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Utah Water Law and Water Rights

A blog written by a Utah water rights lawyer with recent case law summaries, legislative updates, and informative articles about Utah water law.

Tuesday, October 25, 2022

2023 Legislation: Water Related Liability Amendments

Rep. Carl Albrecht is sponsoring proposed legislation in response to concerns from his constituents who utilize irrigation water from canals that divert Sevier River water across the Sevier Valley. **The irrigation companies that operate the canals have had problems in the past with thunderstorms flowing down the nearby canyons and flooding the canals, which exceeds the capacity of the canals and floods out neighboring properties,** particularly when the floodwater fills the canals with debris. Some canals are not insured for flooding, leaving them fully exposed to liability for such events, while others that are insured often lose their insurance when such claims are paid out. In addition, it is fairly common for these canals to be used by municipalities and others to convey stormwater, sometimes without permission, further exposing the canal owners to liability.

The bill proposes amending [Utah Code section 73-1-8](#), which addresses the duties of canal owners or operators and their liability. The bill would expand the section's applicability by **changing the existing "ditch, canal, flume or other watercourse" language to "water facility," which includes any facility "used for the diversion, transportation, distribution, measurement, collection, containment, or storage of water."** Identical language has already been inserted into two other sections of Title 73, Chapter 1 that apply to the operation of canals to reflect the changing uses of canals and the need to extend protections to other types of water facilities as well. Among other things, the bill shields the owners or operators of water facilities from liability for damage or injury caused by "the diversion or discharge of water or another substance into the water facility by a third party" without permission, or "an act of God, including fire, earthquake, storm, flashfloods, or similar natural occurrences." In addition, the bill clarifies that water facility owners or operators have a duty of "ordinary care" to maintain the water facilities to prevent the waste of water or property damage, rather than a higher degree of liability which courts have threatened to impose on canals in particular in recent years.

The Natural Resources, Agriculture, and Environment Interim Committee unanimously adopted this draft legislation as a committee bill in its August 17, 2022 meeting. In addition, the Legislative Water Development Commission endorsed the bill in its September 22, 2022 meeting. As an interim committee-sponsored and approved bill, it should move directly to the House floor without an additional committee hearing when the 2023 General Session of the Utah Legislature gets underway in January.

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[JEFF GITTINS](#)

UTAH, UNITED STATES

Need a water rights attorney? Have questions about Utah

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The text of the proposed bill can be found [here](#).

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Labels: [2023 Legislation](#), [Canal Safety](#)

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Monday, September 19, 2022

Utah Water Rights - Interview on Real Estate Edge

I was recently interviewed about Utah water rights and water law on the Real Estate Edge podcast. It was a great opportunity to discuss what water attorneys do, some basics of Utah water law, and water policy considerations.

Labels

[2009 Legislation](#) (5)

[2010 Legislation](#) (30)

[2011 Legislation](#) (10)

[2012 Legislation](#) (2)

[2013 Legislation](#) (7)

[2014 Legislation](#) (8)

[2015 Legislation](#) (8)

[2016 Legislation](#) (4)

[2017 Legislation](#) (2)

[2018 Legislation](#) (1)

[2019 Legislation](#) (2)

[2020 Legislation](#) (4)

[2021 Legislation](#) (3)

[2022 Legislation](#) (3)

[2023 Legislation](#) (1)

[Canal Safety](#) (11)

[Case law](#) (49)

[Division of Water Rights](#) (20)

[General Adjudications](#) (55)

[Groundwater](#) (24)

[Public Meeting](#) (66)

[Rainwater Harvesting](#) (6)

[Rules and Policies](#) (22)

[Stream Access](#) (26)

[Title to water rights](#) (17)

[Training Meeting](#) (7)

[Water Companies](#) (27)

[Water law basics](#) (32)

[Water Quality](#) (2)

Real Estate Edge | Episode #31 – Utah Water ...



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Labels: [Water law basics](#)

Thursday, June 30, 2022

Personnel Changes at Utah Division of Water Rights

In the past few months, there have been several leadership changes at the Utah Division of Water Rights.

James Greer has left the Division and Jared Manning has been appointed to fill his position as Deputy State Engineer.

Blake Bingham has returned from military service and has been appointed to the new Deputy State Engineer position created by House Bill 334.

Eric Jones has been appointed to be the Assistant State Engineer for Applications and Records.

Kirk Forbush has retired and Terry Monroe has been appointed as Regional Engineer for the Sevier River/Southern Regional Office.

Chase McDonald has been appointed as Regional Engineer for the Utah Lake/Jordan River Office.

Posted by [Jeff Gittins](#) [No comments:](#)

Labels: [Division of Water Rights](#)

Tuesday, May 31, 2022

District Court Water Judges - rule adopted

In a [prior post](#), I discussed a proposed amendment to the Utah Code of Judicial Administration that would allow for the appointment of district court water judges. Rule 6-104 has now been formally adopted and will become effective on November 1, 2022.

The adopted rule has a few changes from the original proposed rule.

First, section 6 of the original proposed rule required water judges to publish any opinion that decided a water law case of first impression. Some people were concerned that publishing the opinions gave the impression that they were binding decisions. Section 6 of the adopted rule requires judges water judges to post decisions in water law cases of first impression.

Second, section 8 was added to clarify that nothing in the rule affects the venue of a water law case.

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

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Friday, May 20, 2022

Ute Indian Tribe v. McKee

The Tenth Circuit Court of Appeals recently issued its decision in the case of *Ute Indian Tribe of the Uintah and Ouray Reservation v. McKee et al.* This court focused on the issue of whether a tribal court had jurisdiction over a dispute between the tribe and a non-Indian about rights to water on non-Indian land within reservation boundaries.

McKee is not a member of the Ute Indian Tribe, but he owns non-Indian fee land that is located within the boundaries of the Ute reservation. McKee used water from two irrigation canals to irrigate his property. The tribe asserted that the water belonged to the United States in trust for the tribe. The tribe sued McKee in tribal court and won. The tribe then petitioned the federal district court to recognize and enforce the tribal court judgment. But the district court determined that the tribal court lacked jurisdiction over the dispute and dismissed the case. The tribe then appealed to the 10th Circuit Court of Appeals.

