



Office of Energy Development

1) Required Reports

[UCA 79-6-203](#) requires the Energy Advisor to annually report to the Natural Resources Interim Committee the following items:

- a) summarize the status and development of the state's energy resources;
- b) summarize the activities and accomplishments of the Office of Energy Development;
- c) address the energy advisor's activities under this part; and
- d) recommend any energy-related executive or legislative action the energy advisor considers beneficial to the state, including updates to the state energy policy under Section 79-6-301.

This report has not been consistently reported since at least 2020. There was an effort to consolidate some reporting requirements in H.B. 305 (2022 General Session), but this reporting requirement was left in code.

Recommendation: The Office/Energy advisor should comply with UCA 79-6-203 as written, reporting required items annually to the NRAE Interim committee.

Agency Response: Neutral HB 305 in the 2022 General session removed that report being required by our office. <https://le.utah.gov/~2022/bills/static/HB0305.html> If there is confusion about it in the code still, we may need to revisit this topic, generally. Our office used to report to three committees annually, presenting the exact same report. HB 305 changed it so we only report to PUET, to remove redundancies. We still report that information to PUET, and have each year, but we did not report to NRAE last year because of HB 305. If it is the desire of the legislature for us to report again to NRAE, then we're happy to have that conversation.

2) Required Resources

[79-6-201\(2\)\(h\)](#) requires the Energy Advisor to compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects. This requirement has not been completed by the Advisor/Office.

Recommendation: The Office/Energy Advisor should comply with UCA 79-6-201(2)(h) as written, making this information available on the Office's website.

Agency Response: Neutral. We've experienced 100% staff turnover in the last two years, and if this information ever did exist, it is no longer is accessible to current staff. This is a significant request to create and also maintain. To gather all permitting/approval requirements from every level of government would require additional resources and quite a bit of time. We would be in favor of removing this from code if the legislature is amenable to it; otherwise, we will pool our resources and see what we can do to build this out over the next two years.

3) OED Appropriation Units

The Office of Energy Development has never had appropriation units (programs in appropriations



acts). Appropriation units provide transparency in budgeting and increase accountability for agencies.

Recommendation: The Legislature should consider creating appropriation units for the Office: OED Administration, Energy Tax Incentives, Federal Energy and Revolving Loan Programs, Energy Policy and Planning, State Grants and Projects.

Agency Response: Support. OED tracks these costs at a unit level and having appropriation units that correlate with these costs would not be difficult for OED to implement.

4) Performance Measures for the Utah Energy Research Grant Program

The Legislature created the Utah Energy Research Grant Program in H.B. 426 of the 2023 General Session as a unique line item in the Department of Natural Resources. The legislature typically assigns performance measures for each line item, especially for line items receiving state funds.

Recommendation: The Office should submit line item measures for the Utah Energy Research Grant Program that measure the program's value and effectiveness.

Agency Response: Support. OED suggests the following performance metric for the new line item be the number of research projects that lead to a marketable outcome.

5) Performance Measures that Capture Outcomes

The current performance measures for the Office of Energy Development focus on efficiency and outputs provided by the office. 79-6-301(3)(b)(i) tasks the Office with implementing the State Energy Policy, it appears they are solely responsible for implementing this statute. The first line of the state energy policy, 79-6-301(1)(a), states that "Utah shall have adequate, reliable, affordable, sustainable, and clean energy resources."

Recommendation: The Office should add performance measures to their annual legislative reporting that focus on outcomes of the office, and capture how well they are implementing the state energy policy, such as:

- Average price paid per kilowatt hour (measuring energy affordability)
- Number and duration of outages (measuring reliability of energy)
- Renewable energy ratio or the percent of renewables as a percent of total energy consumed in the state (measuring how clean Utah's energy is)
- Annual statewide loss of load expectation (an industry metric that captures adequacy of energy resources)

The Legislature should also consider requiring the Office of Energy Development to adopt best practices in developing actionable goals and recommendations for the state energy plan, and ensure that their line item measures align with the objectives and metrics of the state energy plan.

Agency Response: Support and Oppose. While we support performance measures, and including them in our annual reporting related to our work (these are currently being developed and we support that part of this recommendation), the proposed performance



measures are not the best measures of success for the work we perform. Our office is non-regulatory, so we have no direct control over the price of electricity, outage durations, etc. Additionally, we do not believe it is prudent to have energy decarbonization goals that mirror other states, which have actually led to outages as they retire their dispatchable energy sources. Allowing us to work through the process of completing Phase Two of our state energy plan, which includes following the process outlined in HB 426 from the 2023 General Session, and other data/research collection, will ensure we have specific energy goals related to our energy plan that are more thoughtful once that process is complete.

