

**CANAL SAFETY AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Johnny Anderson**

Senate Sponsor: Gene Davis

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**LONG TITLE**

**General Description:**

This bill modifies the Water and Irrigation code.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "water conveyance facility";
- ▶ requires the state engineer, by July 1, 2017, to inventory and maintain a list of all open, human-made water conveyance systems in the state;
- ▶ requires the state engineer to contract with a local conservation district to provide technical support for a canal owner who is adopting a management plan; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-5-7**, Utah Code Annotated 1953

**73-10-33**, as enacted by Laws of Utah 2010, Chapter 113

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

Section 1. Section **73-5-7** is amended to read:

**73-5-7. Inspection of ditches and diverting works by engineer.**

30           (1) (a) The state engineer shall have authority to examine and inspect any ditch or other  
31 diverting works, and at the time of such inspection [~~he~~], the state engineer may order the  
32 owners thereof to make any addition or alteration [~~which he~~] that the state engineer considers  
33 necessary for the security of such works, the safety of persons, or the protection of property.

34           (b) If any person, firm, copartnership, association, or corporation refuses or neglects to  
35 comply with [~~such~~] the requirements of the state engineer[~~, he~~] as described in Subsection  
36 (1)(a), the state engineer may bring action in the name of the state in the district court to  
37 enforce [~~his~~] the order.

38           (2) The state engineer shall, by July 1, 2017, inventory and maintain a list of all open,  
39 human-made water conveyance systems that carry 5 cubic feet per second or more in the state,  
40 including the following information on each conveyance system:

41           (a) alignment;

42           (b) contact information of the owner;

43           (c) maximum flow capacity in cubic feet per second;

44           (d) whether the conveyance system is used for flood or storm water management; and

45           (e) notice of the adoption of a management plan for the conveyance system as reported  
46 to the Division of Water Resources under Section [73-10-33](#).

47           (3) The owner of an open, human-made water conveyance system that carries 5 cubic  
48 feet per second or more shall inform the state engineer if the information described in  
49 Subsection (2) changes.

50           (4) The state engineer:

51           (a) may contract with a local conservation district created in Title 17D, Chapter 3,  
52 Conservation District Act, to fulfill the duties described in Subsection (2); and

53           (b) may contract a local conservation district created in Title 17D, Chapter 3,  
54 Conservation District Act, to provide technical support for a canal owner who is adopting a  
55 management plan, as described in Section [73-10-33](#).

56           Section 2. Section **73-10-33** is amended to read:

57           **73-10-33. Management plan for water conveyance facilities.**

- 58 (1) As used in this section:
- 59 (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.
- 60 (b) "Conservation district" means a conservation district created under Title 17D,  
61 Chapter 3, Conservation District Act.
- 62 (c) "Division" means the Division of Water Resources created by Section 73-10-18.
- 63 (d) "Facility owner or operator" means:
- 64 (i) a water company as defined in Subsection 73-3-3.5(1)(b); or
- 65 (ii) an owner or operator of a water conveyance facility.
- 66 (e) "Management plan" means a written document meeting the requirements of  
67 Subsection (3).
- 68 (f) "Potential risk" means a condition where, if a water conveyance facility fails, the  
69 failure would create a high probability of:
- 70 (i) causing loss of human life; or
- 71 (ii) causing extensive economic loss, including damage to critical transportation  
72 facilities, utility facilities, or public buildings.
- 73 (g) "Potential risk location" means a segment of a water conveyance facility that  
74 constitutes a potential risk due to:
- 75 (i) location;
- 76 (ii) elevation;
- 77 (iii) soil conditions;
- 78 (iv) structural instability;
- 79 (v) water volume or pressure; or
- 80 (vi) other conditions.
- 81 (h) (i) "Water conveyance facility" means a water conveyance defined in Section  
82 57-13a-101.
- 83 (ii) "Water conveyance facility" does not include:
- 84 (A) a pipeline conveying water for industrial use, or municipal use, within a public  
85 water system as defined in Section 19-4-102;

86 (B) a natural channel used to convey water for use within a water conveyance facility;

87 or

88 (C) a fully piped~~[, pressurized]~~ irrigation system.

89 (2) (a) For a water conveyance facility that has a potential risk location, the board or  
90 division may issue a grant or loan to the facility owner or operator, and the facility owner or  
91 operator may receive state money for water development or water conveyance facility repair or  
92 improvements, only if the facility owner or operator promptly adopts a management plan in  
93 accordance with this section.

94 (b) For a management plan to be considered to be promptly adopted for purposes of  
95 this Subsection (2), the facility owner or operator shall:

96 (i) adopt the management plan by an affirmative vote of the facility owner or operator's  
97 board of directors, or persons occupying a similar status or performing similar functions before  
98 receiving money under Subsection (2)(a);

99 (ii) (A) adopt the management plan as described in Subsection (2)(b)(i) by no later  
100 than:

101 (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or

102 (II) for a water conveyance facility that begins operation after May 11, 2011, one year  
103 after the day on which the water conveyance facility begins operation; or

104 (B) (I) adopt the management plan as described in Subsection (2)(b)(i); and

105 (II) provide written justification satisfactory to the board as to why the facility owner or  
106 operator was unable to adopt a management plan during the time period provided in Subsection  
107 (2)(b)(ii)(A); and

108 (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently  
109 than every 10 years.

