

Water & The Law

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or contact one of us directly through the following links:

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[David Hartvigsen](#)

[Jeff Gittins](#)

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Upcoming Conferences

**Rural Water Association of
Utah Annual Conference**

Feb. 24-28 1, 2020

St. George, UT

For more information click [here](#)

Water Law & Policy Seminar
Mar. 16, 2020

Greetings!

Welcome to the 2020 Legislative Preview 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

2020 Legislative Preview on Water Related Bills

House Bills

HB 28 - Legislative Water Development Commission Sunset Amendments

(Rep. Keven J. Stratton & Sen. Ralph Okerlund)

When the Utah Legislature originally created the State Water Development Commission, it provided a sunset date of January 1, 2021 at which point the State Water Development Commission would expire. HB 28 extends the sunset date until January 1, 2031. Additionally, HB 28 changes the name of the State Water Development Commission to the Legislative Water Development Commission. It also requires that the Legislative Management Commission may only appoint nonvoting members appointed to the Legislative Water Development Commission who are first recommended by the cochairs of the Commission.

To read the full text of the bill, click [here](#).

HB 39 - Agricultural Water Optimization Task Force Amendments

(Rep. Casey Snider & Rep. David P Hinkins)

House Bill 39 modifies the voting membership of the Agricultural Water Optimization Task Force by adding three individuals whose primary source of income derives from the production of agricultural commodities. The bill also provides that the Task Force should recommend legislation regarding the issues within the Task Force's responsibility, and makes minor changes to language about task force members receiving per diem and travel expenses in accordance with current statutes and rules.

To read the full text of the bill, click [here](#).

HB 40 - Water Loss Accounting Act

(Rep. Melissa G. Ballard)

House Bill 40 would enact the Water Loss Accounting Act that creates a technical advisory committee which provides technical assistance to certain water systems that are required to prepare and submit

St. George, UT

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**Utah Water Users Association
Annual Conference**

Mar. 16-18, 2020

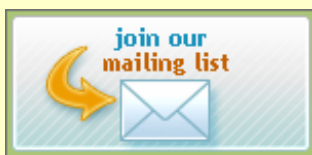
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Water Blog

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annual water loss accounting reports. The water systems that would be subject to this Act are "public water systems that serve a population of more than 3,300 individuals." The water losses that are to be accounted for and reported annually include: water lost through leaks, breaks, overflows, etc.; water lost through the unauthorized use of water; and water lost through metering inaccuracies and data handling errors. The first annual reports would be in 2022. The bill proposes a one-time appropriation of \$900,000 for technical assistance and to train the covered water systems and \$450,000 to develop a validation program for the water loss audits. It also proposes one-time appropriations for data integration (\$150,000) and ongoing expenses of the Division of Water Resources to administer this program (\$300,000).

To read the full text of the bill, click [here](#).

HB 41 - State Water Policy Amendments
(Rep. Kevin Stratton & Rep. David Hinkins)

Rep. Kevin Stratton has introduced H.B. 41 with Senator David Hinkins to outline water polices for Utah. The bill includes three overarching polices. The first states that Utah will pursue "adequate, reliable, affordable, sustainable, and clean water resources, recognizing that Utah is the second most arid state in the nation and as such, there is, and will continue to be, a need to ensure Utah's finite water resources are used beneficially."

The second policy states that Utah will promote 23 goals, including among others: (1) water conservation, efficiency, and the optimal use of water resources; (2) water resource development and the creation of water infrastructure to meet demands and promote economic development; (3) compliance with state statutes regarding the Lake Powell Pipeline and Bear River development; (4) timely replacement of aging and inefficient infrastructure; (5) optimal use of agriculture water; (6) water quality in rivers and lakes; (7) water pricing and funding mechanisms; (8) respect for water rights; (9) standards for accurate water use measurement, tracking, enforcement and reporting; (10) water education efforts; (11) the study and implementation of mechanisms to increase water use flexibility, including water banking and split-season uses; (12) science-based evaluation of watersheds, increased reservoir capacity, and aquifer storage and recovery; (13) the study and development of strategies to address declining water levels and ways to protect water quality and quantity at the Great Salt Lake; (14) regulations and practices to maintain sufficient stream flows and lake levels; (15) equitable access to safe, affordable, and reliable drinking water; and (16) regulations and practices to encourage the effective treatment and use of wastewater; and (17) control of invasive species that threaten or degrade water resources.

