

SMITH HARTVIGSEN PLLC

Water & The Law

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Spring 2018 Issue

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Welcome to the Spring 2018 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

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@water.law

or contact one of us directly through the following links:

[Craig Smith](#)
[David Hartvigsen](#)
[Jeff Gittins](#)
[Nathan Bracken](#)
[Devin Bybee](#)

To view previous newsletters, visit our website www.Water.law

Upcoming Events

Water Law & Policy Seminar
Mar. 19, 2018
St. George, UT
For more information call
Donna Keeler at
801-292-4662

Utah Water Users Association
Workshop
Mar. 19-21, 2018

2018 Legislative Review of Water Related Bills

The 2018 General Session of the Utah Legislature ended Thursday, March 8. Here are the highlights of the water related bills that passed and failed.

BILLS THAT PASSED

HB 66 (1st Sub.) - Local Government Modifications
Rep. Stephen G. Handy

House Bill 66 eliminates the need for a local district board of trustees to have an odd number of board members if the local district has more than nine board members. For "regular" improvement districts, this bill requires that the number of board members must be the number of municipalities in the improvement district if there are more than nine municipalities in the district or there are an odd number of municipalities in the improvement district and there is not a remaining area (i.e., an area outside of a municipality) in the district. This bill also requires the number of board members to be the number of municipalities in the improvement district plus one if there is an even number of municipalities and there are less than nine municipalities. Finally, the bill requires the number of board members to be the number of municipalities in the improvement district plus two if there are an odd number of municipalities in the improvement district, the total number is less than nine municipalities, and there is a remaining area in the district. Click [here](#) to see the full text of the bill.

HB 272 (1st Sub.) - Utah Lake Amendments
Rep. Mike McKell

House Bill 272 addresses restoration of Utah Lake. The bill allows the State to dispose of available State land in and around Utah Lake

St. George, UT

For more information click [here](#)

Utah League of Cities Mid-Year Conference

Apr. 25-27, 2018

St. George, UT

For more information click [here](#)

American Water Resources Association - Utah Chapter

Annual Conference

May 16, 2018

Salt Lake City, UT

For more information click [here](#)

Water Blog

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utahwaterrights.blogspot.com



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as compensation for a comprehensive restoration project, if the State finds that the project would meet certain goals and requirements, including improving the clarity and quality of the water in the lake, removing invasive plant and animal species, protecting and conserving native fish, enhancing recreational access and opportunities on the lake, and preserving water rights associated with the lake. This bill is related to recent proposals by private developers to build islands in Utah Lake. Click [here](#) to see the full text of the bill.

HB 303 (2nd Sub.) - Drinking Water Source Sizing Amendments
Rep. Scott Sandall

House Bill 303 requires community water systems serving a population of 500 or more people to collect accurate water use data each year and to report that water use data to the Division of Water Rights. A certified operator or professional engineer is required to verify the accuracy of the water use data, and the data must include information about peak day source demand, average annual demand, and the quantity of non-revenue water (i.e., water that is lost through leaks, evaporation, etc. before it reaches a customer). The Drinking Water Board is authorized to make rules for systems that fail to comply with the reporting requirements, including establishing fines and penalties. The bill also shifts source and storage minimum sizing requirements for community water systems to a system-specific approach. The Division of Drinking Water is required to establish these system-specific requirements based on the water use data submitted by the system. Systems serving more than 3300 people must submit the necessary information by March 1, 2019, and systems serving between 500 and 3300 people must submit the necessary information by March 1, 2023. Click [here](#) to see the full text of the bill.

HB 341 - Government Nonprofit Amendments

Rep. Mike McKell

House Bill 341 removes the repeal date for Utah Code section 11-13a-102(4)(b), which exempts water companies from the definition of "government nonprofit corporations," unless the water company is wholly owned by one or more governmental entities. This section was set to be repealed on July 1, 2019. Click [here](#) to see the full text of the bill.

HB 381 (1st Sub.) - Agricultural Water Optimization

Rep. Tim Hawkes

House Bill 381 creates the Agricultural Water Optimization Task Force to identify critical issues affecting Utah's long-term water supply; identify how the State should optimize agricultural water supplies in light of continued population growth; and recommend means, methods, and technologies to improve agricultural water use. The bill establishes the Agricultural Water Optimization Account, and the Task Force will issue requests for proposals and award grants to study the issues identified above. Each year, the Task Force must report its progress to the Legislative Water Development Commission; the Natural Resources, Agriculture, and Environment Interim Committee; and the Executive Water Task Force. The Task Force members will include one person

representing the Department of Agriculture and Food, one person representing the Division of Water Resources, one person representing the Division of Water Rights, one person representing the Division of Water Quality, one person representing the agricultural industry, one person representing environmental interests, and one person representing water conservancy districts. There will also be one nonvoting member from the higher education community with a background in research. Click [here](#) to see the full text of the bill.

