

GREAT SALT LAKE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill addresses management of the Great Salt Lake and related activities.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to severance taxes;
- ▶ clarifies minerals with royalties going to the Great Salt Lake Account;
- ▶ addresses mineral leases or royalty agreements related to the Great Salt Lake;
- ▶ provides for royalties for certain elements and minerals;
- ▶ defines terms;
- ▶ codifies legislative findings;
- ▶ modifies the Division of Forestry, Fire, and State Lands' management

responsibilities for the Great Salt Lake, including addressing rulemaking;

- ▶ establishes emergency management responsibilities and powers;
- ▶ addresses force majeure; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-5-202, as last amended by Laws of Utah 1990, Chapter 295

65A-5-1, as last amended by Laws of Utah 2022, Chapter 54

65A-5-1.5, as enacted by Laws of Utah 2022, Chapter 54

65A-6-2, as last amended by Laws of Utah 1994, Chapter 294

65A-6-4, as last amended by Laws of Utah 1994, Chapter 294

73-30-202, as last amended by Laws of Utah 2012, Chapter 242

ENACTS:

65A-10-201, Utah Code Annotated 1953

65A-10-202, Utah Code Annotated 1953

65A-10-204, Utah Code Annotated 1953

65A-10-205, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

65A-10-203, (Renumbered from 65A-10-8, as last amended by Laws of Utah 2022, Chapter 78)

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

Section 1. Section **59-5-202** is amended to read:

59-5-202. Severance tax -- Rate -- Computation -- Annual exemption.

(1) ~~Every~~ A person engaged in the business of mining or extracting metalliferous minerals in this state shall pay to the state a severance tax equal to 2.6% of the taxable value of all metals or metalliferous minerals sold or otherwise disposed of.

(2) If the metals or metalliferous minerals are shipped outside the state, this constitutes a sale, and the finished metals or the recoverable units of finished metals from the metalliferous minerals shipped are subject to the severance tax. If the metals or metalliferous minerals are stockpiled, the tax is not applicable until they are sold or shipped out of state. For purposes of the tax imposed by this chapter, uranium concentrates shall be considered to be finished metals. The owner of the metals or metalliferous minerals that are stockpiled shall report to the commission annually, in a form acceptable to the commission, the amount of metalliferous minerals so stockpiled. Metals or metalliferous minerals that are stockpiled for more than two years, however, are subject to the severance tax.

(3) An annual exemption from the payment of the tax imposed by this chapter upon the first \$50,000 in gross value of the metalliferous mineral is allowed to each mine.

(4) These taxes are in addition to all other taxes provided by law and are delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year when the metalliferous mineral is produced and sold or delivered.

(5) (a) As used in this Subsection (5):

(i) "Great Salt Lake extraction operator" means a person who:

(A) is engaged in the business of mining or extracting metal or metalliferous minerals from the brine of the Great Salt Lake; and

(B) as of July 1, 2020, had a mineral lease with the Division of Forestry, Fire, and State Lands, but not a royalty agreement for a metalliferous mineral, chloride compound, or salt.

(ii) "Metalliferous compound" means a metalliferous mineral or a chloride compound or salt containing a metalliferous mineral.

(b) Notwithstanding the exclusion for chloride compounds or salts from the definition of metalliferous minerals under Section 59-5-201, beginning with calendar year 2023, a Great Salt Lake extraction operator shall pay to the state a severance tax in accordance with this part for the mining of a metalliferous compound.

(c) This Subsection (5) may not be interpreted to:

(i) excuse a person from paying a severance tax in accordance with the other provisions of this part; or

(ii) void a mineral lease or royalty agreement.

(d) A person extracting metal or metalliferous minerals, including a metalliferous compound, from the brine of the Great Salt Lake is subject to the payment of a royalty agreement under Section 65A-6-4 and the payment of a severance tax under this part.

Section 2. Section 65A-5-1 is amended to read:

65A-5-1. Sovereign Lands Management Account.

(1) There is created within the General Fund a restricted account known as the "Sovereign Lands Management Account."