The third policy states that Utah supports the "timely and appropriate" negotiated settlement of federally reserved water rights claims for Native American trust lands and other federal reservations, but opposes future federal reservations that result in unquantified federal reservations of water.

Under the bill, State agencies would be "encouraged" to conduct activities consistent with the above policies and other policies that the Legislature may establish. The Natural Resources, Agriculture, and Environmental Interim Committee would also review the state policy each year to recommend priority balancing and other changes to the Legislature.

To read the full text of the bill, click [here](#).

HB 88 - School & Child Care Center Water Testing
(Rep. Stephen G. Handy)

House Bill 88 provides water quality testing of all water taps at schools and childcare centers by 2022. The testing is targeted at understanding and reducing lead levels in water consumed by children. All taps must be tested by June 1, 2022, and at least once every five years thereafter. If a test result reveals lead levels above 10 parts per billion, the school or childcare center must take steps to either stop using the tap or reduce the lead levels below 10 parts per billion. The records related to the tests and the remediation steps must be kept for five years and must be made available to the public at no charge.

To read the full text of the bill, click [here](#).

HB 94 - Water Applications Amendments
(Rep. Timothy D. Hawkes)

House Bill 94 makes one addition to Utah Code section 73-3-5.6 regarding applications for a small amount of water. This statute was amended last year under HB 355 to provide that in areas with ongoing general adjudications, reinstatements of small applications that had lapsed were to be evaluated as part of the adjudication process. HB 94 provides the State Engineer with the discretion to issue a certificate before evaluating the claim as part of the general adjudication.

To read the full text of the bill, click [here](#).

HB 95 - General Adjudication Water Amendments
(Rep. Timothy D. Hawkes)

House Bill 95 is a "clean up" bill proposed by the state engineer that would amend the General Adjudication statutes to: (1) better define what is required in a written objection to a proposed determination or an addendum thereto; (2) prohibit the filing of water user claims after the final summons stage of the General Adjudication is completed; and (3) make several minor technical corrections to the language in the existing statutes.

To read the full text of the bill, click [here](#).

HB 96 - Water Forfeiture Amendments
(Rep. Timothy D. Hawkes)

House Bill 96 is another "clean up" bill proposed by the state engineer that would amend the water forfeiture statute, Utah Code section §73-1-4, to: (1) require that a lease be in writing and have an specific termination date before it qualifies as an exception to the forfeiture provisions; (2) limit the time to seven years that an exception to the forfeiture provisions apply where use of a reservoir is limited due to safety, regulatory, or engineering restrictions; (3) allow the state engineer to establish rules regarding the evidence that is to be submitted by a public water supplier in order to qualify for an exemption to the forfeiture provisions when holding water for the reasonable future water needs of the public; and (4) make several minor technical corrections to the language in the existing forfeiture statute.

To read the full text of the bill, click [here](#).

HB 105 - Water Facilities Amendments
(Rep. Logan Wilde)

House Bill 105 would expand the existing protections provided to

owners and operators of water facilities and water apportionment officials. These protections are proposed to be separated into three separate scenarios, including where a person: (1) maliciously interferes with, damages, destroys, or removes a water facility; (2) intentionally or knowingly makes an unauthorized connection to water facility; and (3) unlawfully interferes with a water apportionment official in his or her authorized duties. There is a different standard of conduct required for each of these three scenarios. Presently, the "unlawfully interferes" standard applies to both the first and third scenario and the code does not address the second scenario. The definition of water facility is expanded to include all water facilities "used for the diversion, transportation, distribution, measurement, collection, or storage of water, stormwater, wastewater, or sewage." The bill would apply this same expanded definition to the statute governing obstructing or changing water facilities, whereas the law currently applies only to obstructing or changing water canals and/or water courses.

To read the full text of the bill, click [here](#).

