

**MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION**
Wednesday, July 29, 2009 – 1:00 p.m. – Room 445 State Capitol

Members Present:

Rep. Patrick L. Painter, House Chair
Sen. Dennis E. Stowell, Senate Chair
Sen. Gene Davis
Sen. David P. Hinkins
Sen. Scott K. Jenkins
Rep. Susan Duckworth
Rep. Ben C. Ferry
Rep. Kerry W. Gibson
Rep. James R. Gowans
Rep. Michael E. Noel
Mr. Larry Anhder
Mr. Roy Gunnell (representing
Leonard Blackham)
Mr. Dallin Jensen
Mr. Kent Jones (representing
Michael Styler)
Mr. Michael Mower
Mr. Warren Peterson
Ms. Amanda Smith

Members Absent:

Mr. Don Christiansen
Mr. Tage Flint
Mr. Chris Fullmer
Mr. Brad Hancock
Mr. Darrell Mensel
Mr. Ron Thompson
Mr. David Ure

Staff Present:

Brian Allred, Policy Analyst
Emily R. Brown, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.leg.utah.gov.

1. Committee Business

Chair Stowell called the meeting to order at 1:15 p.m. Members of the Commission and staff introduced themselves. Mr. Flint and Mr. Fullmer were excused from the meeting.

MOTION: Rep. Painter moved to approve the minutes of the December 16, 2008 meeting. The motion passed unanimously. Sen. Davis, Rep. Ferry, and Mr. Jensen were absent for the meeting.

2. H.B. 241, Priority of Water Rights

Ms. Brown pointed out that Utah Code Section 73-3-21 regarding priorities between appropriators will be repealed on May 11, 2010. A copy of the statute was included in the mailing packet.

Rep. Gibson discussed 2009 General Session H.B. 241, "Priority of Water Rights." He indicated he would like to have some kind of resolution to this issue prior to the next general session.

Rep. Painter stated the Executive Water Task Force is studying draft language but has not yet reached a resolution. He said the Task Force is trying to define more carefully what scarcity is.

Mr. Peterson said there is a draft bill being presented at the August 4, 2009 meeting of the Task Force. He said the proposed replacement statute is fairly complicated. Mr. Peterson stated the other choice is to let the repeal of the statute stand and the market place will take care of it.

Mr. Fred Finlinson, Utah Water Coalition, commented that the Coalition has met and devoted attention

and major discussion to the existing code provision in question. He said one very difficult issue they have been discussing is the payment of appropriate compensation for use of the water if and when the water had to be used as a result of an emergency situation.

Mr. Randy Parker, Utah Farm Bureau, expressed concerned with some of the language in the proposed replacement statute. He noted that the proposal would give some an opportunity to use eminent domain when they haven't looked to the future and use the marketplace to meet that need.

Rep. Noel said water districts have an obligation to have contingency plans for times of drought. He hoped the legislation would not allow for condemnation until other issues have been resolved.

Rep. Gibson asked that the bill be placed on the agenda for the last meeting prior to the general session.

3. Bear River Overview

Mr. Dennis Strong, Director, Division of Water Resources, distributed and reviewed a map of the "Proposed Washakie Reservoir and Pipeline Study Area." He stated that the Board of Water Resources and its staff have prepared a plan to: 1) enter into discussions with Weber Basin Water Conservancy District to use existing facilities; 2) divert water from the Bear River near the I-15 crossing; 3) construct local delivery systems; and 4) construct on stream or near stream water storage reservoirs. Mr. Strong indicated the current cost estimate for the proposed project is \$1.3 billion.

4. State Engineer Groundwater Management Plans - Local Management

Mr. Bob Fotheringham, Water Manager, Cache County, gave a presentation on "73-5-15 Groundwater management plan - to include a WATER MANAGEMENT AUTHORITY." He outlined the history of the Bear River development. Mr. Fotheringham explained the purpose of water banking and discussed its objectives. He noted that water banking is perceived as the way to resolve issues facing the western states. He stressed that Cache County is trying to preserve existing priorities for future use - not expand. He stated that agriculture water users and municipalities are in favor of water banking.

Mr. Kent Jones, State Engineer, explained that when areas are adjudicated, beneficial use of the water is considered. When people lease water and try to use it in a place not authorized, they are required to file a change application. If a beneficial use can be identified, the state engineer would give them credit for it.

Mr. Peterson explained that mutual irrigation companies in the state are in various stages of sophistication. He said there needs to be a mechanism to transition the water. He stated that a study of how to transfer water from agriculture to municipal use with the agricultural water holder realizing a benefit from that property right would be valuable.

Mr. Jensen pointed out that some states have created a water bank that users put their water into and the bank leases out the water. The bank receives a small portion of the lease money. He said those banks are normally a little broader than county by county.

Chair Stowell stated that this issue and the problem of over appropriation in the Beryl area could possibly be addressed together in legislation. He said he would meet with Mr. Fotheringham and Mr. Jensen and others to develop legislation.

5. Drinking Water Quality

Ms. Lorna Rosenstein, Waterwatch of Utah, distributed "Waterwatch of Utah" and "Waterwatch of Utah, Doing our best to keep the information flowing." She reviewed the timeline of a fluoride spill which occurred on August 31, 2007, at Mt. Dell Reservoir in Parley's Canyon. She explained that the fluorosilicic acid that water agencies are purchasing is a hazardous substance which is coming from manufacturers that rarely, if ever, disclose all the trace contaminants in the undiluted acid. She raised several issues of concern that Waterwatch of Utah has identified. She requested that a fully funded task force be established to study these concerns.

Staff distributed a letter to the Commission from Mr. Timothy Hawkes, Director, Utah Water Project, regarding issues raised as a result of the fluoride spill.

Mr. Ken Bousfield, Director, Division of Drinking Water, stated that Utah Code Title 19, Chapter 4, outlines the authority of the Division of Drinking Water and Drinking Water Board. He discussed the training provided by the different water districts. He stated fluorine in its concentrated form is hazardous and needs to be carefully treated. He said fluorine in the drinking water is diluted down to .8 parts per million. Mr. Bousfield stated it would be appropriate to have a response from Mr. Walt Baker, Director, Division of Water Quality.

Dr. Royal DeLegge, Environmental Health Director, Salt Lake Valley Health Department, stated that as a result of the spill, some enforcement actions were taken. He said the treatment facility involved was taken off line for about six months while modifications were made. He noted that they are more than willing to work where issues are identified. Dr. DeLegge indicated that regulatory oversight within the local health departments is sufficient.

Mr. Lewis Garrett, Director, Davis County Health Department, commented that almost 70 percent of the water systems in the United States fluoridate their water. He stated that it is incorrect to suggest that the benefits of fluoride are outweighed by the minuscule risk.

Ms. Amanda Smith, Acting Director, Division of Environmental Quality, indicated she would research the cross over in authority of the Divisions of Drinking Water and Water Quality and the role of local health departments in order to address concerns that there isn't proper oversight of the issue.

Chair Stowell requested that Ms. Smith provide her findings to the cochairs.

6. Other Business / Adjourn

Staff distributed the article "It's Now Legal to Catch a Raindrop in Colorado," from the *New York Times*. Chair Stowell indicated the issue of rainwater will be placed on the agenda of the next meeting.

MOTION: Sen. Jenkins moved to adjourn. The motion passed unanimously.

Chair Stowell adjourned the meeting at 3:20 p.m.