6) Accelerate the Transition to the Department of Natural Resources

79-6-201 describes a transition from the Energy Advisor reporting to the Governor versus the Executive Director of the Department of Natural Resources (DNR) which takes place between FY 2022 and FY 2029. Before FY 2029, the Energy Advisor is also allowed under 79-6-401 to appoint a separate director of the office. During the 2021 General Session, the Office was moved to be within the Department of Natural Resources, however, tasking the Office with reporting to both the Governor and the Executive Director in the interim provides ambiguity and potential confusion for the direction and priorities of the Office.

Recommendation: The Legislature should consider accelerating the transition to reporting exclusively to the Department of Natural Resources and clarify if the Energy Advisor and the Director of the Office should be one or two employees.

Agency Response: Neutral. This is a point of confusion in our office, and additional clarity one way or the other would be beneficial. And we are engaged in discussions with DNR leadership on this topic.

7) Office Location

The Office is not currently in a lease, and is occupying space in the World Trade Center building under an agreement with the Governor's Office of Economic Opportunity. In the 2021 General Session, the Office was combined with DNR, however the Department has not housed the Office since this transition was made in code.

Recommendation: The Department of Natural Resources should work to find space to house the Office of Energy Development within its physical office building, providing the office with a plan for relocation.

Agency Response: Neutral. Since this is a recommendation for DNR, we won't speak for them. But DNR administration has told us they are working with DFCM on solutions, and the plan is forthcoming.

8) Audit Recommendations

The Performance Audit of the State Energy Policy provided several recommendations for the Office of Energy Development which are critical to organizational success. The current office administration inherited a lack of documentation and internal governance procedures. Implementing the recommendations included in the Legislative audit are critical, basic steps that the Office will need for long term success. Specifically, recommendations 2.1, 2.3 and 2.4 are focused on the personnel and organizational policies of OED. During the 2023 General Session, the



Legislature awarded funding for three additional staff positions for the office. Before the office hires additional staff, they should implement the recommendations in the audit related to staff and operations.

Recommendation: The Legislature should consider holding funding for additional staff in the office until the audit recommendations related to personnel and administration have been satisfied:

- **2.1** We recommend the Office of Energy Development balance energy policy staff expertise to better fulfill their mandate of implementing the State Energy Policy and the governor's energy goals.
- **2.3** We recommend the Office of Energy Development develop goals, measures, and tracking to demonstrate accountability for office operations and to provide better direction moving forward.
- **2.4** We recommend the Office of Energy Development establish stronger internal governance and inner-office continuity by updating job descriptions, policies and procedures, grant selection criteria, and standard operating procedures to better fulfill its mandate.

Agency Response: Neutral. We are confident on our abilities as an office to deliver on this recommendation in a timely manner, with or without the recommendation.

Water Resources Funds

9) Improve Statutory Language for Loan Funds

The Conservation and Development Fund (C&D), an single enterprise (loan) fund, is impacted by at least 15 sections of code within Title 73, Chapter 10 (in some cases it's not clear if the fund is being referenced or not). Several sections in Chapter 10 refer to funds or revolving funds but do not specify if the intended fund is the C&D Fund, or one of the other two loan funds created in the chapter. The purpose and intention of the C&D is challenging to interpret from the current code structure. The outdated and piecemeal language makes it challenging for agencies, the Legislature, and the public to read, and implement. Similar challenges exist for both the Construction Fund and the Cities Water Loan Fund which could be addressed in a rewrite of Chapter 10.

Recommendation: The Legislature should consider rewriting Chapter 10 of Title 73 to provide clarity and improve relevance, provide direction, and also consolidate language for the C&D Fund which is found in the Tax Code.

Agency Response: The division supports this recommendation.

10) Performance Measures for the C&D Fund

The Water Resources Conservation and Development Fund is an important, active fund that receives a significant portion of all sales tax revenue each year. To date, the fund hasn't had any performance measures associated with it. While performance of funds is tricky to measure, especially without a concise code that directs the intent of the fund, performance measures should



be established for the funding provided by this account. (Improving statutory language would also assist in measuring success for this account.)

Recommendation: Water Resources should work with the Legislative Fiscal Analyst to establish performance measures that capture the value provided by the funding for the State of Utah to be included in appropriations acts during the General Session.

Agency Response: The division supports this recommendation.

