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,

[Signature]
Senator Jani Iwamoto
Assistant Senate Minority Whip
Utah State Senate

[Signature]
Representative Timothy Hawkes
Rules Chair
Utah House of Representatives
WATER BANKING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Timothy D. Hawkes

Cosponsors: Ralph Okerlund

David P. Hinkins

LONG TITLE

Committee Note:
The Legislative Water Development Commission recommended this bill.

Membership: 13 legislators 11 non-legislators

Legislative Vote: 8 voting for 1 voting against 4 absent

General Description:
This bill addresses transactional water right banking.

Highlighted Provisions:

This bill:

- authorizes the Board of Water Resources, the state engineer, and the Division of Water Resources to implement water banking;

- enacts the Water Banking Act, including:
  - defining terms;
  - outlining the objectives of a water right banking system;
  - providing the scope of the chapter;
  - addressing assistance by the Division of Water Resources;
  - outlining how statutory water banks are established and amended;
  - outlining how contract water banks are established and amended;
requiring annual reports to the Board of Water Resources;
addressing default of a water bank and revocation of a water bank;
providing for the banking of water rights;
addressing condemnation of banked water rights;
addressing delivery request for loaned water rights 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

Utah Code Sections Affected:

AMENDS:
- 63I-1-273, as last amended by Laws of Utah 2019, Chapters 96 and 246
- 73-1-4, as last amended by Laws of Utah 2017, Chapter 132
- 73-10-4, as last amended by Laws of Utah 1969, Chapter 198

ENACTS:
- 73-31-101, Utah Code Annotated 1953
- 73-31-102, Utah Code Annotated 1953
- 73-31-103, Utah Code Annotated 1953
- 73-31-104, Utah Code Annotated 1953
- 73-31-105, Utah Code Annotated 1953
- 73-31-106, Utah Code Annotated 1953
- 73-31-201, Utah Code Annotated 1953
- 73-31-202, Utah Code Annotated 1953
- 73-31-203, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 63I-1-273 is amended to read:

63I-1-273. Repeal dates, Title 73.

(1) In relation to the Legislative Water Development Commission, on January 1, 2021:

[(++) (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;
[(++) (b) Subsection 73-10g-203(4)(a) is repealed; and
[(++) (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 under Subsection (3) does not:

(A) constitute beneficial use of a water right;

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

(C) bar a water right owner from:

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

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

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

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

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

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

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

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

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

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

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

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

(B) the water made available by the forfeiture:

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

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

(d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:
(i) permitted to run to waste; or
(ii) beneficially used by others without right with the knowledge of the water right holder.

(e) This section does not apply to:

(i) the beneficial use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;
(ii) a water right if its place of use is contracted under an approved state agreement or federal conservation fallowing program;
(iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;
(iv) a water right when water is unavailable because of the water right's priority date;
(v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
   (A) the water is stored for present or future beneficial use; or
   (B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct;
(vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;
(vii) except as provided by Subsection (2)(g), a water right:
   (A) (I) owned by a public water supplier;
   (II) represented by a public water supplier's ownership interest in a water company; or
   (III) to which a public water supplier owns the right of beneficial use; and
   (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
that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the
period of time the state engineer authorizes the water right to be used within the water bank.

(f) (i) The reasonable future water requirement of the public is the amount of water
needed in the next 40 years by:
(A) the persons within the public water supplier's reasonably anticipated service area
based on reasonably anticipated population growth; or
(B) other water use demand.
(ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
anticipated service area:
(A) is the area served by the community water system's distribution facilities; and
(B) expands as the community water system expands the distribution facilities in
accordance with Title 19, Chapter 4, Safe Drinking Water Act.

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

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

(iv) operation of a legal proceeding;

(v) the holding of a water right or stock in a mutual water company without use by any 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[.];

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

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

[(6) To] (f) consult and advise with the Utah Water Users' Association and other
organized water users' associations in the state[.];
consider and make recommendations on behalf of the state of Utah of reclamation projects or other water development projects for construction by any agency of the state or United States and in so doing recommend the order in which projects shall be undertaken;

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

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

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

CHAPTER 31. WATER BANKING ACT


73-31-101. Title.
This chapter is known as the "Water Banking Act."

