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, over a geographic
1328 area bordering the Great Salt Lake.

1329 (2) In an action filed under this section, a court shall review de novo the distribution
1330 management plan.

1331 (3) A person challenging a distribution management plan under this section shall join
1332 the state engineer as a defendant in that action.

1333 (4) (a) No later than 30 days after the day on which a person files an action challenging
1334 any aspect of a distribution management plan, the person filing the action shall publish notice
1335 of the action:

1336 (i) once a week for two consecutive weeks in a newspaper of general circulation in the
1337 county in which the court is located; and

1338 (ii) for two weeks in accordance with Section [45-1-101](#).

1339 (b) The notice required by Subsection (4)(a) shall:

1340 (i) identify the distribution management plan that the person is challenging;

1341 (ii) identify the case number assigned by the court;

1342 (iii) state that a person affected by the distribution management plan may petition the
1343 court to intervene in the action challenging the distribution management plan; and

1344 (iv) list the address of the clerk of the court in which the action is filed.

1345 (c) A person affected by a distribution management plan that is being challenged under
1346 this section may petition to intervene in the action in accordance with Utah Rules of Civil
1347 Procedure, Rule 24.

1348 Section 24. Section **73-33-203** is enacted to read:

1349 **73-33-203. Measuring volume and quality of water.**

1350 (1) (a) A person diverting water under a Great Salt Lake water right shall:

1351 (i) measure through the use of a physical measurement and not estimate or calculate the
1352 water or brine diverted from the Great Salt Lake as part of the mineral or element extraction
1353 process;

1354 (ii) keep a record of the measurements described in Subsection (1)(a)(i); and

1355 (iii) report the measurements described in Subsection (1)(a)(i) to the Division of Water
1356 Rights in accordance with rules made by the Division of Water Rights under Title 63G,
1357 Chapter 3, Utah Administrative Rulemaking Act.

1358 (b) A duty described in Subsection (1)(a) does not replace or modify any other duty to
1359 measure water under this title or rules made under this title.

1360 (2) A person diverting water under a Great Salt Lake water right shall:

1361 (a) measure the salinity of any discharge of water or brine from the person's operations
1362 into the Great Salt Lake in accordance with rules made by the Division of Forestry, Fire, and
1363 State Lands in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1364 (b) keep a record of the measurements described in Subsection (2)(a); and

1365 (c) report the measurements described in Subsection (2)(a) to the Division of Forestry,
1366 Fire, and State Lands in accordance with rules made by the Division of Forestry, Fire, and State
1367 Lands under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1368 (3) (a) On or before June 1, 2025, the Division of Water Quality, in consultation with
1369 the Division of Forestry, Fire, and State Lands, and in cooperation with the Great Salt Lake
1370 commissioner pursuant to Section [73-32-203](#), shall make a rule, in accordance with Title 63G,
1371 Chapter 3, Utah Administrative Rulemaking Act, setting a limit for the salinity of water or
1372 brine that a person may discharge into the Great Salt Lake as part of the mineral or element
1373 extraction process.

1374 (b) If a person discharges water or brine that exceeds the limit imposed under
1375 Subsection (3)(a), the Division of Water Quality may modify, revoke and reissue, or terminate
1376 any permit issued by the Division of Water Quality related to the discharge.

1377 (4) A person shall keep a record required under this section for a period of at least five
1378 years from the day on which the record is made.

1379 Section 25. Section **78B-6-501** is amended to read:

1380 **78B-6-501. Eminent domain -- Uses for which right may be exercised --**

1381 **Limitations on eminent domain.**

1382 (1) As used in this section[;]:

1383 (a) [~~"century farm"~~] "Century farm" means real property that is:

1384 [~~(a)~~] (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

1385 [~~(b)~~] (ii) owned or held by the same family for a continuous period of 100 years or
1386 more.

1387 (b) "Mineral or element" means the same as that term is defined in Section

1388 [65A-17-101](#).

