



UTAH STATE LEGISLATURE

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July 31, 2019

Dear Colleagues:

As discussed at the Utah Water Task Force meeting on July 29, the water banking group has developed the attached draft legislation, which a diverse group of 60 professionals from across Utah's water community developed over the past two years. The legislation would authorize a 10-year pilot program during which water banks could be created and monitored.

We would appreciate your input because water banking will need the support and participation of Utah's water community to work. Accordingly, we will discuss the bill in greater detail and solicit feedback at the next Task Force meeting on August 26. Importantly, we will not be asking the Task Force to endorse the legislation at the next meeting. Instead, we are working with Sterling Brown of the Utah Farm Bureau Federation and others to meet with stakeholders around the state to collect feedback and comments. Once we have completed this outreach effort, we will incorporate the feedback we receive and seek the Task Force's endorsement at a later date.

Please send any comments or questions that you may have regarding the legislation to us at jiwamoto@le.utah.gov and thawkes@le.utah.gov, with copies to Patricia Owen with the Office of Legislative Research (powen@le.utah.gov); Nathan Bracken with Smith Hartvigsen (nbracken@water.law); and Emily Lewis with Clyde Snow (eel@clydesnow.com). More information is also available at: <https://utahwaterbank.org/>.

As you review the draft legislation in preparation for the next Task Force meeting, please keep the following in mind:

1. Water banking is not a new concept and is used in a number of other western states. The water banking group studied the banking programs in other states and various basins around Utah to develop this draft legislation.
2. The legislation is intended to further the Governor's 2017 Recommended Water Strategy, which recommended water banking as a way of providing more flexible water management by facilitating the voluntary and temporary transfer of water for a variety of uses, including but not limited to agriculture uses, municipal uses, and environmental needs.


3. Consistent with the Governor's Strategy, one of the goals of the legislation is to provide an alternative to "buy-and-dry" transfers and court actions in which water rights are permanently taken out of agriculture to satisfy urban or environmental needs.
4. Instead, the legislation is intended to lessen the need for "buy-and-dry" transfers and court actions by authorizing voluntary, temporary, and local water markets in which right holders can voluntarily lease or "bank" water rights for others to use for a variety of uses in exchange for compensation. There are already a number of informal water marketing efforts around Utah that are similar to water banking. The legislation would not affect those efforts. It would, however, create a 10-year pilot program that would establish a statutory framework that would give water right holders the option of creating and operating their own water banks, subject to public notice and comment as well as oversight from the Board of Water Resources and coordination with the State Engineer.
5. No banks would be operated or managed at the state level and the decision to create a water bank or to participate in one would be entirely voluntary.
6. The legislation authorizes right holders to create two types of banks: (1) "statutory banks," which would operate as open marketplaces where water rights could be leased and used within a defined service area; and (2) "contract banks" based on option contracts or other voluntary leasing arrangements involving a public water supplier. Notably, many public water suppliers in Utah are already using "contract banks" and the legislation seeks to provide more clarity and transparency for this practice.
7. Rights holders seeking to deposit a water right into a bank would go through the same change application process that applies to all water rights. This means the State Engineer would review all applications that seek to place a water right into a bank to ensure that they do not impair other rights. It also means that the existing limitations on out-of-basin transfers would also apply.
8. After the State Engineer approves a right for use within a bank, the right could then be used within the bank's service area for other uses for a specified period of time without the need for another change application, subject to any limitations imposed by the State Engineer.
9. Water right holders would retain ownership of their water rights at all times and the rights would revert to their prior "heretofore" use when withdrawn from the bank without the need for a change application. Water rights deposited within a bank would also not be subject to abandonment and forfeiture for the period of time the State Engineer authorizes them to be used within a bank.
10. As a pilot program, every bank would submit an annual report to the Board of Water Resources. At the end of the pilot program, the Board would report on the effectiveness of the water banking program to the Legislature, which would then determine whether to continue the program, modify it, or allow it to terminate.

