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SECONDARY WATER REQUIREMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the metering of pressurized secondary water.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of public water supplier;
- ▶ defines terms;
- ▶ requires metering of secondary water under certain circumstances;
- ▶ imposes requirements related to metering;
- ▶ requires submissions of specified information;
- ▶ grants rulemaking authority;
- ▶ provides for the issuance of loans with specified restrictions;
- ▶ restricts the use of culinary water for regular irrigation;
- ▶ enacts exemptions;
- ▶ creates the Secondary Water Metering Restricted Account;
- ▶ provides for the issuance of grants; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **73-1-4**, as last amended by Laws of Utah 2017, Chapter 132

31 **73-10-34**, as enacted by Laws of Utah 2019, Chapter 449

32 ENACTS:

33 **73-10-35**, Utah Code Annotated 1953



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

36 Section 1. Section **73-1-4** is amended to read:

37 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
38 **seven years -- Nonuse application.**

39 (1) As used in this section:

40 (a) "Public entity" means:

41 (i) the United States;

42 (ii) an agency of the United States;

43 (iii) the state;

44 (iv) a state agency;

45 (v) a political subdivision of the state; or

46 (vi) an agency of a political subdivision of the state.

47 (b) "Public water supplier" means an entity that:

48 (i) supplies water, directly or indirectly, to the public for municipal, domestic,
49 secondary watering, or industrial use; and

50 (ii) is:

51 (A) a public entity;

52 (B) a water corporation, as defined in Section **54-2-1**, that is regulated by the Public
53 Service Commission;

54 (C) a community water system:

55 (I) that:

56 (Aa) supplies water to at least 100 service connections used by year-round residents; or

57 (Bb) regularly serves at least 200 year-round residents; and

58 (II) whose voting members:

59 (Aa) own a share in the community water system;

60 (Bb) receive water from the community water system in proportion to the member's
61 share in the community water system; and

62 (Cc) pay the rate set by the community water system based on the water the member
63 receives; or

64 (D) a water users association:

65 (I) in which one or more public entities own at least 70% of the outstanding shares; and

66 (II) that is a local sponsor of a water project constructed by the United States Bureau of
67 Reclamation.

68 (c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

69 (d) "Water company" means the same as that term is defined in Section 73-3-3.5.

70 (e) "Water supply entity" means an entity that supplies water as a utility service or for
71 irrigation purposes and is also:

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

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

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

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

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

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

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

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

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

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

- 92 (A) constitute beneficial use of a water right;
 - 93 (B) protect a water right that is already subject to forfeiture under this section; or
 - 94 (C) bar a water right owner from:
 - 95 (I) using the water under the water right as permitted under the water right; or
 - 96 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided
- 97 by law.

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

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

102 or

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

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

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

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

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

119 (iii) A water right, found to be valid in a decree entered in an action for general
120 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim

121 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
122 engineer filed the related proposed determination of rights with the court, unless the decree
123 provides otherwise.

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

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

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

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

129 and

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

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

133 (i) permitted to run to waste; or

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

136 (e) This section does not apply to:

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

139 (ii) a water right if its place of use is contracted under an approved state agreement or
140 federal conservation fallowing program;

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

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

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

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

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

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

152 Rights;

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

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

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

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

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

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

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

164 (f) (i) The reasonable future water requirement of the public is the amount of water
165 needed in the next 40 years by:

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

168 (B) other water use demand.

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

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

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

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

176 (i) the public water supplier submits a change application under Section [73-3-3](#); and

