

Constitutional Amendment D

Impartial Analysis | August 31, 2020

Current Provisions of the Utah Constitution

The Utah Constitution currently prohibits a municipality from selling or disposing of: (1) its water rights; or (2) its sources of water supply, such as wells, springs, or streams. The term “municipality” includes cities and towns. The current Utah Constitution requires a municipality to retain the municipality’s water rights and sources of water supply to supply water to the municipality’s residents. The constitution states that a municipality is not prevented from exchanging water rights or sources of water supply for other water rights or sources of water supply of equal value.

The constitution does not mention whether a municipality is allowed to supply water to water users outside the municipality’s boundary. Over time the need for water outside municipal boundaries has resulted in a long-standing and widespread practice by many Utah municipalities of supplying water to water users outside the municipality’s boundary.

Effect of Constitutional Amendment D

Constitutional Amendment D rewrites the provision of the Utah Constitution dealing with a municipality’s water rights and sources of water supply.

Amendment D allows a municipality to define the boundary of its water service area and to set the terms of water service for that area, including reasonable water service charges. The boundary of a municipality’s water service area may be different than the boundary of the municipality.

In addition, Constitutional Amendment D resolves uncertainty about the ability of a municipality to supply water to water users outside the municipality’s boundary. The Amendment states that a municipality is not prevented from:

- supplying water to water users outside the municipality’s boundary; or
- entering into contracts to supply water outside the municipality’s water service area if the water is more than what is needed for the municipality’s water service area.

Under the Amendment, a municipality will still not be allowed to sell or dispose of its water rights or sources of water supply. A municipality will continue to be able to exchange water rights or sources of water supply for other water rights or sources of water supply. However, any such exchange will require the municipality to determine that the water rights or sources of water supply that the municipality receives in exchange will equally enable the municipality to meet the needs of its water service area.

Implementing Legislation

If Constitutional Amendment D is approved by voters, a bill passed during the 2019 General Session of the Utah Legislature will also take effect and become law. That bill is H.B. 31, Water Supply and Surplus Water Amendments.

H.B. 31 requires a municipality that provides water to water users outside the municipality’s boundary to define the municipality’s water service area and to create a map showing that area. The bill requires a municipality to provide water service to all end-use customers within the municipality’s water service area in a manner that treats similarly situated customers the same. H.B. 31 also requires a



municipality to set reasonable water rates for the water provided by the municipality. The bill requires a municipality that provides water outside its water service area to provide the water only through a contract.

Effective Date

If approved by voters, Constitutional Amendment D takes effect on January 1, 2021.

Fiscal Effects

The Legislative Fiscal Analyst has determined that Constitutional Amendment D will have no fiscal effect and will not result in any increase or decrease in revenue or cost to the state or to local governments.