11. Because this program is intended to be a pilot, we have tried to keep it as simple as possible to limit the potential for unintended consequences and to make it easier to study the effectiveness of the program.


Lastly and most importantly, this is still a draft that will hopefully improve as we incorporate your comments and feedback. Moreover, because this is still a work in progress, we have not sought the endorsement of any of the water banking group participants. Instead, we hope to work with you to refine this draft and develop a consensus bill that Utah's water community can support.

Thank you in advance for your comments.

Sincerely,



Senator Jani Iwamoto
Assistant Senate Minority Whip
Utah State Senate



Representative Timothy Hawkes
Rules Chair
Utah House of Representatives

WATER BANKING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses water banking.

Highlighted Provisions:

This bill:

- ▶ authorizes the Division of Water Resources, the state engineer, and the Board of Water Resources to implement water banking;
- ▶ enacts the Water Banking Act, including:
 - defining terms;
 - outlining the objectives of a water banking system;
 - providing the scope of the act;
 - outlining how statutory water banks are established;
 - outlining how contract water banks are established;
 - requiring annual reports to the Board of Water Resources;
 - addressing default of a water bank and revocation of a water bank;
 - providing for banking of water;
 - addressing delivery request for loaned water in water banks;
 - addressing the enforcement powers of the state engineer; and
 - imposing reporting procedures on the board and the Department of Natural Resources;
- ▶ provides for a repeal date of the water banking provisions;
- ▶ specifies that water rights deposited in a water bank are not subject to abandonment or forfeiture while approved for use in a water bank; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63I-1-273**, as last amended by Laws of Utah 2019, Chapters 96 and 24636 **73-1-4**, as last amended by Laws of Utah 2017, Chapter 13237 **73-10-4**, as last amended by Laws of Utah 1969, Chapter 198

38 ENACTS:

39 **73-31-101**, Utah Code Annotated 195340 **73-31-102**, Utah Code Annotated 195341 **73-31-103**, Utah Code Annotated 195342 **73-31-104**, Utah Code Annotated 195343 **73-31-201**, Utah Code Annotated 195344 **73-31-202**, Utah Code Annotated 195345 **73-31-203**, Utah Code Annotated 195346 **73-31-204**, Utah Code Annotated 195347 **73-31-205**, Utah Code Annotated 195348 **73-31-301**, Utah Code Annotated 195349 **73-31-302**, Utah Code Annotated 195350 **73-31-303**, Utah Code Annotated 195351 **73-31-304**, Utah Code Annotated 195352 **73-31-401**, Utah Code Annotated 195353 **73-31-402**, Utah Code Annotated 195354 **73-31-501**, Utah Code Annotated 195355 **73-31-502**, Utah Code Annotated 195356 **73-31-503**, Utah Code Annotated 195357 **73-31-601**, Utah Code Annotated 1953

58

59 *Be it enacted by the Legislature of the state of Utah:*60 Section 1. Section **63I-1-273** is amended to read:61 **63I-1-273. Repeal dates, Title 73.**62 (1) In relation to the Legislative Water Development Commission, on January 1, 2021:63 (+) (a) in Subsection 73-10g-105(3), the language that states "and in consultation

with the State Water Development Commission created in Section 73-27-102" is repealed;

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

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

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

(a) Subsection 73-1-4(2)(e)(x) is repealed;

(b) Subsection 73-10-4(1)(h) is repealed; and

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

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

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

(1) As used in this section:

(a) "Public entity" means:

(i) the United States;

(ii) an agency of the United States;

(iii) the state;

(iv) a state agency;

(v) a political subdivision of the state; or

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

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

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

(ii) is:

(A) a public entity;

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

(C) a community water system:

(I) that:

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

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

(II) whose voting members:

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

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

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

(D) a water users association:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The filing or approval of a nonuse application or a series of nonuse applications

126 under Subsection (3) does not:

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

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

129 (C) bar a water right owner from:

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

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

132 by law.