[Water Right Information](#) (16)

[Wetlands](#) (1)

Helpful Utah Water Law Links

[Utah Water Code \(Title 73\)](#)

[Utah Administrative Code: Water Rights \(Title R655\)](#)

[Utah Division of Water Rights](#)

[Utah Division of Water Rights: Advertising List](#)

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[Utah Division of Water Rights: Filing Fees](#)

[Utah Division of Water Rights: Forms](#)

[Utah Division of Water Rights: Glossary of Water Words](#)

[Utah Division of Water Rights: Maps](#)

[Utah Division of Water Rights: Search by Name](#)

[Utah Division of Water Rights: Search by Water Right Number](#)

Blog Archive

▼ [2022](#) (12)

▼ [October](#) (1)

[2023 Legislation: Water Related Liability Amendments](#)

▶ [September](#) (1)

▶ [June](#) (1)

▶ [May](#) (2)

▶ [April](#) (2)

▶ [March](#) (4)

▶ [January](#) (1)

▶ [2021](#) (17)

▶ [2020](#) (15)

▶ [2019](#) (33)

The court noted the general rule that tribes can regulate only their territory and their members on the reservation, and that they have no general authority over nonmembers of the tribe -- even when nonmembers engage in activity on the reservation and especially when they do so on non-Indian fee land. There are only two exceptions to this general rule: (1) tribes can regulate the activity of nonmembers who enter into consensual relationships with the tribe or its members and (2) tribes can regulate the activity of nonmembers on reservation land if that activity threatens the tribe's political integrity, economic security, or health and welfare. The tribe bears the burden of showing that one of these exceptions exists.

- ▶ [2018](#) (23)
- ▶ [2017](#) (25)
- ▶ [2016](#) (22)
- ▶ [2015](#) (17)
- ▶ [2014](#) (19)
- ▶ [2013](#) (20)
- ▶ [2012](#) (14)
- ▶ [2011](#) (28)
- ▶ [2010](#) (54)
- ▶ [2009](#) (28)

The tribe argued that the court should create a third exception that a tribe can exercise civil jurisdiction over a nonmember's use of a natural resource if the tribe claims an interest in that natural resource. The court rejected this argument and held that a tribe's authority does not extend to a nonmember's use of a natural resource on non-Indian land.

The court then looked to see if either of the exceptions applied. The tribe argued that the first exception should apply because McKee has agricultural leases on tribal lands and a farming partnership with a tribe member. But the court noted that neither of facts related to the land and water at issue. Accordingly, the court held that the first exception did not apply. The court noted that for the second exception to apply, the challenged conduct cannot merely injure the tribe but must be "catastrophic for tribal self-government." The court determined that the water dispute between the tribe and McKee did not rise to this level, and therefore held that the second exception did not apply. Because neither exception applied, the court concluded that the tribal court lacked jurisdiction over the water dispute and upheld the district court's dismissal of the case.

The attorneys at [Smith Hartvigsen](#) were pleased to represent Mr. McKee in this case.

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

Posted by [Jeff Gittins](#) [No comments](#):

Thursday, April 21, 2022

Drought Emergency Order

Gov. Spencer J. Cox declared a state of emergency due to the dire drought conditions affecting the entire state. This declaration activates the Drought Response Committee and triggers increased monitoring and reporting. It also allows drought-affected communities, agricultural producers and others to report unmet needs and work toward solutions.

To read the full text of the governor's executive order, [click here](#).

Spencer J. Cox
Governor

EXECUTIVE ORDER
2022-04

Declaring a State of Emergency Due to Drought

Posted by [Jeff Gittins](#) [No comments:](#)

Labels: [Rules and Policies](#)

Tuesday, April 12, 2022

Public Meeting Concerning the General Adjudication in Jordanelle Area

The Utah Division of Water Rights has set a public meeting to discuss the [general adjudication](#) of water rights in the Jordanelle area in the Provo River Division of the Utah Lake/Jordan River Drainage (Area 55, Book 13). The Jordanelle area boundaries on shown on the map below. The following information is from the public meeting notice:

What: Public Meeting

Who: Water Users within the Jordanelle area

When: April 21, 2022, 6:00 to 7:00 pm

Where: Wasatch County Senior Center, 465 East 1200 South, Heber City

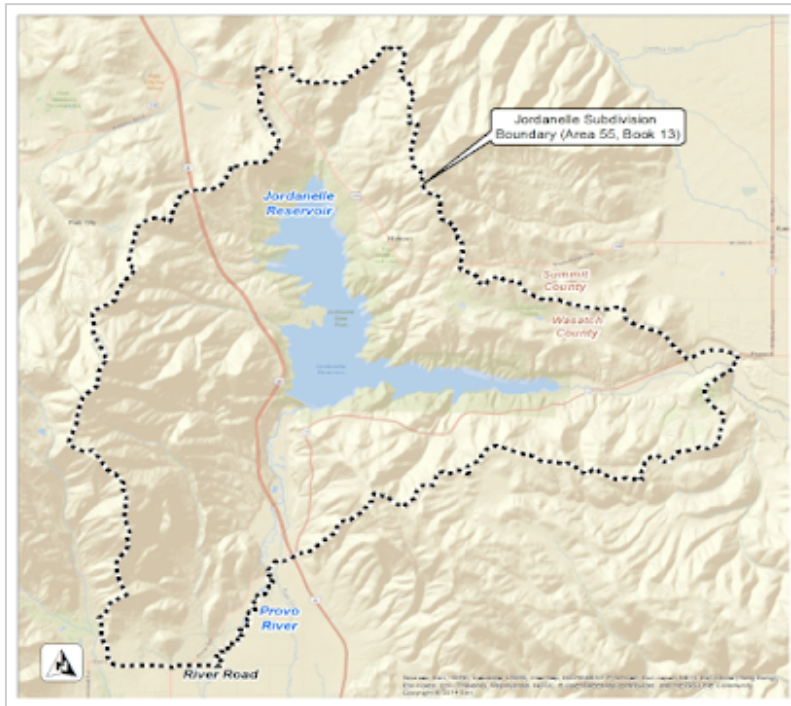
Purpose: In accordance with Chapter 73-4, Utah Code Annotated, and the Third Judicial District Court (Civil No. 365729852), the State Engineer is authorized and ordered to conduct a general determination of the rights to the use of all water, both surface and underground, within the drainage area of the Jordanelle Subdivision, Provo River Division, of the Utah Lake and Jordan River drainage in Wasatch County. Efforts are currently underway and over the next few months, representatives of the Division of Water Rights will be working in the Jordanelle area to survey existing water rights and investigate [water user's claims](#). In light of this work, the public is invited to a public meeting. Representatives from the Division of Water Rights will be available during this time to discuss the adjudication process, review water rights within the area, and answer questions. If individuals cannot attend, but have questions regarding the adjudication process or water rights within the Jordanelle area, please contact the Division of Water Rights at 801-538-5282.

