

**UTAH ASSOCIATION OF SPECIAL DISTRICTS**  
**2019 Water Legislation**  
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**Annual Meeting**  
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Generally, water legislation fits into three categories: Ah-Ha; Oh, Really and Oh-Oh.

**AH-HA.**

**Utah Water Task Force Interim Work.**

The 2018 General Session produced a lot of “Water Fire Works.” Good bills were passed, bad bills were killed and the hardest, the most complex were “kicked down the road” to Interim Study. The three difficult bills were: HB 124 (Coleman) Water Holding Accountability, HB 135 (Noel) Extraterritorial Jurisdiction and HJR 15 (Stratton) Constitutional Amendment to Article XI, Section 6. The Legislature wanted this interim to be different. They wanted resolutions to these long-standing complex issues and at the urging of Mike Styler, Executive Director of the Department of Natural Resources, passed intent language for interim study that is unique. “The legislature intends the Executive Director of the Department of Natural Resources appoint a working group of subject matter experts to study various issues related to water quality, water rights, and water supply in the state including extraterritorial jurisdiction, watershed management, forest health, and property rights. The Executive Director may appoint members of the Executive Water Task Force, the Legislative Water Development commission or other individuals to the working group. The working group will report regularly to the Natural Resource Interim Committee during the 2018 interim. The Executive Director shall deliver a final report of the working groups conclusions and recommendations to the Legislative Water Development Commission by September 30, 2018.”

The rest of this story is an “Ah-Ha” moment in the history of the Utah Water Community. In an interim laced with controversy about what is and what isn’t a public Meeting, Executive Director Styler charted one of the best public processes for problem solving. He divided the interim work into four areas: Constitutional, Surplus Water & Water Supply, Extraterritorial Jurisdiction and Private Property. He selected creditable experts to chair these working groups: Steve Clyde, an attorney practicing in the area of water law chaired the Constitutional working group; Boyd Clayton, Deputy Director of the Division of Water Rights steered the Surplus Contract working group; Marie Owens, the Director of the Division of Drinking Water charted the course for the Extraterritorial Jurisdiction and Wendy Fisher, Director of the Utah Land Trust directed the Private Property Working Group. Director Styler also appointed individual members to these working groups that had expertise with the assigned subject matter. All working group meetings were treated as public meetings. Notice was published on the Department’s Web Page. All attending any working group meeting were allowed to participate in the discussions; however, when votes were taken, only those members appointed to the working group were allowed to vote. Notes were taken and provided to all who attended the meeting and signed the attendance list. All signing the attendance list were given personal e-mail notice of next working group meetings. The Constitution and Surplus Water working groups held joint sessions and shared for comment and review, the issues being developed. Some legislators participated on a regular basis. Often water community members attended all the working group meetings and participated in these meetings. Reports were made during the summer to the Utah Water Task Force and the Executive

Director made monthly reports to the Interim Natural Resource Committee. The working groups held multiple meetings, covered a lot of issues and then they developed consensus recommendations.

The members of the Constitutional Working group had been considering potential changes since HJR 15 was introduced in the 2018 General Session. The concept of constitutionally authorizing municipalities to serve water to a designated service area that could include retail residents that live outside of the municipal boundaries was a concept that was shared with the Surplus Water Contract Committee. The concept gathered support. The Utah League of Cities and Towns (“ULCT”) played a key role in developing this concept. It was reviewed by ULCT, suggestions were made and adopted. Thought was given to what should be in a Constitutional Amendment and what should be included in Surplus Water Contract Legislation. Basic concepts were included in the Constitutional Amendment and more details were included in proposed legislation by the Surplus Water Working group. As this concept developed, various interest groups were watching closely to see how it would look in actual legislative format. The ULCT approved the Constitutional Change and have endorsed the concepts developed to implement the Designated Service Area legislation.

During the interim, the Extraterritorial Jurisdiction Working group delved into a jurisdictional swamp. Municipal Entities with water rights have had the right to enforce pollution protection for domestic and culinary uses beyond their political boundaries since 1898 with the passage of the original UCA 10-8-15. Although this section is just three sentences, it is almost a page long. The Legislature has amended this section in 1907, 1911, 1915, 1917, 1917, and in 1923 additional authority was given to First Class Cities to protect from ridge to ridge in a watershed. It was also amended in 1933, 1943, and 2010. Initially the legislation was designed to protect domestic and culinary water from pollution. Recently, many have felt that pollution protection had been leverage into land use planning and Wasatch County was reluctant to allow cities from the Wasatch Front to have any jurisdiction in Wasatch County. Part of the Ah-Ha moment is that the major concept included in the working group proposal was jointly developed by Mike Davis, Wasatch County General Manager and Laura Briefer, the Salt Lake City Director of Public Utilities.

