

**MINUTES OF THE  
STATE WATER DEVELOPMENT COMMISSION**

Thursday, September 24, 2009 – 1:30 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  
Rep. Susan Duckworth  
Mr. John Bennett (Representing  
Mike Mower)  
Christine Finlinson (Representing  
Don Christiansen)  
Rep. Kerry W. Gibson  
Rep. James R. Gowans  
Rep. Michael E. Noel  
Mr. Tage Flint  
Mr. Dallin Jensen  
Mr. Darrell Mensel  
Mr. Warren Peterson

Ms. Amanda Smith  
Mr. Michael Styler  
Mr. Ron Thompson  
Mr. David Ure

**Members Absent:**

Sen. Scott K. Jenkins  
Rep. Ben C. Ferry  
Mr. Larry Anhder  
Commissioner Leonard Blackham  
Mr. Chris Fullmer  
Mr. Brad Hancock

**Staff Present:**

Brian Allred, Policy Analyst  
Christopher R. Parker, 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.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Painter called the meeting to order at 1:40 p.m. Commissioner Blackham, Mr. Fullmer, and Sen. Jenkins were excused from the meeting.

**MOTION:** Rep. Duckworth moved to approve the minutes of the July 29, 2009 meeting. The motion passed unanimously. Rep. Gibson, Rep. Noel, and Mr. Peterson were absent for the vote.

**2. Status of Paiute Tribe Water Rights Negotiations**

Mr. Gaylord Robb, Trust Lands Administrator, Paiute Indian Tribe of Utah, introduced Ms. Jeanine Borchardt, Chairwoman, Paiute Tribe of Utah. He said the Paiute Tribe was terminated from federal supervision in 1954, however, its right to the water was never abrogated. He explained that from 1954 to 1980, most of the band's original reservation lands were lost to tax foreclosure or sale since they were not protected by the United States under its trusteeship. Mr. Robb pointed out that legislation passed in 1980 recognized the five bands within the Paiute Tribe and they were given small parcels of land and promised there would be water with those parcels. He asked for the Committee's help in getting the aboriginal water right recognized.

Mr. Kent Jones, State Engineer, said he has met with Mr. Robb to discuss options. He is supportive of helping to develop water so that reservation lands can realize their economic potential. He stressed that the federal government needs to be involved in the negotiations.

**MOTION:** Sen. Davis moved that the Committee send a letter to Mr. Larry Echohawk, U.S. Department of the Interior, Assistant Secretary of the Interior and head of the Bureau of Indian Affairs, asking that he and the Bureau of Indian Affairs become involved in the discussion to determine a resolution. The letter

should indicate the need for coordination between Utah's State Engineer and the federal government, respecting existing rights and appropriations. All interests should be represented in the process. The letter should not indicate that Utah believes there is an aboriginal right. A copy of the letter should be sent to Utah's congressional delegation. The motion passed unanimously.

### **3. Rainwater Harvesting**

Mr. Allred distributed a packet containing the following documents:

- 2009 General Session S.B. 58, "Collection and Use of Precipitation"
- 2009 General Session S.B. 128, "Rainwater Harvesting"
- 2009 General Session 1st Substitute S.B. 128, "Rainwater Harvesting"
- 2009 General Session 2nd Substitute S.B. 128, "Rainwater Harvesting"
- Amendment proposed by Rep. Wayne A. Harper to S.B. 128
- Amendment proposed by Rep. Kerry W. Gibson to S.B. 128
- *It's Now Legal to Catch a Raindrop in Colorado*, article from the New York Times, 6/29/09

Mr. Allred discussed the background of the legislation and the amendments that were made to it during the 2009 General Session. He noted that the intent of the bill was to allow the relatively small user to be able to harvest rainwater without violating the law.

Mr. Mensel stated that it did not seem reasonable that the public water supplier makes the determination whether the water can be harvested. He said it would make sense to consider this bill in conjunction with a gray water use bill.

Mr. Thompson questioned whether rainwater harvesting is an economical practice given the amount of rainfall in the state. He also questioned if a homeowner should be able to have a second system to collect gray water and reuse it for landscaping. He suggested that the Division of Water Resources study the issue and report on what the impact of harvesting rainwater would be.