(2) The Sovereign Lands Management Account shall consist of the following:

(a) the revenues derived from sovereign lands, except for revenues deposited into the Great Salt Lake Account under Section 65A-5-1.5;

(b) that portion of the revenues derived from mineral leases on other lands managed by the division necessary to recover management costs;

(c) fees deposited by the division; and

(d) amounts deposited into the account in accordance with Section 59-23-4.

(3) (a) The expenditures of the division relating directly to the management of sovereign lands shall be funded by appropriation by the Legislature from the Sovereign Lands Management Account or other sources.

(b) Money in the Sovereign Lands Management Account may be used only for the direct benefit of sovereign lands, including the management of sovereign lands.

(c) In appropriating money from the Sovereign Lands Management Account, the Legislature shall prefer appropriations that benefit the sovereign land from which the money is derived unless compelling circumstances require that money be appropriated for sovereign land other than the sovereign land from which the money is derived.

(4) The division shall use the amount deposited into the account under Subsection (2)(d) for the Great Salt Lake as described in Section ~~65A-10-8~~ 65A-10-203 as directed by the Great Salt Lake Advisory Council created in Section 73-30-201.

Section 3. Section 65A-5-1.5 is amended to read:

65A-5-1.5. Great Salt Lake Account.

(1) As used in this section:

(a) "Account" means the Great Salt Lake Account created in this section.

(b) "Mineral" includes a chemical compound that includes an element or mineral.

~~[(b)]~~ (c) "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a natural deposit of the mineral.

(2) (a) There is created within the General Fund a restricted account known as the "Great Salt Lake Account" consisting of:

(i) revenues deposited into the account under Subsection (3);

(ii) appropriations from the Legislature; and

(iii) interest and other earnings described in Subsection (2)(b).

(b) The Office of the Treasurer shall deposit interest and other earnings derived from investment of money in the account into the account.

(3) The division shall deposit into the account the royalty income received by the state

from mining that occurs on or after July 1, 2022, of a mineral from the sovereign lands of the Great Salt Lake if during the fiscal year beginning July 1, 2020, the state did not receive royalty income from the mining of that same mineral from the sovereign lands of the Great Salt Lake.

(4) Upon appropriation by the Legislature, money in the account may be used to manage the water levels of the Great Salt Lake.

Section 4. Section **65A-6-2** is amended to read:

65A-6-2. Mineral leases -- Division to prescribe rules.

The division shall by rule prescribe:

(1) the term of the lease;

(2) the annual rental;

(3) subject to Section 65A-6-4, the amount of royalty in addition to or in lieu of rental;

and

(4) the basis upon which the royalty shall be computed.

Section 5. Section **65A-6-4** is amended to read:

65A-6-4. Mineral leases -- Multiple leases on same land -- Rentals and royalties -- Lease terms -- Great Salt Lake.

(1) As used in this section:

(a) "Great Salt Lake element or mineral" means:

(i) a rare earth element;

(ii) a trace element or mineral; or

(iii) a chemical compound that includes a rare earth element or trace element or mineral.

(b) "Rare earth element" is one of the following ores, minerals, or elements located in the brines or the sovereign lands of the Great Salt Lake:

(i) lanthanum;

(ii) cerium;

(iii) praseodymium;

(iv) neodymium;

(v) samarium;

(vi) europium;

(vii) gadolinium;

- (viii) terbium;
(ix) dysprosium;
(x) holmium;
(xi) erbium;
(xii) thulium;
(xiii) ytterbium;
(xiv) lutetium; and
(xv) yttrium.

(c) "Trace element or mineral" means an element or mineral that is located in the brines or the sovereign lands of the Great Salt Lake that is not in production by July 1, 2020, and for which the state has not received a royalty payment by July 1, 2020.

(2) (a) Mineral leases, including oil, gas, and hydrocarbon leases, may be issued for prospecting, exploring, developing, and producing minerals covering any portion of state lands or the reserved mineral interests of the state.

(b) (i) Leases may be issued for different types of minerals on the same land.

