

**Senator Jacob L. Anderegg** proposes the following substitute bill:

**SECONDARY WATER REQUIREMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: Timothy D. Hawkes

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**LONG TITLE**

**General Description:**

This bill addresses the metering of pressurized secondary water.

**Highlighted Provisions:**

This bill:

- ▶ addresses forfeiture of water and the sale of surplus water;
- ▶ defines terms;
- ▶ requires a secondary water supplier to report certain information to the Division of Water Rights each year;
- ▶ requires a secondary water provider:
  - that begins design work for new secondary water services to certain users on or after April 1, 2020, to meter the use of water;
  - to meter the use of all of the secondary water provider's commercial, industrial, institutional, and residential users by 2039;
  - to develop and submit to the Division of Water Rights a strategy for meeting the 2039 metering requirement; and
  - to provide educational material to certain users;
- ▶ authorizes the Division of Water Rights to make, in conjunction with the Division of Water Resources, rules regarding the requirements of and the procedure for



- 26 submitting a required report or strategy;
- 27       ▶ provides for exemptions;
- 28       ▶ requires a secondary water supplier to finance at least 25% of the total cost to meet
- 29 secondary water metering requirements through means other than those provided for
- 30 in this bill;
- 31       ▶ requires \$20,000,000 in loans and grants available each year for the financing of
- 32 secondary water metering;
- 33       ▶ authorizes rules regarding loans and grants for financing secondary water metering
- 34 and exemptions;
- 35       ▶ creates the Secondary Water Metering Restricted Account (account);
- 36       ▶ requires grants from the account to assist secondary water suppliers to finance
- 37 metering of the use of secondary water; and
- 38       ▶ authorizes the Division of Water Resources to make rules for the administration of
- 39 the account.

40 **Money Appropriated in this Bill:**

41       None

42 **Other Special Clauses:**

43       None

44 **Utah Code Sections Affected:**

45 AMENDS:

46       73-1-4, as last amended by Laws of Utah 2017, Chapter 132

47 ENACTS:

48       73-10-34, Utah Code Annotated 1953

49       73-10-35, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52       Section 1. Section 73-1-4 is amended to read:

53       **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**  
54 **seven years -- Nonuse application.**

55       (1) As used in this section:

56       (a) "Public entity" means:

- 57 (i) the United States;
- 58 (ii) an agency of the United States;
- 59 (iii) the state;
- 60 (iv) a state agency;
- 61 (v) a political subdivision of the state; or
- 62 (vi) an agency of a political subdivision of the state.
- 63 (b) "Public water supplier" means an entity that:
- 64 (i) supplies water, directly or indirectly, to the public for municipal, domestic,
- 65 secondary watering, or industrial use; and
- 66 (ii) is:
  - 67 (A) a public entity;
  - 68 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public
  - 69 Service Commission;
  - 70 (C) a community water system:
    - 71 (I) that:
      - 72 (Aa) supplies water to at least 100 service connections used by year-round residents; or
      - 73 (Bb) regularly serves at least 200 year-round residents; and
    - 74 (II) whose voting members:
      - 75 (Aa) own a share in the community water system;
      - 76 (Bb) receive water from the community water system in proportion to the member's
      - 77 share in the community water system; and
    - 78 (Cc) pay the rate set by the community water system based on the water the member
    - 79 receives; or
  - 80 (D) a water users association:
    - 81 (I) in which one or more public entities own at least 70% of the outstanding shares; and
    - 82 (II) that is a local sponsor of a water project constructed by the United States Bureau of
    - 83 Reclamation.
  - 84 (c) "Shareholder" means the same as that term is defined in Section [73-3-3.5](#).
  - 85 (d) "Water company" means the same as that term is defined in Section [73-3-3.5](#).
  - 86 (e) "Water supply entity" means an entity that supplies water as a utility service or for
  - 87 irrigation purposes and is also:

88 (i) a municipality, water conservancy district, metropolitan water district, irrigation  
89 district, or other public agency;

90 (ii) a water company regulated by the Public Service Commission; or

91 (iii) any other owner of a community water system.

92 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the  
93 appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a  
94 water right for a period of at least seven years, the water right or the unused portion of that  
95 water right is subject to forfeiture in accordance with Subsection (2)(c).

