

Water & the Law
2013 Legislative Update on Water Issues

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The 2013 General Session of the Utah Legislature ran from Monday, January 28, 2013 through Thursday, March 14, 2013. The following bills and resolutions passed both the House of Representatives and the Senate, have been signed by the Governor, and will take effect on May 14, 2014, unless otherwise noted.

H.B. 29 - Adjudication of Water Rights, Representative Joe Briscoe. This bill amends Utah Code sections 73-4-1, -3, -4, -5, -9, -11, and -22. It allows the State Engineer to divide a general adjudication into divisions and subdivisions and conduct the adjudication for each division or subdivision separately. The bill also provides that notices in general adjudications are to be completed by the Division of Water Rights rather than the court clerk, and allows for electronic service of Water Users Claims and the Proposed Determinations in certain instances.

H.B. 36 - Storm Water Capture Amendments, Representative Jim Nielson. This bill amends Utah Code sections 73-2-25 and 73-3-1.5. The bill would prevent enforcement actions by the State Engineer for detention of water for storm water purposes so long as the detention does not interfere with any water right and does not put the detained water to beneficial use. The bill also proposes changes to the rain water harvesting section to allow capture and use of water from as much as two 100-gallon tanks without registration with the State Engineer, and to allow capture and use of water from a maximum 2500-gallon tank (or multiple tanks totaling no more than 2500 gallons) after registering with the State Engineer. The bill would also clarify that the ability to harvest rainwater consistent with section 1.5 does not constitute a water right and cannot be assigned, consolidated, or be the subject of a change application.

H.B. 72 - Safe Drinking Water Disclosure Act, R. Barrus. This bill requires certain disclosures related to fluoridation of water supplies. It also requires that fluoridation be temporarily discontinued under certain circumstances and requires Utah Division of Drinking Water oversight of fluoridation record keeping. (Effective July 1, 2013)

H.B. 73 - Water Easement Amendments, Representative John G. Mathis. This bill amends Utah Code section 57-13a-104 and would establish a procedure for a holder of a prescriptive easement for water conveyance to abandon all or a portion of its easement. The bill contains notice provisions to ensure that others who may have an interest in the canal easement or in keeping the canal corridor active can take appropriate action. The abandonment would be subject to others who may have established a right, but if no others exist, then the owner of the underlying property may reclaim the property.

H.B. 166 - Water Rights Amendments, Representative Ken Ivory. This bill allows a beneficial user of water for livestock on public lands to access and improve public land that has been designated for grazing to use, develop, and maintain beneficial use of water appurtenant to that designated area. Additionally, if the federal government files a diligence claim, the state engineer is obligated to notify the Natural Resources, Agriculture, and Environment Interim Committee of the claim. Finally, the bill requires the Department of Natural Resources to, before November 30, 2013, study the state's jurisdiction over water right conflicts between state or its subdivisions or citizens and the federal government.

H.B. 215 - Water Quality Amendments, R. Wilcox. This bill removes the maximum permit fee allowance for sewage sludge management.

H.B. 326 - Division of Water Rights Amendments, Representative R. Curt Webb. This bill requires the state engineer to consider a recorded water rights deed addendum as a report of water right conveyance. The bill further provides that if a county recorder updates ownership based on a recorded document, the state engineer shall rely on that document to update title to a water right appurtenant to that land. Finally, the bill also requires that, absent clear language in a company's articles or bylaws, the right to use of water evidenced by shares of stock may only transfer under chapter 8 of the Utah Uniform Commercial Code and not as an appurtenance to land.

H.B. 358 - Instream Flow Amendments, Representative Mike Noel. This bill gives more flexibility for fishing groups wanting to file for an instream flow water right. Specifically, a change application for instream flow may occur if there is a Candidate Conservation Agreement with Assurances or if there is the fishing group as entered into a contract to indemnify the water right holder against any liability under the Endangered Species Act.

H.B. 360 - Water and Irrigation Revisions, Representative Ryan D. Wilcox. This is a cleanup bill that closes an unintended loophole from a H.B. 51 in 2008. Although H.B. 51 (2008) did provide additional protections against forfeiture, it was not intended to resurrect water rights subject to forfeiture. It arguably allowed a person to do so, however, simply by filing a nonuse application. H.B. 360 clarifies that a nonuse application only prevents the years where the nonuse application is active from being considered in a forfeiture action and does not prevent forfeiture based on nonuse that predated the nonuse application.

H.J.R. 14 - Joint Resolution on Water Rights, Representative Ken Ivory. This joint resolution expresses concern with actions by the U.S. Forest Service that seek to take control of water rights originating and used on federal public lands and calls on state, county, and local governments "to protect, preserve, and defend their jurisdiction . . . over the water resources of [Utah]." (No effective date, Governor's signature not needed)

S.B. 30 - Water and Irrigation Amendments, Senator Margaret Dayton. This bill makes the following amendments: (a) Amends section 73-1-4 to remove an unintended forfeiture exemption for the sometimes-decades-long period between when the State Engineer issues a proposed determination and when a final decree is issued by the court, to prevent the State Engineer from asserting forfeiture in a proposed determination for periods ending more than fifteen years before the date of the proposed determination, and to prevent a forfeiture challenge by anyone to a water right included in the proposed determination based on pre-proposed determination nonuse unless the challenge comes in the form of a timely objection to the proposed determination. (b) Amends section 73-2-1 to make rulemaking related to sewage effluent reuse discretionary for the State Engineer. (c) Amends section 73-2-22 to update the name of the Emergency Management Administration Council. (d) Amends section 73-3-12 to further define how the State Engineer should assess proof extensions for wholesale electrical cooperatives beyond fifty years. (e) Amends section 73-3-16 to remove the requirement that a submission of proof have both a professional engineer stamp and a notary stamp. (f) And amends section 73-5-13 to require that a diligence claim be prepared by a professional engineer or licensed surveyor rather than require a verification under oath.

S.B. 101 - Division of Water Rights Revisions, Senator Margaret Dayton. This bill makes technical revisions to sections 73-3-10, 73-3-18, 73-3-20, and 73-5-13. The most significant changes are that fixed time applications no longer have a proof due deadline, diligence claimants may file an amended diligence claim, and general adjudications can cut off unfiled diligence claims.

S.B. 115 - Water Development Commission Amendments, Senator Margaret Dayton. This bill provides for staggered, four-year terms for appointed nonvoting members of the Commission.

S.B. 276 - Water Conservancy District Capital Assets, Senator John Valentine. This bill enacts Utah Code section 17B-2a-1010, which requires conservancy districts to "adopt a policy for the assessment, maintenance, and replacement of . . . qualified capital assets" and inventory which of its assets are "qualified capital asset[s]."

S.C.R. 8 - Concurrent Resolution for the Provo Reservoir Canal Title Transfer, Senator Margaret Dayton. This resolution calls for transfer of title to the Provo Reservoir Canal from the United States to the Provo River Water Users Association in conformance with the Provo River Project Transfer Act (P.L. 108-382). (Effective March 12, 2013)

Your questions or comments are invited. The author can be reached at 801-413-1600 or mejensen@smithlawonline.com.