11) Dam Safety Performance Measure

One of the line item performance measures for the Water Resources Construction Fund is "Percent of Appropriated Funding to be Spent on Dam Safety Projects." This information should be available from actuals after close out each year. A better piece of information for the fund would be the number of outstanding high hazard dams to be upgraded (currently, 101).

Recommendation: Water Resources should change their performance measure "Percent of Appropriated Funding to be Spent on Dam Safety Projects" to "Number of High Hazard Dams in the State to be Upgraded."

Agency Response: The division supports this recommendation.

Water Rights

12) Performance Measures that Capture Outcomes

The current line item measures for the Division of Water Rights are:

- timely processing of change/exchange applications,
- unique visitors to the water rights website, and
- number of parties noticed in adjudication.

These measures do a good job of capturing the efficiency of the Division's operations, but lack the ability to capture the larger outcome of how well the state is managing water rights. Because the division plays a critical role in Utah's water management, Water Rights should add measures that focus on outcomes related to managing water rights.

Recommendation: The division should adopt measures that focus on their mission, such as:

- Percent of systems in the state that are fully telemetered
- Time-oriented goals for current adjudications, such as Completing the Bear River Adjudication by 2030; and
- Percent of the Systems in the State that are over-allocated.

Agency Response: The Division of Water Rights supports the concepts in recommendations number one and two as performance measures for the division that could



be defined given sufficient time to do so. As you have identified, Utah Code Title 73 directs that the Division of Water Rights is the water rights authority of the state of Utah and responsible for the measurement, distribution and appropriation of the waters of the state. Proposed performance measures one and two are well within these authorities. With continued legislative policy support and adequate funding these two measures could be developed, tracked, and reported.

In regard to item three, the division also recognizes the critical need to address water supply, water needs, and water rights allocations. Further discussions may be warranted to explore if this is more of a policy question rather than a performance measure. The division is willing to engage in such discussions.

13) Maintenance and Operation of Stream Gauges

During the 2023 General Session, budget requests related to adjudication but not explicitly described as allowable uses in 73-2-1.6 were funded by the Water Rights Restricted Account. The section does allow the division to purchase equipment, but not to pay for operations or maintenance. For clarity, and because a necessary function of adjudication is not only acquiring equipment but also operating and maintaining measuring devices, language should be added to the authorizing statute for the fund that identifies operation and maintenance of metering devices as an allowable use of these restricted funds.

Recommendation: The Legislature should consider amending the language of 73-2-1.6 to include maintenance and operation of stream gauges as an allowable use of the Water Rights restricted account.

Agency Response: The Division of Water Rights supports this recommendation. Having accurate and reliable measurement data is key to the proper administration and adjudication of water rights. With continued legislative policy support and adequate funding the division would be able to install, operate, and maintain critical measurement diversion locations. Being proactive and coupling this with already occurring adjudication planning, the data would better inform the adjudication process.

14) Studying Available Supply (Unappropriated Water)

The supply of available water is inherent in the work provided by Water Rights. Throughout title 73, statute requires the state engineer to consider water supply in the process of approving water right applications. In the adjudication process, there is currently no 'reconciliation' function, or balancing of the available or reliable supply (wet water) with the amount of water rights which have been approved (paper rights).

Recommendation: The Legislature should consider amending the language of 73-2-1.6 to include up to 5% of the received sales tax to be used for water supply studies to support the function of the Division.

Agency Response: The Division of Water Rights supports this recommendation for a limited amount of these funds to be used for water supply studies and potentially staffing, as necessary, to ensure the state engineer has sufficient information regarding water supply in consideration of water right applications and administering existing water rights.



The scope of an adjudication 'reconciliation' process would need to be better defined and take into account statutory requirements to ensure due process in determining the characteristics and limits of water rights. Perhaps the envisioned 'reconciliation' process could be an administrative preplanning and post-implementation effort to identify basin characteristics, data gaps, distribution accounting needs, and other information to expedite the adjudication and implementation of the findings. The information could also be used in future planning studies and identification of potential policy gaps.

Wildlife Resources

15) Appropriation from the Aquatic Invasive Species Interdiction Account

During the 2023 General Session, the Legislature passed S.B. 112, Aquatic Invasive Species Amendments, intended to increase the revenues to the account by estimated \$646,300 per year. However, even with this increase, the total account revenues projected for FY 2024 (less than \$1.5 million) are likely going to be much less than the \$3 million ongoing appropriation from the account. (The FY 2023 appropriation from the account is \$1,454,200, but the revenues to the account have averaged \$776,500.)