96 (b) (i) An appropriator or the appropriator's successor in interest may file an  
97 application for nonuse with the state engineer.

98 (ii) A nonuse application may be filed on all or a portion of the water right, including  
99 water rights held by a water company.

100 (iii) After giving written notice to the water company, a shareholder may file a nonuse  
101 application with the state engineer on the water represented by the stock.

102 (iv) (A) The approval of a nonuse application excuses the requirement of beneficial use  
103 of water from the date of filing.

104 (B) The time during which an approved nonuse application is in effect does not count  
105 toward the seven-year period described in Subsection (2)(a).

106 (v) The filing or approval of a nonuse application or a series of nonuse applications  
107 under Subsection (3) does not:

108 (A) constitute beneficial use of a water right;

109 (B) protect a water right that is already subject to forfeiture under this section; or

110 (C) bar a water right owner from:

111 (I) using the water under the water right as permitted under the water right; or

112 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided  
113 by law.

114 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the  
115 water right may not be forfeited unless a judicial action to declare the right forfeited is  
116 commenced:

117 (A) within 15 years from the end of the latest period of nonuse of at least seven years;

118 or

119 (B) within the combined time of 15 years from the end of the most recent period of  
120 nonuse of at least seven years and the time the water right was subject to one or more nonuse  
121 applications.

122 (ii) (A) The state engineer, in a proposed determination of rights filed with the court  
123 and prepared in accordance with Section 73-4-11, may not assert that a water right was  
124 forfeited unless the most recent period of nonuse of seven years ends or occurs:

125 (I) during the 15 years immediately preceding the day on which the state engineer files  
126 the proposed determination of rights with the court; or

127 (II) during the combined time immediately preceding the day on which the state  
128 engineer files the proposed determination of rights consisting of 15 years and the time the  
129 water right was subject to one or more approved nonuse applications.

130 (B) After the day on which a proposed determination of rights is filed with the court a  
131 person may not assert that a water right subject to that determination was forfeited before the  
132 issuance of the proposed determination, unless the state engineer asserts forfeiture in the  
133 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection  
134 to the proposed determination that asserts forfeiture.

135 (iii) A water right, found to be valid in a decree entered in an action for general  
136 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim  
137 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state  
138 engineer filed the related proposed determination of rights with the court, unless the decree  
139 provides otherwise.

140 (iv) If in a judicial action a court declares a water right forfeited, on the date on which  
141 the water right is forfeited:

142 (A) the right to beneficially use the water reverts to the public; and

143 (B) the water made available by the forfeiture:

144 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

145 and

146 (II) second, may be appropriated as provided in this title.

147 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or  
148 abandoned water or a portion of the water is:

149 (i) permitted to run to waste; or

150 (ii) beneficially used by others without right with the knowledge of the water right  
151 holder.

152 (e) This section does not apply to:

153 (i) the beneficial use of water according to a lease or other agreement with the  
154 appropriator or the appropriator's successor in interest;

155 (ii) a water right if its place of use is contracted under an approved state agreement or  
156 federal conservation following program;

157 (iii) those periods of time when a surface water or groundwater source fails to yield  
158 sufficient water to satisfy the water right;

159 (iv) a water right when water is unavailable because of the water right's priority date;

160 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with  
161 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

162 (A) the water is stored for present or future beneficial use; or

163 (B) storage is limited by a safety, regulatory, or engineering restraint that the  
164 appropriator or the appropriator's successor in interest cannot reasonably correct;

165 (vi) a water right if a water user has beneficially used substantially all of the water right  
166 within a seven-year period, provided that this exemption does not apply to the adjudication of a  
167 water right in a general determination of water rights under Chapter 4, Determination of Water  
168 Rights;

169 (vii) except as provided by Subsection (2)(g), a water right:

170 (A) (I) owned by a public water supplier;

171 (II) represented by a public water supplier's ownership interest in a water company; or

172 (III) to which a public water supplier owns the right of beneficial use; and

173 (B) conserved or held for the reasonable future water requirement of the public, which  
174 is determined according to Subsection (2)(f);

175 (viii) a supplemental water right during a period of time when another water right  
176 available to the appropriator or the appropriator's successor in interest provides sufficient water  
177 so as to not require beneficial use of the supplemental water right; or

178 (ix) a period of nonuse of a water right during the time the water right is subject to an  
179 approved change application where the applicant is diligently pursuing certification.