HB 130 - Water Use Amendments

(Rep. Timothy D. Hawkes)

Rep. Hawkes has introduced H.B. 130, which would modify Section 73-3-3 of the Utah Code to expressly authorize split-season and fixed-time change applications. In particular, the bill would allow holders of a perfected water right to "split" their right by allowing others to use or lease their rights for a portion of the applicable periods of use. These split-season change applications could be approved for a period of up to ten years. Similarly, for fixed time change applications, water right holders could request a change in how, where, and when they use their water right for a period of up to ten years. With a few limited exceptions, Utah law currently requires most change applications be temporary changes that cannot exceed one year or permanent changes. The bill is intended to provide greater flexibility on how water rights are used to encourage water sharing among multiple uses to help address growing water demands. Notably, the Governor's 2017 Water Strategy also identifies split season leases as a possible tool for addressing competing water demands.

To read the full text of the bill, click [here](#).

HB 156 - Water Amendments and Education Entities

(Rep. Stephen G. Handy)

House Bill 156 modifies the list of public entities for purposes of categorizing public water suppliers under Utah's water nonuse statute, Utah Code section 73-1-4. Institutions of higher education that are part of the state system of higher education are added to the list of public entities. The purpose of the bill is therefore to allow the University of Utah, Utah State University, and other state institutions of higher education to qualify as public water suppliers. The bill also makes other minor wording edits to the nonuse statute.

To read the full text of the bill, click [here](#).

HB 166 - Watershed Councils

(Rep. Timothy D. Hawkes)

House Bill 166 would enact the Watershed Councils Act in response to a recommendation in Section 9.9 of the 2017 Recommended State Water Strategy report generated by the Governor's Water Strategy Advisory Team. The new Act would divide the state into 12 different

watersheds or drainage basins and would create a state watersheds council with defined membership. The Act would also allow creation of local watershed council on a voluntary basis. The primary purpose of these councils is to provide a forum for discussions on water policy and water resource issues. These councils would be open to the public and would be subject to the Open and Public Meetings Act as well as the Government Records Access and Management Act.

To read the full text of the bill, click [here](#).

HB 168 - Public Water Supplier Relocation Amendments
(Rep. Timothy D. Hawkes)

House Bill 168 amends provisions related to reimbursement of costs by UDOT for relocation of water facilities. Currently, UDOT is required to pay 100% of relocation costs for utilities owned by political subdivisions of the state, including cities, towns, and districts. Otherwise, UDOT is only required to pay 50% of the relocation costs. This bill would add public water suppliers to the list of entities that receive 100% relocation costs from UDOT.

To read the full text of the bill, click [here](#).

HJR 3 - Proposal to Amend the Utah Constitution - Water Resources of Municipalities
(Rep. Keven J. Stratton & Sen. Ralph Okerlund)

This joint resolution furthers the effort began last session to amend Utah's constitutional prohibition of alienating water rights and waterworks by Utah municipalities. Article XI, Section 6 forbids Utah's cities and towns to "directly or indirectly, lease, sell, alien, or dispose of any waterworks, water rights, or sources of supply." This provision has often been considered an anachronism from long ago. It also required municipalities to be creative, only selling "surplus" water and exchange rather than sell water rights or water shares, or form a district, not subject to this prohibition, to hold water rights. A likely unintended consequence of this ban is that the Town of Alta, that receives all drinking water under a contract with Salt Lake City, only has surplus water that could be cut off, with thirty days' notice, if no longer surplus to Salt Lake City.

In place of the absolute prohibition, new language will continue to ban the outright sale, lease, or alienation, but will allow water right exchanges and the designation of service areas outside of the municipal limits and preserve and maintain those water rights and sources of supply to serve those within the entire service area. It will also recognize the long-utilized practice of exchanging water rights and sources by municipalities. In other words, not much will change. If passed, this proposed constitutional amendment will next be submitted to the voters of Utah.

To read the full text of the bill, click [here](#).

SENATE BILLS

SB 26 - Water Banking Amendments
(Sen. Jani Iwamoto & Rep. Timothy D. Hawkes)

Senator Jani Iwamoto and Rep. Tim Hawkes have introduced S.B. 26 to create a water banking program in Utah. A water bank is a market tool that facilitates the voluntary, temporary transfer of water rights from one use to another. Most other western states have some form of banking, and the bill would further a number of recommendations in the Governor's 2017 Recommended Strategy, which identified

