

# WATER & THE LAW

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## 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)

or contact one of us directly through the following links:

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To view previous newsletters, visit our website [www.smithhartvigsen.com](http://www.smithhartvigsen.com)

## Upcoming Events

**Northern Utah Mini Water Conference**  
**Mar. 30, 2015**  
**Logan, UT**  
For more information call:  
435-753-6029

**Water Environment Association of Utah Annual Conference**  
**Apr. 28 - May 1, 2015**  
**St. George, UT**  
For more information click

Welcome to the Spring 2015 Issue of *Water & 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.

Smith Hartvigsen, PLLC

## 2015 Legislative Summary on Water Related Bills

By J. Craig Smith, David B. Hartvigsen and Jeffry R. Gittins

The 2015 General Session of the Utah Legislature began on January 26th and ended at midnight on March 12th. The last day for the Governor to sign or veto bills is April 1st, and the effective date for most of the newly enacted bills will be May 12th, unless otherwise noted below. You may click on the underlined bill numbers to access the actual text of the bills.

Included below is a summary of the water related bills that passed. Often, it is equally important to review those bills that did not pass and discuss the topics that will likely be addressed during "Interim." These items are also included below.

## BILLS THAT PASSED

### House Bills

#### **House Bill 25: Application Revisions** **Representative V. Lowry Snow**

Big Change - Little Fanfare

A coalition of large districts and organizations, such as Utah Farm Bureau, along with the State Engineer successfully supported HB 25, amending the process and scope of review for change applications (commonly known as the "Jensen Fix" relating to the Supreme Court decision in Jensen v. Jones). HB 25 garnered little debate or controversy and will allow the State Engineer to consider non-use when acting on change applications. This has been described as part of the "gatekeeper" function of the State Engineer.

The bill provides the State Engineer a 90-day window, after a change application is filed, to give the applicant notice of any

[here](#)

**American Water Resources  
Association-Utah  
Annual Conference  
May 12, 2015  
Salt Lake City, UT**

For more information click  
[here](#)

concerns the State Engineer may have regarding non-use and the resulting impact (defined in terms of "quantity impairment") that the proposed change may have on one or more specifically identified water rights. If the State Engineer gives such notice, or if a timely protest is filed alleging quantity impairment because of the unexcused non-use of water, then the applicant has the burden of proving that the water, right subject to the change, has been beneficially used and quantity impairment will not occur. If the applicant cannot overcome this presumption and prove that all of the water right has been beneficially used the State Engineer may reject the application or reduce the amount approved to the extent that such quantity impairment is likely to occur. The bill also reorganizes the application to appropriate and change application statutes UCA §§ 73-3-8 and 73-3-3 and makes some minor technical changes to the wording.

The impact of this legislation on the change application process is likely not yet widely understood. Most, if not all, protested change applications will become "mini beneficial use adjudications." Protestants with the inclusion of a sentence or two in their Protests will require the applicant to "prove it or lose it." While the water right will not be forfeited, the change may be rejected or the amount changed may be reduced and the water right tainted with a nonuse label if either rejection or reduction occur.

The most vulnerable are individual water users who have not fully beneficially used all of their water right. Public Water Suppliers as defined in UCA § 73-1-4(1)(b) will continue to be protected under forfeiture protections and the forty year planning horizon which became law through HB 51 in 2008.

If you are not a Public Water Supplier, and you are not beneficially using all of the water allowed under your water right you should strongly consider either putting 100% of your water right to beneficial use or filing for non-use status, or both. If you are buying a water right and filing a change application you need to make the purchase subject to an approved change or face the possibility of not ending up with the water you thought you had purchased.

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

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



To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0025.html>

### **House Bill 43: Water Rights - Change Application Amendments Representative Kay L. McIff**

This bill changes the procedures for shareholders of a mutual water company requesting the filing of a change application. It requires that the company respond to the change within 120 days after receiving the change application request from the shareholder. Failure to respond will be interpreted as consent. It requires mediation if the company refuses to file the change application or if the shareholder and mutual water company cannot agree to

conditions of the change application. It also allows the shareholder to advance the change application to the State Engineer for administrative review regardless of the mutual water company decision. If the mutual water company declines the change application request, the company is required to state the reasons why.