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

73-31-102. Definitions.
As used in this chapter:

(1) "Applicant" means:
(a) a record holder of a perfected water right or a valid diligence claim applying for board approval of a statutory water bank under Part 2, Statutory Water Banks; or
(b) a public entity applying for board approval of a contract water bank under Part 3, Contract Water Banks.

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

(3) "Approved change application" means a change application that the state engineer approves to authorize a water right holder to deposit a water right in a water bank pursuant to this chapter and Section 73-3-3 or 73-3-3.5.

(4) "Banked water right" means a water right, or a portion of a water right, deposited in a water bank that the state engineer has authorized for use in a water bank through an approved change application.
(5) "Board" means the Board of Water Resources.

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

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

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

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

(10) "Depositor" means a person seeking to deposit a water right in a water bank.

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

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

(13) "Loaned water rights" means a banked water right that is used pursuant to an approved delivery request.

(14) "Perfected water right" means a water right evidenced by:

(a) a decree;

(b) a certificate of appropriation; or

(c) a proposed determination or court order issued in a general adjudication.

(15) "Public entity" means the same as that term is defined in Section 73-1-4 except for the United States or an agency of the United States.

(16) "Reporting year" means November 1 through October 31.

(17) "Service area" means the geographic area where a water bank is approved to operate and operates.

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

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

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

(21) "Water banking website" means a website overseen by the board in accordance
Section 6. Section 73-31-103 is enacted to read:

73-31-103. Notice -- Website.

(1) A notice required under this chapter shall be posted in accordance with Subsection 73-3-6(1) and to a water bank's website, unless otherwise specified.

(2) The board may create and oversee a website for the purpose of making water banking information available to the public.

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

73-31-104. Objectives of water banks.

The objectives in creating a water bank are to:

(1) promote:

(a) the optimal 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) robust and sustainable agricultural production while meeting growing municipal and industrial water demands, such as fallowing arrangements;

(b) water quality standards;

(c) water rights administration and distribution; and

(d) a healthy and resilient natural environment.

Section 8. Section 73-31-105 is enacted to read:

73-31-105. Scope.

Nothing in this chapter prevents a person from entering into an agreement regarding the use of a water right that differs from the requirements of this chapter, except that only a water bank approved under this chapter may avail itself of the statutory provisions that apply to a water bank.

Section 9. Section 73-31-106 is enacted to read:

73-31-106. Board assistance.

The board may direct the Division of Water Resources to assist the board in fulfilling
the board's responsibilities under this chapter.

Section 10. 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 an application to create a statutory water bank that satisfies this part.

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

Section 11. Section 73-31-202 is enacted to read:

**73-31-202. Statutory water bank application.**

(1) A record holder, other than the United States or an agency of the United States, of a perfected water right or a valid diligence claim may request approval for a proposed statutory water bank if the place of use and point of diversion for the applicant's water right are encompassed within the proposed service area of the proposed statutory water bank and the applicant files an application with the board that includes the following:

(a) the name of the statutory water bank;

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

(c) the type of legal entity recognized under Utah law that constitutes the statutory water bank;

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

(e) whether the statutory water bank will accept deposits of surface water rights or groundwater rights, provided that:

(i) a statutory water bank may not accept deposits of both surface water rights and groundwater rights; and

(ii) the applicant's perfected water right or valid diligence claim is of the type accepted by the statutory water bank;

(f) a copy of the statutory water bank's governing documents that specify:

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

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

(iii) the initial governing members' names, telephone numbers, and post office addresses;
(g) a confirmation that the applicant satisfies the criteria listed in Subsection (1)(e)(ii);

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

(i) determine and fund the water bank's administrative costs;

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

(iii) accept, reject, and manage banked water rights, including:

(A) what information a depositor shall provide to inform the statutory water bank, the state engineer, or any other distributing entity regarding the feasibility of using the water right within the statutory water bank's designated service area;

(B) how a potential depositor is to work with the statutory water bank to jointly file a change application seeking authorization from the state engineer to deposit a water right within the statutory water bank;

(C) conditions for depositing a water right with the statutory water bank;