water banking as a possible tool to support agriculture while also providing water for urban and environmental needs in the face of Utah's growing population. The bill also responds to S.J.R. 1, which the Legislature passed during the 2019 General Session to request water banking legislation to consider during the 2020 session. Working since 2017, a diverse group of over 70 stakeholders representing agriculture, public water suppliers, conservation groups, and other interests developed the legislation by meeting with stakeholders across Utah and reviewing water banking programs in other western states. Based on its outreach efforts, the group determined that in order to be successful in Utah, water banks must be voluntary, temporary, and local. To support these goals, the bill would create the framework for a 10-year pilot program that would authorize water right holders to create and manage water banks for their local areas. Ideally, this would allow water banks to be specifically tailored to their regions' unique conditions and needs. During the pilot period the banking program would be monitored, evaluated, and modified as needed. The Board of Water Resources would oversee the creation and operation of water banks while the State Engineer would regulate water rights deposited in a bank. The banking program is intended to build upon and utilize existing Utah law as much as possible. For instance, to deposit a water right into a bank, a right holder would file a change application pursuant to the current process. Similarly, Section 73-3-3.5 of the Utah Code would require shareholders seeking to deposit a water right into a bank to first obtain approval from their water company. The State Engineer's Office has also indicated that it would only approve the consumptive portion of a water right for use within a water bank and that it would impose conditions where necessary to govern the right's use within a bank to avoid impacts to other users. Once the State Engineer approves a water right for use within a bank, the right would be available for others to use for a variety of uses, including water quality and environmental purposes.

To read the full text of the bill, click [here](#).

SB 51 - Secondary Water Requirements

(Sen. Jacob L. Anderegg)

Senate Bill 51 is a continuation from the 2019 legislative session regarding secondary water metering. The bill requires all water suppliers that provide pressurized secondary water in first and second class counties to meter water use by December 31, 2040. Each water supplier must develop and submit a strategy to comply with the metering requirement by March 31, 2021. If the meters provide real-time data, the water supplier must make the data available to the users in an open-source format upon request. Water suppliers must also provide monthly information to each user, including the user's secondary water use in relation to other users in the area and suggestions for conserving water. With respect to funding, the bill establishes the Secondary Water Metering Restricted Account, which will be funded through legislative appropriations and will be used by the Division of Water Resources to give up to \$10 million per year in grants to water suppliers to install the meters. The bill provides that no more than 25% of the funding can come from a loan from the Division of Water Resources, that no more than 50% of the funding can come from a grant through the Secondary Water Metering Restricted Account, and that at least 25% must come from the water supplier through some other funding mechanism.

To read the full text of the bill, click [here](#).

SB 52 - Agricultural Water Use Amendments

(Sen. Jacob L. Anderegg)

SB 52 would require the Utah Division of Water Rights to compile and provide a report about agricultural use of water to the Natural Resources, Agriculture, and Environmental Interim Committee and the Economic Development Workforce Services Interim Committee by November 1, 2020. The report must include the following:

- * the total amount of water used for agricultural use in the State of Utah;
- * how the water used for agricultural use is distributed, including how much water is used by flood irrigation, drip irrigation, through pressurized systems, or any other irrigation method;
- * the amount of water used for agricultural use that is metered;
- * the amount of water used for agricultural use that is owned by different ownership types, including special service districts, municipalities, or private entities;
- * explanations of regional issues that impact metering of agricultural use of water; and
- * any other relevant information about metering agricultural use of water.

To read the full text of the bill, click [here](#).

SB 63 - Recreational Activities Related to Public Waters (Sen. Scott D. Sandall)

In 2010, the Utah Legislature passed HB141, which is now referred to as the Public Waters Access Act. The Public Waters Access Act provides, among other things, how recreationists may access and use the public waters in the State of Utah. SB63 seeks to amend the Public Waters Access Act to provide greater protections for private property owners along a 40 mile section of the Weber River between Holiday Park and Echo Reservoir that is considered navigable waters.

Regarding the described 40 mile section of the Weber River navigable waters, SB63 would prohibit a person who does not own the adjacent property from the following:

- * Destroying, materially damaging, removing, or altering real or personal property;
- * Altering or obstructing water flows;
- * Constructing or maintaining a structure on the bed of the river;
- * Traveling on the water by horseback, motor vehicle, off-highway vehicle, or non-motorized vehicle; and
- * Hunting

SB63 would also prohibit an individual recreating on the Weber River navigable waters from littering, destroying, or defacing public or private property, and harassing livestock or property owners. SB63 would further allow a private property owner to place a fence or other obstruction across a Weber River navigable waters as long as the fence or other obstruction is not intended to block access for recreational activity. In turn, SB63 prohibits any person from harassing an individual recreating on the Weber River navigable waters.