180 (f) (i) The reasonable future water requirement of the public is the amount of water

181 needed in the next 40 years by:

182 (A) the persons within the public water supplier's reasonably anticipated service area  
183 based on reasonably anticipated population growth; or

184 (B) other water use demand.

185 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably  
186 anticipated service area:

187 (A) is the area served by the community water system's distribution facilities; and

188 (B) expands as the community water system expands the distribution facilities in  
189 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

190 (g) For a water right acquired by a public water supplier on or after May 5, 2008,  
191 Subsection (2)(e)(vii) applies if:

192 (i) the public water supplier submits a change application under Section 73-3-3; and

193 (ii) the state engineer approves the change application.

194 (3) (a) The state engineer shall furnish a nonuse application form requiring the  
195 following information:

196 (i) the name and address of the applicant;

197 (ii) a description of the water right or a portion of the water right, including the point of  
198 diversion, place of use, and priority;

199 (iii) the quantity of water;

200 (iv) the period of use;

201 (v) the extension of time applied for;

202 (vi) a statement of the reason for the nonuse of the water; and

203 (vii) any other information that the state engineer requires.

204 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the  
205 application once a week for two successive weeks:

206 (A) in a newspaper of general circulation in the county in which the source of the water  
207 supply is located and where the water is to be beneficially used; and

208 (B) as required in Section 45-1-101.

209 (ii) The notice shall:

210 (A) state that an application has been made; and

211 (B) specify where the interested party may obtain additional information relating to the

212 application.

213 (c) Any interested person may file a written protest with the state engineer against the  
214 granting of the application:

215 (i) within 20 days after the notice is published, if the adjudicative proceeding is  
216 informal; and

217 (ii) within 30 days after the notice is published, if the adjudicative proceeding is  
218 formal.

219 (d) In any proceedings to determine whether the nonuse application should be  
220 approved or rejected, the state engineer shall follow the procedures and requirements of Title  
221 63G, Chapter 4, Administrative Procedures Act.

222 (e) After further investigation, the state engineer may approve or reject the application.

223 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water  
224 right for a period of time not exceeding seven years if the applicant shows a reasonable cause  
225 for nonuse.

226 (b) A reasonable cause for nonuse includes:

227 (i) a demonstrable financial hardship or economic depression;

228 (ii) physical causes or changes that render use beyond the reasonable control of the  
229 water right owner so long as the water right owner acts with reasonable diligence to resume or  
230 restore the use;

231 (iii) the initiation of water conservation or efficiency practices, or the operation of a  
232 groundwater recharge recovery program approved by the state engineer;

233 (iv) operation of legal proceedings;

234 (v) the holding of a water right or stock in a mutual water company without use by any  
235 water supply entity to meet the reasonable future requirements of the public;

236 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in  
237 implementing an existing, approved water management plan; or

238 (vii) the loss of capacity caused by deterioration of the water supply or delivery  
239 equipment if the applicant submits, with the application, a specific plan to resume full use of  
240 the water right by replacing, restoring, or improving the equipment.

241 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall  
242 notify the applicant by mail or by any form of electronic communication through which receipt



243 is verifiable, of the date when the nonuse application will expire.

244 (b) An applicant may file a subsequent nonuse application in accordance with this  
245 section.

246 Section 2. Section **73-10-34** is enacted to read:

247 **73-10-34. Secondary water metering.**

248 (1) As used in this section:

249 (a) "Board" means the Board of Water Resources created in Section [73-10-1.5](#).

250 (b) (i) "Commercial user" means a secondary water user that is a place of business.

251 (ii) "Commercial user" does not include a multi-family residence, an agricultural user,  
252 or a customer that falls within the industrial or institutional classification.

253 (c) "Connection" means a connection between a pressurized secondary water supply  
254 system and a user.

255 (d) (i) "Industrial user" means a secondary water user that manufactures or produces  
256 materials.