Mr. Flint raised the issue of the possibility of health problems within the home due to a cross connection. He cautioned against extrapolating rainwater harvesting beyond what can be collected from the rooftop.

Chair Painter said he would favor legislation allowing rainwater harvesting without the requirement to go to the water authority. He asked Mr. Allred to report the comments that have been provided regarding the legislation to Sen. Jenkins, who is considering sponsoring legislation.

Mr. Jones pointed out that statute is clear that the waters of the state belong to the public. He said in order to use the water, a water right must be obtained. He expressed support of clarifying what would be allowed in statute.

### **4. Water Storage for Public Entities Proof and Certification for Recovery and Recharge Systems**

Staff distributed 2010 General Session draft legislation, "Groundwater Recharge and Recovery Act Amendments" and 2010 General Session draft legislation, "Water Storage Projects."

Mr. Jensen briefly explained the provisions outlined in the "Groundwater Recharge and Recovery Act."

He noted that the bill would require proof of completion of a recharge or recovery project. Mr. Jensen reviewed "Water Storage Projects," which addresses proof and certification of water storage projects. He indicated that both bills have been through an extensive review process.

**MOTION:** Mr. Ure moved to pass 2010 General Session draft legislation, "Groundwater Recharge and Recovery Act Amendments" with a favorable recommendation. The motion passed unanimously.

**MOTION:** Mr. Ure moved to pass 2010 General Session draft legislation, "Water Storage Projects" with a favorable recommendation. The motion passed unanimously.

## **5. Snake Valley Agreement Update**

Mr. Styler gave a presentation on "Utah/Nevada Ground-Water Apportionment and Protection Agreement." He explained that the proposed agreement protects existing water rights, follows Utah/Nevada water law, allows maximum sustainable use, allows public comment, provides environmental safeguards, and anticipates future unknowns. He noted that Nevada has agreed to hold Southern Nevada Water Authority's Snake Valley water applications in abeyance until September 2019.

Mr. Thompson commended Mr. Styler for his efforts and encouraged him to move forward with the agreement.

Mr. Jensen cautioned that if Nevada does not get an agreement, it will seek to repeal the protection in the federal legislation. He expressed support for the agreement.

Mr. Peterson stated the agreement is a powerful tool and seems to be well-balanced.

Mr. Jones pointed out that the agreement sets up a monitoring process to monitor sources, springs, and wells to determine what impacts may exist.

## **6. Canal Safety**

Sen. Davis stated he has opened a bill file to address canal safety. He requested input from the Commission prior to moving forward with legislation. Sen. Davis explained that more and more municipalities are buying into canals and allowing building around them. He outlined the issues under consideration relating to the canal safety: 1) requirement of regular inspections of canals by owners, 2) possibility of requiring complete engineering studies of the canals - how often and by whom. He noted that each study should include preventive measures for potential problems.

The Commission discussed the issues and problems surrounding the many canals within the state. The following options and concerns were raised:

- receive input from all parties involved
- give oversight of the proposed studies to the State Engineer, as with dam safety
- address cost, liability, and ultimate responsibility for the canals
- take into consideration the funding needed for the agency given the responsibility
- craft legislation to classify the risks

- limit inspections to areas where high hazard public structures would be affected
- establish a standard to measure which canals are dangerous and have the higher risk
- review the report of the subcommittee of the Executive Water Task Force
- give authority to the Division of Water Resources to provide a canal safety group
- address liability and insurance issues of the canal companies
- consider the possibility of a risk management pool

Mr. Sterling Brown, Utah Farm Bureau, said the subcommittee has proposed to: develop maps of the high risk canals, leverage partnerships to survey those canals, develop risk management plans, and solicit funding from the federal government and other existing funding opportunities.

Sen. Davis indicated he would like to discuss this issue in a future meeting.

**MOTION:** Mr. Jensen moved to adjourn. The motion passed unanimously.

Chair Painter adjourned the meeting at 3:55 p.m.