

# Legislative and Case-Law Update

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**LEGISLATIVE UPDATES**

**House Concurrent Resolution 1 – Concurrent Resolution Regarding the Grand County Water Conservancy District (Rep. Albrecht & Sen. Hinkins)**

This resolution supports the transfer of a pipeline, pump stations, storage reservoir, and associated rights of way owned by the U.S. Department of Energy for its Moab Uranium Mill Tailings Remedial Action project site (which will soon be completed) to the Grand County Water Conservancy District. The District currently holds approximately 2,500 acre feet annually of unused water rights that could be accessed with this pipeline and carried to rural areas.

**House Bill 41 (1<sup>st</sup> Sub.) – State Water Policy Amendments (Rep. Albrecht & Sen. Sandall)**

This bill adds to the State’s water policy the following: (1) promotion of groundwater water quality, (2) promotion of the study and consideration of saved water for more flexible water use, (3) promotion of the monitoring of activities in watersheds that provide water to drinking water systems to protect the watersheds, (4) promotion of state water planning, including the formation of a state water plan, (5) and the promotion of water reuse with “appropriate conditions” for the region of use.

**House Bill 46 – Water Rights Applications Amendments (Rep. Owens & Sen. Vickers)**

This bill amends the requirements for reinstating a lapsed application. The State Engineer may reinstate a lapsed application if, within 60 days of notification of the lapse, the applicant files a request to reinstate the application and a request for an extension of time under Section 73-3-12.

The State Engineer shall change the date of priority to the date the request for reinstatement was filed, except under enumerated circumstances

**House Bill 47 – Public Lands Watering Rights Amendments (Rep. Albrecht & Sen. Owens)**

Repeals Subsection 73-3-31(6) which defined the circumstances under which the State Engineer must issue a livestock water use certificate. This bill also removes fees for the request for a livestock water use certificate and the ability of the Division of Water Rights to use fees from the General Fund to process a request for a livestock water certificate. These are now governed by 73-3-8.5.

Otherwise, this bill addresses livestock watering rights on public land. The bill regulates Public Water Reserve No. 107 claims (a claim for water under Public Water Reserve No. 107, Exec. Order of April 17, 1926). Public Water Reserves were created by Executive Order in 1926 and reserved unsurveyed public land within one-quarter mile of a spring or

water hole for public use. The bill's sponsor stated that he felt that BLM was "abusing" this executive order and that his intent was to limit BLM's reserve claims.

To recognize a Public Water Reserve No. 107 claim for a spring or water hole on public land in Utah, the State Engineer shall (1) require that the public land agency file a statement of claim with the written consent of the beneficial user and establish "the extent to which, as of April 17, 1926, the Public Water Reserve No. 107 use supported the beneficial use of livestock watering and human consumption by grazing permittees"; (2) determine whether the spring or watering hole meets certain criteria; (3) determine whether the purposes described in the Subsection would be frustrated without the water.

The bill prohibits the State Engineer from recognizing more than one Public Water Reserve No. 107 claim within a 40-acre parcel, one that is closer than a quarter mile from another claim, or one that has as its beneficial use the watering of wildlife. It also prohibits a Public Water Reserve No. 107 claim from interfering with a use with a priority date before April 17, 1926, requires written consent from the beneficial user before approving a livestock watering right or Public Water Reserve No. 107 claim change application, and provides that a Public Water Reserve No. 107 claim is appurtenant to the land.

Finally, the bill allows a beneficial user to file a non-use application if a federal land management agency reduces livestock grazing AUMs on federal grazing allotments and the reduction results in a potential partial forfeiture of an appropriated right. The bill requires the State Engineer to approve such an application and prohibits the use of the subject water for any other purpose than watering livestock.

#### **House Bill 81 (1<sup>st</sup> Sub.) – Fluoride Amendments (Rep. Gricius & Sen. Cullimore)**

This bill enacts Utah Code Section 19-4-111 – Prohibition of fluoride in public water systems. This bill prohibits the addition of fluoride to water or that will be introduced into a public water system. Further, this section prohibits a political subdivision from enacting or enforcing an ordinance that requires or permits the addition of fluoride to public water systems.

Finally, this updates Utah Code Section 58-17b-627(3) to direct the Division of Professional Licensing to enact rules designating fluoride as a prescription drug that may be prescribed by a pharmacist.

#### **House Bill 89 (1<sup>st</sup> Sub.) – Water Transfer Amendments (Rep. Bennion & Sen. Sandall)**

This bill prohibits the transfer of water shares through small estate probate proceedings, regardless of whether the shares would normally meet the requirements of Utah Code Section 75-3-1201(1).