Agenda:

1. Introduction (Mike Drake - Assistant State Engineer)
2. Adjudication Process Presentation
3. Public Comments and Questions

A live stream broadcast of the public meeting will also be available online at this [link](#).

For more information regarding this meeting, [click here](#).



Posted by [Jeff Gittins](#) No comments:

Labels: [General Adjudications](#), [Public Meeting](#)

Friday, March 18, 2022

Public Meetings Regarding General Adjudication of Water Rights Within the Navajo Nation Subdivision

The Utah Division of Water Rights has set a series of public meetings regarding the [General Adjudication](#) of water rights within the Navajo Nation subdivision, San Juan Division of Southeastern Colorado River (Book 09-1). Information regarding the four public meetings is provided below, along with a map showing the boundaries of the adjudication area.

Public Meeting in Monticello

March 30, 2022, 4:00 pm to 5:00 pm

The Hideout Community Center

648 South Hideout Way
Monticello, Utah

Public Meeting in Blanding

March 30, 2022, 7:00 pm to 8:00 pm
USU Blanding Arts & Events Center
715 West 200 South
Blanding, Utah

Public Meeting in Aneth

March 31, 2022, 10:00 am to 11:00 am
Aneth Chapter House
SR 162 and Riverside Ct
Aneth, Utah

Public Meeting in Monument Valley

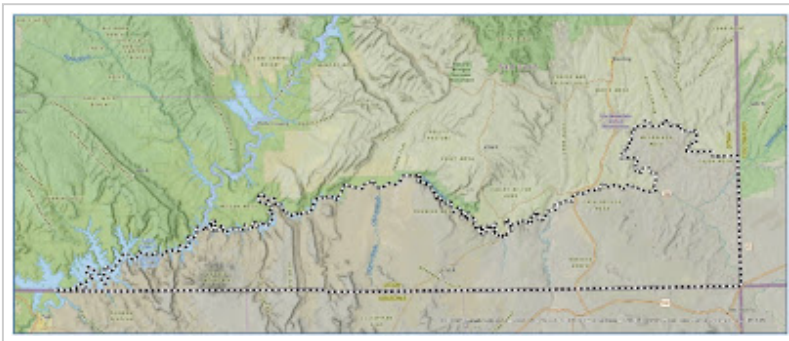
March 31, 2022, 3:00 pm to 4:00 pm
The Navajo Welcome Center
SR 163 and Monument Valley Road
Oljeto-Monument Valley, Utah

In accordance with Chapter 73-4, Utah Code Annotated, and the Seventh Judicial District Court (Civil No. 810704477), the State Engineer is authorized and ordered to conduct a general determination of the rights to the use of all water, both surface and underground, within the drainage area of the Navajo Nation Subdivision, San Juan River Division of the Southeastern Colorado River General Adjudication.

Efforts are currently underway and over the next few months, representatives of the Division of Water Rights will be working in the Navajo Nation area to survey existing water rights and investigate [water user's claims](#). In light of this work, the public is invited to a public meeting. Representatives from the Division of Water Rights will be available during this time to discuss the adjudication process, review water rights within the area, and answer questions.

If individuals cannot attend, but have questions regarding the adjudication process or water rights within the Navajo Nation area, please contact the Division of Water Rights at (801) 538-5282.

A recording of the public meeting will also be available on-line under the meetings tab on the Division's [website](#).



Posted by [Jeff Gittins](#) [No comments:](#)

Labels: [General Adjudications](#), [Public Meeting](#)

Monday, March 14, 2022

District Court Water Judges

The Utah Judicial Council has proposed an amendment to the Code of Judicial Administration that would allow for the appointment of water judges. The amendment would add Rule 6-104 entitled "District Court Water Judges."

The Utah Judicial Council would formally designate at least three district court judges as water judges. The Judicial Council will consider a judge's knowledge and experience in relation to water right cases, as well as a judge's willingness to become familiar with water law. If a water law case is filed in district court, a party to the action can request to have the case assigned to a water judge. The case will be reviewed and possibly granted by the judge originally assigned to the case (if the case is filed under a provision of Title 73, Chapters 3 or 4 of the Utah Code) or by the supervising water judge (if the case is not filed under a provision of Title 73, Chapters 3 or 4 of the Utah Code). A case will be assigned to a water judge on a random basis.

The water judges will elect a supervising water judge to serve a two-year term. The supervising water judge will assign water cases, coordinate schedules and facilities, address concerns regarding the management of water cases, and overseeing the use of resources to develop water law expertise and facilitate consistency in the development of case precedents in the water law area.

If a water judge does not have a full caseload of water cases, the judge will hear non-water law cases to maintain a full court calendar. Water judges do not serve for a specific term, but can only serve so long as they are district court judges and they can resign as a water judge at any time.

The proposed rule also provides that if a water judge decides a water law case of first impression, or a case that creates new law or gives new guidance, the opinion will be published (although the rule does not say exactly where the opinion will be published).

To read the full proposed rule, [click here](#). The Council is accepting comments on the proposed rule until April 28, 2022.

Posted by [Jeff Gittins](#) [No comments:](#)

Wednesday, March 9, 2022

2022 Legislation: Water Bills That Passed

The 2022 Utah legislative session has ended. Here are summaries of the water-related bills that passed the legislature and have gone to the governor for signature.

[HB 21 \(1st Substitute, amended\): School and Child Care Center Water Testing](#)
Rep. Stephen G. Handy

House Bill 21 requires each school and child care center to test their water taps for lead by December 31, 2023. The samples must be submitted for testing to a certified laboratory that has entered into a memorandum of understanding with the Division of Water Quality. Tests are not required for taps that have been tested within the past six years. Subject to appropriations, the Division will pay the laboratory for the costs of the testing. If a test result shows actionable levels of lead, the school or child care center must take steps to stop using the water tap or reduce the lead level below actionable levels. Administrative rules will be drafted regarding procedures and standards for reducing the lead levels, as well as possible grants to pay for the costs associated with remediation actions.

