

**MINUTES OF THE  
UTAH TAX REVIEW COMMISSION**

Thursday, August 27, 2015 – 2:00 p.m. – Room 445 State Capitol

**Members Present:**

Mr. Curtis Trader, Chair  
Sen. Jim Dabakis  
Sen. Deidre M. Henderson  
Sen. Lyle W. Hillyard  
Rep. Joel K. Briscoe  
Rep. Steve Eliason  
Rep. Daniel McCay  
Mr. Kelly J. Applegate  
Ms. Emily D. Bagley  
Mr. Phil Dean  
Ms. Kathleen Howell  
Mr. K. Tim Larsen

Mr. Troy K. Lewis  
Mr. Gregory G. Prawitt  
Comm. John L. Valentine

**Members Absent:**

Mr. Lawrence C. Walters

**Staff Present:**

Mr. Leif G. Elder, Policy Analyst  
Mr. Bryant R. Howe, Deputy Director  
Ms. Andrea Valenti Arthur, Associate General Counsel  
Ms. Bree A. Frehner, Legislative Assistant

**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 Trader called the meeting to order at 2:11 p.m. Mr. Walters was excused from the meeting.

**MOTION:** Commissioner Valentine moved to approve the minutes of the June 25, 2015, meeting. The motion passed unanimously. Sen. Henderson, Sen. Hillyard, Rep. Briscoe, Rep. Eliason, and Rep. McCay were absent for the vote.

**2. Earmarking of the State Sales and Use Tax**

Ms. Kristen Cox, Executive Director, Governor's Office of Management and Budget, presented the position of the governor's office on sales and use tax earmarks and expressed concerns regarding the increased amounts of earmarked revenue. She mentioned discussions in the governor's office about transportation and water earmarks particularly. She stated that during its upcoming budget process, the governor's office plans to scrutinize earmarks within the one-sixteenth of a percent earmark for water and waste water projects. She responded to questions from the commission.

Mr. Howe distributed "Sales Tax Earmarks Flowchart: Water" and "UDEQ and UDNR Programs Funded by Earmarks of the State Sales and Use Tax" and reviewed actions taken by the commission in prior meetings. He previewed the meeting agenda and discussed "UDEQ and UDNR Programs Funded by Earmarks of the State Sales and Use Tax." He responded to questions from the commission.

Mr. Walter Baker, Director, Division of Water Quality, Utah Department of Environmental Quality, presented "Utah Wastewater Loan Program" with assistance from Mr. Mike Luers, General Manager, Snyderville Basin Water Reclamation District, and Mr. Alan Brown, Chairman, Wasatch Conservancy District. They distributed "The Wallsburg Watershed Improvement Project." Mr. Baker discussed the importance of the wastewater loan program funded by the sales and use tax earmark. He gave examples of wastewater and non-point pollution source projects that are funded by the loan program. He responded to questions from the commission.

Mr. Luers addressed his organization's use of funds from the wastewater loan program to protect the water quality of East Canyon Creek. He discussed the far-reaching benefits of ensuring water quality in this creek by reducing sources of pollution.

Sen. Henderson asked whether ending the earmark would end the loan program, especially considering the possibility of annual appropriations to the loan program. Mr. Baker responded that the earmark provides money for a state match that helps secure federal funding, stating that the reliability of the earmark ensures the receipt of federal funding. He spoke about projects that likely would not remain funded if the Legislature eliminated the earmark.

Chair Trader questioned the nearly \$14,000,000 balance in the Utah Wastewater Loan Program Subaccount. Mr. Baker responded that some projects have been approved to receive that money.

Sen. Henderson noted that other programs that require a state match for federal funding do not rely on earmarked funds. She inquired why the wastewater loan program deserves an earmark while others do not. Mr. Baker responded that there is a certainty issue, referencing uncertainty of funds in the loan program's history when there was no earmark. Sen. Henderson commented that all programs want certainty, but not all programs can be given that certainty.

Mr. Lewis asked whether the entire cash balance of the loan program was committed already to specific projects and inquired whether any applicants for a loan are turned away. Mr. Baker responded that more than \$14,000,000 will be needed for known upcoming projects but stated that the size of each loan is not yet known. He said that the board that administers the wastewater loan program does not accept all projects, specifically mentioning certain development projects.

Sen. Hillyard asked why water loan programs are tied to sales tax revenue. Mr. Baker responded that it is not necessary to link the source of funds and the use of funds, certainty of funding is more important. Sen. Hillyard questioned whether terminating the earmark would remove the current unofficial cap on the funds given to the loan program. He said that there are increasing pressures on the sales tax including a tax base that is declining relative to the economy.

Sen. Henderson asked whether other entities offer loans for clean water projects. Mr. Baker said that others provide loans, but some communities cannot rely on private lenders due to the risk they present the lender. He added that the mission of the loan program is to abate pollution, not to be the lender of last resort.

Mr. Baker discussed with commission members how state funds combine with federal funds in revolving state and federal programs, which are both administered by the same water quality board that has responsibility over wastewater funds in the state.

Sen. Hillyard asked whether the wastewater loan program was affected by downturns in state revenue. Mr. Baker replied that earmarked money is not reduced but also mentioned that money has been taken from the loan program account in recent economic downturns.

