

**UTAH ASSOCIATION OF SPECIAL DISTRICTS
2020 GENERAL SESSION WATER LEGISLATION
“IT’S THE WATER AND A LOT MORE”
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An old beer commercial, had a great line, “It’s the Water and a Lot More.” This is a great introduction for the 2020 Water Legislation Review. There were on October 31, 2019, 21 different bill requests. All are “In Process” which means that as of October 31, 2019 the exact legislative language is not available yet to the public. This is really scary and totally appropriate for any kind of research done on October 31. The scariest bill is the one that no one knows what it is about. A review of the 21 bills for which files have been requested will reveal “The Good, the Bad and the Ugly” of these requested bills and there are a few other bills that have been talked about, but a bill file has not yet been opened.

The Good Bills

It should be noted that value is in the eye of the beholder. Ron Thompson, Washington County Water Conservancy District General Manager is a perfect example of the “eye of the beholder,” he always claimed that forfeiture was a good policy until one of his rights was in danger of being forfeited. This is my take on the value of proposed 2020 legislation and does not reflect the opinion of my clients. It has always been my policy to provide deniability to my clients so they can make the choice on legislation. The definition of a good water bill is a boring bill, no excitement, limited unknown consequences, no surprises, and that while the bill may not have totally awesome support, the bill has not motivated formidable opposition. The Utah Water Task Force (“UWTF”) has done a good job in providing a forum for developing and vetting changes to our existing code of Water Policy. There are some in the Legislature that are jealous of the ability of the UWTF to develop, vet and recommend changes to legislative policy (“existing code”) because they feel that should be a legislative role. So, a great question is, “Who gets to vet Water Policy? Is it the Legislature with both standing and interim jurisdiction, the Utah Water Task Force, the Irrigators, the Districts, Municipalities, or the regulating agencies? Wisdom and Experience dictate that the best answer comes from the involvement of all the water community, not just the Legislature.

Good Technical Bills

Each year, the Utah Water Task Force has identified tune-up legislation that is often very technical and clearly a tune up. These bills generally are treated favorable by the Legislature and become new laws, clarifying existing law.

General Adjudication Water Amendments – Rep. T. Hawks. The bill modifies UCA 73-5-13(7) to provide that when a final summons in a general adjudication occurs, the area is closed to further filing of diligence claims. The bill is recommended by the State Engineer and has

received an endorsement from the UWTF. Rep. Hawks has opened the bill file, but he may find another legislative sponsor for the bill.

Water Applications Amendments – Rep. T. Hawks. The bill recommends a change to the application process for small applications UCA 73-3-5.6 to continue to provide a certificate for these small changes. The legislation is recommended by the State Engineer and has been endorsed by the UWTF. Rep. Hawks has opened the bill file, but he may find another legislative sponsor for the bill.

Water Forfeiture Amendments – Rep. T. Hawks. The State Engineer has recommended four changes to UCA 73-1-4, Forfeiture Statute, 1) Exemption to forfeiture based on a lease or other agreement must be based on a written document. 2) Clarifies that water stored for future beneficial use is exempt from forfeiture. 3) Authorizes the State Engineer to establish rules for the municipal 40 year water development plan. 4) Lists some unreasonable causes for non-use related to non-use applications which codifies existing practice. The bill was endorsed by the UWTF. Rep. Hawk has opened the bill file, but he may find another legislative sponsor for the bill.

The State Engineer is planning on requesting the UWTF at its November 2019 meeting to consider legislation to change the Recharge and Recovery Certificates UCA 73-3b-203 & 206 to a permit process. There was a little push back earlier and the State Engineer thinks they have a solution that they want to review with the UWTF to see if endorsement can be obtained.

The State Engineer is also planning at the same November meeting to request consideration of a technical change to UCA 73-4-11 dealing with proposed determinations by the State Engineer. More information will be available on both items after the November meeting.

“Good Bill” Category.

The UWTF has developed and endorsed the following legislation which fits into a **“Good Bill Category:**

Water Facilities Amendments – Rep. L Wilde. This bill was recommended by the UWTF and was considered by the 2019 Session, but the bill did not pass because there was a concern raised by the Home Builders. The bill was worked on by the interested parties and workable legislation developed and vetted. The bill is designed to make it a crime to interfere or tap into without approval to the water infrastructure of a public water entity. The bill is endorsed by the UWFA.

