

UTAH WATER BANKING ACT - TITLE 73 CHAPTER 31 CONTRACT WATER BANK PROGRAM GUIDELINES

The Utah Water Banking Act - Title 73 Chapter 31 (act) authorizes the Board of Water Resources to approve eligible leasing arrangements as water banks and be extended certain rights and benefits. Utah Code 73-31-303 requires the board to review, notice and approve complete contract water bank applications as contract water banks. A contract water bank is based on and governed by a voluntary agreement to lease water between local parties. The act allows a willing non-federal public entity be a party to the contract and act as the bank applicant. Once approved, a contract water bank applicant has certain annual reporting duties to the Board. Utah Code 73-31-106 authorizes the board to direct and delegate responsibilities under the act to the Division of Water Resources.

Contract Water Bank Program Guidelines:

1. A non-federal public entity who is a party to a contract governing leasing between local parties may seek to have the contract approved as a contract water bank by submitting a contract water bank application to the Board of Water Resources.
2. The Board of Water Resources must mark the date a contract water bank application is received by the Board.
3. Once marked received, the board is required to review the contract water bank application for completeness. To be complete under Utah Code 73-31-302 , a contract water bank application must contain the following:
 - Name of the contract water bank
 - Description of the proposed bank service area and map
 - Description of the structure of bank's governing body and how it will operate
 - Description of how delivery requests and loaned water rights are to be administered
 - Criteria for the participation of non-public entities (if any)
 - A copy of the underlying water leasing contract
 - Where the public can learn when the water leasing contract is on the agenda of a public meeting held by the applicant
 - Type of water rights accepted by bank – ground or surface, but not both
 - Description of how the bank will unwind if terminated, dissolved, or revoked, including how the bank will return banked water rights and monies owed to depositors

The board is to notify the applicant if any additional information or changes are needed to process the contract water bank application.

4. The board is to mark the date the board deems the contact water bank application complete.

5. Within 30 days of marking the contract water bank application complete, the board must publish notice according to Utah Code 73-31-103. This notice shall state that an application to approve a contract water bank has been filed with the board and where a person may review the application.
6. The contract water bank applicant will hold a public meeting to collect any comments on the water lease contract. If no comments are received, or the applicant does not find the comments merit amending the water lease contract, the applicant will alert the board they have completed the requirement to hold a public meeting to collect comment and request the board approve the contract water bank application as complete.
7. If the applicant receives comments it determines merit amending the water lease contract, the application may notify the board in writing before the board takes action on the contract water bank application and the applicant will submit a revised application following the same process that governs the filing of an original application.
8. After the applicant has held a public meeting and has requested the board approve the contract water bank application, the board shall liberally interpret the standards set in Utah Code 73-31-302 to find the contract water bank application complete and approve the application.
9. The board will issue an order approving the contract water bank and publish a summary of information submitted on the water banking website.
10. If the Board of Water Resources denies an application, it must provide a written explanation describing the reasons for the denial. Denial of contract water bank application does not create a right of appeal under Utah Code 63G-4, the Utah Administrative Procedures Act.
11. Once approved as a contract water bank, the bank participants will use the State Engineer's existing change application process under Utah Code 73-3-3 and 73-3-8 to secure approval from the Division of Water Rights to use water rights for water banking purposes inside the contract water bank service area.
12. The contract water bank is responsible overseeing internal administration of water leases between participating parties and coordinating with the State Engineer on distribution and enforcement matters.
13. On or before November 30 each year, the governing body of a water bank will make a report to the board regarding the water bank's operation and including the information listed under Utah Code 73-31-401.