(ii) If leases are issued for different types of minerals on the same land, the leases shall include stipulations for simultaneous operations.

(c) No more than one lease may be issued for the same resource on the same land.

(d) The division shall require a separate royalty agreement for extraction of minerals from brines of the Great Salt Lake when:

(i) a mineral lease, a royalty agreement, or both that are in effect before the operator seeks to extract a particular mineral or mineral compound do not expressly include the right to extract the particular mineral or mineral compound; or

(ii) the proposed operation will use brines from the Great Salt Lake, but will not occupy sovereign lands for the direct production of minerals other than for incidental structures such as pumps and intake and outflow pipelines.

[~~(2)~~] (3) (a) Each mineral lease issued by the division shall provide for an annual rental of not less than \$1 per acre per year, except that a mineral lease issued by the division involving the extraction of mineral from brines in the Great Salt Lake shall provide for an annual rental of not less than \$100 per acre per year.

(b) However, a lease may provide for a rental credit, minimum rental, or minimum

royalty upon commencement of production, as prescribed by rule.

~~[(3)]~~ (4) The primary term of a mineral lease may not exceed:

(a) 20 years for oil shale and tar sands; and

(b) 10 years for oil and gas and any other mineral.

(5) (a) Subject to the other provisions of this Subsection (5), for a mineral lease or royalty agreement involving the extraction of minerals from brines in the Great Salt Lake, the division shall ensure that following terms are included:

(i) an extraction operation or extraction method shall adhere to commercially available technologies that minimize water depletion or evaporation;

(ii) an extraction operation or extraction method shall mitigate depletion or evaporation that occurs through operations or processing by providing water back into the Great Salt Lake that approximates the volume of water lost through operations, processing, or evaporation;

(iii) a provision authorizing the division to curtail or limit mineral production at any time the condition of the Great Salt Lake reaches the emergency trigger, as defined in Section [65A-10-201](#);

(iv) a provision authorizing the division to withdraw lands, operations, extraction methods, or technologies from mineral production or mineral operations; and

(v) a provision allowing the division to require an existing operator to use commercially available, innovative technologies to minimize water evaporation or depletion caused by the planned mineral extraction as a condition of continued operations.

(b) If as of May 3, 2023, an operator has a mineral lease but not a royalty agreement involving the extraction of minerals from brines in the Great Salt Lake, the extraction operation or extraction method shall mitigate depletion and evaporation as provided in Subsection (5)(a)(ii) only to the extent that the extraction operation or extraction method increases depletion and evaporation as compared to the 10-year average of depletion and evaporation measured beginning on January 1, 2013, and ending on December 31, 2022.

(c) If under Subsection (5)(a)(v) the division requires an existing operator to use a commercially available, innovative technology, the division may not require use of the technology to begin until after a reasonable period determined by the division not to exceed five years.

(6) (a) Upon nomination from a prospective operator, the division shall by rule, made

in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a royalty rate and calculation methodology for a Great Salt Lake element or mineral that:

(i) provides for a full and fair return to the state from the production of the Great Salt Lake element or mineral;

(ii) is consistent with market royalty rates applicable to the production of the Great Salt Lake element or mineral or of the production of oil and gas;

(iii) provides a base royalty rate;

(iv) provides a reduced royalty rate from the royalty rate under Subsection (6)(a)(iii) if the royalty agreement:

(A) relates to a non-evaporative method of producing the Great Salt Lake element or mineral; or

(B) provides an incentive to use commercially available, innovative technology to minimize water depletion and evaporation as determined by the division; and

(v) provides for a royalty rate that is based on the highest market value prevailing at the time of the sale or disposal of the following:

(A) the Great Salt Lake element or mineral; or

(B) a product the lessee produces from the Great Salt Lake element or mineral.

(b) Before entering into a royalty agreement permitting the extraction of Great Salt Lake elements or minerals, the operator shall:

(i) demonstrate commercial viability;

(ii) certify before operation begins that the operator is not negatively impacting the biota or chemistry of the Great Salt Lake; and

(iii) obtain the approval of the division and the Department of Environmental Quality that the certification supports a finding that the operation will not negatively impact the biota or chemistry of the Great Salt Lake.