1389 (2) Except as provided in Subsections (3) and (4) and subject to the provisions of this
1390 part, the right of eminent domain may be exercised on behalf of the following public uses:

1391 (a) all public uses authorized by the federal government;

1392 (b) public buildings and grounds for the use of the state, and all other public uses
1393 authorized by the Legislature;

1394 (c) (i) public buildings and grounds for the use of any county, city, town, or board of
1395 education;

1396 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
1397 sewage, including to or from a development, for the use of the inhabitants of any county, city,
1398 or town, or for the draining of any county, city, or town;

1399 (iii) the raising of the banks of streams, removing obstructions from streams, and
1400 widening, deepening, or straightening their channels;

1401 (iv) bicycle paths and sidewalks adjacent to paved roads;

1402 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a
1403 development; and

1404 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;

1405 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
1406 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
1407 logging or lumbering purposes, and railroads and street railways for public transportation;

1408 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
1409 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
1410 with water for domestic or other uses, or for irrigation purposes, or for the draining and
1411 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
1412 minerals or elements in solution;

1413 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
1414 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
1415 quarries, coal mines, or mineral deposits including oil, gas, and minerals or elements in
1416 solution;

1417 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
1418 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
1419 mines or mineral deposits including minerals or elements in solution;

- 1420 (iii) mill dams;
- 1421 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
1422 formation in any land for the underground storage of natural gas, and in connection with that,
1423 any other interests in property which may be required to adequately examine, prepare,
1424 maintain, and operate underground natural gas storage facilities;
- 1425 (v) solar evaporation ponds and other facilities for the recovery of minerals in solution,
1426 which for the Great Salt Lake includes construction, removal, or extinguishment, in whole or in
1427 part, by a state entity of:
- 1428 (A) a solar evaporation pond;
- 1429 (B) improvements, property, easements, or rights-of-way appurtenant to a solar
1430 evaporation pond, including a lease hold; or
- 1431 (C) other facilities for the recovery of minerals or elements in solution; and
- 1432 (vi) any occupancy in common by the owners or possessors of different mines,
1433 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
1434 or any place for the flow, deposit or conduct of tailings or refuse matter;
- 1435 (g) byroads leading from a highway to:
- 1436 (i) a residence; or
- 1437 (ii) a farm;
- 1438 (h) telecommunications, electric light and electric power lines, sites for electric light
1439 and power plants, or sites for the transmission of broadcast signals from a station licensed by
1440 the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
1441 provides emergency broadcast services;
- 1442 (i) sewage service for:
- 1443 (i) a city, a town, or any settlement of not fewer than 10 families;
- 1444 (ii) a public building belonging to the state; or
- 1445 (iii) a college or university;
- 1446 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
1447 storing water for the operation of machinery for the purpose of generating and transmitting
1448 electricity for power, light or heat;
- 1449 (k) cemeteries and public parks; and
- 1450 (l) sites for mills, smelters or other works for the reduction of ores and necessary to

1451 their successful operation, including the right to take lands for the discharge and natural
1452 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
1453 powers granted by this section may not be exercised in any county where the population
1454 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
1455 proposed condemner has the right to operate by purchase, option to purchase or easement, at
1456 least 75% in value of land acreage owned by persons or corporations situated within a radius of
1457 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
1458 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
1459 between the condemner and the owner of land within the limit and providing for the operation
1460 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
1461 been commenced to restrain the operation of such mill, smelter, or other works for the
1462 reduction of ores.

1463 (3) The right of eminent domain may not be exercised on behalf of the following uses:

1464 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
1465 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
1466 foot path, equestrian trail, bicycle path, or walkway;

1467 (b) (i) a public park whose primary purpose is:

1468 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

1469 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
1470 equestrian use; or

1471 (ii) a public park established on real property that is:

1472 (A) a century farm; and

1473 (B) located in a county of the first class.