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

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

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

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

- 183 (iii) the quantity of water;
- 184 (iv) the period of use;
- 185 (v) the extension of time applied for;
- 186 (vi) a statement of the reason for the nonuse of the water; and
- 187 (vii) any other information that the state engineer requires.
- 188 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
- 189 application once a week for two successive weeks:
 - 190 (A) in a newspaper of general circulation in the county in which the source of the water
 - 191 supply is located and where the water is to be beneficially used; and
 - 192 (B) as required in Section 45-1-101.
- 193 (ii) The notice shall:
 - 194 (A) state that an application has been made; and
 - 195 (B) specify where the interested party may obtain additional information relating to the
 - 196 application.
- 197 (c) Any interested person may file a written protest with the state engineer against the
- 198 granting of the application:
 - 199 (i) within 20 days after the notice is published, if the adjudicative proceeding is
 - 200 informal; and
 - 201 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
 - 202 formal.
- 203 (d) In any proceedings to determine whether the nonuse application should be
- 204 approved or rejected, the state engineer shall follow the procedures and requirements of Title
- 205 63G, Chapter 4, Administrative Procedures Act.
- 206 (e) After further investigation, the state engineer may approve or reject the application.
- 207 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
- 208 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
- 209 for nonuse.
 - 210 (b) A reasonable cause for nonuse includes:
 - 211 (i) a demonstrable financial hardship or economic depression;
 - 212 (ii) physical causes or changes that render use beyond the reasonable control of the
 - 213 water right owner so long as the water right owner acts with reasonable diligence to resume or

214 restore the use;

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

217 (iv) operation of legal proceedings;

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

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

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

225 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
226 notify the applicant by mail or by any form of electronic communication through which receipt
227 is verifiable, of the date when the nonuse application will expire.

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

230 Section 2. Section **73-10-34** is amended to read:

231 **73-10-34. Secondary water metering.**

232 (1) As used in this section:

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

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

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

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

240 ~~(b)~~ (d) (i) "Industrial user" means a secondary water user that manufactures or
241 produces materials.

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

244 ~~(c)~~ (e) (i) "Institutional user" means a secondary water user that is dedicated to public

245 service, regardless of ownership.

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

248 ~~[(d)]~~ (f) (i) "Residential user" means a secondary water user in a residence.

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

251 ~~[(e)]~~ (g) "Secondary water" means water that is:

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

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

256 ~~[(f)]~~ (h) "Secondary water supplier" means an entity that supplies pressurized
257 secondary water.

258 (2) A secondary water supplier that begins design work for new service on or after
259 April 1, ~~[2020]~~ 2021, to a commercial, industrial, institutional, or residential user shall meter
260 the use of pressurized secondary water by the users receiving that new service.

261 (3) (a) A secondary water provider that provides pressurized secondary water to a
262 commercial, industrial, institutional, or residential user shall develop a plan for metering the
263 use of the pressurized water in accordance with this Subsection (3).

264 (b) The plan required by this Subsection (3) shall be filed with the Division of Water
265 Resources ~~[by no later than December 31, 2019,]~~ and address the process the secondary water
266 supplier will follow to implement metering, including:

267 (i) the costs of full metering by the secondary water provider;

268 (ii) how long it would take the secondary water provider to complete full metering,
269 including an anticipated begin date and completion date; and

270 (iii) how the secondary water supplier will finance metering.

271 ~~[(4) (a) The Department of Natural Resources shall oversee a study by the Utah Water
272 Task Force within the Department of Natural Resources of issues related to metering secondary
273 water in the state including cost, timing, the need for exemptions, resources to pay the cost of
274 metering, and any other issues the Department of Natural Resources finds relevant.]~~

275 ~~[(b) The Department of Natural Resources shall report the results of the study to the~~

276 Natural Resources, Agriculture, and Environment Interim Committee by no later than the
277 November interim meeting of 2019.]

278 (4) (a) A secondary water supplier that supplies pressurized secondary water to a
279 commercial, industrial, institutional, or residential user shall meter the use of the pressurized
280 secondary water by December 31, 2040.

281 (b) A secondary water supplier shall finance at least 25% of the secondary water
282 supplier's total cost to comply with this Subsection (4) without the use of:

283 (i) a loan described in Subsection (7); or

284 (ii) a grant described in Section 73-10-35.