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0043.html>

### **House Bill 58: Change Application Modification** **Representative Keith Grover**

This bill is in response to the 2011 Utah Supreme Court ruling in the (Salt Lake City v. Big Ditch) case that concluded that Big Ditch, while not the owner of certain water rights, could file a change application on those water rights because it was a "person entitled to the use of water," as that phrase is used in the "Change Application" statute, pursuant to a contract it has with Salt Lake City. Attempts to pass a bill that addressed both this issue and the issue raised in the (Jensen v. Jones) case (see H.B. 25 above) failed in the last three sessions. This bill clarifies and redefines who is entitled to file a change application, i.e.: (1) a holder on an approved but unperfected application to appropriate water; (2) the record owner of a perfected water right; (3) a person who has written authorization from a person described in (1) or (2) above to file the application of that person's behalf; and (4) a shareholder in a water company who files in accordance with the existing "Shareholder Change Application" statute.

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0058.html>

### **Senate Bills**

### **Senate Bill 15: Water Law - Forfeiture Exemptions** **Senator Margaret Dayton**

This bill amends Utah Code section 73-1-4 regarding nonuse and forfeiture. The bill adds some clarifying language that the section does not apply to "a period of nonuse of a water right during the time the water right is subject to an approved change application where the applicant is diligently pursuing certification"

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0015.html>

### **Senate Bill 40: Water Law - Application Withdrawal** **Senator Margaret Dayton**

This bill amends Utah Code section 73-3-6 to allow for the withdrawal of water right applications. Although the Division of Water Rights has historically allowed for applications to be

withdrawn, this bill will provide specific statutory authorization and explanation for withdrawals. The bill provides that an applicant or an applicant's successor-in-interest may withdraw an unperfected application (even if already approved) by filing a written withdrawal request with the Division. Upon receipt of the withdrawal request, the Division must promptly update its records to show that the application has been withdrawn and is of no further force or effect. An applicant who withdraws an application is not entitled to a refund of the application filing fees.

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0040.html>

### **SB225: Irrigation Service Water Rights Amendments** **Senator Kevin T. Van Tassell**

This bill makes a minor change to Section 73-3-3. The bill states that a change application on a United States Indian Irrigation Service water right that is serving the needs of a township or municipality shall be signed by (1) the local public water supplier that is contractually responsible for the operation and maintenance of the public water supply system and (2) the record owner of the water right.

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0225.html>

### **SB281: Water Infrastructure Funding** **Senator J. Stuart Adams**

The second substitute of SB281 passed on the last day of the legislative session. The bill establishes Title 73, Chapter 10g of the Utah Code, which creates the Water Infrastructure Restricted Account within the general fund. The Account is to be managed by the Division of Water Resources and the Board of Water Resources, and the money in the Account is to be used for the development of Utah's undeveloped share of the Bear River and the Colorado River, and for the repair, replacement, or improvement of federal water projects in Utah when federal funds are not available. The Board and the Division are to make administrative rules regarding the procedures, criteria, and qualifications for loans to be made from the Account for underfunded federal projects. Money used for the development of water from the Bear River and the Colorado River is subject to the repayment provisions of the Bear River Development Act (Title 73, Chapter 26) and the Lake Powell Pipeline Act (Title 73, Chapter 28), respectively. For the upcoming fiscal year, the legislature appropriated \$5 million from the general fund into the Account.

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0281.html>

## BILLS THAT DID NOT PASS

### House Bills

#### **House Bill 47: Protection of Water Rights** Representative Kay L. McIff

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0047.html>

#### **House Bill 108: Public Water Access Act** Representative Dixon M. Pitcher

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0108.html>

#### **House Bill 161: Utah Revised Nonprofit Corporation Act** Representative Kay L. McIff

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/HB0161.html>

### Senate Bills

#### **Senate Bill 126: Water Amendments** Senator Margaret Dayton

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0126.html>

#### **Senate Bill 142: Water Rights - Change Applications** Senator Jerry W. Stevenson

To read the full text of the bill, click here.  
<http://le.utah.gov/~2015/bills/static/SB0142.html>