SB 28 (1st Sub.) - Local Government and Limited Purpose Entity Registry

Sen. Deidre Henderson

Senate Bill 28 requires all government entities that are not part of the state executive, legislative, and judicial branches, including all counties, cities, and local districts, to register with and provide entity information to the lieutenant governor. In turn, the lieutenant governor will establish registration and renewal fees to create, administer, and maintain the registry. The bill also authorizes the state auditor to withhold certain state funds and property tax disbursements, as well as prohibit access to certain funds, for noncompliance with the registry requirements. Click [here](#) to see the full text of the bill.

SB 29 - County Listing of Local Government and Limited Purpose Entities

Sen. Deidre Henderson

Senate Bill 29 is a companion bill to Senate Bill 28. Starting on July 1, 2019, each county is required to list on its website the following information regarding the local government entities that operate within the county's boundaries: (1) the entity's name; (2) the type of entity; (3) the entity's governmental function; (4) the entity's contact information; (5) the members of the entity's governing body; (6) the entity's sources of revenue; and (7) if the entity is an assessment area, information regarding the assessment area's creation, purpose, and boundaries. Click [here](#) to see the full text of the bill.

SB 34 - Legislative Water Development Commission Amendments

Sen. Margaret Dayton

Senate Bill 34 removes a statutory "sunset provision" for Title 73, Chapter 7 of the Utah Code, which governs the Utah Legislative Water Development Commission. The repeal date was December 31, 2018, but this bill removes the repeal date entirely. The bill also allows the Commission to meet up to six times per calendar year without requiring approval from the Legislative Management Committee. Click [here](#) to see the full text of the bill.

SB 35 - Water Right for Trout Habitat Repeal Date Extension

Sen. Allen Christensen

Senate Bill 35 extends a statutory "sunset provision" for instream flow water rights for trout habitat established under Utah Code section 73-3-30(3). The repeal date was December 31, 2018, but

this bill extends the repeal date until December 31, 2019. Click [here](#) to see the full text of the bill.

SB 45 - Water Law Amendments - Diligence Claims

Sen. Margaret Dayton

Senate Bill 45 requires that when the State Engineer prepares an investigation report of a diligence claim, the State Engineer should apply the doctrine of beneficial use and should include an evaluation of the asserted beneficial uses at the time of the asserted priority date. The report should specifically identify any portion of the diligence claim that was not placed to beneficial use in accordance with the law. Click [here](#) to see the full text of the bill.

SB 61 (1st Sub.) - Water Rights Adjudication Amendments

Sen. Margaret Dayton

Senate Bill 61 modifies the language contained in summonses sent to potential water claimants in a general adjudication. The bill also instructs the State Engineer to return a statement of claim to the claimant without further notice of the statement of claim is not timely filed. Similarly, if an untimely statement of claim is filed with the court, the State Engineer will not take further action on that statement of claim unless the claimant is excused by circumstances beyond the claimant's control, mistake, or any other reason justifying relief. SB 61 also permits the State Engineer to file one or more addenda for a proposed determination, if the State Engineer does the following: files the addendum with the court; provides an explanation in the preamble regarding the issues addressed in the addendum; serves the addendum on each owner of record, according to the State Engineer's records, of a perfected water right authorizing the diversion of water from within the area, division, or subdivision covered by the addendum; and holds a public meeting. Click [here](#) to see the full text of the bill.

SB 96 (2nd Sub.) - Canal Amendments

Sen. David Hinkins

Senate Bill 96 addresses the issue of relocating easements for canals, ditches, pipelines, and other water conveyance facilities used for secondary (irrigation) water and storm water. This issue often arises when a landowner wants to develop their property and wants to relocate an existing water conveyance facility to better allow for development. Unless prohibited by the terms of a specific grant of easement or an agreement, a landowner may make reasonable changes to the location and method of delivery of a water conveyance facility if certain conditions are met. These conditions include having a licensed engineer redesign the facility in a way that does not decrease the utility of the facility, increase the burden on the facility owner, or frustrate the purpose of the facility. The facility owner may require changes to the plans if there are anticipated negative impacts. The landowner and the facility owner can request that the Office of the Property Rights Ombudsman mediate disputes between the two parties. The costs of relocating the facility, including many of the costs incurred by the facility owner, are the responsibility of the landowner. Click [here](#) to see the full text of the bill.

SB 98 - Ratification of the Ute Indian Water Compact
Sen. Kevin Van Tassell

Senate Bill 98 ratifies the Ute Indian Compact, which will be housed in Utah Code Title 73, Chapter 21. Click [here](#) to see the full text of the bill.

