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WATER RIGHTS

*Utah*

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(GEOTHERMAL RESOURCE CONSERVATION ACT)

1981

GENERAL SESSION

B. No. \_\_\_\_\_

By \_\_\_\_\_

AN ACT RELATING TO THE DEVELOPMENT OF GEOTHERMAL RESOURCES IN THE STATE; DECLARING THE PUBLIC INTEREST IN THIS DEVELOPMENT AND ASSIGNING REGULATORY AUTHORITY REGARDING THIS TO THE DIVISION OF WATER RIGHTS; DEFINING THE RESOURCE AND ITS RELATIONSHIP TO WATER; PROVIDING FOR THE PROTECTION OF CORRELATIVE RIGHTS AND THE PREVENTION OF WASTE; AUTHORIZING AND ESTABLISHING PROCEDURES FOR UNITIZING OF GEOTHERMAL AREAS; AND PROVIDING FOR PROCEDURES TO GOVERN REGULATION BY THIS DIVISION.

THIS ACT ENACTS THE UTAH GEOTHERMAL RESOURCE CONSERVATION ACT BY ENACTING SECTIONS 73-21-1 THROUGH 73-21-10, UTAH CODE ANNOTATED 1953; AND REPEALS SECTION 73-1-20, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 189, LAWS OF UTAH 1973.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 73-21-1, Utah Code Annotated 1953, is enacted to read:

73-21-1. This chapter shall be known and may be cited as the "Utah Geothermal Resource Conservation Act."

Section 2. Section 73-21-2, Utah Code Annotated 1953, is enacted to read:

73-21-2. It is declared to be in the public interest to foster, encourage, and promote the discovery, development, production, utilization, and disposal of geothermal resources

2 in the State of Utah in such manner as will prevent waste,  
3 protect correlative rights, and safeguard the natural  
4 environment and the public welfare; to authorize, encourage,  
5 and provide for the development and operation of geothermal  
6 resource properties in such manner that the maximum ultimate  
7 economic recovery of geothermal resources may be obtained  
8 through, among other things, agreements for cooperative  
9 development, production, injection, and pressure maintenance  
10 operations.

11 Section 3. Section 73-21-3, Utah Code Annotated 1953, is  
12 enacted to read:

13 73-21-3. As used in this chapter:

14 (1) "Correlative rights" mean the rights of each  
15 geothermal owner in a geothermal area to produce without waste  
16 his just and equitable share of the geothermal resource  
17 underlying the geothermal area.

18 (2) "Division" means the division of water rights,  
19 department of natural resources.

20 (3) "Geothermal area" means the general land area which  
21 is underlain or reasonably appears to be underlain by  
22 geothermal resources.

23 (4) "Geothermal fluid" means water and steam at  
24 temperatures greater than 120 degrees centigrade naturally  
25 present in a geothermal system.

26 (5) "Geothermal resource" means: (a) the natural heat  
27 of the earth at temperatures greater than 120 degrees  
28 centigrade; and (b) the energy, in whatever form, including  
29 pressure, present in, resulting from, created by, or which may  
30 be extracted from that natural heat, directly or through a  
31 material medium. Geothermal resource does not include  
32 geothermal fluids.

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(6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation containing geothermal resources.

(7) "Material medium" means geothermal fluids, or water and other substances artificially introduced into a geothermal system to serve as a heat transfer medium.

(8) "Operator" means any person drilling, maintaining, operating, producing, or in control of any well.

(9) "Owner" means a person who has the right to drill into, produce, and make use of the geothermal resource.

(10) "Person" means any individual, business entity (corporate or otherwise), or political subdivision of this or any other state.

(11) "Waste" means any inefficient, excessive, or improper production, use, or dissipation of geothermal resources. Wasteful practices include, but are not limited to: (a) transporting or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources; or (b) locating, spacing, constructing, equipping, operating, producing, or venting of any well in a manner that results or tends to result in unnecessary surface loss or in reducing the ultimate economic recovery of geothermal resources.

(12) "Well" means any well drilled, converted, or reactivated for the discovery, testing, production, or subsurface injection of geothermal resources.

Section 4. Section 73-21-4, Utah Code Annotated 1953, is enacted to read:

73-21-4. (1) Ownership of a geothermal resource derives from an interest in land and not from an appropriative right to geothermal fluids.

(2) This chapter shall apply to all lands in the State of Utah, including federal and Indian lands to the extent allowed by law. When these lands are committed to a unit agreement

2 involving lands subject to federal or Indian jurisdiction, the  
3 division may, with respect to the unit agreement, deem this  
4 chapter complied with if the unit operations are regulated by  
5 the United States and the division finds that conservation of  
6 geothermal resources and prevention of waste are accomplished  
7 under the unit agreement.