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

H.B. 33 (1st Substitute): Instream Flow Amendments **Rep. Joel Ferry**

House Bill 33 amends Utah's instream flow statute (Utah Code § 73-3-30) to allow water rights to be used to benefit Great Salt Lake levels and other sovereign lands. Currently, the statute is limited to streams, whereas the bill allows water rights to be used in the Great Salt Lake and other sovereign lands if the use contributes to (1) the propagation or maintenance of wildlife; (2) the management of state parks; or (3) the reasonable preservation or enhancement of the natural aquatic environment. The bill also adds the Utah Division of Forestry, Fire, and State Lands to the list of state agencies that can file change applications under the instream flow statute, which currently includes the Division of Wildlife Resources and the Division of State Parks. The bill also allows right holders or water right lessees to file change applications to support instream flows or to support sovereign lands in accordance with the above requirements for one to ten years.

Importantly, the bill removes the so-called "priority penalty" under the current statute, which requires the State Engineer to administer an instream flow change application according to the date the application was filed rather than its underlying priority date. This priority penalty usually makes instream flow change applications the most junior water right in the stream, which has limited the effectiveness of instream flow applications by allowing other right holders, including junior right holders, to divert and use water intended for instream purposes.

The bill also responds directly to the HCR 10 report, which the Department of Natural Resources and Department of Environmental Quality issued in 2020 in response to a request from the legislature to work with stakeholders to identify ways to support flows to the Great Salt Lake. Among other things, the report suggested amending Utah Code § 73-3-30 to better support the Great Salt Lake.

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

HB 37: State Water Policy Amendments **Rep. Keven J. Stratton**

House Bill 37 makes a minor modification to the State's water policy in Utah Code section 73-1-21. The added wording is underlined in the quoted language: "Utah will promote...continued improvements in the management of water resources through protection, restoration, and science-based evaluation of Utah watersheds, increased reservoir capacity, and aquifer recharge or aquifer storage and recovery"

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

HB 121 (1st Substitute, amended): Water Conservation Modifications

Rep. Robert M. Spendlove

House Bill 121 requires all state agencies to reduce their outdoor water use by 5% by the end of 2023 and by 25% by the end of 2026. Each state agency must submit water use reports to the Division of Water Resources to demonstrate their water use reduction. The water use information will be published on a public website. The bill also prohibits state agencies from watering between the hours of 10:00 am and 6:00 pm, follow weekly watering guidelines issued by the Division of Water Resources, implement a leak detection and repair program for watering systems, shut off watering systems during rain and wind events, and perform annual evaluations on how to water landscaping in a more effective and efficient manner.

House Bill 121 also authorizes the Division of Water Resources to provide funding to property owners to replace lawn and turf with drought resistant landscaping. The funding is intended to provide up to 50% of the replacement costs and will be capped at \$5 million per year. The Division is instructed to make rules regarding what qualifies as drought resistant landscaping and the process under which property owners will apply for the incentive.

Finally, House Bill 121 requires the Utah Legislative Water Development Commission to study water conservation on public and private lands. The Commission will issue a report to the legislature by November 2022.

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

HB 131: Watershed Restoration Initiative

Rep. Gay Lynn Bennion

House Bill 131 creates the Watershed Restoration Initiative within the Department of Natural Resources. The objectives of the initiative are to manage, restore, and improve watershed ecosystems across the state by focusing on watershed health and biological diversity, water quality and water yield, and opportunities for sustainable uses of natural resources. The initiative will develop statewide watershed restoration priorities using ranking criteria, maintain a website that tracks watershed restoration projects, organize a biennial statewide watershed restoration workshop, assign funding to watershed restoration projects, provide training and technical support for watershed restoration project managers, and provide performance reporting on watershed restoration projects. The director of DNR will appoint a director and provide staff for the initiative. The initiative is required to submit an annual report to the legislature regarding funding, costs, and performance metrics. The bill creates the Watershed Restoration Expendable Special Revenue Fund for the initiative.

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

HB 132 (1st Substitute): Uniform Easement Relocation Act

Rep. V. Lowry Snow

House Bill 132 applies the Uniform Easement Relocation Act to certain easements. The bill specifically does not apply to water conveyance easements, which includes ditches, canals, flumes, pipelines, or other

watercourses used to convey irrigation water, storm water, culinary water, or industrial water, as well as federal water project facilities. Relocation of water conveyance easements would continue to be governed by the provisions of Utah Code section 73-1-15.5, which was enacted in 2018.

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

HB 157 (1st Substitute): Sovereign Lands Revenue Amendments

Rep. Timothy D. Hawkes

House Bill 157 modifies the Sovereign Lands Management Account and creates the Great Salt Lake Account, which is a restricted account consisting of revenue deposits from mining royalties the State receives from Great Salt Lake mineral mining. Money from the GSL Account is to be used to manage the water levels in Great Salt Lake.

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

HB 160: State Resource Management Plan Amendments

Rep. Keven J. Stratton

House Bill 160 adopts the November 2021 statewide resource management plan and makes minor amendments to the process under which the Public Lands Policy Coordinating Office may propose modifications to the plan. The bill requires legislative approval for any modifications to the plan.

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

HB 166 (1st Substitute): Water Facility Amendments

Rep. Christine F. Watkins

House Bill 166 modifies criminal and civil penalties related to interfering with water facilities. The bill provides more comprehensive definitions of an improper connection to a water facility and provides that a person is guilty of a crime if the person knowingly (rather than maliciously) makes an improper connection to a water facility. The bill also adds that a person who commits an improper connection can be ordered to pay reasonable costs and attorney fees in a civil action brought against the person. Finally, the bill exempts governmental entities from the definition of "person" under the statute, but does not limit or impair a claim by a water facility owner against a governmental entity.

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

HB 168: Preferences of Water Rights Amendments

Rep. Carl R. Albrecht

House Bill 168 creates several new statutes regarding preferences of water rights. The State Engineer is required to work with stakeholders to study how the State should address preferred uses of water during temporary water shortage emergencies, including the process for whether and how a water use may be given a preference and how to compensate water right owners who are adversely affected by such preferences. The State Engineer is to report its findings by November 2022. The bill provides clarification regarding executive orders of the governor declaring a temporary water shortage emergency and provides that in such an emergency, a preference is given to water used for drinking, sanitation, generation of electricity, and fire

suppression – provided that the water is used without unnecessary waste. Water use for agricultural purposes, including irrigation and livestock watering, is given a preference over other water uses. A person using water preferentially is obligated to pay an affected water right owner for the reasonable value of the water use interrupted, crop losses, and other consequential damages. Finally, the bill authorizes the State Engineer to make rules regarding the preferences of water rights and payments for affected water right owners.