(D) how payments to depositors are determined; and

(E) under what conditions a depositor may use a water right at the heretofore place of use pursuant to Subsection 73-31-501(4);

(iv) accept, review, and approve delivery requests, including:

(A) deadlines for submitting a delivery request to the statutory water bank;

(B) a cost or fee associated with submitting a delivery request and how that cost or fee is to be applied or used by the statutory water bank;

(C) what information a borrower is to include on a delivery request to sufficiently inform the statutory water bank, state engineer, or another distributing entity whether the delivery request is feasible within the statutory water bank's designated service area;

(D) any notice and comment procedures for notifying other water users of the delivery request;

(E) the criteria the statutory water bank will use to valuate delivery requests;

(F) how the statutory water bank will inform water users who have submitted a delivery request if the delivery request is approved or denied, the reasons for denial if denied, and any applicable conditions if approved;

(G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial of a delivery request, including identifying who has the burden in an appeal and the standards
461  of review;
462  (H) how the statutory water bank will determine prices for the use of loaned water
463  rights; and
464  (I) how the statutory water bank will coordinate with the state engineer to facilitate
465  distribution of approved delivery requests;
466  (v) how the statutory water bank will ensure that the aggregate amount of loaned water
467  rights during a calendar year does not exceed the total sum of the banked water rights within
468  the statutory water bank; and
469  (vi) how the statutory water bank will resolve complaints regarding the statutory water
470  bank's operations;
471  (i) the process that the statutory water bank will follow if the statutory water bank
472  terminates, dissolves, or if the board revokes the statutory water bank's permission to operate
473  pursuant to this chapter, including how the statutory water bank will return banked water rights
474  to depositors and how the statute water bank will return any amounts owing to depositors; and
475  (j) a signed declaration or affidavit from at least two governing members of the
476  statutory water bank affirming that:
477  (i) the information submitted is correct;
478  (ii) as a condition for permission to operate, the statutory water bank may not
479  discriminate between the nature of use, depositors, or borrowers;
480  (iii) the statutory water bank shall comply with the conditions of an approved changed
481  application for a banked water right; and
482  (iv) the statutory water bank shall report to the state engineer known violations of
483  approved change applications.
484  (2) The board may prepare a form or online application for an applicant to use in
485  submitting an application to the board under this part.
486  Section 12. Section 73-31-203 is enacted to read:
487  73-31-203. Action by board on statutory water bank applications.
488  (1) Upon receipt of an application under Subsection 73-31-202, the board shall record
489  the date the board receives the application.
490  (2) The board shall:
491  (a) examine an application for completeness to determine whether the application
satisfies this part;

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

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

(d) notify the applicant of any additional information or changes needed to process the application.

(3) Within 30 days of the date the board determines that an application is complete, the board shall post notice of the application pursuant to Section 73-31-103.

(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 a copy of the application and any additional information related to the application; and

(c) the date, time, and place of the public meeting required by Section 73-31-204.

Section 13. Section 73-31-204 is enacted to read:

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

(1) On the date indicated in the notice posted under Subsection 73-31-203(3), 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 adjournment 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 under Title 63G, Chapter 4, Administrative Procedures Act, 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 that governs the filing and review of
the original application for a statutory water bank under this chapter.

Section 14. 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 the application satisfies Section 73-31-202, which is to be liberally interpreted by the board to facilitate the objectives described in Section 73-31-104.

(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, provided that the board's decision regarding an application does not create a right of appeal under Title 63G, Chapter 4, Administrative Procedures Act.

Section 15. Section 73-31-206 is enacted to read:

73-31-206. Amending application.

(1) After the board approves a statutory water bank's application under this part, the statutory water bank may seek to amend the statutory water bank's application by filing a description of the proposed amendment with the board. The board shall follow the procedures of Sections 73-31-201, 73-31-204, and 73-31-205 to approve an amendment to a statutory water bank's application.

(2) An amendment approved by the board becomes effective on the first day of the next reporting year.

Section 16. 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 an application to create a contract water bank that satisfies this part.