(c) A new mineral lease for a mineral in production in the Great Salt Lake as of May 3, 2023, is subject to new royalty rates due to emergent technologies.

(d) An operator who as of July 1, 2020, had a mineral lease with the division but not a royalty agreement and who is subject to a severance tax under Subsection 59-5-202(5) shall pay a royalty under this section in addition to the severance tax.

(7) An operator who extracts a Great Salt Lake element or mineral from tailings from

the production of minerals from brines in the Great Salt Lake is subject to this section to the same extent as an operator producing a Great Salt Lake element or mineral from brines in the Great Salt Lake.

(8) Actions under this section related to the Great Salt Lake are reasonable and necessary in light of the legislative findings under Section [65A-10-202](#).

~~[(4) The division shall make rules regarding the continuation of a mineral lease after the primary term has expired, which shall provide that a mineral lease shall continue so long as:]~~

~~[(a) the mineral covered by the lease is being produced in paying quantities from:]~~

~~[(i) the leased premises;]~~

~~[(ii) lands pooled, communitized, or unitized with the leased premises; or]~~

~~[(iii) lands constituting an approved mining or drilling unit with respect to the leased premises; or]~~

~~[(b) (i) the lessee is engaged in diligent operations, exploration, research, or development which is reasonably calculated to advance development or production of the mineral covered by the lease from:]~~

~~[(A) the leased premises;]~~

~~[(B) lands pooled, communitized, or unitized with the leased premises; or]~~

~~[(C) lands constituting an approved mining or drilling unit with respect to the leased premises; and]~~

~~[(ii) the lessee pays a minimum royalty.]~~

~~[(5) For the purposes of Subsection (4), diligent operations with respect to oil, gas, and other hydrocarbon leases may include cessation of operations not in excess of 90 days in duration.]~~

Section 6. Section **65A-10-201** is enacted to read:

Part 2. Great Salt Lake Management

65A-10-201. Definitions.

As used in this part:

(1) "Emergency trigger" means that the salinity levels of the south arm of the Great Salt Lake do not satisfy the ecological conditions required for functional brine shrimp and brine fly reproduction.

(2) "Healthy physical and ecological condition" means that the south arm of the Great Salt Lake has sustained salinity levels that satisfy the ecological conditions required for functional brine shrimp and brine fly reproduction.

(3) "Management berm" means a berm on the Great Salt Lake that is implemented and maintained for the management of salinity.

(4) "UP causeway breach" means the 21-mile Union Pacific Railroad causeway across the Great Salt Lake that separates the Great Salt Lake into a north arm and a south arm of different salinities.

Section 7. Section **65A-10-202** is enacted to read:

65A-10-202. Legislative findings.

The Legislature finds that:

(1) under Section 65A-10-1 the division, as the manager of sovereign lands, has a duty to serve the public interest in managing the Great Salt Lake;

(2) the Great Salt Lake is a critical resource owned and managed by the state;

(3) the lake levels of the Great Salt Lake have reached historic lows, requiring action by the state to address significant risks and minimize dangers to protect the ecological integrity of the Great Salt Lake, the state's environment in general, and the welfare of the state's citizens; and

(4) the management of the Great Salt Lake under this part, especially if the emergency trigger is reached, is reasonable and necessary to serve important public purposes and no reasonable alternative meets the interests described in Subsection (3).

Section 8. Section **65A-10-203**, which is renumbered from Section 65A-10-8 is renumbered and amended to read:

[65A-10-8]. 65A-10-203. Great Salt Lake -- Management responsibilities of the division.