More broadly, SB63 would impose a class B misdemeanor on anyone trespassing on private property along any public water in the State of Utah and also impose fines, which increase with each recurring offense.

To read the full text of the bill, click [here](#).

Farewell to Cousin Kent

by J. Craig Smith

I can finally reveal that Kent and I are distant cousins. I have the orange colored "Smith Things A to Z" book, which lists all of the descendants of our distinguished common ancestor James Henry Smith, to prove it. I promised Kent to keep that under wraps while he was State Engineer. He had a reputation to maintain.

Kent L. Jones, P.E., State Engineer and Director of the Utah Division of Water Rights, retired from public service last November. Jones spent almost 39 years with the Division, starting in 1981. Prior to his appointment as State Engineer in 2009, he held the position of Assistant State Engineer, which is the hardest and most visible job in the Division, next to State Engineer. (It was called Directing Engineer for Appropriations back then) In this job, he traveled the state holding hearings on all types of applications, becoming well known to water users throughout Utah.

While the position of State Engineer is inherently one where some folks will always be mad and upset with what he either did or did not do, Kent was always fair, accessible, reasonable, likeable, and respected by all. The State Engineer is often called the most powerful person in Utah that no one knows. Kent did nothing to change that perception by never calling attention to himself and always acting without ego or guile. He would patiently and quietly sit in a legislative hearing room, until some legislator would have enough sense to call upon him. Then he would in a soft spoken, unpretentious, and humble manner, educate the gathered legislators and audience on water administration and policy. Even when he was the smartest person in the room, which was most of the time, he never acted like it.

Kent's accomplishments are too many to recount here. One that all in the water community are thankful for is accelerating the administrative process from years to months. He also inaugurated and prosecuted the first major general determination of water rights in our lifetimes, giving hope that one day all drainages in Utah will be adjudicated, not just the Weber and Sevier.

Upon Kent's retirement, Governor Gary Herbert said "I appreciate Kent's commitment and years of dedication and service to the State of Utah. His leadership has played a vital role in the State's ability to solve complex water challenges, and our ability to administer the appropriation and distribution of Utah's water." To these statements, all of us in the water community can say "Amen and Thank You Kent."

To view Kent's retirement announcement, click [here](#).

Allen Family Trust v. Holt

by Jeffrey Gittins

The Utah Court of Appeals recently issued its opinion in the case of Allen Family Trust v. Holt. This case focuses on an easement for a water pipeline, as well as forfeiture of water rights.

In the late 1800s, Ammon Allen settled in the Ogden Valley and constructed ditches to carry water from a creek and springs to his property. He later deeded the property to his son, Abner Allen. In the 1948 Ogden River Decree, Abner was awarded water rights in the Creek and springs. A ditch carried the water from the sources, across State-owned land, and to Abner's property. In the 1960s, Abner's sons formed a ranching company, which acquired the land and water rights. The ranching company also entered into a lease with the State for the abutting property that the ditch crossed. In the 1970s, the sons dissolved the ranching company. The deeds led to confusion,

but it was ultimately determined that one son acquired 70% of the water rights (which was later conveyed to his son, David Allen) and another son acquired 30% of the water rights (which was later conveyed to his children Jarl, Jenna, and Lesly). A few years later, David constructed a system of pipes to convey his water from the sources to the property. The pipe system generally followed the location of the original ditch system.

In the 1990s, the State sold its property to a third party, who later sold the land to Millennial Partners North LLC ("MPN") in 2008. Shortly thereafter, disputes arose between David and MPN regarding David's access to MPN's property to maintain the pipe system. MPN sent threatening letters to David, erected fences around the property, and even dug up and cut the pipes. This led to a first lawsuit, which was resolved in David's favor. In 2011, Jarl, Jenna, and Lesly conveyed their land and 30% interest in the water rights to MPN.

In 2012, David initiated a second lawsuit, asserting (1) that David had an easement across MPN's property to convey water through the pipe system; (2) that MPN had unlawfully interfered with David's water rights; and (3) that MPN had forfeited its water rights due to nonuse. Following a trial, the district court concluded that David did have an easement across MPN's property and that MPN had unlawfully interfered with the easement. But the district court also ruled that MSN had not forfeited its water rights because nonuse had not been proven by clear and convincing evidence. The district court ordered MPN to pay David's attorney fees. MPN appealed the ruling, and David cross-appealed.