#### **House Bill 174 – Water Rights Restricted Account (Rep. Albrecht & Sen. Owens)**

This bill expands the Division of Water Rights's access to the Water Rights Restricted Account for costs incurred by the Division to obtain legal support for the benefit of water rights adjudications. The amended language expressly authorizes the Division to access the

Account for costs incurred to obtain legal support in geographic areas that are not undergoing an active general adjudication.

**House Bill 243 – Agricultural Water Optimization Amendments (Rep. Shallenberger & Sen. Sandall)**

This bill authorizes the Agricultural Water Optimization Committee to use certain money to fund research. It directs the committee on the types of research it should fund, adding research that establishes methods for measuring saved water or the effectiveness of the agricultural water optimization funding projects.

The bill also amends grant eligibility, requiring the committee to establish eligibility requirements for grants filed after January 1, 2020, and issued under 73-10g-206 that require at least a match of 25% of total cost for a subsurface drip irrigation project, an automated surge irrigation project, or a measurement, telemetry, or reporting project.

**House Bill 274 (5<sup>th</sup> Sub.) – Water Amendments (Rep. Snider & Sen. McCay)**

This bill addresses certain water rates. This bill requires secondary water suppliers to move to a tiered system by 2030 if they are not already metered and by 2025 if they are already metered. There are some exemptions. The bill outlines how a secondary water supplier may comply with these requirements and how public water systems may handle billing for secondary water suppliers and requires the supplier to “provide an educational component for end users” as determined by rulemaking.

This bill clarifies that a “reasonable basis” for charging a different rate for municipal water retail customers under Section 10-8-22 can include consideration of conservation interests. This bill makes a similar change for special districts, providing that a “reasonable estimated cost” for service by a special district includes conservation as an element in determining the rate charged for a block unit of water.

This bill also requires certain retail water suppliers to consider water conservation in setting rates for culinary water and incorporate at least one “water conservation effort” by July 1, 2027, into its rate structure. It also adds a requirement for culinary retail water suppliers to consider urban farming when setting rates.

Despite these considerations, this bill clarifies that a public water system is not required to show that the rate designed to encourage conservation is based on the actual cost of service, has a “reasonable basis” compared to other block units of water, or is limited to reasonable profit or return on investment. And the adoption of a conservation water rate is “conclusively presumed” to be reasonable.

The bill prohibits for-profit public water suppliers from using revenue from water blocks designed to encourage conservation to pay profits or dividends to investors or owners. But revenue collected from the conservation blocks may be used for conservation or shared with another public water system or wholesale water supplier.

The State Engineer may enforce a violation of this section if the Director of the Division of Water Resources finds a violation and determines that enforcement is necessary to conserve or protect a water resource in the State. The Subsection then outlines the procedure for enforcement actions, including requiring a notice of violation, requiring rulemaking for enforcement proceedings, defining who may have standing for enforcement proceedings, establishing the review and enforcement of final orders, and defining allowable fines.

This bill also removes the requirement not more than five members of the Board of Water Resources be from the same political party.

#### **House Bill 285 (1<sup>st</sup> Sub.) – Water Infrastructure Modifications (Rep. Snider & Sen. Sandall)**

Repeals Water Resources Cities Water Loan Funds created in 73-10-22 and provides that any repayments on the remainder of those loans goes into the Water Infrastructure Fund. It also authorizes and requires the consolidation of several funds into the Water Infrastructure Fund. The bill also adds language to section 73-10g-603 requiring the State Council to establish a process by which applicants may apply for funding from the Water Infrastructure Fund.

The bill requires that a public water system that is not a water conservancy district have capital asset management plan and conditions receipt of state or federal financing upon having that plan by 2028. That plan must be updated every 5 years. The Drinking Water Board has authority to promulgate rules to provide a process to monitor compliance and impose administrative penalties for noncompliance.

This bill also repeals Section 73-10g-504 – Review and reporting by the Water Development Coordinating Council.

#### **House Bill 311 (3<sup>rd</sup> Sub.) – Watershed Amendments (Rep. Snider & Sen. Sandall)**

This bill gives authority to the Board of Water Resources to enter into a contract recommended by the water agent and gives the Water Agent the authority to recommend projects for the construction or purchase of projects that will conserve and use for the best advantage of the people of the state water and power resources.