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

134 water right may not be forfeited unless a judicial action to declare the right forfeited is

135 commenced:

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

137 or

138 (B) within the combined time of 15 years from the end of the most recent period of

139 nonuse of at least seven years and the time the water right was subject to one or more nonuse

140 applications.

141 (ii) (A) The state engineer, in a proposed determination of rights filed with the court

142 and prepared in accordance with Section 73-4-11, may not assert that a water right was

143 forfeited unless the most recent period of nonuse of seven years ends or occurs:

144 (I) during the 15 years immediately preceding the day on which the state engineer files

145 the proposed determination of rights with the court; or

146 (II) during the combined time immediately preceding the day on which the state

147 engineer files the proposed determination of rights consisting of 15 years and the time the

148 water right was subject to one or more approved nonuse applications.

149 (B) After the day on which a proposed determination of rights is filed with the court a

150 person may not assert that a water right subject to that determination was forfeited before the

151 issuance of the proposed determination, unless the state engineer asserts forfeiture in the

152 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection

153 to the proposed determination that asserts forfeiture.

154 (iii) A water right, found to be valid in a decree entered in an action for general

155 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim

156 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state

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

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

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

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

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

164 and

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

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

168 (i) permitted to run to waste; or

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

171 (e) This section does not apply to:

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

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

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

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

179 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with

180 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

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

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

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

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

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

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

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

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

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

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

(x) a water right subject to an approved change application for use within a water bank authorized under Chapter 31, Water Banking Act, during the period of time the state engineer authorizes the water right to be used within the water bank.

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

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

(B) other water use demand.

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

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

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

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

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

(ii) the state engineer approves the change application.

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

(i) the name and address of the applicant;

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

(iii) the quantity of water;

(iv) the period of use;

(v) the extension of time applied for;

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

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

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

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

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

(ii) The notice shall:

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

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

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

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

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

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

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

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

(b) A reasonable cause for nonuse includes:

(i) a demonstrable financial hardship or economic depression;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (h) review, approve, and revoke an application to create a water bank under Chapter
297 31, Water Banking Act, collect an annual report, maintain the water banking website, and
298 conduct any other function related to a water bank as described in Chapter 31, Water Bank Act.

299 ~~[(8)]~~ (2) Nothing contained ~~[herein]~~ in this section shall be construed to impair or
300 otherwise interfere with the authority of the state engineer granted by Title 73, Water and
301 Irrigation, except as ~~[herein]~~ specifically otherwise provided in this section.

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

303 **CHAPTER 31. WATER BANKING ACT**

304 **Part 1. General Provisions**

305 **73-31-101. Title.**

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

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

308 **73-31-102. Definitions.**

309 As used in this chapter:

310 (1) "Applicant" means a record holder of a perfected water right or public entity
311 applying for board approval of a water bank.

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

(3) "Banked water" means a water right, or a portion of a water right, deposited in a water bank that the state engineer authorizes for use in a water bank through an approved change application.

(4) "Board" means the Board of Water Resources.

(5) "Borrower" means a person seeking to use banked water within a water bank's service area.

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

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

(8) "Deposit" means depositing banked water for use within the service area of the water bank.

(9) "Depositor" means a person seeking to bank water in a water bank.

(10) "Hereafter use" means the conditions of use the state engineer authorizes for banked water for the term of an approved change application.

(11) "Heretofore use" means the authorized conditions of use that were in effect before the state engineer approves a change application authorizing new conditions for the use of banked water.

(12) "Loaned water" means banked water that is used pursuant to an approved delivery request.

(13) "Public entity" means the same as that term is defined in Section 73-1-4.

(14) "Publically post" means publishing notice in accordance with Subsection 73-3-6(1) and posting notice to the water bank website.

(15) "Service area" means the geographic area where a water bank operates.