Recommendation: The Legislature should reduce the FY 2025 appropriation from the Aquatic Invasive Species Interdiction Account to \$1,400,000 in FY 2024 and FY 2025 and include the following intent language in the base budget:

“Notwithstanding the legislative intent in S.B. 3, Item 439 (2023 General Session), the Legislature intends that that the Division of Wildlife Resources maintain its efforts to prevent aquatic invasive species spread into Bear Lake in FY 2024, with up to \$200,000 to be spent on check stations for boats entering Bear Lake Valley, boat decontamination, public education, and related activities.”

Agency Response: We agree with this recommendation. Because a new approach to AIS fees was enacted beginning July 1, 2023, we do not yet know how much revenue this account will accrue each year, but we agree that the current appropriation is likely excessive. We will work with the LFA and the Legislature to adjust the appropriation.

16) State-owned Shooting Ranges Restricted Account

The appropriation from the Support for State-Owned Shooting Ranges Restricted Account to the division for FY 2024 is \$27,900 ongoing, but this account has not generated any revenues since its creation during the 2017 General Session (S.B. 245, Second Amendment Special License Plates). Given the lack of revenue, we recommend the Legislature eliminate the appropriation from this account and consider closing the account during the 2024 General Session.

Recommendation: The Legislature should eliminate the \$27,800 ongoing appropriation from the Support for State-owned Shooting Ranges Restricted Account, and consider closing the account during the 2024 General Session.



Agency Response: We agree with this recommendation. Due to high start-up costs and the small amount of anticipated annual revenue, a license plate to support this program has not been developed.

17) Predator Control Restricted Account Balance

The Predator Control Restricted Account revenue comes primarily from a \$5 fee added to each big game hunting permit (UCA 23A-4-703). The account balance has been increasing since FY 2018, and at the end of FY 2022, it was \$917,400, which was 132% of the actual expenditure for the year. The division leadership should identify the purpose of the growing balance and propose to the Legislature a reasonable balance for the account.

Recommendation: The Division should identify the purpose of the growing balance of the Predator Control Restricted Account and propose to the subcommittee a reasonable balance for the account.

Agency Response: Much of DWR's predator control efforts are completed in conjunction with the Utah Department of Agriculture, and those efforts are currently evolving. We will work with the Utah Department of Agriculture and our other partners to effectively spend the predator control funds available to us each year.

18) Wildlife Resources Conservation Easement Account Balance

During the 2007 General Session, the Legislature created the Wildlife Resources Conservation Easement Account (see S.B. 188, Wildlife Resources Conservation Easement Restricted Account) to monitor and manage conservation easements held by DWR. The closing balance of the account was \$354,000 in FY 2022. The Legislature has appropriated \$15,600 ongoing in FY 2024 from this account, but the division hardly ever uses the funding. Overall, there has been very little activity in the account over the years.

Recommendation: The Division should present a plan for the balance in the Wildlife Resources Conservation Easement Account and explain the need for the \$15,600 ongoing appropriation from the account.

Agency Response: We agree with this recommendation. The Wildlife Resources Conservation Easement Account was envisioned to act somewhat like an annuity, where the principal is maintained in the account, and the annual interest earnings are available for conservation easement management and monitoring. The small amount of money available annually has made it difficult for DWR to effectively use this account, but a new approach is needed.

19) Hatcheries Performance Measure

There is a discrepancy between the target on "Number of hatcheries in operation" in the intent language and the last item in the above table (# of Hatcheries in Operation). Both numbers are provided by the division but represent slightly different things. The 12 represents the number of hatchery locations and the 13 represents the number of hatcheries. In Springville, DWR has a cold water hatchery and a separate warm water hatchery. To avoid further confusion, we recommend



the division use the number of hatcheries for its target for the performance measure for FY 2025, which currently would be 13, and not the locations with hatcheries.

Recommendation: The Division should report for FY 2025 for the Wildlife Resources, Capital line item the number of separate hatcheries for its performance measure target (which currently is 13), and not the locations with hatcheries (which currently is 12).

Agency Response: We agree with this recommendation.

20) Cooperative Agreements Appropriation Units

The Cooperative Agreements line item is fairly large, between 51 and 72 FTE, and total budget of almost \$35 million, but has only one appropriation unit (program). Appropriation units provide transparency in budgeting and increase accountability for agencies.

Recommendation: The Legislature should consider creating the following appropriation units in the Cooperative Agreements line item:

- Federal Agreements,
- State Agreements, and
- Other Agreements

Agency Response: In agreement.