

**PRODUCED WATER AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steven J. Lund**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill addresses issues related to produced water.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides for the scope of the Produced Water Act;
- ▶ addresses the Board of Oil, Gas, and Mining's regulation of produced water;
- ▶ addresses water right issues;
- ▶ enacts provisions related to possessory interests and control; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**40-6-5**, as last amended by Laws of Utah 2022, Chapter 62

ENACTS:

**40-12-101**, Utah Code Annotated 1953

**40-12-102**, Utah Code Annotated 1953



28 [40-12-201](#), Utah Code Annotated 1953

29 [40-12-202](#), Utah Code Annotated 1953

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

32 Section 1. Section **40-6-5** is amended to read:

33 **40-6-5. Jurisdiction of board -- Rules.**

34 (1) The board has jurisdiction over all persons and property necessary to enforce this  
35 chapter. The board shall make rules in accordance with Title 63G, Chapter 3, Utah  
36 Administrative Rulemaking Act.

37 (2) The board shall make rules and orders as necessary to administer the following  
38 provisions:

39 (a) Ownership of all facilities for the production, storage, treatment, transportation,  
40 refining, or processing of oil and gas shall be identified.

41 (b) Well logs, directional surveys, and reports on well location, drilling, and production  
42 shall be made and filed with the division. Logs of wells marked "confidential" shall be kept  
43 confidential for one year after the date on which the log is required to be filed, unless the  
44 operator gives written permission to release the log at an earlier date. Production reports shall  
45 be:

46 (i) filed monthly;

47 (ii) accurate; and

48 (iii) in a form that reasonably serves the needs of state agencies and private fee owners.

49 (c) Monthly reports from gas processing plants shall be filed with the division.

50 (d) Wells shall be drilled, cased, cemented, operated, and plugged in such manner as to  
51 prevent:

52 (i) the escape of oil, gas, or water out of the reservoir in which they are found into  
53 another formation;

54 (ii) the detrimental intrusion of water into an oil or gas reservoir;

55 (iii) the pollution of fresh water supplies by oil, gas, or salt water;

56 (iv) blowouts;

57 (v) cavings;

58 (vi) seepages;

- 59 (vii) fires; and
- 60 (viii) unreasonable:
  - 61 (A) loss of a surface land owner's crops on surface land;
  - 62 (B) loss of value of existing improvements owned by a surface land owner on surface
  - 63 land; and
  - 64 (C) permanent damage to surface land.
- 65 (e) The drilling of wells may not commence without an adequate and approved supply
- 66 of water as required by Title 73, Chapter 3, Appropriation. This Subsection (2)(e) is not
- 67 intended to impose additional legal requirements, but to assure that existing legal requirements
- 68 concerning the use of water have been met before the commencement of drilling.
- 69 (f) Subject to Subsection (9), an operator shall furnish a reasonable performance bond
- 70 or other good and sufficient surety, conditioned for the performance of the duty to:
  - 71 (i) plug each dry or abandoned well;
  - 72 (ii) repair each well causing waste or pollution;
  - 73 (iii) maintain and restore the well site; and
  - 74 (iv) except as provided in Subsection (8), protect a surface land owner against
  - 75 unreasonable:
    - 76 (A) loss of a surface land owner's crops on surface land;
    - 77 (B) loss of value of existing improvements owned by a surface land owner on surface
    - 78 land; and
    - 79 (C) permanent damage to surface land.
- 80 (g) Production from wells shall be separated into oil and gas and measured by means
- 81 and upon standards that are prescribed by the board and reflect current industry standards.
- 82 (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and
- 83 any accumulation of nonmerchantable waste crude oil shall be treated and processed, as
- 84 prescribed by the board.
  - 85 (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or
  - 86 processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced
  - 87 recovery, or salt water disposal in this state shall maintain complete and accurate records of the
  - 88 quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or
  - 89 injected for a period of at least six years. The records shall be available for examination by the

90 board or the board's agents at any reasonable time. Rules enacted to administer this Subsection  
91 (2)(i) shall be consistent with applicable federal requirements.

92 (j) Any person with an interest in a lease shall be notified when all or part of that  
93 interest in the lease is sold or transferred.

94 (k) The assessment and collection of administrative penalties is consistent with Section  
95 [40-6-11](#).

96 (l) The board shall regulate the disposition, transfer, use, transport, recycling,  
97 treatment, and disposal by injection of produced water, as defined in Section [40-12-101](#),  
98 during, or for reuse in an oil and gas activity, as defined in Section [40-6-2.5](#), including disposal  
99 by injection pursuant to authority delegated to the board by the United States Environmental  
100 Protection Agency to be done in a manner that protects surface water and fresh water resources.

101 (3) The board has the authority to regulate:

102 (a) all operations for and related to the production of oil or gas including:

103 (i) drilling, testing, equipping, completing, operating, producing, and plugging of  
104 wells; and

105 (ii) reclamation of sites;

106 (b) the spacing and location of wells;

107 (c) operations to increase ultimate recovery, such as:

108 (i) cycling of gas;

109 (ii) the maintenance of pressure; and

110 (iii) the introduction of gas, water, or other substances into a reservoir;

111 (d) the disposal of salt water and oil-field wastes;

112 (e) the underground and surface storage of oil, gas, or products; and

113 (f) the flaring of gas from an oil well.

114 (4) For the purposes of administering this chapter, the board may designate:

115 (a) wells as:

116 (i) oil wells; or

117 (ii) gas wells; and

118 (b) pools as:

119 (i) oil pools; or

120 (ii) gas pools.