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

HB 173 (amended): Jordan River Recreation Area Amendments **Rep. Mike Winder**

House Bill 173 allows the Division of Forestry, Fire, and State Lands to issue a five-year grant to a zoo, aviary, nature center, or other educational program located within the Jordan River Recreation Area. The grant can be renewed every five years. The bill appropriates \$190,000 to fund the grant.

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

HB 177: Water Well Amendments **Rep. Joel Ferry**

House Bill 177 provides that the State Engineer may not exempt a water well from regulation based on well depth. Historically, the State Engineer has exempted wells that are less than 30 feet deep from regulation for drilling, construction, deepening, repair, renovation, cleaning, and abandonment. This exemption has caused confusion, as many people incorrectly believe that they do not need a water right if they have a well that is less than 30 feet deep. This bill will ensure that all water wells – not matter how shallow – will be properly regulated by the State Engineer.

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

HB 232 (2nd Substitute, amended): Utah Lake Authority **Rep. Brady Brammer**

House Bill 232 creates the Utah Lake Authority and defines the Authority's purposes, powers, duties, policies, and objectives. The Authority is an independent public entity that will supplant and replace the current Utah Lake Commission by May 2023. The Authority will have land use authority over publicly owned land within the Authority boundary and will work with other governmental entities to improve the water quality of Utah Lake. The Authority has no jurisdictional control or power over other governmental entities; the regulation of water quality, water rights, water storage and delivery; and water facilities that the Authority does not own. The Authority is instructed to work with state and local entities, property owners, water right owners, and other stakeholders to (1) develop and implement a management plan for Utah Lake, (2) plan and facilitate the management of Utah Lake uses, and (3) manage any land owned or leased by the Authority that is not sovereign land. The management plan cannot interfere with water rights, water projects, or water facilities associated with Utah Lake. The Authority will be governed by a 15-member board including two members appointed by the governor (including one from the Governor's Office of Economic Opportunity), one member of the Senate appointed by the Senate president, one member of the House appointed by the Speaker of the

House, one member from the Utah County Council, eight board members appointed by the Utah County Council of Governments (including one selected from nominees provided by the chambers of commerce in Utah County and four elected officials from municipalities adjacent to Utah Lake), one member appointed by the director of the Department of Natural Resources, and one member appointed by the director of the Department of Environmental Quality.

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

HB 240 (2nd Substitute, amended): Utah Lake Amendments
Rep. Keven J. Stratton

House Bill 240 amends the Utah Lake Restoration Act by requiring the Division of Forestry, Fire, and State Lands to prepare recommendations for standards, criteria, and thresholds to more specifically define the objectives which need to be met for the Division to recommend the disposal of state sovereign land in and around Utah Lake as compensation for implementation of a project to restore Utah Lake. These objectives include restoring the clarity and quality of the water, conserving water resources, preserving the lake's water storage and water supply functions, removing invasive plant and animal species, restoring and conserving native fish, improving navigability of the lake, maximizing recreation access, preserving current water rights, or otherwise improving the lake for residents and visitors. Any recommendation by the Division to dispose of sovereign lands would be made to the governor and the legislature, who could approve the disposal through the adoption of a concurrent resolution – provided the recommended disposal is fiscally sound, constitutionally sound, and meets the delineated objectives.

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

HB 242 (2nd Substitute): Secondary Water Metering
Amendments
Rep. Val L. Peterson

House Bill 242 continues the evolution of secondary water metering requirements in Utah. The bill continues to require that beginning April 1, 2020, all new secondary water connections in first and second class counties must be metered. The bill adds that beginning May 4, 2022, all new secondary water connections in third, fourth, fifth, and sixth class counties must be metered. The bill also requires that all existing secondary water connections must be metered by January 1, 2030. (Previously, the target date was 2040.) If a secondary water provider does not meet the 2030 deadline, the provider will not receive state money for water projects and will be subject to an enforcement action (and associated fines) by the State Engineer. The bill provides limited exceptions to the metering requirement. The Board of Water Resources is authorized to issue grants to secondary water suppliers to help with the cost of installing meters. A grant cannot exceed 70% of the costs and is capped at \$5 million for suppliers with 7,000 connections or less and \$10 million for suppliers with more than 7,000 connections. Meters purchased with grant money must allow for data communication that is available to the end user and that can be integrated with third-party providers. The bill also allows for retroactive grants up to \$2 million for suppliers who have already installed secondary water meters. The Board of Water Resources is authorized to make rules establishing the procedures for applying for a grant. The fiscal note provides for more than \$250

million in state funding to go toward secondary water metering grants.

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

HB 263 (amended): Utah Watersheds Council Amendments
Rep. Scott H. Chew

House Bill 263 adds a new member to the Utah Watersheds Council. The new member will be an attorney who is licensed to practice law in Utah and who has recognized expertise in water law. The new member will be selected by the governor from a list of three individuals provided by the director of the Department of Natural Resources, the director of the Department of Environmental Quality, and the commissioner of the Department of Agriculture and Food.

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

HB 269 (3rd Substitute): Capital Assets Related to Water
Rep. Keven J. Stratton

House Bill 269 requires water providers (defined as retail water suppliers or water conservancy districts) and wastewater service providers to adopt a capital asset management plan as a condition to receiving state or federal financing or grants to be used for water or wastewater infrastructure improvements. The Drinking Water Board is tasked with making rules to establish the elements of a capital asset management plan for retail water providers, the Board of Water Resources is tasked with making similar rules for water conservancy districts, and the Water Quality Board is tasked with making similar rules for wastewater providers. Water providers are also required to participate in regular infrastructure needs surveys and evaluations.

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

HB 326 (1st Substitute, amended): State Innovation Amendments
Rep. Robert M. Spendlove

House Bill 326 creates the Strategic Innovation Grant Pilot Program within the Governor's Office of Economic Opportunity to award grants to businesses to implement projects that address air quality or water conservation. The Office will administer the program in consultation with the Division of Air Quality and the Division of Water Resources. Businesses that participate in the program and receive grants will have to submit independent evaluations to show that the projects are meeting the correct targets and benchmarks. Projects will be prioritized if they offer strategic and innovative solutions for achieving the intended outcomes and that demonstrate matching funds from private entities. The bill instructs the Office to make rules to administer the program.