At the heart of some of the conflict in the Cottonwood Canyons and throughout the state, private property rights conflict with the public needs for water pollution control and recreation. This conflict is also “Muddied” by whether a given piece of private property has water service. In our arid state, land with water is more valuable if it is served by water. Control of water use allows control of actual land use. There has been a lot of conflict in these two canyons, but it is not limited to just these canyons. It is an eternal conflict between the “Haves” and the “Have Nots.” The Cottonwood Canyons have more visits in a year than our five National Parks. The Cottonwood Canyons are “being loved to death” by their own visitors. There are multiple jurisdictions in the Cottonwood Canyons, but not enough coordinated funding to resolve the conflicting issues.

With this background of conflicting and complex issues, the 2018 Utah Water Task Force and the respective working groups have developed legislation which helps deal with these long-standing problems. Their combined legislative impact is truly a paradigm shift in water law. These Utah Water Task Force bills are “Ah-ha” bills.

### **Constitutional Change (Article XI, Section 6) Sponsored in 2019 by Rep. Kevin Stratton**

In 1896, the State Constitution restricted Municipalities from alienating Municipal Water Rights. However, since 1898 municipalities have been authorized to sell surplus water to non-residents. In

1992, Salt Lake City was selling surplus water to 107,000 people living in the south-east section of Salt Lake County. Today the ULCT has indicated that approximately 50% of the Municipalities sell surplus water to non-residents. Questions have been raised about the reliability of surplus water sales. Additionally, concerns have been raised about the lack of accountability to these surplus water users. Currently the only standard governing these surplus sales to non-residents is judicial review to determine if the rates being charged are reasonable. In most cases, review by a state commission of a city rate is not allowed by the Utah Constitution. In

1992 a Legislative Task Force looked at this issue, but without a change to Article XI, Section 6, there was not consensus for a change in the existing system.

The constitutional working group developed a creative approach for a constitutional change. The proposed constitutional amendment does the following:

1. It retains the existing provision against the alienation of a water right.
2. It removes the current restriction preventing the sale or transfer of a water works, if the “water works” is transferred to a “public water supplier.”
3. It allows a municipality to adopt by ordinance a “designated water service area” which may include retail water customers located outside the boundaries of the municipality. It also requires the municipality to set the terms of service (including rates) by ordinance.
4. It allows municipalities to continue to sell excess surplus water by contract to those willing to purchase the water outside the municipalities designated water service area.
5. It requires municipalities to supply water to its designated service area at reasonable rates.
6. It continues to allow municipalities to exchange water rights or other sources of water for equal value to be able to meet the water supply needs of the designated service area.

Requiring the designated service area and the terms of sale to be determined by ordinance provides notice and input inherent in the public process for the adoption of an ordinance. It also requires the city to adhere to a standard of equal protection for its retail customers. The Constitutional amendment was carefully developed to obtain consensus and it has been endorsed by the Utah Water Task Force and the ULCT. Constitutional amendments require legislative approval by 2/3rds of each House and then must be approved by the electors voting in the next general election. The effective date would be after approval at the 2020 General Election.

### **Water Supply and Surplus Water Amendments, sponsored by Representative Kim Coleman.**

This proposed legislation contains additional provisions developed by both the Constitutional and the Water Supply/Surplus Contract working groups to govern the process for adopting a “designated service area.” The ordinance process includes the following:

1. The creation of a map showing the designation service area including the area outside political boundaries where retail water customers receive water services, and a copy of the map delivered to the state engineer. The map shall also be posted on the Municipality’s Web site if the city has more than 500 retail customers.
2. The municipality is required to adopt by ordinance, rules and regulations applicable to the designated service area and retail customers.

3. The municipality is required to adopt by ordinance reasonable water rates for retail customers in its designated service area.
4. Within the designated service area, the municipality must provide service to all retail customers consistent with equal protection.
5. The setting of water rates is a legislative action and is governed by a new section, UCA 10-8-22.
6. Rates are required to be reasonable and non-residents are allowed participation as a resident in the ordinance process setting rates.
7. The municipality may establish different rates for different classes of retail customers based on cost of services recognized by industry standards. No adjustment may be made just because the retail customer is a nonresident.
8. If more than 10% of the retail customers are non-residents, the municipality shall organize an advisory council. If the % of non-resident customers are greater than 10%, but less than 30%, the number of non-resident advisory members shall be 20%. If the non-resident retail customers are greater than 30% of the retail customers, the non-resident advisory members shall constitute 40% of the advisory council.
9. Water sales outside of the designated service area are allowed by contract only. However, a copy of the executed contract must be given to the State Engineer.
10. The State Engineer is required to publish on its web site, the copies of maps of the designated service areas required above.
11. The effective date of the Water Supply and Surplus Water Amendments would be January 1, 2021 provided that the Constitutional Amendment is approved by both the Legislature and by the electorate in the 2020 General Election.