BILLS THAT DID NOT PASS

HB 60 - Water Commissioner Amendments
Rep. Scott Chew

House Bill 60 sought to require the State Engineer to establish rules governing the use of the Water Commissioner Fund. The bill also sought to clarify and expand the items that can be paid from the Fund, including benefits for commissioners, expenses approved by a distribution system committee, and administration expenses of a distribution system committee. The bill was similar to HB 225 that was introduced in the 2017 legislative session, but did not pass. Click [here](#) to see the full text of the bill.

HB 73 - Instream Flow Water Rights Amendments
Rep. Tim Hawkes

House Bill 78 sought to remove the current sunset provision the Legislature enacted when it created Section 73-3-30(3), which authorized fishing groups to file fixed time change applications to provide instream flows for the Bonneville cutthroat, the Colorado River cutthroat, and the Yellowstone cutthroat. The program was currently set to expire on December 31, 2018. See SB 35, above, which passed and extended this sunset provision by one year. Click [here](#) to see the full text of the bill.

HB 103 (1st Sub.) - Water Conservation Amendments
Rep. Gage Froerer

House Bill 103 sought to modify water conservation plan requirements in Utah Code section 73-10-32. Each water conservancy district, each water wholesaler, and each retail water provider that provides culinary or pressurized secondary water to more than 500 connections would be required to have a water conservation plan. These plans would have to include goals for reduction in residential, commercial, and industrial uses; water conservation measures for these same uses plus landscaping; and complete and accurate water use data. The bill also sought to change some recommended components of a water conservation plan into required components, such as information regarding the installation of water efficient fixtures and appliances; retail water rate structures designed to encourage conservation; and existing or proposed regulations designed to encourage conservation, including restrictions on grass landscaping. Each entity would be required to provide annual updates to the entity's board describing progress relating the goals and objectives contained in the plan. Districts, wholesalers, and retail water providers could not receive State funds for water development unless they had a compliant water conservation plan in place. This bill is similar to HB 304 that was

introduced in the 2017 legislative session, but did not pass. Click [here](#) to see the full text of the bill.

HB 124 (1st Sub.) - Water Holdings Accountability and Transparency Amendments

Rep. Kim Coleman

House Bill 124 sought to require first-class cities (i.e., cities with over 100,000 residents) that supply water outside of their jurisdictional boundaries to post the following information on their website and provide it to the State Engineer: (1) a map of the service area served; (2) any change application number, if applicable, being used to service the area outside of the city's boundaries; (3) the quantity of water being used to service the area outside of the city's boundaries; (4) the rates assessed to water users, both inside and outside municipal boundaries; (5) the number of retail connections served inside and outside municipal boundaries; and (6) and financial statements showing separate financial accounting of revenues derived from water service inside and outside municipal boundaries. The State Engineer would be required to post this information on the State Engineer's website. Click [here](#) to see the full text of the bill.

HB 135 (3rd Sub.) - Extraterritorial Jurisdiction Amendments

Rep. Mike Noel

House Bill 135 sought to make significant changes to the extraterritorial jurisdiction that municipalities have to protect waterworks and watersheds under Utah Code section 10-8-15. Cities of the first class (i.e., cities with over 100,000 residents) have historically been able to exercise this extraterritorial jurisdiction over the entire applicable watershed, and all other cities have been able to exercise extraterritorial jurisdiction for 15 miles above their point of diversion and for a distance of 300 feet on each side of the watercourse. This bill sought to limit the extraterritorial jurisdiction of cities of the first class to the same extent as all other cities, effective July 1, 2020. Click [here](#) to see the full text of the bill.

HB 450 (1st Sub.) - Wastewater Reuse Amendments

Rep. Gage Froerer

House Bill 405 sought to modify laws regarding water reuse. Among other things, the bill would require a publicly owned treatment works to file an application to appropriate in order to use discharged water in a water reuse project, and that the diversion and use of the water for the reuse project would be governed by the priority date of the application to appropriate. This would effectively relegate water reuse projects to the latest priority water use, and would give downstream users who have relied on the released water earlier priority - which would make many reuse projects unfeasible. Click [here](#) to see the full text of the bill.

HJR 15 (1st Sub.) - Proposal to Amend Utah Constitution - Municipal Water

Rep. Keven Stratton

House Joint Resolution 15 sought to amend Article XI, Section 6 of

the Utah Constitution to allow municipalities to lease their water rights and water shares. Click [here](#) to see the full text of the bill.

SB 204 (2nd Sub.) - Secondary Water Metering Requirements
Sen. Jacob Anderegg

Senate Bill 204 sought to require all secondary water suppliers that provide pressurized secondary water to at least 500 connections to install meters on all new connections beginning in 2020 and to install meters on all existing connections within the next 10 years. The data gathered from the meters would be provided to the Division of Water Rights and the Division of Water Resources. Click [here](#) to see the full text of the bill.

We welcome feedback and questions. Please contact us at info@Water.law
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