257 (ii) "Industrial user" includes a manufacturing plant, an oil and gas producer, and a  
258 mining company.

259 (e) (i) "Institutional user" means a secondary water user that is dedicated to public  
260 service, regardless of ownership.

261 (ii) "Institutional user" includes a school, church, hospital, park, golf course, and  
262 government facility.

263 (f) (i) "Residential user" means a secondary water user in a residence.

264 (ii) "Residential user" includes a single-family or multi-family home, apartment,  
265 duplex, twin home, condominium, or planned community.

266 (g) "Secondary water" means water that is:

267 (i) not culinary or water used on land assessed under Title 59, Chapter 2, Part 5,  
268 Farmland Assessment Act; and

269 (ii) delivered to and used by an end consumer for the irrigation of landscaping or a  
270 garden.

271 (h) "Secondary water supplier" means an entity that supplies pressurized secondary  
272 water.

273 (2) A secondary water supplier that begins design work for new service on or after

274 April 1, 2020, to a commercial, industrial, institutional, or residential user shall meter the use  
275 of pressurized secondary water by the users receiving that new service.

276 (3) (a) Each secondary water supplier that supplies pressurized secondary water to a  
277 commercial, industrial, institutional, or residential user shall meter the use of the pressurized  
278 secondary water by December 31, 2039.

279 (b) Each secondary water supplier shall finance at least 25% of the supplier's total cost  
280 to comply with this Subsection (3) without the use of:

281 (i) a loan described in Subsection (6); or

282 (ii) a grant described in Section [73-10-35](#).

283 (c) If a secondary water provider acquires a metering device that has the ability to  
284 provide flow data, usage data, or both in real-time, the secondary water provider shall make the  
285 data available to the user in an open-source format upon request.

286 (4) A secondary water supplier shall:

287 (a) on or before March 31 of each year, report to the Division of Water Rights:

288 (i) for commercial, industrial, institutional, and residential users whose pressurized  
289 secondary water use is metered, the number of acre feet of pressurized secondary water the  
290 secondary water supplier supplied to the commercial, industrial, institutional, and residential  
291 users during the preceding 12-month period;

292 (ii) the number of secondary water meters within the secondary water supplier's service  
293 boundary;

294 (iii) a description of the secondary water supplier's service boundary;

295 (iv) the number of connections in each of the following categories through which the  
296 secondary water supplier supplies pressurized secondary water:

297 (A) commercial;

298 (B) industrial;

299 (C) institutional; and

300 (D) residential;

301 (v) for each size of connection, the number of connections in that size through which  
302 the secondary water supplier supplies pressurized secondary water; and

303 (vi) the dates of service during the preceding 12-month period in which the secondary  
304 water supplier supplied pressurized secondary water;

305 (b) on or before March 31, 2020, develop and submit to the Division of Water Rights  
306 the secondary water supplier's strategy to comply with the metering requirement described in  
307 Subsection (3); and

308 (c) each month that the secondary water supplier provides service, provide each of the  
309 secondary water supplier's metered commercial, industrial, institutional, and residential users  
310 with educational material regarding the user's pressurized secondary water use that shall  
311 include:

312 (i) the user's pressurized secondary water use in relation to others in the area; and

313 (ii) one or more suggestions for conserving pressurized secondary water use.

314 (5) The Division of Water Rights in conjunction with the Division of Water Resources  
315 shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
316 Act, establishing:

317 (a) the requirements of and the procedure for submitting a report under Subsection  
318 (4)(a); and

319 (b) the requirements of and the procedure for submitting a strategy under Subsection  
320 (4)(b).

321 (6) (a) Beginning July 1, 2019, and ending June 30, 2039, the board shall make at least  
322 \$10,000,000 in loans available each year:

323 (i) from the Water Resources Conservation and Development Fund, created in Section  
324 73-10-24; and

325 (ii) for financing, in conjunction with grants from the Secondary Water Metering  
326 Restricted Account, created in Section 73-10-35, the cost of secondary water metering as  
327 described in Subsection (3).