This bill removes a limitation on the Water Agent that prohibited the Agent to negotiate interests governed by the Colorado River Compacts and the Bear River Compact.

This bill also classifies a water commissioner as a “regular full-time employee” if they meet the requirements of 49-13-102(5)(a), which also makes them eligible for health benefits. A water commissioner is no longer career service exempt or exempt from the classified service provisions of Section 63A-17-307. The sponsor stated that this provision is intended to give local governments more flexibility in negotiating contracts with water commissioners.

Amends the Legislative Water Development Commission membership from a set number of 13 to a minimum of two members from the House and Senate each, with at least one member from the minority political party.

**House Bill 446 – Great Salt Lake Amendments (Rep. Koford & Sen. Sandall)**

This bill clarifies that metalliferous compounds are included in the calculation of total cost of the sale or disposal of metal, metalliferous minerals, or metalliferous compounds for the purposes of severance tax issues in Section 59-5-203.

Amends the circumstances under which the Division of FFSL may require a feasibility assessment to issue a royalty agreement. The agreement must now require a minimum use of five acre-feet of brines instead of the previous maximum of five acre-feet.

Extends the deadline schedule from 9 to 18 months for lowering the adaptive management term after raising it. Additionally, leases entered into under this authority for use on sovereign lands must comply with Section 73-3-30.

Adds a duty of the Great Salt Lake Commissioner to "consult on projects funded by state appropriations that are designed to acquire or lease water or water rights for the Great Salt Lake to ensure the project is consistent with the strategic plan." The bill gives authority to the Commissioner to negotiate agreements, leases, or other means to acquire water for the Great Salt Lake. And it requires the Commissioner to consult with the commissioner of the Department of Agriculture and Food for leasing agricultural water for the Great Salt Lake.

**House Bill 478 (1<sup>st</sup> Sub.) – Brine Mining Amendments (Rep. Bolinder & Sen. Hinkins)**

This bill repeals Utah Code Section 40-8-24 – Brine Mining and enacts Title 40, Part 13, "Brine Conservation Act." This Act gives the Board of Oil, Gas, and Mining jurisdiction over the drilling and production of brine wells. It allows the Board to regulate "multiple mineral development" areas in which both surface and subsurface operations may be occurring simultaneously. It also establishes that any brine mining operation requires a permit.

Bill clarifies that the Board's jurisdiction does not modify the duties or authority of the State Engineer and that the bill doesn't modify water rights.

If the Division of Oil, Gas, and Mining has reason to believe a violation has occurred, it shall "immediately" order inspection of the operation unless the information is already available from a previous inspection. If after inspection the Division determines there has been a violation that creates an imminent danger to health and safety of the public, the environment, or "land, air, or water resources," the Division shall "immediately order cessation" of the operation or the portion thereof relating to the violation. The Division may impose affirmative obligations in order to abate the harm.

If there is no imminent harm or danger from the violation, the Division shall issue a notice specifying a reasonable time, not to exceed 90 days, for the abatement of the

violation. The Division may order cessation of operations for good cause if the deadline is not met. The bill sets an appeal process for notices.

The Division may assess a civil penalty not to exceed \$5,000 for each penalty. Each day may be considered a separate penalty for a continuing violation. The permittee may request an informal conference to protest amount or the fact of a violation. A penalty assessment is final upon public hearing. The statute of limitations for assessing a penalty is within 5 years of the date of the violation.

The bill also sets criminal penalties for intentional or knowing misconduct. A violation is a misconduct with penalties not to exceed \$1000 or 6 months of imprisonment. The statute of limitations for commencing a criminal action is 2 years.

Under certain circumstances, the Board may order forfeiture of a surety or payment equal to costs to remediate the site and close the well. After the Board determines a well has been abandoned, it may sell or dispose of various materials on the site and apply that money to any unpaid penalties. If none, must return to the operator

Upon the petition of an owner or operator of a brine well, the Board may also order the establishment of a brine production drilling unit. The bill limits each production unit to one well but provides exceptions when circumstances dictate. It establishes distribution and size requirements and limitations as well. Two or more owners within a brine production drilling unit may pool resources for the development and operation of a unit by written agreement or by an order by the Board. The requirements for such an order are set forth in 40-13-302(4), with different requirements for consenting owners versus non-consenting owners.

The bill provides procedures for ordering the operation one or more reservoirs as a unit if the operation is reasonably necessary for the purposes of the chapter and the value of estimated recovery “substantially exceeds” the estimated additional cost to the operation. What an order must include and consider is outlined in 40-13-303(3).