(16) "State engineer" means the state engineer appointed under Section 73-2-1.

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

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

(19) "Water bank website" means a website overseen by the board for the purpose of making water banking information available to the public.

(20) "Water year" means November 1 through October 31.

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

73-31-103. Objectives of water banks.

The objectives in creating a water bank are to:

(1) promote:

(a) the efficient use of the public's water;

(b) transparency and access to water markets;

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

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

Utah's agricultural industry; and

(2) facilitate:

(a) ways of protecting sustainable agricultural production while meeting growing municipal and industrial water demands, such as split season uses and fallowing arrangements;

(b) the use of water to meet environmental and water quality needs;

(c) water rights administration and distribution; and

(d) meeting other statewide water objectives, programs, and strategies.

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

73-31-104. Scope.

Nothing in this chapter prevents a water user from entering into agreements regarding the use of water that differs from the requirements of this chapter, except that only a water bank approved under this chapter may avail itself of the provisions applicable to a water bank.

Section 8. Section **73-31-201** is enacted to read:

Part 2. Statutory Water Banks

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

(1) The board shall approve a statutory water bank pursuant to this part.

(2) As a condition of approval, a statutory water bank shall agree to be subject to this chapter.

Section 9. Section **73-31-202** is enacted to read:

73-31-202. Statutory water bank application.

(1) A record holder of a perfected water right may request approval for a statutory water bank by filing an application with the board that includes the following:

374 (a) the name of the statutory water bank;

375 (b) a mailing address for the statutory water bank;

376 (c) the corporate or other legal form of the statutory water bank;

377 (d) a proposed service area map for the statutory water bank;

378 (e) whether the statutory water bank will accept deposits of surface water rights or
379 groundwater rights, provided that a statutory water bank may not accept deposits of both
380 surface water rights and groundwater rights.

381 Subsection (e) is an issue raised by the state engineer for which there may not be
382 consensus. Public comment on this provision is being sought.

383 (f) a description of how the statutory water bank's governing body will be structured
384 and operate, including:

385 (i) the number of members of the governing body, which may not be an even number;

386 (ii) requisite qualifications for governing members, including terms and election or
387 appointment procedures;

388 (iii) how the governing members represent or promote the objectives found in Section
389 73-31-103; and

390 (iv) the initial governing members of a statutory water bank including:

391 (A) the person's name, telephone number, and post office address; and

392 (B) a confirmation that the person meets the criteria listed in Subsection (1)(e)(ii);

393 (g) procedures that describe how the statutory water bank will:

394 (i) determine and fund its administrative costs;

395 (ii) design, facilitate, and conduct transactions between borrowers and depositors for
396 the use of banked water; and

397 (iii) accept, reject, and manage water rights seeking to be deposited in the statutory
398 water bank, including:

399 (A) what information a depositor is to provide to sufficiently inform the statutory water
400 bank, the state engineer, the local water commissioner, or other distributing entity as to whether
401 it is feasible to use the water right within the statutory water bank's designated service area and
402 therefore be eligible to be the subject of a change application seeking authorization to use the
403 water right as banked water;

404 (B) how a potential depositor is to work with the statutory water bank to jointly file a