1474 (4) (a) The right of eminent domain may not be exercised within a migratory bird
1475 production area created on or before December 31, 2020, under Title 23A, Chapter 13,
1476 Migratory Bird Production Area, except as follows:

1477 (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory
1478 bird production area located in a county of the first class only for the purpose of installing
1479 buried power lines;

1480 (ii) an electric utility may condemn land within a migratory bird production area in a
1481 county other than a county of the first class to install:

1482 (A) buried power lines; or

1483 (B) a new overhead transmission line that is parallel to and abutting an existing
1484 overhead transmission line or collocated within an existing overhead transmission line right of
1485 way; or

1486 (iii) the Department of Transportation may exercise eminent domain for the purpose of
1487 the construction of the West Davis Highway.

1488 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the
1489 electric utility shall demonstrate that:

1490 (i) the proposed condemnation would not have an unreasonable adverse effect on the
1491 preservation, use, and enhancement of the migratory bird production area; and

1492 (ii) there is no reasonable alternative to constructing the power line within the
1493 boundaries of a migratory bird production area.

1494 Section 26. Section **78B-6-502** is amended to read:

1495 **78B-6-502. Estates and rights that may be taken.**

1496 The following estates and rights in lands are subject to being taken for public use:

1497 (1) a fee simple, when taken for:

1498 (a) public buildings or grounds;

1499 (b) permanent buildings;

1500 (c) reservoirs and dams, and permanent flooding occasioned by them;

1501 (d) any permanent flood control structure affixed to the land;

1502 (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill,
1503 smelter, or other place for the reduction of ores; and

1504 (f) solar evaporation ponds and other facilities for the recovery of minerals in
1505 solution[.];

1506 (i) except when the surface ground is underlaid with minerals, coal, or other deposits
1507 sufficiently valuable to justify extraction, only a perpetual easement may be taken over the
1508 surface ground over the deposits; and

1509 (ii) which for the Great Salt Lake includes construction, removal, or extinguishment, in
1510 whole or in part, by a state entity of:

1511 (A) a solar evaporation pond;

1512 (B) improvements, property, easements, or rights-of-way appurtenant to a solar

1513 evaporation pond, including a lease hold; or

1514 (C) other facilities for the recovery of minerals or elements in solution;

1515 (2) an easement, when taken for any other use; and

1516 (3) the right of entry upon and occupation of lands, with the right to take from those

1517 lands earth, gravel, stones, trees, and timber as necessary for a public use.

1518 Section 27. **Repealer.**

1519 This bill repeals:

1520 Section **65A-10-201, Definitions.**

1521 Section 28. **FY 2025 Appropriation.**

1522 The following sums of money are appropriated for the fiscal year beginning July 1,
1523 2024, and ending June 30, 2025. These are additions to amounts previously appropriated for
1524 fiscal year 2025.

1525 Subsection 28(a). **Operating and Capital Budgets.**

1526 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
1527 Legislature appropriates the following sums of money from the funds or accounts indicated for
1528 the use and support of the government of the state of Utah.

1529 ITEM 1 To Department of Natural Resources - Forestry, Fire, and State Lands

1530 From General Fund Restricted - Sovereign Lands Management, \$500,000

1531 One-time

1531 Schedule of Programs:

1532 Project Management \$500,000

1533 The Legislature intends that the money appropriated under this item be used to fund the
1534 analysis required by Subsection **65A-17-201(17)**, renumbered and amended by this bill. The
1535 Legislature intends that the appropriation be nonlapsing.

1536 ITEM 2 To Department of Natural Resources - Water Rights

1537 From General Fund Restricted - Sovereign Lands Management, \$300,000

1538 One-time

1538 Schedule of Programs:

1539 Field Services \$300,000

1540 The Legislature intends that the money appropriated under this item be used to fund costs

1541 associated with developing a distribution management plan. The Legislature intends that the
1542 appropriation be nonlapsing.

1543 Section 29. **Effective date.**

1544 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

1545 (2) The actions affecting Sections [59-5-202](#) (Effective 01/01/25), and [59-5-203](#)
1546 (Effective 01/01/25), take effect on January 1, 2025.