Finally, this bill sets forth payment obligations of proceeds derived from the sale of minerals extracted from brine.

#### **House Bill 520 (2<sup>nd</sup> Sub.) – Water Entity Amendments (Rep. Snider & Sen. Brammer)**

This bill updates duties and authority of various water entities to require more interagency and inter-authority coordination.

Utah Lake Authority: This bill prevents the Lake Authority from entering into improvement projects that are conditional on the approval of DFFSL without providing prior notice of intent to enter into the project; Establishes that the Lake Authority is subject to DFFSL’s public trust duty to oversee Utah Lake; Requires the Lake Authority to coordinate with DNR at least monthly and annually report compliance with this section.

Great Salt Lake Trust Council: Now oversees the expenditures of grant money for the Salt Lake; the Commissioner may now designate one member of the Trust Council or be on the

council themselves; the Trust Council must coordinate with the Commissioner to meet the goal of acquiring or leasing water for the Lake; the Trust Council must set a threshold amount for expenditures that it must review.

Great Salt Lake Commissioner: Must work with DNR to ensure a smooth transition between commissioners; Must work cooperatively with the Trust Council; Prohibits the Commissioner from spending money to lease or acquire water without obtaining a review and recommendation from the Trust Council; Now officially a part of DNR and reports to the Director.

Water Agent: Must coordinate at least monthly with “relevant divisions” within the Department of Natural Resources regarding the water agent’s activities.

Removes Great Salt Lake Commissioner and Colorado River Authority from being subject to Section Title 63H Part 9 Chapter 1 – Oversight of Independent State Entities, which would require them to report annually to the Legislative Management Committee.

**House Bill 550 (1<sup>st</sup> Sub.) – Building Permit Fee Prohibition Amendments (Rep. Peterson & Sen. Hinkins)**

This Bill prevents a municipality or a city from imposing an inspection fee on certain water conservancy districts that hire a qualified inspector to conduct inspections on new infrastructure. This means that a conservancy district may hire its own inspector rather than having to rely on a municipality or a city’s chosen inspector.

This bill also repeals Subsection 10-9a-510(4)(c) and Subsection 17-27a-509(4)(c), effective July 2026.

**Senate Bill 33 – Water Rights Recording Amendments (Sen. Vickers & Rep. Shipp)**

This bill allows a grantor’s or grantee’s signature on a water rights addendum to be submitted by facsimile or electronic means. Previously it only permitted a grantee’s e-signature.

**Senate Bill 80 (3<sup>rd</sup> Sub.) –Water Fee Amendments (Sen. Sandall & Rep. Snider)**

This bill enacts Section 19-4-116, which requires the Department of Environmental Quality to establish a fee schedule for the regulation of public water systems for drinking water. The fee schedule may:

- Implement an annual fee on a public water system on the basis of consumption for delivery of water for domestic uses
- Implement a fee for plan review
- Implement a fee for a PWS sanitary survey
- Provide for oversight of the fee schedule by the department
- Provide for the needs of PWSs and the department, including employment
- Include fees to provide various specified incentives

This section generally exempts wholesale water suppliers except those that deliver water directly to end users for domestic uses.

The Department must retain fees as dedicated credits and use the fees to administer the regulation of PWSs.

It also repeals Subsection 19-4-116(6).

Fiscal note: This fee schedule is estimated to bring in a little over a million dollars.

**Senate Bill 36 (1<sup>st</sup> Sub.) – Water Quality Board Amendments (Sen. Weiler & Rep. Cutler)**

This bill requires the Utah Water Quality Board to ensure a prompt and fair settlement of a civil action initiated by the Division of Water Quality to compel compliance. To that end, the bill requires the Board to review an ongoing penalty mediated settlement between the director and a publicly-owned alleged violator if the negotiation meets certain threshold criteria (like, for example, a penalty amount).

Additionally, the bill imposes procedural requirements for when the Board receives a sufficient written request for board review.

**Senate Bill 195 (7<sup>th</sup> Sub.) – Transportation Amendments (Sen. Harper & Rep. Christofferson)**

In relevant part, this bill requires certain municipalities to update the transportation and traffic circulation element of its general plan to identify “priority connections to remedy physical impediments,” including water conveyances, that would improve circulation and access to significant destinations.

**Senate Bill 220 (2<sup>nd</sup> Sub.) – Construction Modifications (Sen. Musselman & Rep. Peterson)**

This bill amends storm water runoff regulation for construction sites.