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

HB 334: State Engineer Modifications
Rep. Timothy D. Hawkes

House Bill 334 clarifies that the State Engineer can employ more than one Deputy State Engineer. The bill also appropriates \$530,000 ongoing for additional staff and \$300,000 one-time for equipment. The bill is intended, in part, to allow the State Engineer to create a new position for a Deputy State Engineer over the Great Salt Lake.

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

HB 377: Water Rights Adjudication Amendments

Rep. Mike L. Kohler

House Bill 377 provides the State Engineer with additional tools within the general adjudication process. If a claimant asserts a water right in a general adjudication, the State Engineer can now serve the claimant with a request for additional information supporting the claimed water right. A claimant must respond to the request for information within 30 days, unless the claimant and State Engineer agree in writing to extend the deadline. Failure to provide the requested information could result in the State Engineer recommending disallowance of the water right. The bill also authorizes the State Engineer to seek an interlocutory judgment from the court on all water rights in the proposed determination that do not receive an objection.

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

HB 393 (1st Substitute): Water Reporting Amendments

Rep. Joel Ferry

House Bill 393 requires the State Engineer to commission a study to determine the quantitative impacts to the state's water cycle from electrolysis (i.e., the process of using electricity to split water into hydrogen and oxygen), the generation of electricity by burning hydrogen resulting from electrolysis, and the generation of electricity by burning a blend of natural gas and hydrogen. The impacts should be compared with the impacts to the water cycle from other forms of energy production, including burning coal, burning natural gas, solar energy, and wind energy. The State Engineer must report the findings of the study to the legislature by November 1, 2022. The bill appropriates \$150,000 for this project.

The bill also provides that the State Engineer may conduct a review of distribution and accounting procedures on a river system in the state. After conducting a review, the State Engineer must provide a report containing specified information about the water rights, diversions, reservoirs, water accounting practices, and recommendations. The bill appropriates \$80,000 for this project.

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

HB 410 (amended): Great Salt Lake Watershed Enhancement

Rep. Brad R. Wilson

House Bill 410 creates the Great Salt Lake Watershed Enhancement Program to issue grant money create a water trust that will implement projects, programs, or voluntary arrangements to retain and enhance water flows to the Great Salt Lake; conserve and restore upstream habitats; enhance and preserve the Great Salt Lake watershed; and otherwise improve the Great Salt Lake. The bill appropriates \$40 million for the Division to award as a one-time grant to two or more eligible non-profit conservation groups to establish the water trust. The bill gives the criteria for the eligible applicant, and the applicants will be evaluated and ranked by the Division in consultation with Great Salt Lake Advisory Council and the director of the Division of Water Quality. The Division is required to make administrative rules to administer the Program, and the Division will oversee the water trust to ensure it is accomplishing the outlined goals.

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

HB 423 (2nd Substitute): Department of Agriculture and Food Amendments**Rep. Joel Ferry**

House Bill 423 allows the Department of Agriculture and Food to borrow up to \$3 million from the Agricultural Water Optimization Account to make loans through a disaster relief program designed to aid the sustainability of agriculture during and immediately following a natural disaster. The amounts borrowed must be repaid with interest, and repayment to the Account has preference over repayment of other fund sources.

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

HB 429 (amended): Great Salt Lake Amendments**Rep. Kelly B. Miles**

House Bill 429 requires the Division of Water Resources to develop an integrated surface and ground water assessment for the Great Salt Lake watershed. The assessment is to evaluate and forecast the quantity of water available for human, agricultural, environmental, and in-stream needs; identify and evaluate best management practices to provide a reliable water supply; investigate the potential benefits of forest management and watershed restoration; and address other matters provided in a work plan. The assessment should include a water budget for the Great Salt Lake and its wetlands. The Division should complete the assessment by November 2026 and present it to the legislature and the Great Salt Lake Advisory Council. The final report will be published by December 2027. The bill appropriates \$5 million for the Division to complete the assessment.

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

HCR 10: Interlocal Agreement Creating the Jordan River Commission**Rep. Cheryl K. Acton**

House Concurrent Resolution 10 gives approval to the Department of Transportation to enter into an interlocal cooperation agreement to join the Jordan River Commission.

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

SB 31: Water Rights Proofs on Small Amounts of Water**Sen. Scott D. Sandall**

Senate Bill 31 grants the State Engineer the ability, under certain circumstances, to issue a certificate on a water right for a small amount of water even when the proof does not conform to the underlying approved application. The State Engineer is able to issue these certificates for nonconforming proofs only if the discrepancy between the proof and the underlying application does not impair existing rights, and: the actual point of diversion in the proof is within 660 feet of the point of diversion described in the underlying application and is located on the same parcel; the place of use represented in the proof is located in a quarter-quarter section or lot that is adjacent to the place of use in the underlying approved application; or the purpose of use in the proof is adjusted without exceeding the approved amount of water.

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

SB 89: Water Amendments**Sen. Jani Iwamoto**

Senate Bill 89 amends Utah Code section 73-10-32 regarding the adoption of water conservation plans by retail water suppliers with at least 500 connections and water conservancy districts (which are both defined as "water providers" in the bill). The substantive changes made in the bill include a requirement that the Division of Water Resources adopt, by rule, regional water conservation goals that are developed by the Division and reevaluated every ten years. Water providers must adopt conservation goals in their water conservation plans that are at least as stringent as the regional goals, or provide a reasonable justification for why the water providers' goals cannot meet the regional goals. Retail water suppliers must also include their rate structures in their water conservation plans. The plans must be posted on the water providers' websites.

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

SB 110 (1st Substitute, amended): Water as Part of General Plan**Sen. Michael K. McKell**

Senate Bill 110 requires cities (except fifth class cities and towns) and counties to include a water use and preservation element in their general plans. The bill provides that a planning commission should consider applicable regional water conservation goals. The bill also contains a long list of recommendations that should be included in a water use and preservation element, including landscaping options for parkstrips that do not include lawn or turf, changes to land use ordinances to improve water efficiency, and water supply planning.