8 Section 5. Section 73-21-5, Utah Code Annotated 1953, is  
9 enacted to read:

10 73-21-5. (1) The division is granted jurisdiction and  
11 authority over all persons and property, public and private,  
12 necessary to enforce the provisions of this chapter and shall  
13 have the power and authority to adopt and enforce rules,  
14 regulations, and orders and do whatever may reasonably be  
15 necessary to carry out this chapter.

16 (2) Any affected person may apply for a hearing before  
17 the division, or the division may initiate proceedings upon any  
18 question relating to the administration of this chapter, and  
19 jurisdiction is conferred upon the division to hear and  
20 determine the same and enter its rule, regulation, or order  
21 with respect to the matter.

22 (3) The division shall have the power to summon  
23 witnesses, to administer oaths, and to require the production  
24 of records, books, and documents for examination at any hearing  
25 or investigation conducted by it.

26 (4) In case of failure or refusal on the part of any  
27 person to comply with a subpoena issued by the division, or in  
28 case of refusal of any witness to testify as to any matter  
29 regarding which he may be interrogated, any district court in  
30 the state, upon the application of the division, may issue an  
31 order compelling the person to comply with the subpoena and to  
32 attend before the division and produce any records, books, and  
33 documents covered by the subpoena or to give testimony or both.  
34 The court shall have the power to punish for contempt as in the

2 case of disobedience to a like subpoena issued by the court, or  
3 for refusal to testify in the court.

4 (5) Whenever it appears that any person is violating or  
5 threatening to violate any provision of this chapter or any  
6 rule, regulation, or order made under this chapter, the  
7 division may bring suit in the name of the state against that  
8 person in the district court in the county of that person's  
9 residence, in the county of the residence of any defendant if  
10 there be more than one defendant, or in the county where the  
11 violation is alleged to have occurred, to restrain that person  
12 from continuing the violation or from carrying out the threat  
13 of violation. In the suit the court may grant injunctions.

14 (6) Nothing in this chapter, no suit by or against the  
15 division, and no violation charged or asserted against any  
16 person under this chapter, or any rule, regulation, or order  
17 issued under it, shall impair or abridge or delay any cause of  
18 action for damages which any person may have or assert against  
19 any person violating this chapter, or any rule, regulation, or  
20 order issued under it. Any person so damaged by the violation  
21 may sue for and recover such damages as he otherwise may be  
22 entitled to receive.

23 Section 6. Section 73-21-6, Utah Code Annotated 1953, is  
24 enacted to read:

25 73-21-6. (1) The division shall have authority to  
26 require:

27 (a) Identification of the location and ownership of all  
28 wells and producing geothermal leases.

29 (b) Filing with the division of a notice of intent to  
30 drill, redrill, deepen, permanently alter the casing of, or  
31 abandon any well. Approval of the notice of intent must be  
32 obtained from the division prior to commencement of operations.

33 (c) Keeping of well logs and filing true and correct  
34 copies with the division. These records are public records

2 when filed with the division, unless the owner or operator  
3 requests, in writing, that the records be held confidential.  
4 The period of confidentiality shall be established by the  
5 division, not to exceed five years from the date of production  
6 or injection for other than testing purposes or five years from  
7 the date of abandonment, whichever occurs first, as determined  
8 by the division. Well records held confidential by the  
9 division are open to inspection by those persons authorized in  
10 writing by the owner or operator. Confidential status shall  
11 not restrict inspection by state officers charged with  
12 regulating well operations or by authorized officials of the  
13 Utah state tax commission for purposes of tax assessment.

14 (d) The spacing, drilling, casing, testing, operating,  
15 producing, and abandonment of wells so as to prevent: (i)  
16 geothermal resources, water, gases, or other fluids from  
17 escaping into strata other than the strata in which they are  
18 found (unless in accordance with a subsurface injection program  
19 approved by the division); (ii) pollution of surface and  
20 groundwater; (iii) premature cooling of any geothermal system  
21 by water encroachment or otherwise which tends to reduce the  
22 ultimate economic recovery of the geothermal resources; (iv)  
23 blowouts, cavings, and seepage; and (v) unreasonable  
24 disturbance or injury to neighboring properties, prior water  
25 rights, human life, health, and the environment.