The division has the following powers and duties:

(1) The division shall ~~[prepare and maintain a comprehensive plan for the Great Salt Lake that recognizes the following policies]~~ make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the management of the Great Salt Lake that recognize and balance the following public trust values and public interest benefits and policies:

307 ~~[(a) develop strategies to deal with a fluctuating lake level;]~~

308 ~~[(b) encourage development of the Great Salt Lake in a manner that will preserve the~~
309 ~~Great Salt Lake, encourage availability of brines to lake extraction industries, protect wildlife,~~
310 ~~and protect recreational facilities;]~~

311 ~~[(c) maintain the Great Salt Lake's flood plain as a hazard zone;]~~

312 ~~[(d)]~~ (a) strategies to effectively and efficiently manage the Great Salt Lake based on
313 the Great Salt Lake's fluctuating lake levels;

314 (b) development of the Great Salt Lake that balances, in a manner that promotes a
315 healthy physical and ecological condition:

316 (i) migratory and shorebirds habitats;

317 (ii) wetlands;

318 (iii) brines, minerals, chemicals, and petro-chemicals;

319 (iv) brine shrimp;

320 (v) the protection of wildlife and wildlife habitat;

321 (vi) the protection of recreational access and facilities; and

322 (vii) search and rescue efforts;

323 (c) [promote] water quality management for the Great Salt Lake and the Great Salt
324 Lake's tributary streams, including adequate nutrients, healthy salinity levels, and sufficient
325 water quantity;

326 ~~[(e) promote the development of lake brines, minerals, chemicals, and petro-chemicals~~
327 ~~to aid the state's economy;]~~

328 ~~[(f) encourage the use of appropriate areas for extraction of brine, minerals, chemicals,~~
329 ~~and petro-chemicals;]~~

330 ~~[(g) maintain the Great Salt Lake and the marshes as important to shorebirds,~~
331 ~~waterfowl, and other waterbird flyway system;]~~

332 ~~[(h) encourage the development of an integrated industrial complex;]~~

333 ~~[(i) promote and maintain recreation areas on and surrounding the Great Salt Lake;]~~

334 ~~[(j) encourage safe boating use of the Great Salt Lake;]~~

335 ~~[(k) maintain and protect state, federal, and private marshlands, rookeries, and wildlife~~
336 ~~refuges; and]~~

337 ~~[(l)]~~ (d) [provide] public access to the Great Salt Lake for recreation, hunting, and

fishing[-];

(e) temperature moderation, a stable role in the water cycle, and dust mitigation;

(f) maintain the Great Salt Lake's flood plain as a hazard zone;

(g) maintain the Great Salt Lake and the marshes as important shorebirds, waterfowl, and other waterbird flyway system;

(h) promote and maintain recreation areas on and surrounding the Great Salt Lake; and

(i) maintain and protect state, federal, and private marshlands, rookeries, and wildlife refuges.

(2) The division shall prepare and maintain a comprehensive management plan for the Great Salt Lake that is consistent with the public trust values and public interest benefits and policies established by rule under Subsection (1).

~~[(2)]~~ (3) The division may employ personnel and purchase equipment and supplies that the Legislature authorizes through appropriations for the purposes of this chapter.

~~[(3)]~~ (4) The division may initiate studies of the Great Salt Lake and the Great Salt Lake's related resources.

~~[(4)]~~ (5) The division may publish scientific and technical information concerning the Great Salt Lake.

~~[(5)]~~ (6) The division shall define the Great Salt Lake's flood plain.

~~[(6)]~~ (7) The division may qualify for, accept, and administer grants, gifts, or other funds from the federal government and other sources, for carrying out any functions under this chapter.

~~[(7)]~~ (8) The division shall determine the need for public works and utilities for the lake area.

~~[(8)]~~ (9) The division may implement the comprehensive plan described in Subsection ~~[(+)]~~ (2) through state and local entities or agencies.

~~[(9)]~~ (10) The division shall coordinate the activities of the various divisions within the Department of Natural Resources with respect to the Great Salt Lake.

~~[(10)] The division may perform all other acts reasonably necessary to carry out the purposes and provisions of this chapter.]~~

(11) The division shall retain and encourage the continued activity of the Great Salt Lake technical team.

(12) The division shall administer Chapter 16, Great Salt Lake Watershed Enhancement Program.

