

**MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION**

Tuesday, September 18, 2012 – 3:30 p.m. – Room 30 House Building

Members Present:

Senate Chair Margaret Dayton
House Chair Patrick Painter
Sen. Gene Davis
Sen. David P. Hinkins
Sen. Scott K. Jenkins
Rep. Joel K. Briscoe
Rep. Gage Froerer
Rep. Keith Grover
Rep. Don L. Ipson
Rep. Michael E. Noel
Comm. Leonard Blackham
Mr. Tage Flint
Mr. Jay Mark Humphrey
Mr. Dallin Jensen
Ms. Voneene Jorgensen
Mr. Darrell Mensel
Mr. Mike Mower

Mr. Joseph Paulick
Mr. Warren Peterson
Mr. Gene Shawcroft
Ms. Amanda Smith
Mr. Mike Styler
Mr. Ron Thompson

Members Absent:

Sen. Kevin Van Tassell
Rep. Melvin R. Brown
Rep. Susan Duckworth
Mr. David Ure
Mr. Boyd Workman

Staff Present:

Mr. J Brian Allred, Policy Analyst
Ms. Tracy J. Nuttall, Associate General Counsel
Ms. Anna M. Allen, 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.

1. Committee Business

Chair Painter called the meeting to order at 3:30 p.m.

MOTION: Sen. Dayton moved to approve the minutes of the August 14, 2012, commission meeting. The motion passed unanimously with Sen. Davis and Rep. Grover absent for the vote.

2. Future Development of Water Resources

Mr. Zach Frankel, Executive Director, Utah Rivers Council, discussed the question of whether or not Utah is running out of water. He explained how water is used in Utah and emphasized the need to distinguish between water wants and needs. He discussed water conservation efforts in other cities, and commented that Utah can use water conservation as a source of water for growth. Mr. Frankel stated that water conservation is cheaper than water development projects. He also explained the difference between the question of whether Utah should develop its allotted water from the Colorado River before the water leaves the state, and whether Utah should develop that water because the state is running out of other water sources. Mr. Frankel responded to questions from the commission.

Chair Painter relinquished the chair to Sen. Dayton.

3. Draft Legislation "Sales and Use Tax Allocations for Water Resources Funding"

Rep. Painter discussed draft legislation "Sales and Use Tax Allocations for Water Resources Funding." He explained that the bill asks the Legislature to allocate 15% of future sales tax growth to water projects. He discussed the cost of other state projects unrelated to water, and emphasized that water projects need funding as well as those projects. He also commented that the state needs to utilize its share of water from the Colorado River. Rep. Painter responded to questions from the commission.

Sen. Davis expressed concern about using a certain portion of the sales tax when there have already been budget cuts for other programs in the state. He stated that instead of earmarking 15% of the sales tax for water projects, the state should instead raise the sales tax to cover these costs.

Mr. Thompson commented that when thinking about funding, the state needs to find a way to provide partnership between water users and state and local governments. He said that new water costs more to develop than existing water and that the state needs to protect the water it has and use it wisely.

MOTION: Rep. Noel moved to pass out draft legislation "Sales and Use Tax Allocations for Water Resources Funding" with a favorable recommendation from the commission. The motion passed with Sen. Davis and Rep. Briscoe in opposition and Sen. Jenkins absent for the vote. Chair Dayton also gave non-voting members of the commission the option to go on record as being for or against the bill. The following commission members showed support for the bill: Mr. Flint, Mr. Humphrey, Mr. Jensen, Ms. Jorgenson, Mr. Paulick, Mr. Peterson, Mr. Shawcroft, Ms. Smith, and Mr. Thompson. Mr. Mensel did not want to show support and Comm. Blackham, Mr. Mower, and Mr. Styler abstained from the vote.

Sen. Dayton relinquished the chair to Rep. Painter.

4. Conversion of Agricultural Water

Rep. Kay McIff discussed the conversion of agricultural water. He commented that the challenge the state faces is to wisely use its supply of water each year and to develop an infrastructure that helps the state prepare for other years as well, such as in the case of reservoirs. He said that instead of focusing solely on conservation efforts, the state should start by fully utilizing the water that it has. He then discussed a case study on the Intermountain Power Agency to explain how water demands change and how citizens react to this change. Rep. McIff responded to questions from the committee.

5. Public Trust Doctrine

Chair Painter introduced this agenda item by discussing how other states are invoking the public trust doctrine. Chair Painter stated that because the public trust doctrine will be an upcoming issue, he wanted to bring the topic into discussion so that the commission can be ready to make changes and propose legislation if necessary. He then introduced Mr. J. Craig Smith.

Mr. J. Craig Smith, Smith Hartvigsen, gave a brief overview of the public trust doctrine and its history. He explained the definition of the doctrine and outlined the difference between common law and statutory law. Mr. Smith stated that the public trust doctrine historically comes from common law. He

also discussed the conflict between public interest and private water rights. Mr. Smith responded to questions from the commission.

Chair Painter asked for Ms. Nuttall's opinion on whether a property right inherent in the water right granted by the state to individuals is protected in the Utah Constitution.

Ms. Nuttall referred to the Utah Constitution and specifically referenced sections dealing with property protection.

Chair Painter invited Mr. Steve Clyde, a water lawyer, to also give his opinion. Mr. Clyde responded by offering the commission a report he wrote on the public trust doctrine.

Chair Painter asked for volunteers for a working group to further look into the public trust doctrine. Mr. Jensen, Mr. Peterson, and Mr. Thompson of the commission and Mr. Smith, Mr. Clyde, and Mr. Fred Finlinson, Utah Water Coalition, agreed to participate in the working group. Sen. Dayton asked the group to report at the October 16, 2012, meeting.

Chair Painter asked if Mr. Smith would head that group and organize the group meetings. Mr. Smith agreed.

6. Adjourn

MOTION: Rep. Noel moved to adjourn. The motion passed unanimously with Sen. Davis, Rep. Briscoe, Rep. Froerer, Rep. Grover, and Rep. Ipson absent for the vote.

Chair Painter adjourned the meeting at 6:07 p.m.