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

Section 17. Section 73-31-302 is enacted to read:
554  **73-31-302. Contract water bank application.**
555  (1) A public entity may seek to have a contract for water use approved as a contract
556  water bank under this chapter by submitting an application to the board that meets the
557  following criteria:
558  (a) the name of the contract water bank;
559  (b) the mailing address for the contract water bank;
560  (c) the proposed service area map for the contract water bank;
561  (d) a description of how the contract water bank's governing body will be structured
562  and operate;
563  (e) a description for how water delivery requests and loaned water rights are to be
564  administered;
565  (f) criteria for the participation, if any, of non-public entities;
566  (g) includes a copy of the contract, provided that a public entity may redact any
567  information that is private, controlled, protected, or otherwise restricted under Title 63G,
568  Chapter 2, Government Records Access and Management Act;
569  (h) information regarding how the public can learn when the submittal of an
570  application or contract that is the basis of the contract water bank is on the agenda of a public
571  meeting of the public entity under Title 52, Chapter 4, Open and Public Meetings Act;
572  (i) whether the contract water bank will accept deposits of surface water rights or
573  groundwater rights, provided that a contract water bank may not accept deposits of both surface
574  water rights and groundwater rights; and
575  (j) the process the contract water bank will follow if the contract water bank
576  terminates, dissolves, or the board revokes the contract water bank's approval to operate
577  pursuant to this chapter, including how the contract water bank will return banked water rights
578  to depositors and how the contract water bank will return any amounts owing to depositors.
579  (2) The board may prepare a form or online application for an applicant to use in
580  submitting an application to the board under this part.
581  Section 18. Section **73-31-303** is enacted to read:
582  **73-31-303. Action by board on contract water bank application.**
583  (1) Upon receipt of an application for a proposed contract water bank, the board shall
584  record the day on which the board receives the application.
(2) The board shall:
(a) examine the application to determine whether changes are required for the board to process the application in accordance with this part;
(b) review the application to determine whether it meets the objectives of a water bank described in Section 73-31-103;
(c) consider the application complete if the application satisfies this part; and
(d) notify the applicant of any additional information or changes 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 that governs the filing of an original application.

(4) Within 30 days of the date the board determines that an application is complete, the board shall post notice of the application in accordance with Section 73-31-103.

(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;
(b) where a person may review the application.

Section 19. 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 the application satisfies Section 73-31-302, which is to be liberally interpreted by the board to facilitate the objectives described in Section 73-31-104.

(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, provided that the board's decision regarding
an application does not create a right of appeal under Title 63G, Chapter 4, Administrative
Procedures Act.
Section 20. Section 73-31-305 is enacted to read:
73-31-305. Amending application.
(1) After the board approves a contract water bank's application under this part, the
contract water bank may seek to amend the contract water bank's application by filing a
description of the proposed amendment with the board. The board shall follow the procedures
of Sections 73-31-303 and 73-31-304 to approve an amendment to a contract water bank's
application.
(2) An amendment approved by the board becomes effective on the first day of the next
reporting year.
Section 21. Section 73-31-401 is enacted to read:
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 reporting 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 reporting
year:
(a) a tabulation of the volume and change application number of water rights deposited
in the water bank;
(b) the nature of use of each banked water right before the banked water right was
deposited in the water bank and the volumes of water allocated to each use before being
deposited;
(c) a tabulation of loaned water rights from that water bank, which includes:
   (i) the change application number;
   (ii) the volume of water derived from the loaned water rights;
(iii) the nature of use of the loaned water rights and the volumes of water allocated to each use; and
(iv) for a statutory water bank, the borrower;
(d) for a statutory water bank:
(i) the amounts charged for the loaned water rights, 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 reporting 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;
(ix) any proposed amendments to an approved statutory water bank's procedures for the coming reporting 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 73-31-104; and
(e) a declaration or affidavit signed by at least two governing members of the statutory water bank stating 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 post notice of the annual report in accordance with Section 73-31-103.
(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 the
water bank submits a corrected annual report that satisfies this section within 90 days of the
written notice of the board.

(6) If a water bank fails to submit an annual report by November 30, or fails to submit
a corrected annual report within 90 days of the rejection of an annual report, the water bank is
considered in noncompliance under this chapter.

Section 22. Section 73-31-402 is enacted to read:

73-31-402. Water bank noncompliance -- Revocation of application.