- 121 (5) The board has exclusive jurisdiction over:
- 122 (a) class II injection wells, as defined by the federal Environmental Protection Agency
- 123 or a successor agency;
- 124 (b) pits and ponds in relation to these injection wells;
- 125 (c) when granted primacy by the Environmental Protection Agency, class VI injection
- 126 wells, as defined by the Environmental Protection Agency or a successor agency; and
- 127 (d) storage facilities, as that term is defined in Section 40-11-1.
- 128 (6) The board has jurisdiction:
- 129 (a) to hear questions regarding multiple mineral development conflicts with oil and gas
- 130 operations if there:
- 131 (i) is potential injury to other mineral deposits on the same lands; or
- 132 (ii) are simultaneous or concurrent operations conducted by other mineral owners or
- 133 lessees affecting the same lands; and
- 134 (b) to enter the board's order or rule with respect to those questions.
- 135 (7) The board has enforcement powers with respect to operators of minerals other than
- 136 oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple
- 137 mineral development issues.
- 138 (8) Subsection (2)(f)(iv) does not apply if the surface land owner is a party to, or a
- 139 successor of a party to:
- 140 (a) a lease of the underlying privately owned oil and gas;
- 141 (b) a surface use agreement applicable to the surface land owner's surface land; or
- 142 (c) a contract, waiver, or release addressing an owner's or operator's use of the surface
- 143 land owner's surface land.
- 144 (9) (a) The board shall review rules made under Subsection (2)(f) to determine whether
- 145 the rules provide adequate fiscal security for the fiscal risks to the state related to oil and gas
- 146 operations.
- 147 (b) During the board's review under this Subsection (9), the board may consider the
- 148 bonding schemes of other states.

149 Section 2. Section 40-12-101 is enacted to read:

150 **CHAPTER 12. PRODUCED WATER ACT**

151 **Part 1. General Provisions**

152 **40-12-101. Definitions.**153 As used in this chapter:154 (1) "Board" means the Board of Oil, Gas, and Mining.155 (2) "Division" means the Division of Oil, Gas, and Mining.156 (3) "Nonconsumptive use of produced water in an oil and gas activity" means the  
157 transfer, use, temporary storage before disposal, transport, recycling, treatment, or other  
158 disposal of produced water in an oil and gas activity that does not reduce the volume of  
159 produced water.160 (4) "Oil and gas activity" means the same as that term is defined in Section [40-6-2.5](#).161 (5) "Oil or gas producing well" means a well that, at the time produced water is  
162 brought to the surface, is a drillhole boring in earth that is intended to bring and does bring  
163 hydrocarbons and associated fluids to the surface.164 (6) "Operator" means a person authorized by the division to operate a unit for an oil or  
165 gas producing well.166 (7) "Produced water" means water that is:167 (a) (i) extracted below the earth's surface by means of an oil or gas producing well; or168 (ii) separated from hydrocarbons after extraction; and169 (b) required to be disposed of pursuant to board rules for waste management and  
170 disposal made pursuant to Subsection [40-6-5\(3\)](#) and in accordance with Title 63G, Chapter 3,  
171 Utah Administrative Rulemaking Act.172 (8) "Transfer" means to sell or otherwise convey.173 (9) "Transferee" means one of the following who receives a possessory interest in  
174 produced water:175 (a) an operator;176 (b) a person who provides recycling or treatment services for produced water; or177 (c) a person who provides disposal services for produced water.178 Section 3. Section **40-12-102** is enacted to read:179 **40-12-102. Scope of chapter.**180 (1) This chapter does not authorize the use of produced water as part of a consumptive  
181 beneficial use without a water right.182 (2) A person may engage in the nonconsumptive use of produced water in an oil and

183 gas activity only in a manner consistent with this chapter.

184 (3) Nothing in this chapter modifies the statutory enforcement and other duties of the  
185 state engineer under Title 73, Water and Irrigation, except as provided in Subsection  
186 40-12-201(2).

187 Section 4. Section **40-12-201** is enacted to read:

188 **Part 2. Produced Water in General**

189 **40-12-201. Regulation by board - Water rights.**

190 (1) The board shall regulate produced water used in an oil and gas activity as provided  
191 in this title.

192 (2) (a) The nonconsumptive use of produced water in an oil and gas activity is not:

- 193 (i) an appropriation of water for beneficial use under Title 73, Water and Irrigation; or
- 194 (ii) a waste of water.

195 (b) A water right is not established by the nonconsumptive use of produced water in an  
196 oil and gas activity.

197 (c) Notwithstanding Title 73, Water and Irrigation, the state engineer may not require  
198 an operator or transferee to obtain a water right for the nonconsumptive use of produced water  
199 in an oil and gas activity.

200 Section 5. Section **40-12-202** is enacted to read:

201 **40-12-202. Responsibility and control of produced water.**

202 (1) Unless otherwise provided by statute or a legally binding agreement, this section  
203 applies.

204 (2) (a) Produced water from an oil or gas producing well is the responsibility of the  
205 operator of the oil or gas producing well.

206 (b) The operator has a possessory interest in produced water from a oil and gas activity,  
207 including the right to:

- 208 (i) take possession of the produced water;
- 209 (ii) engage in the nonconsumptive use of produced water in an oil and gas activity; and
- 210 (iii) obtain proceeds from an action described in this Subsection (2)(b).

211 (3) When a person with a possessory interest in produced water under Subsection (2)  
212 transfers the produced water to a transferee, upon transfer, the transferee has a possessory  
213 interest in the produced water and is liable for the disposal of the produced water.

214 Section 6. **Effective date.**

215 This bill takes effect on May 1, 2024.