

SMITH | HARTVIGSEN <sup>PLLC</sup>  
ATTORNEYS AT LAW

# WATER & THE LAW

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## Spring Issue 2011

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## Upcoming Events

Utah Water User's  
Association Annual  
Conference  
March 14-16, 2011  
St. George, UT

For more information click  
[here](#)

Water Law & Policy Seminar  
March 14, 2011  
St. George, UT

For more information contact  
Jack Barnett at:  
[jbarnett@barnettwater.com](mailto:jbarnett@barnettwater.com)  
or 801-292-4662

ABA Annual Conference on  
Environmental Law  
March 17-19, 2011  
Salt Lake City, UT

For more information click  
[here](#)

Northern Utah Water Users  
Conference  
March 30, 2011  
Logan, UT

For more information contact  
Bob Fotheringham at:  
[bob.fotheringham@cachecounty.org](mailto:bob.fotheringham@cachecounty.org)  
or 435-755-1854

## Greetings!

Welcome to the 2011 Spring edition of *Water and the Law* we hope you will find this newsletter to be helpful and informative. As always, we welcome your feedback. If you have questions or comments, please reply to this e-mail or call us at 801-413-1600.

Craig Smith  
David Hartvigsen  
Matt Jensen  
Bryan Bryner  
Jeff Gittins

## Upcoming Seminar

Smith Hartvigsen is pleased to inform you of an upcoming seminar at which David B. Hartvigsen and Matthew E. Jensen will be speaking. We would like to personally let you know about this seminar and that you can receive a **20% discount** on the registration fees because David and Matt are faculty members. The seminar is:

**Water Rights Sales and Transfers**  
April 7, 2011 in Salt Lake City, UT

A copy of the seminar brochure can be found on the following link:

[www.lorman.com/383776](http://www.lorman.com/383776)

If you or any one of your colleagues wish to attend, there are several easy ways to register:

- Complete the registration form in the brochure and fax or mail the form and payment to Lorman Education Services
- Register online at <http://www.lorman.com>
- Call 1-866-352-9539

When registering, use priority code **15800** and discount code **F2716129** to receive the 20% discount.

Water Environment  
Association of Utah  
Annual Conference  
April 5-7, 2011  
St. George, UT

For more information click  
[here](#)

American Water Resources  
Association - Utah  
Conference  
May 10, 2011  
Salt Lake City, UT

For more information click  
[here](#)

To view more information  
about water law in Utah, visit  
our water blog at

[utahwaterrights.blogspot.com](http://utahwaterrights.blogspot.com)



#### Contact Us

If you have any questions or  
if you would like to see  
something discussed in the  
future, please let us know  
by sending an e-mail to  
[info@smithlawonline.com](mailto:info@smithlawonline.com)

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## 2011 LEGISLATIVE REPORT ON WATER ISSUES

by David B. Hartvigsen

The 2011 Session of the Utah Legislature concluded yesterday (March 10, 2011) and, with respect to water related bills, was a much less controversial and prolific session than prior sessions. Of the 27 bill files opened this session on water issues, 15 became actual bills, and 11 were passed by the Legislature. The following is a brief summary of those 11 bills that passed. They are now being prepared for the Governor's review and signature. We do not anticipate that the Governor will veto any of these bills. Most of the bills will take effect on May 10, 2011. Copies of the bills and amendments can be found at <http://le.utah.gov/session/2011/bills.htm> and "enrolled" (clean versions in final format) copies, as they become available, can be found at <http://le.utah.gov/asp/passedbills/passedbills.asp>.

### Bills Addressing Significant or Substantive Water Policy Issues

**S.B. 25 - Lost Water Share Certificates** - provides a new "safe harbor" for water companies and shareholders to use in dealing with lost or missing water stock certificates. It provides for notice of the proposed issuance of a replacement certificate to be given to the public and to those known to have a possible interest in the shares covered by a lost certificate, such as those who have paid assessments on those shares within the last five years. In general, if no objections are filed with the company within a 60-day period, the company may issue a replacement certificate and both the company and the holder of the new certificate are protected against future claims of ownership of those shares. If an objection is received, the company can either evaluate the claims and take action as it deems appropriate or tell the parties to go have a court settle the dispute. There are more specific requirements and procedures that must be followed, but this is the basic concept.

