

**MINUTES OF THE  
STATE WATER DEVELOPMENT COMMISSION**  
Tuesday, October 16, 2012 – 3:30 p.m.– Room 30 House Building

**Members Present:**

Sen. Margaret Dayton, Senate Chair  
Rep. Patrick Painter, House Chair  
Sen. Gene Davis  
Sen. David P. Hinkins  
Sen. Scott K. Jenkins  
Rep. Joel K. Briscoe  
Rep. Melvin R. Brown  
Rep. Susan Duckworth  
Rep. Gage Froerer  
Rep. Keith Grover  
Rep. Don L. Ipson  
Rep. Michael E. Noel  
Mr. Tage Flint  
Mr. Jay Mark Humphrey  
Mr. Dallin Jensen  
Ms. Voneene Jorgensen  
Mr. Warren Peterson

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

**Members Absent:**

Sen. Kevin T. Van Tassell  
Comm. Leonard Blackham  
Mr. Darrell Mensel  
Mr. Mike Mower  
Mr. Joseph Paulick  
Mr. Gene Shawcroft  
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](http://www.le.utah.gov).

**1. Commission Business**

Chair Dayton called the meeting to order at 3:32 p.m. Mr. Workman was excused from the meeting.

**MOTION:** Rep. Brown moved to approve the minutes of the September 18, 2012, commission meeting. The motion passed unanimously.

**2. River Commission System**

Mr. Kent Jones, State Engineer, discussed and distributed "Water Rights Distribution Information." Mr. Jones introduced Mr. Jared Manning, Assistant State Engineer for Field Services, and discussed river commissions systems around the state. Mr. Jones discussed the history of distribution systems, setting up distribution systems, current systems, water commissioners, the funding of these commissioners, and state engineer oversight.

**3. Utah River Basins/State Water Plans**

Mr. Dennis Strong, Director, Utah Division of Water Resources, discussed a presentation about the division. He talked about the mission of the division and introduced Mr. Todd Adams, Assistant Director, Utah Division of Water Resources, and Mr. Eric Millis, Deputy Director, Utah Division of Water Resources.

Mr. Adams listed the river basins throughout Utah and discussed the river basin planning process. He also discussed the division's special studies on topics including water conservation, water reuse, drought, sedimentation in reservoirs, residential water use, the cost of water in Utah, and where Utah residents get their water.

Mr. Millis discussed the division's development programs. He stated that the goal of the division's water development projects are to conserve, protect, and efficiently use water resources in Utah. He said that projects include municipal, industrial, irrigation, and agricultural projects. Mr. Millis also discussed the funding of the division's programs.

Mr. Strong, Mr. Adams, and Mr. Millis responded to questions from the commission.

#### **4. Public Trust Doctrine**

Mr. J. Craig Smith, Smith Hartvigsen, and chair of the Public Trust Doctrine working group, spoke about the progress of the group, which was established at the September 18, 2012, commission meeting. Mr. Smith discussed and distributed "A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust." He stated that the group hopes to have recommendations for the commission by the November 2012 meeting. Mr. Smith described how the group has been looking at the definition of public trust doctrine in other states in order to clarify the definition of public trust doctrine for Utah. He said that the group has also been considering ways that the public trust doctrine can be regulated, while still protecting the rights of water right holders. Mr. Smith and Mr. Steve Clyde, Clyde Snow & Sessions, another working group member, responded to questions from the commission.

Rep. Painter discussed and distributed the handout "Rep. Painter Proposed Language" for the consideration of the commission and the working group, which would amend certain language in Section 73-1-1 of the Utah Code.

#### **5. 2012 General Session S.B. 187, "Change Application Procedure"**

Sen. Ralph Okerlund discussed 2012 General Session S.B. 187, "Change Application Procedure." Sen. Okerlund gave a brief background of the issue, the intent of the bill, and the state engineer's historical role as a gatekeeper, which allows the state engineer to track if water is being beneficially used. Sen. Okerlund stated that S.B. 187 would require that a person who applies for a permanent or temporary change to a water right meets certain conditions. He continued saying that the bill also allows the state engineer, upon receiving a change application, to determine the quantity of water that is currently being beneficially used and limit the approval of the change application based on that determination. He stated that he wanted to start the discussion about S.B. 187 and ensure that the commission is involved in the process before it is brought to the Natural Resources, Agriculture, and Environment Interim Committee. Sen. Okerlund responded to questions from the commission.

Mr. Styler commented that the Executive Water Task Force has discussed this bill in past years. He also mentioned 2008 General Session H.B. 51 5<sup>th</sup> Substitute. Sen. Okerlund distributed the proposed intent language of Chair Dayton and Rep. Kay McIff for this bill in the handout "5<sup>th</sup> Sub. H.B. 51 Water Right Amendments- Floor Intent Language." Mr. Styler also clarified that the state engineer does not have the

right, without judicial authority, to declare a water right forfeit; the state engineer can simply deny a change application.

Mr. Clyde discussed shareholder change applications in response to a question from Sen. Jenkins.

Ms. Jody Hoffman, League of Cities and Towns, expressed concern with S.B. 187. She discussed the problem of the length of the change application process. She stated that the league wants to emphasize that the bill affects a broader spectrum than the commission has been discussing. She also stated that the official policy of the league is that it is opposed to S.B. 187.

In response to questions brought up by Rep. Noel, Mr. Peterson discussed the swing-out provision of S.B. 187. He clarified that whatever action the state engineer takes, he or she cannot forfeit a water right, but can only approve or deny a change application. He also discussed the investigation of water rights and a city's responsibility to examine water rights from a developer. Finally, Mr. Peterson contradicted the notion that it is the state engineer's fault when a water right is forfeited.

In response to discussion on the length of the change application process, Mr. Jones stated that the average time frame for the process is 80-90 days, and that within the first year, 90% of all applications are acted on and within two years, 95% of all applications are acted on.

Sen. Okerlund concluded the discussion by expressing his opinion that S.B. 187 deals with very important topics and he would like to have the issue resolved.

## **6. Adjourn**

**MOTION:** Rep. Grover moved to adjourn. The motion passed unanimously with Rep. Froerer absent for the vote.

Chair Dayton adjourned the meeting at 5:31 p.m.