Water Amendments and Education Entities – Rep. S. Handy. This bill was brought to the UWTF by Steve Clyde on behalf of his client, the University of Utah. The bill provides that the University of Utah is a Public Water Supplier as defined by code. The University does supply a lot drinking water to the public. A diverse working group reviewed the initial request and

developed the concept now included in this bill. The bill has now been endorsed by the working group and then by the UWTF.

Water Use Amendments – Rep. T. Hawks. This bill provides for different uses of a single water right during the same irrigation season. A working group of the UWTF is currently working on legislation for review at the UWTF November meeting. Rep. Hawks is engaged on this concept. It has been used in other states. One of the frustrations of the existing change application process is its deliberative and lengthy process. There seems to be a willingness to proceed with further drafting to find the right combination for the actual legislation.

Public Water Supplier and Education Agencies – Sen. R. Okerlund. This bill amends (we think) UCA 72-6-116 to require UDOT to pay 100% of relocation costs to accommodate road/highway projects. The proposal was endorsed by the UWTF. The definition change would include Associations, and members of the UASD to receive 100% reimbursement from UDOT for water infrastructure relocations.

“It could be Good or Bad.”

Proposal to Amend Utah Constitution – Municipal Water Resources – Natural Resources, Agriculture, and Environment Interim Committee. There are two potential amendments to the Constitutional Amendment approved in the 2019 General Session. One is suggested by Mark Stratford, Ogden City Attorney’s Office and the ULCT’s water policy representative, which is a one word change to the 2019 Constitutional Amendment. His change is far more accurate than the existing wording and was endorsed by the UWTF. Rep. Stratton encouraged the UWTF to consider additional changes to the 2019 Constitutional Amendment. These proposals were contested by stakeholders and the UWTF did not endorse the suggested changes. If the proposed legislation is the one word, Mark Stratford, (ULCT) then this becomes a good bill. If it contains a variety of changes, it becomes either a bad or an ugly bill. We just have to wait and see.

Agriculture Water Optimization Task Force Amendment – Legislative Water Task Force. At the last meeting of the Legislative Water Task Force a request was made to extend the timing and protect the authorizing appropriation from lapsing. The discussion then morphed into a lot of different ideas. This Task Force requested legislation, but it is not clear whether it will be just for the extension and protection of existing funds or whether the proposed legislation morphs into “The Water and a lot more.” It will be the difference between Good or Bad and it won’t take long to tell which it is when the legislation is finally made available to the public.

Water Banking Amendments – Sen. J. Iwamoto. This bill has had the most discussion, Interim hype and divided responses. The bill authorizes and funds a pilot water bank, most likely to be located in Cache County. To the proponents it holds out the hope to be able to recover some economic benefit from a surplus water or a water right that might be in jeopardy from being forfeited for non-use. Water banking does exist now in the current practice in

certain water communities. Opponents feel that proposed legislation may create problems for their existing practices of water banking. The pilot project may be helpful in Cache County. There has been a lot of support from those that might benefit from loaning their water to Another user for a price. There has not been much support from those customers who will be asked to pay for the price of the temporary use. It might work out then it would be a good bill, but if it messes up more than it fixes, it's probably a bad bill.

State Water Policy Amendments – Legislative Water Development Commission. Rep. Stratton had a discussion before the Commission on the updating of the State Water Policy, and he submitted for review a concise variety of concepts to be called the State Water Policy. The Policy will be discussed at the November meeting of the Commission and possibly at the Natural Resource Interim Committee. The discussion includes both conservation and development of new water resources. Some in the water community have made editing suggestions. It could very well be a good bill, but it has the potential to change to a bad bill depending on the final form of the legislation.

Secondary Water Requirements – Sen. J. Anderegg. Senator Anderegg sponsored SB 52, Secondary Watering Metering in the 2019 Session. The bill that passed contains a requirement for the UWTF to report on Secondary Metering. After discussions before the full UWTF, a working group was formed and chaired by Tage Flint to create a report back to the Natural Resource Interim Committee on Secondary Metering. The working group has met a couple of times and is in the process of preparing to report to the UWTF at the November 13, 2019 meeting. The problem is that the report is not legislation. The problems that caused the disjointed SB 52 have not been resolved. If Senator Anderegg works with the issues and recommendations of the working group and the UWTF, it possible that a revised SB 52 can be developed. However, at the October 29, 2019 Water Summit, Senator Anderegg seemed more interested in telling the attendees how it was going to be rather than asking how it could be made better. That may be an overreaction to his presentation, perhaps he was really asking how to make secondary metering really work because it does help conserve water resources. At this point I not sure that this won't be a bad bill.