26 (e) The operator to file cash or individual surety bonds  
27 with the division for each new well drilled and each abandoned  
28 well redrilled. The amount of surety required shall be  
29 determined by the division. In lieu of bonds for separate  
30 wells, the operator may file a blanket cash or individual  
31 surety bond in an amount set by the division to cover all the  
32 operator's drilling, redrilling, deepening, maintenance, or  
33 abandonment activities for wells in the state. Bonds filed  
34 with the division shall be executed by the operator, as

2 principal, conditioned on compliance with division regulations  
3 in drilling, redrilling, deepening, maintaining, or abandoning  
4 any well or wells covered by the bond and shall secure the  
5 state against all losses, charges, and expenses incurred by it  
6 to obtain such compliance by the principal named in the bond.

7 (f) The geothermal owner or operator to measure  
8 geothermal production according to standards set by the  
9 division and maintain complete and accurate production records.  
10 The records, or certified copies of them, shall be preserved on  
11 file by the owner or operator for a period of five years and  
12 shall be available for examination by the division at all  
13 reasonable times.

14 (g) Filing with the division any other reasonable reports  
15 which it prescribes regarding geothermal operations within the  
16 state.

17 (2) Any bond filed with the division in conformance with  
18 this chapter may, with the consent of the division, be  
19 terminated and canceled and the surety be relieved of all  
20 obligations under it when the well or wells covered by the bond  
21 have been properly abandoned or another valid bond has been  
22 substituted for it.

23 (3) The division may enter onto private or public land at  
24 any time to inspect any well or geothermal resource development  
25 project to determine if the well or project is being  
26 constructed, operated, or maintained according to any  
27 applicable permits or to determine if the construction,  
28 operation, or maintenance of the well or project may involve an  
29 unreasonable risk to life, health, property, the environment or  
30 subsurface, surface, or atmospheric resources.

31 Section 7. Section 73-21-7, Utah Code Annotated 1953, is  
32 enacted to read:

33 73-21-7. (1) The division upon its own motion may hold,  
34 and upon the application of any affected person shall hold, a

2 hearing to consider the need for cooperative or unit operation  
3 of a geothermal area.

4 (2) The division shall make an order providing for the  
5 cooperative or unit operation of part or all of a geothermal  
6 area if the division finds that this operation is reasonably  
7 necessary to prevent waste, to protect correlative rights, or  
8 to prevent the drilling of unnecessary wells and will not  
9 reduce the ultimate economic recovery of geothermal resources.

10 (3) An order for cooperative or unit operations shall be  
11 upon terms and conditions that are just and reasonable and  
12 satisfy the requirements of subsection (2).

13 (4) An order by the division for unit operations shall  
14 prescribe a plan, including:

15 (a) A description of the geothermal area to be so  
16 operated, termed the unit area.

17 (b) A statement of the nature of the operations  
18 contemplated, the time they will commence, and the manner and  
19 circumstances under which unit operations shall terminate.

20 (c) An allocation to the separately-owned tracts in the  
21 unit area of the geothermal resources produced and of the costs  
22 incurred in unit operations. The allocations shall be in  
23 accord with the agreement, if any, of the affected parties. If  
24 there is no such agreement, the division shall determine the  
25 allocations from evidence introduced at a hearing before the  
26 division. Production shall be allocated in proportion to the  
27 relative value that each tract bears to the value of all tracts  
28 in the unit area. The acreage of each tract in proportion to  
29 the total unit acreage shall be the measure of relative value,  
30 unless the division finds after public hearing that another  
31 method is likely to result in a more equitable allocation and  
32 protection of correlative rights. Resource temperature,  
33 pressure, fluid quality, geological conditions, distance to  
34 place of use, and productivity are among the factors that may



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2 be considered in evaluating other methods. The method for  
3 allocating production in unit operations shall be revised if  
4 after a hearing the division finds that the revised method is  
5 likely to result in a more equitable allocation and protection  
6 of correlative rights. The division shall hold a hearing to  
7 consider adoption of a revised allocation method upon the  
8 application of any affected person, but the application may not  
9 be made until three years after the initial order by the  
10 division or at less than two-year intervals after that.

11 (d) A provision for adjustment among the owners of the  
12 unit area (not including royalty owners) of their respective  
13 investment in wells, tanks, pumps, machinery, materials,  
14 equipment, and other things and services of value attributable  
15 to the unit operations. The amount to be charged unit  
16 operations for each item shall be determined by the owners of  
17 the unit area (not including royalty owners), but if the owners  
18 of the unit area are unable to agree upon the amount of the  
19 charges or to agree upon the correctness of same, the division  
20 shall determine them after due notice and hearing, upon the  
21 application of any affected party. The net amount charged  
22 against the owner of a separately-owned tract shall be  
23 considered an expense of unit operation chargeable against that  
24 tract. The adjustments provided for in this subsection may be  
25 treated separately and handled by agreements separate from the  
26 unitization agreement.