**Extra Territorial Jurisdiction Amendments, Sponsored by Senator Ralph Okerlund.**

The Davis/Briefer “lynch pin” concept is simple. The First-Class Cities may not exercise pollution control protection beyond the boundaries of their County of origin, unless they have a pollution control agreement with impacted entities in counties still in their watershed but beyond their County of origin. The current statute consists of about a page, all contained in three sentences. The Legislation organizes the existing code in the following clarifying provisions:

1. All municipalities have pollution control jurisdiction for culinary and domestic water uses within and without their respective municipal limits for 15 miles above the diversion point and for 300’ on each side of the stream. (Existing authority.)
2. First-Class Cities have additional jurisdiction for pollution protection over the entire watershed; however, this authority is now restricted to the County of origin of the First-Class City and subject to a new provision discussed in #5 below. An interesting time warp is required for this protection authority. The First-Class City must provide a highway for transportation through their city for cattle, horses, sheep, hogs and now goats as well. (Existing authority modified to add “goats.”)
3. Municipalities may enact ordinances necessary to carry out the pollution control power authorized by UCA 10-8-15 for domestic and culinary purposes and may regulate closet, privy, outhouses or urinal. (Existing Authority).
4. Permits issues by municipalities can include reasonable conditions and requirements for the protection of the public health as they determine proper. (Existing Authority).
5. Cities of the First Class may only exercise extra territorial jurisdiction outside of its country of origin pursuant to a written agreement with all the impacted municipalities and counties that have jurisdiction over the area where the watershed is located. (New restriction).

6. After 7/1/19, a municipality legislative body that seeks to adopt a new ordinance or regulate under the authority of the section shall hold a public hearing, give public notice by mailing to each affected entity and the Directors of the Divisions of Drinking Water and Water Quality and posting the notice in a newspaper of general circulation and posting on the State Public Web page. The ordinance is required to be consistent with Federal and State drinking water and water quality regulations. Once the ordinance has been adopted, a copy of the enacted ordinance is required to be mailed to each affected entity and to be included in the municipalities drinking water source protection plan. (New provision.)

The legislation is designed to encourage communities to work together to protect the public health of their citizens.

### **Private Property.**

The Private Property working group faced the conflicts mentioned earlier. Three areas of focus were developed by the working group: 1) Ensuring Watershed Protection for the general public; 2) Effectively dealing with Visitors to the Canyons; and 3) alleviating Private property Conflict. They did not recommend any specific legislation but made the following recommendations:

1. To utilize the LeRay McAllister Critical Lands Fund as an objective process to vet land acquisition projects brought forward by willing sellers through the allocation of \$2 million in funding designated specifically for the Wasatch Front Canyons stipulating the funds must be matched by other public and private funding sources.
2. To address increased recreational infrastructure needs through current available funding, an example being the Governor's Office of Outdoor Recreation.
3. To ensure that a component of the National Recreation Conservation Area legislation incorporates funding to adequately deal with recreational infrastructure needs and issued.

The Governor has included in his budget the additional \$2 million in funding for the existing LeRay McAllister Critical Lands FY 2019 budget. The Utah Water Task Force supports the Governor's proposed additional funding to start the acquisition process of private land from willing sellers.

### **Universal Metering/ Secondary Metering**

Senator Jacob Anderegg introduced a bill in the 2018 General Session to require metering of secondary water systems. Senator Anderegg worked with water community members to develop amendments to phase in the time before the metering was required. He then pulled the bill so that it could be worked on during the interim. Metering will result in water savings, but the meters are expensive. During the interim, Senator Anderegg and Rep. Hawks have joined forces to find a source of funding for the meters and they are planning to introduce new legislation. They have met with members of the water community to gather information and support for secondary metering. It's a great idea, but it is expensive, and it will be difficult to find funding. Weber Basin Water Conservancy District is one of the leaders in the State in installing secondary meters. The City of Saratoga Springs installed meters on their secondary water system. Some irrigation companies have voluntarily installed meters on their systems. Each of these entities have experienced water savings. Some of the amendments being considered by Senator Anderegg are exemptions for agricultural users and a delayed effective date for implementation. New systems would be required to install secondary meters.