328 (b) The Division of Water Resources shall ensure that:

329 (i) in accordance with Subsection (3), the total amount available to a secondary water  
330 supplier through:

331 (A) a loan described in this Subsection (6) does not exceed 25% of the supplier's total  
332 cost to comply with Subsection (3); and

333 (B) a grant described in Section 73-10-35 does not exceed 50% of the supplier's total  
334 cost to comply with Subsection (3); and

335 (ii) for the purpose of determining the amount of a loan under this Subsection (6) or a

336 grant described in Section 73-10-35, the calculation of a secondary water supplier's total cost to  
337 comply with Subsection (3) includes secondary water metering costs the secondary water  
338 supplier:

339 (A) incurs in or before May 2019; or

340 (B) finances through a loan, bond, grant, subsidy, program, or any other means not  
341 described in this Subsection (6) or Section 73-10-35.

342 (c) The Division of Water Resources and board shall make rules in accordance with  
343 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing the criteria and  
344 process for receiving a loan described in this Subsection (6).

345 (7) A commercial, industrial, institutional, or residential user may not use culinary  
346 water for the regular irrigation of landscaping or a garden, if:

347 (a) the user has a connection to secondary water;

348 (b) the user's area is served with both culinary and secondary water; and

349 (c) the user's secondary water rates exceed the user's culinary water rates.

350 (8) The Division of Water Resources may exempt a secondary water supplier from the  
351 requirements of this section if, after testing, there is no meter that a meter manufacturer will  
352 warrant for the water in a specific location. In accordance with Title 63G, Chapter 3, Utah  
353 Administrative Rulemaking Act, the Division of Water Resources may make rules for the  
354 implementation of this Subsection (8).

355 (9) This section does not apply to a secondary water supplier to the extent that the  
356 secondary water supplier supplies secondary water to a county of the third, fourth, fifth, or  
357 sixth class.

358 (10) The Division of Water Resources may exempt from this section a secondary water  
359 supplier that:

360 (a) provides both culinary and pressurized secondary irrigation water; and

361 (b) demonstrates, through a study conducted by a person licensed under Title 58,  
362 Occupations and Professions, as an engineer or geologist, to the satisfaction of the Division of  
363 Water Resources, that the estimate recharge into the aquifer or response to the levels of ground  
364 water wells has a significant impact and warrants an exemption.

365 (11) The selling by a secondary water supplier of surplus water, as authorized for a  
366 municipality under Subsection 10-8-14(2)(d), and not restricted for any other water user, if

367 used by the purchaser for beneficial purposes fulfills the requirements of use contemplated in  
368 Subsection 73-1-4(2).

369 Section 3. Section 73-10-35 is enacted to read:

370 **73-10-35. Creation of Secondary Water Metering Restricted Account --**  
371 **Awarding of grants from the restricted account.**

372 (1) There is created with the General Fund a restricted account known as the Secondary  
373 Water Metering Restricted Account.

374 (2) The restricted account consists of:

375 (a) any voluntary contributions received;

376 (b) appropriations the Legislature makes to the restricted account; and

377 (c) interest or other earnings accrued pursuant to Subsection (3)(b).

378 (3) The state treasurer shall:

379 (a) invest the money in the restricted account by following the procedures and  
380 requirements of Title 51, Chapter 7, State Money Management Act; and

381 (b) deposit all interest or other earnings derived from those investments into the  
382 restricted account.

383 (4) Upon appropriation from the Legislature, the Division of Water Resources shall  
384 make grants from the Secondary Water Metering Restricted Account:

385 (a) to assist secondary water suppliers, as defined in Section 73-10-34, to comply with  
386 Subsection 73-10-34(3);

387 (b) beginning July 1, 2019, and ending June 30, 2039, in the total amount of up to  
388 \$10,000,000 each year; and

389 (c) in accordance with Subsection 73-10-34(6)(b).

390 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
391 Division of Water Resources shall make rules establishing:

392 (a) criteria for awarding grants under this section; and

393 (b) criteria for determining eligibility for assistance under this section, specifically  
394 including factors such as the size of the secondary water supplier's budget, the secondary water  
395 supplier's ability to contribute to the cost of complying with Subsection 73-10-34(4), and the  
396 water rates that would have to be charged to cover the secondary water supplier's contribution  
397 to the costs.