27 (e) A provision providing how the costs of unit  
28 operations, including capital investments, shall be determined  
29 and charged to the separately-owned tracts and how these costs  
30 shall be paid, including a provision providing when, how, and  
31 by whom the unit production allocated to an owner who does not  
32 pay the share of the cost of unit operation charged to that  
33 owner, or the interest of that owner, may be sold and the  
34 proceeds applied to the payment of the costs. The operator of

2 the unit shall have a first and prior lien for costs incurred  
3 pursuant to the plan of unitization upon each owner's  
4 geothermal rights and his share of unitized production to  
5 secure the payment of the owner's proportionate part of the  
6 cost of developing and operating the unit area. This lien may  
7 be established and enforced in the same manner as provided by  
8 sections 38-1-8 through 38-1-26. For these purposes any  
9 nonconsenting owner shall be deemed to have contracted with the  
10 unit operator for his proportionate part of the cost of  
11 developing and operating the unit area. A transfer or  
12 conversion of any owner's interest or any portion of it,  
13 however accomplished, after the effective date of the order  
14 creating the unit, shall not relieve the transferred interest  
15 of the operator's lien on the interest for the cost and expense  
16 of unit operations.

17 (f) A provision, if necessary, for carrying or otherwise  
18 financing any person who elects to be carried or otherwise  
19 financed, allowing a reasonable interest charge for this  
20 service payable out of that person's share of the production.

21 (g) A provision for the supervision and conduct of the  
22 unit operations, in respect to which each person shall have a  
23 vote with a value corresponding to the percentage of the costs  
24 of unit operations chargeable against the interest of that  
25 person.

26 (h) Such additional provisions that are found to be  
27 appropriate for carrying on the unit operations.

28 (5) No order of the division providing for unit  
29 operations shall become effective unless and until the plan for  
30 operations prescribed by the division has been approved in  
31 writing by those persons, who under the division's order, will  
32 be required to pay 66% of the costs of the unit operation, and  
33 also by the owners of 66% of the production or proceeds of same  
34 that are free of costs, such as royalties, overriding

2 royalties, and production payments; and the division has made a  
3 finding that the plan for unit operations has been so approved.  
4 If the persons owning the required percentage of interest in  
5 the unit area do not approve the plan within six months from  
6 the date on which the order is made, the order shall be  
7 ineffective and shall be revoked by the division unless for  
8 good cause shown the division extends this time.

9 (6) An order providing for unit operations may be amended  
10 by an order of the division in the same manner and subject to  
11 the same conditions as an original order for unit operations;  
12 but if this amendment affects only the rights and interests of  
13 the owners, the approval of the amendment by the owners of  
14 royalty, overriding royalty, production payments, and other  
15 interests which are free of costs shall not be required.  
16 Production allocation may be amended only according to  
17 subsection 73-21-7 (4) (c).

18 (7) All operations, including, but not limited to, the  
19 commencement, drilling, or operation of a well upon any portion  
20 of the unit area shall be deemed for all purposes the conduct  
21 of such operations upon each separately-owned tract in the unit  
22 by the several owners of tracts in the unit. The portions of  
23 the unit production allocated to a separately-owned tract in a  
24 unit area shall, when produced, be deemed for all purposes to  
25 have been actually produced from that tract by a well drilled  
26 on it. Good faith operations conducted pursuant to an order of  
27 the division providing for unit operations shall constitute a  
28 complete defense to any suit alleging breach of lease or of  
29 contractual obligations covering lands in the unit area to the  
30 extent that compliance with these obligations cannot be had  
31 because of the order of the division.

32 (8) The portion of the unit production allocated to any  
33 tract, and the proceeds from the sale of this production, shall  
34 be the property and income of the several persons to whom, or

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2 to whose credit, the same are allocated or payable under the  
3 order providing for unit operations.

4 (9) Except to the extent that the parties affected so  
5 agree and as provided in subsection 73-21-7 (4) (e), no order  
6 providing for unit operations shall be construed to result in a  
7 transfer of all or any part of the title of any person to the  
8 geothermal resource rights in any tract in the unit area. All  
9 property, whether real or personal, that may be acquired in the  
10 conduct of unit operations shall be acquired for the account of  
11 the owners within the unit area and shall be the property of  
12 these owners in the proportion that the expenses of unit  
13 operations are charged.