The relevant authority may not make requirements more stringent than the corresponding Clean Water Act standards, except when entering a consent decree.

This bill adds the requirement of creating a prevention plan for construction sites. If there is a violation of the prevention plan, the bill establishes procedures to follow and authority for the relevant authority. The bill authorizes the imposition of fines where they were currently prohibited and outlines allowable fines and acceptable reasons and the procedure for imposing them.

It requires the authority that owns the municipal system to inspect the site and outlines what an inspection should include. The inspection should be conducted online (site submits photos online) unless the authority has a documented reason justifying an in-person inspection.

This bill creates a right to request an informal adjudicative proceeding to contest a notice of violation or a fine imposed. And it outlines how funds received from fines may be used.

### **Numbered Bills That Did Not Pass During the 2025 General Session**

- HJR 9 – Joint Resolution Regarding Utah’s Share of Colorado River Water (Rep. Snider)
- HB 45 – Irrigation Amendments (Rep. Shipp)
- HB 295 – Municipal Services Fees and Political Subdivision Lien Amendments (Rep. Cutler & Sen. Harper)
- HB 304 – Livestock Watering Modifications (Rep. Chew)
- HB 318 – Residential Turf Amendments (Rep. Owens)
- HB 328 – Water Usage Amendments (Rep. Owens)
- HB 330 – Water Sprinkler Efficiency Requirements (Rep. Owens)
- HB 386 – Public Waters Access Act Amendments (Rep. Chew)
- HB 415 – Water Commissioner Modifications (Rep. Peterson & Sen. Vickers)
- HB 492 – Drinking Water Utilities Amendments (Rep. Jack & Sen. Balderree)
- HB 507 – Legislative Water Development Commission Amendments (Rep. Peterson)
- HB 536 – Water Usage Notification Amendments
- HB 546 – Water Infrastructure Amendments (Rep. Peterson)
- SB 92 – Golf Course Amendments (Sen. McCay & Rep. Hawkins)
- SB 131 – Water Commitment Amendments (Sen. Blouin & Rep. Nguyen)
- SB 305 – Water Wise Landscaping Amendments (Sen. Stratton)
- SB 319 – Utah Lake Authority Amendments (Sen. Brammer & Rep. Gricius)

### **CASELAW UPDATES**

*Zundel v. Ramsdell*, 2024 UT App 88, 553 P.3d 1075

This case addresses whether water shares were conveyed by appurtenance in a land transaction that took place in 2007. Two parties executed a purchase agreement in which land was conveyed and “all water rights appurtenant thereto, if any.” The buyers understood that this language included water shares that had been used on the land. The water shares were never transferred after the purchase.

The question of the case was whether the water shares were appurtenant to land and therefore passed with the land when it is conveyed. The law at the time of the conveyance

presumed that water shares were not automatically conveyed with the land, but that presumption could be rebutted. The Court held that the presumption was not rebutted and the conveying party did not intend to transfer the shares.

This case has limited applicability because Utah Code § 73-1-11 was amended in 2013 with express language that states that “[t]he right to the use of water evidenced by shares of stock in a corporation is not a water right appurtenant to land” and can only be transferred in compliance with the UCC, unless a corporation’s bylaws provide otherwise.

*Washington Cnty. Water Conservancy Dist. v. Washington Townhomes, LLC*, 2024 UT App 55, 549 P.3d 56

This case, having been around for nearly a decade, addresses a challenge to Impact Fees adopted by the District in 2006. At this point, the question on appeal is whether it was reversible error for the district court to grant a motion to appoint a special master.

The Court of Appeals interpreted Utah Rule of Civil Procedure 53(b), which governs the appointment of a special master, requiring a “showing that some exceptional condition requires” the appointment. The court determined that the circumstances of this case—the judge retiring, the duration of the case, the complexities of the case, and the busy court schedule that prevented the case from being heard before the judge retired—were not exceptional. Accordingly, the Court reversed the district court’s decision to appoint a special master.

*Utah Physicians for a Healthy Environment v. Department of Natural Resources*, Case No. 230906637 (Third District, Utah)

In this case, UPHE seeks a declaration that the public trust doctrine imposes a duty on DNR, DWR, and DFFSL to act to ensure a minimum elevation of the Great Salt Lake, which includes reviewing and modifying diversions in the watershed to protect that minimum elevation.

A hearing on motions to dismiss filed by several parties was held on September 17, 2024. Supplemental briefing was submitted after the hearing. A decision on the motion is expected relatively soon.