Heads-up Category.

Under the subject matter of "Water Quality" there two bill requests that certainly need to be watched:

Recipient Drug Water Quality – Government Operations Committee. The discussion centered on the impact of Drugs discharged into the receiving waters of the state on water quality. Does existing water quality treatment effectively remove the drugs? There are a lot of unanswered questions about this impact and what can be done about it.

School & Child Care Water Testing Requirements – Rep. S. Handy. This issue came to the forefront post Flint, Michigan and Sandy City. It will likely be a matter of concern for Public Water Suppliers.

Flat Out Ugly.

As noted in the beginning, the worse bill is the one that no one knows anything about. It could be good, bad or flat out ugly. The following bill request right now should be treated as flat out ugly until more knowledge proves the bill to be moved into a better category.

Agricultural Water Use Amendments – Senator J. Anderegg. This bill in work in process, no information has been made available by the sponsor to the water community; although, he seemed to take on a threatening stance at the Utah Water Users Association Water Summit where he warned that Agriculture was going to need to conserve and use its water more efficiently. This could be a whole new level of learning experiences for both the Senator and the Agriculture Committee. It could turn into a battle between the “haves” and the “have nots.”

Public Water Supplier Amendments – Rep. K. Coleman. Last year, Rep. Coleman worked with the Water Community and together developed a long needed resolution for Public Water Suppliers. This year she has not attended any of the UWTF meetings and nobody has any information about this bill. Sneak attacks are not a preferred method of developing meaningful water policy.

Water Infrastructure Leakage Reporting – Rep. M. G. Ballard. The regional staff for the American Water Works Association (“AWWA”) made presentations to the UWTF and Legislative Water Task Force about the importance of water audits to find where water infrastructure was leaking. It is a good concept, it has been around for a long time, and it is something that the Division of Drinking Water has been encouraging. A pitch has been made for a \$1.5 million appropriation so that engineering firms, including AWWA, could perform this valuable service to protect our critical water resources. Two bill files have been opened, one by Rep. M. Ballard and one by the Legislative Water Development Commission. No one has seen any specific legislation yet. Public Water Suppliers have both the budget and authorization available to contract for water audits now, not sure who gets the \$1.5 million at the state to do a water audit for the existing Public Water Suppliers, or does it go to the DFCM to find the leaky pipes for the State of Utah?

Water Conservation Plan – Rep. S. Harrison & Rep J. Briscoe. Both Representatives, Harrison and Brisco, met with the UWTF to talk about the Water Conservation Bill introduced in the last session by Rep. Harrison. It set a state-wide goal for water conservation and required accounting of costs to either achieve the state-wide goal or not achieve the goal. Last year the bill did not advance beyond the House Natural Resource Committee. Rep. Harrison asked for feed-back and urged that available funds be used for repair and replacement of existing water resources rather than for the development of new water projects. Despite pleas to “stay in touch” no further information has been received by either party.

Lake Powell Financing Clarifying Terms. The Legislative Auditor reported to the Audit Committee of Legislative Management and noted that depending on adoption of reasonable repayment terms that Washington County Water Conservancy District would be able to pay the State back for the building of the Lake Powell Pipeline. The Legislative Auditor noted that the Lake Powell Pipeline Development Act has ambiguous terms for financing and repayment that ought to be clarified by the Legislature. The Interim Natural Resource Committee reported back to The Legislative Management Audit Committee that legislation should be drafted to clarify the financing terms. In the process of starting to develop clarifying terms for financing, LRGC discovered that a working group under the direction of the Executive Director of the Department of Natural Resources had already been formed and was working on the resolution of reasonable financing terms with stake holders. Steps are being taken to have members of the Interim Natural Resource Committee participate with this DNR working group. This working group is not scheduled to complete its work in time for the 2020 General Session. If legislation is introduced before this working group completes its review process, the bill will likely be drafted with a view of making it impossible for Washington County Water Conservancy District to meet the requirements proposed for financing the Lake Powell Pipeline.