

SMITH HARTVIGSEN PLLC

Water & The Law

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Winter 2018 Issue

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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

**Utah Division of Water Rights
Training on Aquifer Storage
and Recovery
Feb. 21, 2018
Salt Lake City, UT**
For more information
contact **Teresa Wilhelmsen**
at
teresawilhelmsen@utah.gov

Dear Brian,

Welcome to the Winter 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.

We're growing, so we've moved our office location to 257 East 200 South, Suite 500, Salt Lake City, UT 84111. Please make a note of this new address.

Smith Hartvigsen, PLLC

2018 Legislative Preview on Water Related Bills

The 2018 General Session of the Utah Legislature begins Monday January 22 and runs through Thursday March 8. Here are the highlights of the currently released bills of interest:

House Bills

HB 60 - Water Commissioner Amendments
Rep. Scott Chew

House Bill 60 exempts the State Engineer from the Utah Procurement Code with respect to the Water Commissioner Fund, but requires the State Engineer to make administrative rules governing the use of the Fund. The bill also clarifies and expands 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. This bill is nearly identical to HB 225 that was introduced in the 2017 legislative session, but did not pass. Click [here](#) to read a full text of the bill

HB 66 - Local Government Modifications
Rep. Stephen G. Handy

This bill seeks to eliminate 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 improvement districts, this bill requires that the number of municipalities in an improvement must be the number of municipalities in the

**Rural Water Association of
Utah Annual Conference**
Feb. 26-Mar. 2, 2018
St. George, UT
For more information click
[here](#)

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
St. George, UT
For more information click
[here](#)

Water Blog

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about water law in Utah, visit
our water blog at

utahwaterrights.blogspot.com



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improvement district if there are more than nine municipalities in the district or there are an odd number of municipalities in the improvement district. This bill also requires the number of included municipalities in an improvement district plus one if there is an even number of municipalities included and there are less than nine municipalities. Finally, the bill requires the number of municipalities plus two if there are an odd number of municipalities in the improvement district and the total number is less than nine municipalities.

Click [here](#) to read a full text of the bill

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

House Bill 78 would 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 is currently set to expire on December 31, 2018.

Click [here](#) to read a full text of the bill

HB 103 - Water Conservation Amendments
Rep. Gage Froerer

House Bill 103 modifies water conservation plan requirements in Utah Code section 73-10-32. Each water conservancy district, each water district that provides culinary or secondary water to 500 or more connections, and each retail water provider that provides culinary or secondary water to 500 or more connections is required to have a water conservation plan. These plans must include goals for reduction in residential, commercial, and industrial uses, as well as water conservation measures for these same uses plus landscaping. The bill also changes 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. Districts and retail water providers cannot receive State funds for water development unless they have 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 read a full text of the bill

HB 124 - Water Holdings Accountability and Transparency
Amendments
Rep. Kim Coleman

This bill would require cities and special service districts 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 legal description and map of the service area served; (2) the cost of water assessed from users; and (3) other information regarding the water right (decree number, certificate number, point of diversion, approved uses, etc.). Rep. Coleman has indicated that the legislation is intended to implement, in part, some of the recommendations in the 2017 Utah Water Strategy,

which called for improved water data and information. She also reports that the legislation seeks to provide greater transparency regarding surplus water contracts in which cities, particularly Salt Lake City, allow users outside of their boundaries to contract on a temporary basis for the use of municipal water rights. Some have expressed concern about the use of temporary contracts to supply water for permanent developments. The use of surplus water contracts, however, stems in part from Article XI, Section 6 of the Utah Constitution, which prohibits municipal corporations from selling or permanently disposing of their water rights. Notably, although HB 124 would apply to special service districts, as currently drafted it would not apply to the other types of local districts that supply water.