110 (3) A management plan described in Subsection (2) shall include at least the following:

111 (a) a GIS coverage or drawing of each potential risk location of a water conveyance  
112 facility identifying any:

113 (i) existing canal and lateral alignment of the canal facility;

- 114 (ii) point of diversion;
- 115 (iii) bridge;
- 116 (iv) culvert;
- 117 (v) screen or trash rack; and
- 118 (vi) spill point;
- 119 (b) an evaluation of any potential slope instability that may cause a potential risk,
- 120 including:
- 121 (i) failure of the facility;
- 122 (ii) land movement that might result in failure of the facility; or
- 123 (iii) land movement that might result from failure of the facility;
- 124 (c) proof of insurance coverage or other means of financial responsibility against
- 125 liability resulting from failure of the water conveyance facility;
- 126 (d) a maintenance and improvement plan;
- 127 (e) a schedule for implementation of a maintenance and improvement plan;
- 128 (f) an emergency response plan that:
- 129 (i) is developed after consultation with local emergency response officials;
- 130 (ii) is updated annually; and
- 131 (iii) includes, in the case of an emergency, how a first responder can:
- 132 (A) contact the facility owner or operator; and
- 133 (B) obtain information described in Subsection (3)(a);
- 134 (g) any potential source of financing for maintenance and improvements under a
- 135 maintenance and improvement plan;
- 136 (h) identification of each municipality or county through which water is conveyed or
- 137 delivered by the water conveyance facility;
- 138 (i) a statement concerning whether storm water enters the water conveyance facility;
- 139 and
- 140 (j) if storm water enters the water conveyance facility:
- 141 (i) an estimate of the maximum volume and flow of all water present in the water

142 conveyance facility as a result of a six-hour, 25-year storm event;

143 (ii) on the basis of information provided in accordance with Subsection (4),  
144 identification of the points at which any storm structures introduce water into the water  
145 conveyance facility and the anticipated flow that may occur at each structure; and

146 (iii) the name of each governmental agency that has responsibility for storm water  
147 management within the area from which storm water drains into the water conveyance facility.

148 (4) A private or public entity that introduces storm water into a water conveyance  
149 facility shall provide the facility owner or operator with an estimate of the maximum volume  
150 and flow of water that may occur at each structure that introduces storm water into the water  
151 conveyance facility.

152 (5) (a) A facility owner or operator of a water conveyance facility shall provide a  
153 municipality or county in which is located a potential risk location of the water conveyance  
154 facility an outline of the information provided in Subsection (3)(f).

155 (b) A facility owner or operator shall give notice to the planning and zoning  
156 department of each municipality and county identified in Subsection (3)(h) outlining the  
157 information provided in Subsections (3)(f), (i), and (j).

158 (c) An outline of information provided under this Subsection (5) is a protected record  
159 under Section [63G-2-305](#).

160 (6) (a) The division may provide information and technical resources to a facility  
161 owner or operator of a water conveyance facility, regardless of whether the water conveyance  
162 facility has a potential risk location.

163 (b) In providing the information and resources described in Subsection ~~[(5)]~~ (6)(a), the  
164 division may coordinate with efforts of any association of conservation districts that may  
165 provide similar information and technical resources.

166 (c) The information and technical resources described in Subsection ~~[(5)]~~ (6)(a)  
167 include:

168 (i) engaging state and local water users in voluntary completion of a management plan;

169 (ii) developing standard guidelines, checklists, or templates that may be used by a

170 facility owner or operator;

171 (iii) using conservation districts as points of contact with a facility owner or operator;

172 (iv) providing training to help a facility owner or operator to adopt a management plan;

173 and

174 (v) assisting, at the request and under the direction of, a facility owner or operator with  
175 efforts to adopt or implement a management plan.

176 (7) (a) A facility owner or operator of a water conveyance facility that has a potential  
177 risk location shall provide the board or division upon request:

178 (i) written certification signed under oath by a person authorized to act for the board of  
179 directors or persons occupying a similar status or performing similar functions, certifying that  
180 the management plan complies with this section; and

181 (ii) an opportunity to review a management plan.

182 (b) A management plan received by the board or division under this section is a  
183 protected record under Section [63G-2-305](#).

184 (8) The board shall report concerning compliance with this section to the Natural  
185 Resources, Agriculture, and Environment Interim Committee of the Legislature before  
186 November 30, 2013.

187 (9) The division and board may make rules, in accordance with Title 63G, Chapter 3,  
188 Utah Administrative Rulemaking Act, concerning the requirements of this section.

189 (10) This section does not:

190 (a) create a private right of action for a violation of this section; or

191 (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility  
192 owner or operator in a civil action for a cause of action that is not based on a violation of this  
193 section.

194 (11) The following may not be introduced as evidence in any civil litigation on the  
195 issue of negligence, injury, or the calculation of damages:

196 (a) a management plan prepared in accordance with this section;

197 (b) the failure to prepare or adopt a management plan in accordance with this section;

198 or

199 (c) the failure to update a management plan in accordance with this section.