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

SB 160 (1st Substitute, amended): Colorado River Authority of Utah Amendments**Sen. Ronald M. Winterton**

Senate Bill 160 modifies the membership of the Colorado River Authority of Utah by adding a seventh member who will represent tribal interests. The member will be appointed by the governor and be a member of a federally recognized tribe located in Utah within the Colorado River system. The bill also requires the Authority to seek an appropriate government-to-government relationship with all federally recognized tribes located in the Colorado River system.

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

SB 221 (2nd Substitute): Water Related Sales and Use Tax Amendments**Sen. David P. Hinkins**

Senate Bill 221 creates the Water Rights Restricted Account. The Division of Water Rights will use money from the Account to fund water right adjudications, including employing technical staff, acquiring equipment, paying for legal support, and conducting studies. The bill appropriates \$4.3 million to the Account.

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

SB 254 (amended): Government Records Access Revisions**Sen. Kirk A. Cullimore**

Senate Bill 254 modifies provision of the Government Records Access and Management Act ("GRAMA"). Under the bill, certain records of a drinking water or wastewater facility—including engineering and architectural drawings of the drinking water and wastewater facility and security information—are classified as protected records.

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

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2022 Legislation: Water Bills That Did Not Pass

The 2022 Utah legislative session has ended. Here are summaries of the water-related bills that did not pass through the legislature. As we have seen in the past, some of these bills may be re-introduced in future legislative sessions.

HB 64 (2nd Substitute): Drinking Water Amendments **Rep. Christine F. Watkins**

The Division of Drinking Water engaged in an extensive study and outreach process to determine how best to fund badly needed increases in capacity to implement the Safe Drinking Water Act. House Bill 64 creates a new restricted Drinking Water Capacity Account. The bill authorizes the State Division of Finance to transfer approximately \$1.6 million into the account. The account funds may be used for compliance, planning, and technical assistance for public water systems.

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

HB 95 (3rd Substitute): Landscaping Requirements Prohibition **Rep. Raymond P. Ward**

House Bill 95 prohibits municipalities, counties, and homeowner associations from requiring the planting and maintaining of lawn or turf through ordinances, resolutions, or policies. Municipalities, counties, and homeowner associations are also required to provide property owners with landscaping alternatives to be used in place of lawn or turf.

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

HB 115 (amended): Water Distribution Efficiency **Rep. Melissa G. Ballard**

House Bill 115 requires water distributors—defined as retail water suppliers with at least 500 connections and water conservancy districts—to adopt standards defining what constitutes an acceptable annual water loss. The water distributors must then prepare annual reports for their governing bodies detailing the amount of water lost within their systems. If the loss is greater than the standard adopted by the governing body, the governing body must implement one or more processes to address the loss. These processes include water loss audits, leak detection procedures, infrastructure assessment and replacement plans, and meter accuracy assessments. The Division of Water Resources must also post annual summaries of the water loss

data which is currently being reported by water distributors to the Division of Water Rights.

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

HB 129: Navigable Water Determinations **Rep. Timothy D. Hawkes**

House Bill 129 makes changes to the definition of “navigable water” in Utah. The amended statutory definition is “a water course that at the time of Utah's statehood, was used, or susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade and travel were or may have been conducted in the customary modes of trade and travel on water.” The bill also establishes a process through the Division of Forestry, Fire, and State Lands to conduct an administrative proceeding to determine whether a specific waterway is a navigable water. The process would include notice to affected landowners and to the general public, along with a 60-day comment period. The Division would issue a report with a detailed description of the evidence and a recommendation regarding a determination of navigability. There would then be a 30-day comment period on the report and recommendation, after which the Division would issue a final determination. The final determination can be appealed to the district court for de novo review. The Division is required to maintain and publish a complete list of all public waters in the state that have been determined to be navigable.

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

HB 271: Water Releases Amendments **Rep. Karianne Lisonbee**

House Bill 271 provides that an operator of a dam or reservoir on the Provo River or Weber River may not increase the flow rate from the dam or reservoir by more than 25% every 15 minutes. The operator may make the first release to a minimum safe level for the applicable dam or reservoir, and then comply with the provision in the prior sentence.

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

HB 343: Water Supply Amendments **Rep. Phil Lyman**

House Bill 343 establishes rules and regulations for a municipality to provide water to contract users outside of the municipality’s boundaries. The bill requires a municipality to provide adequate water service to contract water customers, and apply water restrictions in times of water shortages, in a manner consistent with equal protection. The bill also requires a municipality to provide retail water service to subdivision lots under certain circumstances, and a failure to do so would result in a taking by the municipality. The bill also provides guidelines for how a municipality may establish different water rights for different classifications of contract water customers.

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

S.B. 73: Flow Rates or Quantity for Plumbing Fixtures **Sen. Jani Iwamoto**

Senate Bill 73 amends the residential plumbing code to require water efficient water fixtures for new construction. Specifically, it would set

the flow rates for lavatory faucets at 1.5 gpm at 60 psi, shower heads at 2 gpm at 80 psi, and toilets at 1.28 per flushing cycle. Urinals would also be required to comply with a requirement of 0.5 gallon per flushing cycle.

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

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Tuesday, January 18, 2022

2022 Legislative Preview of Water Bills

The 2021 session of the Utah Legislature is going to be a very busy session for the water community. There are a lot of water bills that are being proposed, which are summarized below. More water bills are also expected to be filed as the session goes on.

HB 21 – School and Child Care Center Water Testing

Rep. Stephen G. Handy

House Bill 21 requires each school and child care center to test their water taps for lead by December 31, 2023. The samples must be submitted for testing to a certified laboratory that has entered into a memorandum of understanding with the Division of Water Quality. Tests are not required for taps that have been tested within the past six years. Subject to appropriations, the Division will pay the laboratory for the costs of the testing. If a test result shows actionable levels of lead, the school or child care center must take steps to stop using the water tap or reduce the lead level below actionable levels. Administrative rules will be drafted regarding procedures and standards for reducing the lead levels, as well as possible grants to pay for the costs associated with remediation actions. The bill seeks to appropriate \$3.5 million from the American Rescue Plan funds to pay for the testing.