14 (10) An order of the division for unit operations shall  
15 constitute a complete defense to any suit charging violation of  
16 any statute relating to trusts, monopolies, and combinations in  
17 restraint of trade on account of unit operations conducted  
18 pursuant to the order.

19 Section 8. Section 73-21-8, Utah Code Annotated 1953, is  
20 enacted to read:

21 73-21-8. (1) Geothermal fluids are deemed to be a  
22 special kind of underground water resource, related to and  
23 potentially affecting other water resources of the state. The  
24 utilization or distribution for their thermal content and  
25 subsurface injection or disposal of same shall constitute a  
26 beneficial use of the water resources of the state.

27 (2) (a) Geothermal owners shall, prior to the  
28 commencement of, or increase in, production from a well or  
29 group of wells to be operated in concert, file an application  
30 with the division to appropriate such geothermal fluids as will  
31 be extracted from the well or group of wells. Publication of  
32 applications shall be made as provided in section 73-3-6, and  
33 protests may be filed as provided in section 73-3-7. The  
34 division shall approve an application if it finds that the

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2 applicant is a geothermal owner and that the proposed  
3 extraction of geothermal fluids will not impair existing rights  
4 to the waters of the state.

5 (b) The division may grant the quantity of an application  
6 on a provisional basis, to be finalized upon stabilization of  
7 well production. Flow testing of a discovery well shall not  
8 require an application to appropriate geothermal fluids.

9 (3) The date of an application to appropriate geothermal  
10 fluids, when approved by the division, shall be the priority  
11 date as between the geothermal owner and the owners of rights  
12 to water other than geothermal fluids. No priorities shall be  
13 created among geothermal owners by the approval of an  
14 application to appropriate geothermal fluids.

15 Section 9. Section 73-21-9, Utah Code Annotated 1953, is  
16 enacted to read:

17 73-21-9. Rights to geothermal resources and to geothermal  
18 fluids to be extracted in the course of production of  
19 geothermal resources acquired under section 73-21-8 shall be  
20 based on the principle of correlative rights.

21 Section 10. Section 73-21-10, Utah Code Annotated 1953,  
22 is enacted to read:

23 73-21-10. (1) Any person adversely affected by any rule,  
24 regulation, or order issued under this chapter may within 60  
25 days after the effective date of the rule or regulation or  
26 entry of the order bring a civil suit against the division in  
27 the district court of Salt Lake County or in the district court  
28 of the county in which the complaining person resides to test  
29 the validity of the rule, regulation, or order, or to secure an  
30 injunction or to obtain other appropriate relief, including all  
31 rights of appeal.

32 (2) An action or appeal involving any provision of this  
33 chapter, or a rule, regulation, or order issued under it shall  
34 be determined as expeditiously as feasible. The trial court

1 shall determine the issues on both questions of law and fact  
2 and shall affirm or set aside the rule, regulation, or order,  
3 or remand the cause to the division for further proceedings.  
4 The court is authorized to enjoin permanently the enforcement  
5 by the division of this chapter, or any act done or threatened  
6 under it, if the plaintiff shall show that as to him the act or  
7 conduct complained of is unreasonable, unjust, arbitrary, or  
8 capricious, or violates any constitutional right of the  
9 plaintiff or if the plaintiff shows that the act complained of  
10 constitutes or results in waste or does not in a reasonable  
11 manner accomplish an end that is the purpose of this chapter.

12 (3) Any person who, for the purpose of evading this  
13 chapter or any rule, regulation, or order of the division  
14 issued under it, shall make or cause to be made any false entry  
15 in any report, record, account, or memorandum required by this  
16 chapter, or by any rule, regulation, or order issued under it,  
17 or shall omit or cause to be omitted from the report, record,  
18 account, or memorandum, full, true and correct entries as  
19 required by this chapter, or by the rule, regulation, or order,  
20 or shall remove from this state or destroy, mutilate, alter, or  
21 falsify the record, account, or memorandum, is guilty of a  
22 class A misdemeanor.  
23

24 (4) No suit, action, or other proceeding based upon a  
25 violation of this chapter or any rule, regulation, or order of  
26 the division issued under it shall be commenced or maintained  
27 unless same shall have been commenced within two years from the  
28 date of the alleged violation.

29 Section 11. If any provision of this act, or the  
30 application of any provision to any person or circumstance, is  
31 held invalid, the remainder of this act shall not be affected  
32 thereby.

33 Section 12. Section 73-1-20, Utah Code Annotated 1953, as  
34 enacted by Chapter 189, Laws of Utah 1973, is repealed.