Click [here](#) to read a full text of the bill

HB 135 - Extraterritorial Jurisdiction Amendments Rep. Mike Noel

HB 135 would remove longstanding municipal authority under Section 10-8-15 to enact protections outside of their boundaries to protect waterworks and prevent pollution. Currently, under Section 18-1-15, cities of the first class can exercise this extraterritorial jurisdiction over the entire applicable watershed. Smaller cities have extraterritorial jurisdiction for 15 miles above their point of diversion and for a distance of 300 feet on each side of the watercourse. The legislation would authorize the Department of Environmental Quality to establish standards and administer controls to maintain water quality in watersheds to protect human health and for the construction and operation of municipal waterworks located outside of a city's limits. According to Rep. Noel, this extraterritorial jurisdiction is no longer needed and is a duplicative regulation in light of state and federal environmental protection programs, which were enacted decades after cities received the extraterritorial jurisdiction embodied in Section 10-8-15. Property rights advocates have also accused cities, particularly Salt Lake City, of using this authority improperly to stop or limit development. Officials from the Department of Environmental Quality, however, indicated at a recent meeting of the Executive Water Task Force that they lack the land management authority cities have under the current law to protect municipal water sources.

Click [here](#) to read a full text of the bill

HB 142 - Impact Fee Amendments Rep. Derrin Owens

House Bill 142 adds "natural gas facilities" to the list of facilities for which impact fees may be collected under Utah's Impact Fees Act. The Bill refers to Section 58-55-308.1 of the Code for the definition of "natural gas facilities," which defines such facilities as "one or more natural gas mains [or] one or more natural gas service lines" or a combination of both. It also includes "any necessary appurtenant facilities." The "service lines" are the laterals that run from a main line to a customer's meter. So, under this amendment, if "natural gas facilities" are included in the duly adopted impact fees facility plan, analysis, and enactment, then impact fees may be assessed, collected, and expended on those natural gas facilities, up to the meters of the ultimate consumers.

Click [here](#) to read a full text of the bill

Senate Bills

SB 28 - Local Government and Limited Purpose Entity Registry
Sen. Deidre Henderson

SB 28 would require 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 the lieutenant governor. In turn, the lieutenant governor would establish registration and renewal fees to create, administer, and maintain the registry. The bill would also authorize 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 read a full text of the bill

SB 29 - County Listing of Local Government and Limited Purpose Entities
Sen. Deidre Henderson

SB 29 is a companion bill to SB 28. Starting on July 1, 2019, it would require each county 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 read a full text of the bill

Senate Bill 34: Legislative Water Development Commission Amendments
Sen. Margaret Dayton

This bill seeks to remove a statutory "sunset provision" for Title 73, Chapter 7 of the Utah Code, which governs the Utah Legislative Water Development Commission. The current repeal date is December 31, 2018, but this bill would remove 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 read a full text of the bill

Senate Bill 35: Water Right of Trout Habitat Repeal Date Extension
Sen. Allen Christensen

This bill seeks to extend a statutory "sunset provision" for instream flow water rights for trout habitat established under Utah Code section 73-3-30(3). The current repeal date is December 31, 2018, but this bill would extend the repeal date until December 31, 2019.

Click [here](#) to read a full text of the bill

SB45 - Diligence Claims
Sen. Margaret Dayton

Those who file diligence claims in the future will be well advised to provide as much evidence as possible of pre-1903 beneficial use if SB45 becomes law (which is highly likely). SB45 amends UCA §73-5-13(5)(b) to require the State Engineer to opine on whether the water under the diligence claim was actually put to beneficial use prior to 1903. This opinion will be included in the report the State Engineer prepares for the diligence claim.

What this means is if you are filing a diligence claim you should provide all available information as to pre-1903 water use with the diligence claim. You should not expect the State Engineer to undertake an exhaustive investigation of your historic water use. Such an expectation is wholly unrealistic and will likely result in a damaging determination that pre-1903 beneficial use did not occur. As we get farther from 1903, diligence claims are becoming both rarer and more suspect. Unless the claimant provides detailed information supporting pre-1903 water use, the expected conclusion in the state engineer's report is most likely going to be that there is no evidence of pre-1903 beneficial water use, the basic requirement for all diligence claims. This could lead to a legal challenge to the diligence claim and potential loss of the water right.

Click [here](#) to read a full text of the bill

SB 61 Water Rights Adjudication Amendments Sen. Margaret Dayton

Senate Bill 61 instructs the state engineer to return a statement of claim to the claimant without further notice of the statement of claim is not filed in time. 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 would permit the state engineer to file one or more addenda to one or more proposed determinations, if the state engineer does the following: files the addendum with the court; in the preamble, provides an explanation of 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 read a full text of the bill

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