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

HB 33: Instream Flow Amendments

Rep. Joel Ferry

House Bill 33 would amend Utah's instream flow statute (Utah Code § 73-3-30) to allow water rights to be used to benefit Great Salt Lake levels and other sovereign lands. Currently, the statute is limited to stream channels, whereas the bill would allow water rights to be used in Great Salt Lake and other sovereign lands if the use: (1) contributes to the propagation or maintenance of wildlife; (2) the management of state parks; or (3) the reasonable preservation or enhancement of the natural aquatic environment. The bill would also add the Utah Division of Forestry, Fire, and State Lands to the list of state agencies that can file change applications under the statute,

which currently includes the Divisions of Wildlife Resources and the Division of State Parks. The bill would also allow right holders or water right lessees to file change applications to support instream flows or to support sovereign lands in accordance with the above requirements for one to ten years.

Importantly, the bill would remove the so-called "priority penalty" under the current statute, which requires the State Engineer to administer an instream flow change application according to the date the application was filed rather than its underlying priority date. This priority penalty usually makes instream flow change applications the most junior water right in the stream channel where the instream flow is located, which has limited the effectiveness of instream flow applications by allowing other right holders, including junior right holders, to divert and use water intended for instream purposes.

Rep. Ferry's bill also responds directly to the HCR 10 report, which the Departments of Natural Resources and Environmental Quality issued in 2020 in response to a request from the Legislature that asked the agencies to work with stakeholders to identify ways to support flows to Great Salt Lake. Among other things, the report suggested amending Utah Code § 73-3-30 to better support Great Salt Lake.

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

HB 37 – State Water Policy Amendments

Rep. Keven J. Stratton

House Bill 37 makes a minor modification to the State's water policy in Utah Code section 73-1-21. The added wording is underlined in the quoted language: "Utah will promote...continued improvements in the management of water resources through protection, restoration, and science-based evaluation of Utah watersheds, increased reservoir capacity, and aquifer recharge or aquifer storage and recovery"

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

HB 64: Drinking Water Amendments

Rep. Christine F. Watkins

The Division of Drinking Water engaged in an extensive study and outreach process to determine how best to fund badly needed increases in capacity to implement the Safe Drinking Water Act. The Division determined that the best way to fund its programs is to impose an annual fee on retail water suppliers. The fee is up to \$1.20 per equivalent residential connection or a minimum of \$25, with the funds collected by the state treasurer and deposited in a new, restricted Drinking Water Capacity Account. The revenues, which the Division anticipates will be \$1.6 million per year, may be used for compliance, planning, and technical assistance for public water systems.

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

HB 95: Landscaping Requirements Prohibition

Rep. Raymond P. Ward**HB 121: Water Conservation Modifications****Rep. Robert M. Spendlove**

In Utah, “turf” is the newest four-letter word. Two bills seek to save water by prohibiting local governments from requiring lawns. House Bill 95, “Landscaping Requirement Prohibition” prohibits municipalities and counties from requiring the planting and maintaining of lawn or turf through land use regulation. House b121, “Water Conservation Modifications,” goes even further and also prohibits condominiums, homeowner associations, and mobile home park owners from requiring lawns to be planted or maintained. Both bills would amend the enabling law for land use regulation, known as the “Land Use Development and Management Act” found in Title 10 Chapter 9a (municipalities) and Title 17 Chapter 27a (counties) of the Utah Code, to prohibit cities and counties from requiring lawns or turf to be planted or maintained through land use regulation.

Depending on your point of view, these bills are either long overdue recognitions that Utah is the second driest state and must conserve its most precious resource, or symbolic acts in a state where over 80% of water is used for agriculture. In either case, local governments will likely view the bills as yet another encroachment by the Utah Legislature on traditionally local areas of control. HB 121 goes a step further and takes away the same power from private associations and mobile home park owners. Neither bill prohibits property owners from choosing to plant and maintain lawns. Thus, xeriscaping will not make lawnmowers and sprinklers a relic of the past.

To read the full text of HB 95, click [here](#).

To read the full text of HB 121, click [here](#).

HB 115: Water Distribution Efficiency**Rep. Melissa G. Ballard**

House Bill 115 focuses on water loss accounting. This is the third legislative session in which she is running the bill, though it has changed drastically from its first iteration. The most recent version requires the governing bodies of water distributors—defined as retail water suppliers with at least 500 connections and water conservancy districts—to adopt standards defining what constitutes an acceptable annual water loss. The water distributors must then prepare annual reports for their governing bodies detailing the amount of water lost within their systems. If the loss is greater than the standard adopted by the governing body, the governing body must implement one or more processes to address the loss. These processes include water loss audits, leak detection procedures, infrastructure assessment and replacement plans, and meter accuracy assessments. The Division of Water Resources must also post annual summaries of the water loss data which is currently being reported by water distributors to the Division of Water Rights.

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

SB 31 – Water Rights Proofs on Small Amounts of Water

Sen. Scott Sandall & Rep. Joel Ferry

Senate Bill 31 grants the State Engineer the ability to, under certain circumstances, issue a certificate on a water right even when the proof does not conform to the underlying approved application. The State Engineer is able to issue these nonconforming water certificates only when it meets all of the following conditions: it does not impair the existing right, the actual point of diversion represented in the proof is located within 660 feet of the point of diversion described, the point of diversion is located on the same parcel, the place of use represented in the proof is located in a quarter-quarter section or lot that is adjacent to the place of use in the underlying approved application, and the purpose of use is represented in the proof is adjusted without exceed the amount of water.

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

SB 73 – Flow Rates or Quantity for Plumbing Fixtures

Sen. Jani Iwamoto

Senate Bill 73 would amend modify the residential plumbing code to require water efficient water fixtures for new construction. Specifically, it would set the flow rates for lavatory faucets at 1.5 gpm at 60 psi, shower heads at 2 gpm at 80 psi, and water closets at 1.28 per flushing cycle. Urinals would also be required to comply with a requirement of 0.5 gallon per flushing cycle.

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

SB 89: Water Amendments

Sen. Jani Iwamoto

Senate Bill 89 amends Section 73-10-32 of Utah Code which addresses the adoption of water conservation plans by retail water suppliers with at least 500 connections and water conservancy districts (which are both defined as “water providers” in the bill). The substantive changes made in the bill include a requirement that the Division of Water Resources adopt, by rule, regional water conservation goals that are developed by the division and reevaluated every ten years. Water providers must adopt conservation goals in their water conservation plans that are at least as stringent as the regional goals, or else provide a reasonable justification for why the water providers’ goals cannot meet the regional goals. Retail water suppliers must also include their rate structures in their water conservation plans. The plans must be posted on the water providers’ websites.

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

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