(1) If a water bank is in noncompliance with this chapter pursuant to Section
73-31-401, the board shall give the water bank a written notice of noncompliance that:

(a) explains why the water bank is in noncompliance; and
(b) gives the water bank a 90-day corrective period from the date of the notice to
correct the cause of the noncompliance.

(2) The board shall:

(a) post a notice given under Subsection (1) pursuant to Section 73-31-103; and
(b) notify the state engineer of the water bank's noncompliance.

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

(a) provide the water bank written notice that the water bank's noncompliance has been
cured;
(b) post the written notice required under Subsection (3)(a) pursuant to Section
73-31-103; and
(c) notify the state engineer that the water bank has corrected the noncompliance within
the 90-day corrective period.

(4) (a) If the water bank fails to correct the noncompliance within the 90-day corrective
period, the water bank's approval to operate terminates at the end of the current calendar year.

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

(c) The board shall post the notice required under Subsection (4)(b) pursuant to Section
73-31-103.
(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 the water bank's application ceasing the water bank's operations.

(5) The state engineer may not approve a change application that seeks to deposit a
water right into a water bank that the board determines to be in noncompliance under this
chapter.

(6) A depositor retains title to deposited water rights and the water bank retains no
ownership in the deposited water rights.

Section 23. Section 73-31-501 is enacted to read:

Part 5. Deposits

73-31-501. Banking water.

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

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

(3) A banked water right is excused from beneficial use requirements pursuant to
Subsection 73-1-4 (2)(e)(x).

(4) A depositor of a banked water right may use the banked water right in its heretofore
use if:

(a) the depositor does so under the authority, control, and accounting of the water bank;

(b) the water bank informs the state engineer that the depositor's heretofore use is
consistent with the water bank's operating procedures for loaned water rights; and

(c) during the time the depositor uses the banked water right in its heretofore use, the
water bank does not allow the banked water right to be used for other uses within the water
bank.

(5) If an entity authorized to condemn a water right leases a water right under this
chapter, the entity may not begin the process of condemning the water right:

(a) while the entity leases the water right under this chapter; or

(b) within five years after the day on which the entity's lease of the water right under
this chapter ends.

Section 24. Section 73-31-502 is enacted to read:
73-31-502. Delivery request for loaned water rights in water bank.

(1) A borrower may use water from a water bank for any use within the water bank's service area consistent with the objectives in Section 73-31-104 and the conditions, if any, of the underlying approved change application.

(2) A borrower shall make use of a banked water right by submitting a delivery request to the water bank that complies with the water bank's requirements.

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

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

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

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

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

(6) A water bank is responsible for the payment of all distribution costs assessed for the delivery of a banked water right under Section 73-5-1.

Section 25. Section 73-31-503 is enacted to read:

73-31-503. State engineer enforcement.

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

Section 26. 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 631-1-273;
(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 631-1-273.

(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.

(5) (a) Upon receipt of the draft report described in Subsection (4), the board shall review the draft report and solicit public comment on the draft report by:

(i) requesting written comments; and
(ii) holding no less than one public hearing at which:
(A) the Department of Natural Resources shall explain and justify the draft report's recommendation; and
(B) an interested person may comment on or speak for or against the draft report's recommendations.

(b) The board shall give notice of the opportunities to provide public comment under this Subsection (5) by:

(i) mailing notice to the address of record for each water bank;
(ii) publishing notice in a newspaper of general circulation in the state; and
(iii) publishing notice as required in Section 45-1-101.

(c) The board may give separate notices for any public hearings the board may hold pursuant to Subsection 73-31-601(5)(a)(ii).

(d) The notice described in Subsection (5)(b) shall state:

(i) that the board is soliciting public comment on the draft report and shall hold a public hearing on a certain day, time, and place fixed in the notice, which shall not be less than
30 days after the day the first notice is published, for the purpose of hearing comments regarding the draft report;

(ii) that the board shall accept written comments on the draft report for a period of no less than 30 days after the day the first notice is published, and include instructions for how the public may submit comments; and

(iii) how the public may obtain a copy of the draft report.

(6) The board shall consider timely public comments submitted under this section, and may require the Department of Natural Resources to make revisions the board considers necessary before approving and submitting the final written report required in Subsection (2).