(13) The division shall administer Section [65A-10-204](#) when the Great Salt Lake emergency trigger is reached.

(14) The division shall manage the adaptive management berm in the UP causeway breach to manage salinity and to protect the ecosystem of Gilbert Bay. Unless salinity conditions in Gilbert Bay warrant raising the management berm, the policy of the state is to keep the UP causeway breach open so as to allow the exchange of water between Gilbert and Gunnison Bays.

(15) The division may perform acts other than those described in Subsections (1) through (14) that are reasonably necessary to carry out this chapter.

Section 9. Section **65A-10-204** is enacted to read:

65A-10-204. Emergency management responsibilities of the division.

(1) When the Great Salt Lake reaches the emergency trigger, the division:

(a) may construct, operate, modify, and maintain one or more management berms;

(b) may construct, operate, modify, and maintain a management system or structure in addition to or in lieu of a management berm;

(c) may enter into agreements as necessary to provide for all or a portion of a management berm, system, or structure;

(d) is exempt from Title 63G, Chapter 6a, Utah Procurement Code, when acting to manage the Great Salt Lake under this section;

(e) is not liable for a third-party claim resulting from the division's actions to manage the Great Salt Lake under this section;

(f) may decline to issue a new permit, authorization, or agreement and may curtail mineral production for leases that contain provisions contemplating curtailment or similar contractual remedies;

(g) may implement mineral lease withdrawal over one or more of the following:

(i) portions of the Great Salt Lake;

(ii) specific methods of extraction; or

(iii) specific minerals; and

(h) may require the implementation of one or more of the following:

(i) extraction methods that are non-depletive in nature;

(ii) mitigation to offset depletion; or

(iii) innovative extraction technologies.

(2) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for the procedures the division shall follow in taking an action described in Subsection (1).

Section 10. Section **65A-10-205** is enacted to read:

65A-10-205. Force majeure.

(1) For purposes of managing the Great Salt Lake, the division may treat the fact that the Great Salt Lake has reached the emergency trigger as a triggering event for the purposes of invoking a force majeure provision in a contract, mineral lease, or royalty agreement.

(2) In addition to the standard mechanisms whereby performance is excused by invocation of a force majeure provision, the division shall include language in a contract, mineral lease, or royalty agreement whereby the division may curtail or prohibit mineral production that results in a net depletion of water.

(3) If the division invokes a force majeure provision in a contract, mineral lease, or royalty agreement, the effected operator is relieved from performance of any contractual provision requiring production to hold the contract, mineral lease, or royalty agreement for a maximum of two years. If the conditions creating the emergency trigger persists beyond a two-year period, the division shall terminate the contract, mineral lease, or royalty agreement and require the operator to engage in new contractual agreements whereby the operator represents and warrants that future operations will not amount to a net depletion of water.

Section 11. Section **73-30-202** is amended to read:

73-30-202. Duties of the council.

(1) (a) The council shall advise the persons listed in Subsection (1)(b) on the sustainable use, protection, and development of the Great Salt Lake in terms of balancing:

(i) sustainable use;

(ii) environmental health; and

(iii) reasonable access for existing and future development.

(b) The council shall advise, as provided in Subsection (1)(a):

(i) the governor;

431 (ii) the Department of Natural Resources; and
432 (iii) the Department of Environmental Quality.
433 (2) The council shall assist the Division of Forestry, Fire, and State Lands in its
434 responsibilities for the Great Salt Lake described in [~~Section 65A-10-8~~] Sections 65A-10-203
435 and 65A-10-204.
436 (3) The council:
437 (a) may recommend appointments to the Great Salt Lake technical team created by the
438 Division of Forestry, Fire, and State Lands; and
439 (b) shall receive and utilize technical support from the Great Salt Lake technical team.
440 (4) The council shall assist the Department of Natural Resources, the Department of
441 Environmental Quality, and their applicable boards in accomplishing their responsibilities for
442 the Great Salt Lake.
443 (5) The council shall report annually to the Natural Resources, Agriculture, and
444 Environmental Quality Appropriations Subcommittee on the council's activities.