**S.B. 108 (2<sup>nd</sup> Sub.) - Joint Use of a Canal or Ditch** - adds clarifying language to Section 73-1-7 of the Utah Code concerning the use of an existing canal or ditch to convey "new" water (water for which there is not an existing shareholder or contractual right to have that water conveyed in a particular canal or ditch). This bill requires the person or entity that is seeking to convey the new water and the owner of the canal or ditch through which the new water is proposed to be conveyed to negotiate in good faith a written contract concerning how this

is to be done. The bill also lists several factors that should be addressed in the written contract. It also provides default positions on liability issues and voting and control issues, which could, of course, be changed in the negotiated contract between the parties.

### **Bills Making Minor Changes or Technical Revisions**

**S.B. 10 - Local District Amendments** - corrects a bill passed last year by allowing a local district to acquire water rights in connection with an approved Groundwater Management Plan. This bill provides that the owners of the groundwater rights rather than the owners of the land are the ones that vote on creating this type of local district and are the ones that are assessed by such a district.

**S.B. 20 - Management of Water Rights Amendments** - allows a local district created to assist in the development and implementation of a Groundwater Management Plan in a critical management area to hold surface water rights as well as groundwater rights for groundwater basin recharge purposes. It also provides that the artificial recharging of a groundwater basin in a critical management area is a beneficial use of water.

**S.B. 26 - Water Law Modifications** - makes the recording of Certificates of Beneficial Use of Water with county recorders optional instead of mandatory. Due to changes in water law over the past few decades, the primary reason for recording the Certificates no longer exists. However, it is still a good practice to record these certificates.

**S.B. 102 - Temporary Water Shortage Emergency - Military Facilities** - amends the water priorities statute rewritten last year by adding military facilities to the list of water users entitled to a special priority for drinking water, sanitation water, and fire suppression water in times of temporary water shortage emergencies.

**H.B. 39 - Water Rights Amendments** - makes corrections in subsections 3 and 4 of Section 73-3-18. An incorrect reference to "forfeited" applications is deleted from subsection 3 and an incorrect cross-reference in subsection 4 is changed from Section 73-3-17 to Section 73-3-12.

**H.B. 132 (1<sup>st</sup>) - Water Quality Amendments** - authorizes the Water Quality Board to make rules relating to agriculture water that are more stringent than federal regulation if the Conservation Commission approves the new rules.

**H.B. 247 - Water Development Amendments** - allows the State to charge a loan origination fee on federally funded water development loans issued by the Drinking Water Board or the Water Quality Board. The fee may be rolled into the loan and then paid out of the loan proceeds.

**H.B. 420 (1<sup>st</sup> Sub.) - Water Quality Board Powers and Duties** - authorizes the Water Quality Board to review all Total Maximum Daily Load ("TMDL") reports and recommendations before they are submitted to the EPA and to approve, disapprove, or approve with conditions all TMDL recommendations. It also requires any board approved TMDL recommendation or strategy that will cost between \$10M and \$100M be submitted to an Interim Legislative Committee for consideration and any recommendation or strategy that will cost over \$100M be approved by the Legislature. This bill takes effect on July 1, 2012.

**H.B. 428 - Water Issues Task Force** - creates a 13 member legislative task force to study two issues - improving water development financing and separating out mutual water companies into their own chapter of the Utah Code on corporations. Mutual water companies are currently included as part of the chapter on non-profit organizations with are typically, quite different in focus and function.

Each year, the Legislature passes a "Master Study Resolution" (H.J.R. 24) which lists the issues that the Legislature has determined should be studied in the "interim" before next year's session in addition to those listed in specific bills, such as H.B. 428. This year, that list includes the following: (1) issues related to the inter-basin transfer of water; (2) the possible regulation of the types of underground and above ground storage containers that can be used when collecting rainwater; (3) the requirement that a person negotiate in good faith to form a contract before using or enlarging another person's canal or ditch to convey water (S.B. 108); and (4) the process for reviewing Total Maximum Daily Load reports before submission to the Environmental Protection Agency (H.B. 420).

Public input is always welcomed as these issues are studied by interim committees and task forces. Therefore, this is your opportunity to help shape and direct new laws in a less formal setting than when the Legislature is in session. If there is something that you see that needs to be addressed, please get involved. You are welcome to contact us if you are unsure how to do that.

We welcome feedback and questions. Please contact us at [info@smithlawonline.com](mailto:info@smithlawonline.com)  
Or Visit us at [www.smithhartvigsen.com](http://www.smithhartvigsen.com)

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