405 change application seeking authorization to use the water right as banked water;
406 (C) conditions for depositing banked water with the statutory water bank;
407 (D) how payments to depositors are determined;
408 (E) under what conditions a depositor may use water at the heretofore place of use
409 pursuant to Subsection 73-31-501(4); and
410 (F) how the statutory water bank will return an outstanding deposit to the record owner
411 of the deposit if the statutory water bank dissolves or the statutory water bank's approval to
412 operate is revoked pursuant to this chapter;
413 (iv) accept, review, and approve delivery requests, including:
414 (A) deadlines for submitting a delivery request to the statutory water bank;
415 (B) a cost or fee associated with submitting a delivery request and how that cost or fee
416 is to be applied or used by the statutory water bank;
417 (C) what information a borrower is to include on a delivery request to sufficiently
418 inform the statutory water bank, the local water commissioner, or another distributing entity
419 whether the delivery request is feasible within the statutory water bank's designated service
420 area;
421 (D) any notice and comment procedures for notifying other water users of the delivery
422 request;
423 (E) the criteria the statutory water bank will use to assess and approve delivery
424 requests;
425 (F) how the statutory water bank will inform water users who have submitted a
426 delivery request if the delivery request is approved or denied, the reasons for denial if denied,
427 and conditions if approved;
428 (G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial
429 of a delivery request, including identifying who has the burden in an appeal and the standards
430 of review;
431 (H) how prices for the use of loaned water are determined; and
432 (I) how the statutory water bank will coordinate with an applicable water commissioner
433 and the state engineer to facilitate distribution of approved delivery requests;
434 (v) how the statutory water bank will ensure that the aggregate amount of loaned water
435 during a calendar year does not exceed the total sum of the deposited water; and

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

(h) how the statutory water bank is to be dissolved; and

(i) a signed declaration or affidavit, signed under criminal penalty under the law of Utah, from at least two officials of the statutory water bank affirming that:

(i) the information submitted is correct;

(ii) as a condition for permission to operate, the statutory water bank has no preferences between uses and borrowers for the use of loaned water;

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

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

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

Section 10. Section **73-31-203** is enacted to read:

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

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

(2) The board shall:

(a) examine an application for completeness to determine whether additional information, corrections, amendments, or deletions are required for the board to process the application pursuant to this part;

(b) review an application to determine whether it meets the objectives described in Section 73-31-103;

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

(d) notify the applicant within 30 days of receiving the application if any additional information or changes are needed to process the application.

(3) Within 30 days of the date the board receives a complete application, the board shall publically post notice and the application.

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

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

(b) where an interested party may obtain additional information related to the application; and

(c) the date, time, and place of the public meeting required by Section 73-31-204, which may not be more than 30 days from the date notice is sent.

Section 11. Section **73-31-204** is enacted to read:

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

(1) On the date indicated in the notice publically posted under Section 73-31-203, the board shall hold a public meeting to:

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

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

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

(3) The board shall review public comments when reviewing the proposed statutory water bank's application, but submitting a comment does not create a right of appeal of the board's decision nor is the board required to address how or whether public comments impacted the board's decision.

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

Section 12. Section **73-31-205** is enacted to read:

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

(1) After complying with Sections 73-31-203 and 73-31-204, the board shall approve an application if there is reason to believe that the application satisfies the requirements of Section 73-31-202, which is to be liberally interpreted by the board to facilitate the objectives described in Section 73-31-103.

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

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

(b) approve persons to serve as the initial members of the governing body in

accordance with the proposed statutory water bank's structure and Section 73-31-202; and

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

(3) If the board denies an application, the board shall issue a written explanation to the applicant that sets forth the reason for denial.

Section 13. Section **73-31-301** is enacted to read:

Part 3. Contract Water Banks

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

(1) The board shall approve a contract water bank pursuant to this part.

(2) As a condition of approval, a contract water bank shall agree to be subject to this chapter.

Section 14. Section **73-31-302** is enacted to read:

73-31-302. Contract water bank application.

(1) A public entity that seeks to have a contract for water use approved as a contract water bank under this chapter, shall submit to the board an application that meets the following criteria:

(a) the name of the contract water bank;

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

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

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

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

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

(g) includes a copy of the contract, provided that a public entity may redact any proprietary or otherwise privileged information; and

(h) information regarding how the public can learn when the submittal of an application or contract that is the basis of the contract water bank is on the agenda of a public meeting of the public entity.