Mr. Fred W. Finlinson, General Counsel, Utah Water Coalition, addressed "Legislative History on Water Funding." He stated that funds for water experienced cuts when other appropriations were experiencing cuts. He gave examples of the Legislature taking money from water funds on three different occasions.

Mr. Ken Bousfield, Director, Division of Drinking Water, Utah Department of Environmental Quality, spoke about the stewardship that his division provides for the drinking water loan program that is funded by a sales and use tax earmark. He stated that the majority of the loans are to very small systems that do not typically have other financing options. He mentioned factors that are considered when loan applications are reviewed. He gave examples of applicants who receive grants and applicants who receive

loans. He stated that the division evaluates whether a project is needed, whether it is affordable, and whether it will be beneficial. He responded to questions from the commission.

Chair Trader asked if the Division of Drinking Water relies on federal funds that require a state match. Mr. Bousfield responded that the division does rely on federal funds that require a state match and reviewed the administrative burden associated with loans made with federal funds. In response to further questions from Chair Trader, Mr. Bousfield discussed the relationship between the state and federal loan programs that relate to drinking water projects.

Mr. Lewis asked whether, given the level of the current fund balance and the amount owing on all outstanding loans, the program could be self-sustaining without new sources of revenue. Mr. Bousfield responded that eliminating the earmark and ongoing funding would result in the loss of federal funds that pay administrative costs for the division. He commented that this would render the division unable to adequately enforce all mandated federal rules, which in turn would likely result in the Environmental Protection Agency asserting primacy and expanding its control in Utah. Responding to questions from Mr. Lewis and Chair Trader, Mr. Bousfield further discussed the federal funds provided when the division provides a state match.

Mr. Dale Pierson, Executive Director, Rural Water Association of Utah, spoke about how all water programs funded by the earmark are interrelated. He stated that the water loan programs have a direct effect on rural economies in Utah. He gave his view that the sales and use tax earmarks to water show a commitment by the Legislature to basic public infrastructure. He mentioned the importance of water systems for communities, roads, schools, and more.

Chair Trader reminded everyone that the question before the commission is not whether programs funded by an earmark should be continued but whether earmarking is the appropriate funding method.

Referencing "Sales and Use Tax Earmarks Flowchart: Water," Sen. Hillyard questioned the fairness of placing a cap on certain water programs that are funded by a sales and use tax earmark while funds to other water programs can fluctuate and tend to rise annually.

Sen. Dabakis asked what the effect would be if the water related earmarks to the Department of Environmental Quality were eliminated, questioning why certain programs should be exempt from seeking an annual appropriation. Mr. Pierson spoke about irreversible effects that would result from underfunding water quality and development projects. He stated that the earmarked funds for water and wastewater programs provide long-term surety to guarantee both the receipt of federal funds and the necessary maintenance to ensure public safety.

Mr. Bousfield reviewed the relationship between state funds and federal funds in drinking water programs administered by the Division of Drinking Water. He reviewed the process followed when federal funds require a state match. He emphasized that the state match may not include funds from repaid loans that originated from the revolving federal loan program administered by the division.

Sen. Hillyard discussed the risk of the Environmental Protection Agency taking control over the drinking water loan program, particularly as the risk for this program relates to the risk for other agencies. Mr. Bousfield commented on the uniqueness of the risk faced in relation to the drinking water loan program due to provisions in federal statute.

Commissioner Valentine provided a historic background to explain why the Legislature created sales and use tax earmarks for water projects. He commented on the importance of considering this background.

Mr. Dean and Ms. Howell remarked that it would be beneficial to know the balances of all the revolving loan funds, both state funded and federally funded, that are connected to the sales and use tax earmarks as well as the administrative costs faced by the administering entity.

Mr. Larsen commented on the benefit of multiplying state money with federal money.

Sen. Henderson expressed concerns regarding the lack of legislative oversight of earmarked funds and suggested that these two loan programs undergo an in-depth review by an appropriations committee. Commissioner Valentine, Mr. Lewis, and Sen. Hillyard agreed that the commission should recommend that the Legislature review the sales and use tax earmarks to the wastewater and drinking water loan programs.

Rep. Briscoe remarked that the commission might consider recommending the Legislature add a sunset on earmarks. He mentioned constraints placed on the Legislature by the 45-day session and suggested that the Legislature consider adding more appropriation days throughout the year.

**MOTION:** Sen. Henderson moved that the commission recommend the following with regard to the sales and use tax earmarks within the Department of Environmental Quality: (a) that the Executive Appropriations Committee direct the appropriate appropriations subcommittee to conduct an in-depth review of the programs funded by these earmarks before the 2016 General Session; (b) that the earmarks be reviewed by the Executive Appropriations Committee every other year; and (c) that the earmarks be included within Title 63I, Chapter 1, Legislative Oversight and Sunset Act, with a five-year review period.

Mr. Dean commented that he was not comfortable with recommending that there be a fixed sunset on the sales and use tax earmarks to the Department of Environmental Quality.

The motion passed with Mr. Dean voting in opposition. Sen. Dabakis and Rep. McCay were absent for the vote.

### **3. Other Items/Adjourn**

**MOTION:** Commissioner Valentine moved to adjourn the meeting. The motion passed unanimously. Sen. Dabakis and Rep. McCay were absent for the vote.

Chair Trader adjourned the meeting at 4:46 p.m.