## **Water Banking**

A working group dealing with the concept of water banking has been working during the interim on the complex issue of water banking. Senator J. Iwamoto has been the leading Legislator bringing together members of the water community. They have made good progress, yet at this point they do not have a legislative recommendation ready. This subject is complex enough that additional time may be needed for development of legislation. Still this concept has great potential. Keep posted on this matter.

## **THE “OH, REALLY” BILLS.**

The “Oh, Really” bills are really good bills that have been well developed and vetted by the Utah Water Task Force. Often, they consist of technical revisions recommended by the Natural Resource Department Staff or by other members of the Utah Water Community.

## **InStream Flow Water Rights, sponsored by Rep. Tim Hawks.**

Last year, the Instream Flow Water Rights bill was up for “sun set” review. Rep. Hawks introduced a bill to remove the reauthorization requirement. The Senate introduced a bill to grant a one-year extension. The Legislature passed the one-year extension. Rep. Hawks has requested a bill, similar to his last year bill, to remove the continuing “sun set” review. He has received Utah Water Task Force endorsement for his bill this year.

## **Utah Water Task Force Clean Up Revisions**

Each year the task force recommends several changes that are generally technical in nature or very easy to understand. These are the following changes likely to be included in these “Oh, Really” bills:

1. Adjudication process. Changes have been made to approve the adjudication process with a change in the language for summons, 73-4-22. Changes to require the affidavit filed in an application to change a small amount of water on an affidavit prepared by the State Engineer, 73-3-5.6 and another change in 73-3-5.6 for the process of renewing a lapsed change application.
2. Clarification to the rebuttable presumption of impairment of water quality. The word “both” is suggested and in another place, “either or” is added to require compliance with both events. 73-3-8.
3. Dam Safety provisions are clarified to assure that the State Engineer has the authority to regulate the safety of dams, and that depending on the severity of a dam safety issue, the state engineer may issue orders to resolve the dam safety issue. 73-51- 101 and 503.
4. Prohibitions have been added to prevent unauthorized connection to a water system and prohibit obstructing a canal or connecting to a sewer works. 73-1-14 &15.
5. The form of Land Deed Addendums and Water Deed Addendums is set by resolution in the statute. These instructive notes needed updating.

## **OH – OH BILLS**

Some bills really deserve an “Oh – Oh.” This happens when the bill will be detrimental to the Water Community or at least they might be, and additional attention needs to be directed toward this

legislation. Hopefully, some with more information, bills become either “Ah Ha” or “O Really” bills. Some with the additional information, really are against the best interest of the water community.

### **Property Tax Restriction**

Senator Lincoln Fillmore tried to restrict the property taxing authority of Local Districts in 2016. That Legislation did not pass, and it was referred to interim study. In 2017, the water community worked out a compromise with Senator Fillmore and that legislation is now in its first year of operation. There is some indication that Senator Fillmore is going to introduce additional legislation in the 2019 General Session that will further restrict property taxing authority for special districts. Meetings are being arranged to visit with Senator Fillmore. Right now, this looks like an “Oh-Oh” bill. Stay alert for this one. We have also heard that the Utah Rivers’ Council is attempting to find a sponsor for legislation that will restrict property taxing authority for Local Districts.

### **Municipal Water Systems Accountability, sponsored by Rep. M. Winder.**

This bill could be an “Oh-Oh” bill. The bill is currently being drafted for the Representative Winder. It sounds like it applies to Municipal Water Systems rather than local districts. Until those municipalities impacted have had a chance to review this bill, it should be on their list of concern. There has been no contact between the Legislator and the Prep 60 Districts. He may have contacted the ULCT, but to my knowledge, this contact has not been made yet. It should be on the list of concern bills.

### **Secondary Water Systems, sponsored by Rep. Paul Ray.**

Rep. Ray has requested this bill. It is a work in progress, but to our knowledge, there has been no contact with the Water Community about what he is trying to do. Senator Anderegg has expressed interest and worked with the Water Community, but there is no indication of what Rep. Ray is planning. We’ll just have to stay connected to see what he has in mind.

### **Storm Water Protection Plan, sponsored by Rep. Paul Ray.**

This bill is in the process of drafting and there is no indication yet of what he is attempting to resolve. We’ll just have to wait and see what he is trying to do. It might not be an “Oh-Oh” bill.