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

Section 15. Section **73-31-303** is enacted to read:

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

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

(2) The board shall:

(a) examine the application to determine whether additional information, corrections, amendments, or deletions are required for the board to process the application in accordance with this part;

(b) review the application with the purposes of fulfilling the objectives of a water bank described in Section 73-31-103;

(c) consider the application complete if it minimally satisfies the requirements of the part; and

(d) notify the applicant within 30 days of receiving the application if any additional information is needed to process the application.

(3) A contract water bank may review public comments and comments from the board before a final decision is made by the board. If the contract water bank desires to make changes to the contract water bank's application, the contract water bank may notify the board in writing before the board takes action on the application that the contract water bank will submit a revised application following the same process as filing the original application.

(4) Within 30 days upon receipt of a complete application, the board shall publically post the application and notice.

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

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

(b) where a person may review the application.

Section 16. Section **73-31-304** is enacted to read:

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

(1) After complying with Section 73-31-303, the board shall approve an application for a contract water bank if there is reason to believe that the application satisfies the requirements of Section 73-31-302, which shall be liberally interpreted by the board to facilitate the objectives described in Section 73-31-103.

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

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

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

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

(3) If the board denies an application, the board shall issue a written explanation to the applicant that sets forth the reason for the denial.

Section 17. Section **73-31-401** is enacted to read:

Part 4. Reporting by Water Banks

73-31-401. Annual reports.

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

(b) Proof to the satisfaction of the board that the water bank has mailed, hand-delivered, or sent the annual report electronically is considered compliance with this Subsection (1).

(2) The annual report shall include the following information for the prior water year:

(a) a tabulation of the volume and change application number of water rights deposited in the water bank, and for a contract water bank that accepts deposits of surface water and groundwater rights:

(i) the volume of water deposited from surface water sources; and

(ii) the volume of water deposited from groundwater sources;

Subsection (a) is an issue for which there may not be consensus. Public comment on this provision is being sought.

(b) the nature of use of banked water before it is deposited in the water bank and the volumes of water allocated to each before being deposited;

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

(i) the change application number;

(ii) the volume of loaned water;

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

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

Subsection (iv) is an issue for which there may not be consensus. Public comment on this provision is being sought.

(d) for a statutory water bank:

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

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

(iii) the amounts paid out to depositors;

(iv) the statutory water bank's expenses;

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

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

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

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

(iv) any proposed amendments to an approved statutory water bank's procedures for the coming water year;

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

(xi) a narrative explanation of how the statutory water bank is or is not fulfilling the objectives described in Section 73-31-103; and

(e) a signed declaration or affidavit, signed under criminal penalty under the law of Utah, from at least two officials of the statutory water bank that the information in the report is correct.

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

(4) If the annual report contains the information required by this section, the board shall publically post the annual report.

(5) If the annual report does not contain the information required by this section, the board shall promptly notify the reporting water bank in writing and return the report to the water bank for correction, providing a written explanation to the water bank that sets forth the information that needs to be corrected. The water bank shall remain in good standing if it

submits a corrected annual report within 60 days of the written notice of the board that satisfies the requirements of this section.

(6) If a water bank fails to submit an annual report by November 30, or fails to submit a corrected annual report within 60 days of the rejection of an annual report, the water bank shall automatically be in default under this chapter.

Section 18. Section **73-31-402** is enacted to read:

73-31-402. Default of water bank -- Revocation of application.

(1) The board shall provide a water bank that is in default under this chapter a written notice that:

(a) describes the reason for the default; and

(b) provides the water bank 90 days from the date of the notice to correct the cause of the default.

(2) The board shall:

(a) publically post a notice given under Section (1); and

(b) notify the state engineer of the default.

(3) If the board determines that the water bank has corrected the default within the 90-day corrective period, the board shall:

(a) provide the water bank written notice that the water bank's default has been cured;

(b) publically post the written notice required under Subsection (3)(a); and

(c) notify the state engineer that the water bank has corrected the default within the 90-day corrective period.