The Court of Appeals first examined if David did have an easement for the pipe system. The district court had determined that an easement existed under the 1866 Mining Act, which required a finding that Ammon Allen had constructed the ditch system before 1896, which is the year that Utah became a state. The Court of Appeals determined that sufficient evidence had been presented to the district court to support the conclusion that the ditch system had been constructed prior to 1896. Thus, the Court of Appeals upheld the determination that David had an easement.

The Court of Appeals also upheld the determination that MPN had interfered with the easement. As noted by the Court, "it is hard to imagine a more clear-cut case of interference with a water right than a party threatening to shut off access to the water, fencing off the right of way, and sawing through a pipe conveying the water to its rightful recipients."

The Court of Appeals then examined whether MPN had forfeited its water rights due to nonuse. The Court began its analysis by noting that it is unsettled law in Utah whether the "clear and convincing" or the "preponderance" standard of proof apply in a water forfeiture action. The Court, unfortunately, did not answer this question, as it determined that the evidence in this case was sufficient to meet both burdens of proof. The Court noted that there was plenty of evidence that MPN's water rights had not been placed to beneficial use between 1994 and 2011. MPN did not dispute this evidence, but rather asserted that David had used MPN's water rights pursuant to a 1977 agreement between Abner Allen's two sons. The Court rejected this argument on several grounds, including the fact that the district court had never determined that such an agreement existed. Thus, the Court reversed the district court and ruled that MPN's water rights have been forfeited due to nonuse.

Finally, the Court of Appeals upheld the district court's order that MPN pay attorney fees. The Court of Appeals also awarded MPN to

pay attorney fees for the appeal.

To read the full opinion, [click here](#).

Metropolitan Water District of Salt Lake & Sandy v. SHCH Alaska Trust

by Jeffrey Gittins

The Utah Supreme Court recently issued a decision in the case of Metropolitan Water District of Salt Lake & Sandy v. SHCH Alaska Trust. The case focused on the scope and size of an easement for a water pipeline, as well as a district's authority to regulate land use within the easement area.

The District owns an easement for a water pipeline across the Trust's property in Wasatch County. The Trust determined to build a commercial zipline course on its property, and received a conditional use permit from Wasatch County. The District purported to enact regulations restricting land use within the easement area on the Trust's property. Pursuant to these regulations, the District asserted that the Trust was required to obtain a license from the District before constructing the zipline course. The Trust moved ahead with the zipline course without obtaining the permit. The District then sued the Trust in district court and requested that the court order the Trust to comply with the District's regulations. The Trust counterclaimed and asked the court to determine the relative property interests of the parties, including the scope and size of the easement.

The district court ruled that Utah law granted regulatory authority to the District. Accordingly, the district court granted summary judgment to the District. The district court also determined that the easement was 200 feet in width. The Trust then appealed the decision to the Utah Supreme Court.

The Supreme Court first examined the District's assertion that it had regulatory authority. The District cited several provisions of the Utah Limited Purpose Local Districts Act to support its asserted authority. The Supreme Court reviewed each of these provisions and determined that none of them granted the District the authority to enact land use regulations that affect the property of others. The Supreme Court also noted that statutes governing land use regulations by cities and counties carefully define and limit the regulatory authority, and that it would be unreasonable to allow districts to exercise similar authority without the same limitations and public participation requirements.

The Supreme Court held that the District's rights with respect to the easement were no different than the rights that any other easement holder has. These rights include the right to prevent the landowner from unreasonably interfering with the easement. The case was remanded to the district court to gather the facts and determine if the Trust's zipline course unreasonably interfered with the District's pipeline easement.

The Supreme Court also reviewed the district court's determination that the pipeline easement was 200 feet in width. The original documents establishing the easement did not define the size or scope of the easement; rather, the documents created and undefined "floating easement." In 1961, an engineer for the US Bureau of Reclamation drafted a written description of the easement, which defined it as a 200-foot easement. The district court had determined

that this description was determinative. The Supreme Court determined that the written description could be considered, but was not dispositive. The case was remanded to the district court to gather the facts and determine the extent and width of the easement.

To read the full opinion, [click here](#).

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