(4) (a) If the water bank fails to correct the default within one year, or if a second default occurs within the corrective period of the first default, the water bank's application shall automatically be revoked at the end of the current calendar year.

(b) The board shall mail notice to the water bank that the water bank's application has been revoked and that its operations under the application shall cease at the end of the current calendar year.

(c) The board shall publically post the notice required under Subsection (4)(b).

(d) A water bank shall notify the water bank's depositors and borrowers of the dissolution within 60 days of receiving a notice under this Subsection (4) and shall enact the procedures set forth in its application for ending its transactions and returning depositor's water

653 rights.

654 (5) The state engineer may not approve a change application that seeks to deposit a
655 water right into a water bank that is in default under this chapter.

656 Section 19. Section **73-31-501** is enacted to read:

657 **Part 5. Deposits**

658 **73-31-501. Banking water.**

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

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

663 (3) Under Section 73-1-4(2)(e)(x) banked water is excused from beneficial use
664 requirements while approved for use in the water bank.

665 (4) The holder of a change application that authorizes the holder to deposit a water
666 right within a water bank may exercise the water right in its heretofore use if:

667 (a) the water right holder does so under the authority, control, and accounting of the
668 water bank;

669 (b) the water bank provides notice to the state engineer that describes the use consistent
670 with the loaned water operating procedures of the water bank; and

671 (c) the water right holder does not, in any case, simultaneously use the water for both
672 the heretofore use and hereafter use.

673 Section 20. Section **73-31-502** is enacted to read:

674 **73-31-502. Delivery request for loaned water in water bank.**

675 (1) A borrower may use water from a water bank for any use within the water bank's
676 service area consistent with the objectives described in Section 73-31-103.

677 (2) A borrower shall make use of banked water by submitting a delivery request to use
678 banked water from a water bank.

679 (3) The state engineer administratively supervises delivery of water to a borrower. The
680 state engineer may:

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

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

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

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

Section 21. Section **73-31-503** is enacted to read:

73-31-503. State engineer enforcement.

This chapter does not limit or impair the enforcement powers of the state engineer set forth in Section 73-2-25.

Section 22. Section **73-31-601** is enacted to read:

Part 6. Board Reports

73-31-601. Reports.

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

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

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

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

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

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

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

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

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

(4) Before the board's submission of the written report described in Subsection (2), the Department of Natural Resources shall prepare and submit a draft report to the board for the board's review, provided that the executive director of the Department of Natural Resources may consult with another state agency or person that the executive director considers necessary to prepare the draft report.

715 (5) (a) Upon receipt of the draft report described in Subsection (4), the board shall
716 review the draft report and solicit public comment on the draft report by:
717 (i) requesting written comments; and
718 (ii) holding no less than one public hearing at which:
719 (A) the Department of Natural Resources shall explain and justify the draft report's
720 recommendation; and
721 (B) an interested person may comment on or speak for or against the draft report's
722 recommendations.
723 (b) The board shall give notice of the opportunity for public comments described under
724 this Subsection (5) by:
725 (i) mailing notice to each water bank to the water bank's address of record;
726 (ii) publishing notice in a newspaper of general circulation in the state; and
727 (iii) publishing notice as required in Section 45-1-101.
728 (c) The notice described in Subsection (5)(b) shall state:
729 (i) that the board is soliciting public comment on the draft report and shall hold a
730 public hearing on a certain day, time, and place fixed in the notice, which shall not be less than
731 30 days after the day the first notice is published, for the purpose of hearing comments
732 regarding the draft report;
733 (ii) that the board shall accept written comments on the draft report for a period of no
734 less than 30 days after the day the first notice is published, and include instructions for how the
735 public may submit comments; and
736 (iii) how the public may obtain a copy of the draft report.
737 (6) The board shall consider timely public comments submitted under this section, and
738 may require the Department of Natural Resources to make revisions the board considers
739 necessary before approving and submitting the final written report required in Subsection (2).