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

288 (5) A secondary water supplier shall:

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

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

294 [(b)] (ii) the number of secondary water meters within the secondary water supplier's
295 service boundary;

296 [(c)] (iii) a description of the secondary water supplier's service boundary;

297 [(d)] (iv) the number of connections in each of the following categories through which
298 the secondary water supplier supplies pressurized secondary water:

299 [(i)] (A) commercial;

300 [(ii)] (B) industrial;

301 [(iii)] (C) institutional; and

302 [(iv)] (D) residential;

303 [(e) the total volume of water that the secondary water supplier receives from its
304 sources; and]

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

307 [(f)] (vi) the dates of service during the preceding 12-month period in which the
308 secondary water supplier supplied pressurized secondary water[-];

309 (b) on or before March 31, 2021, develop and submit to the Division of Water Rights
310 the secondary water supplier's strategy to comply with the metering requirement described in
311 Subsection (4); and

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

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

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

318 (6) The Division of Water Rights in conjunction with the Division of Water Resources
319 shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
320 Act, establishing:

321 (a) the requirements of and the procedure for submitting a report under Subsection
322 (5)(a); and

323 (b) the requirements of and the procedure for submitting a strategy under Subsection
324 (5)(b).

325 [(6)] (7) (a) Beginning July 1, [2019, the Board of Water Resources may make up to]
326 2020 and ending June 30, 2040, the board may make at least \$10,000,000 in low-interest loans
327 available each year:

328 (i) from the Water Resources Conservation and Development Fund, created in Section
329 73-10-24; and

330 (ii) for financing, in conjunction with grants from the Secondary Water Metering
331 Restricted Account, created in Section 73-10-35, the cost of secondary water metering as
332 described in Subsection (4).

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

334 (i) in accordance with Subsection (4), the total amount available to a secondary water
335 supplier through:

336 (A) a loan described in this Subsection (7) does not exceed 25% of the secondary water
337 supplier's total cost to comply with Subsection (4); and

338 (B) a grant described in Section 73-10-35 does not exceed 50% of the supplier's total
339 cost to comply with Subsection (4); and

340 (ii) for the purpose of determining the amount of a loan under this Subsection (7) or a
341 grant described in Section 73-10-35, the calculation of a secondary water supplier's total cost to
342 comply with Subsection (4) includes secondary water metering costs the secondary water
343 supplier:

344 (A) incurs during or before May 2020; or

345 (B) finances through a loan, bond, grant, subsidy, program, or any other means not
346 described in this Subsection (7) or Section 73-10-35.

347 ~~[(b)]~~ (c) The Division of Water Resources and the [Board of Water Resources] board
348 shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
349 Act, establishing the criteria and process for receiving a loan described in this Subsection [(6)]
350 (7), except the rules may not include prepayment penalties.

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

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

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

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

356 (9) The Division of Water Resources may exempt a secondary water supplier from the
357 requirements of this section if, after testing, there is no meter that a meter manufacturer will
358 warrant for the water in a specific location. In accordance with Title 63G, Chapter 3, Utah
359 Administrative Rulemaking Act, the Division of Water Resources may make rules for the
360 implementation of this Subsection (9).

361 (10) This section does not apply to a secondary water supplier to the extent that the
362 secondary water supplier supplies secondary water to a county of the third, fourth, fifth, or
363 sixth class.

364 (11) The Division of Water Resources may exempt from this section a secondary water
365 supplier that:

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

367 (b) demonstrates, through a study conducted by a person licensed under Title 58,
368 Occupations and Professions, as an engineer or geologist, to the satisfaction of the Division of

369 Water Resources, that the estimate recharge into the aquifer or response to the levels of ground
370 water wells has a significant impact and warrants an exemption.

371 (12) The selling by a secondary water supplier of surplus water, as authorized for a
372 municipality under Subsection 10-8-14(2)(d), and not restricted for any other water user, if
373 used by the purchaser for beneficial purposes fulfills the requirements of use contemplated in
374 Subsection 73-1-4(2).

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

376 **73-10-35. Creation of Secondary Water Metering Restricted Account -- Awarding**
377 **of grants from the restricted account.**

378 (1) There is created within the General Fund a restricted account known as the
379 "Secondary Water Metering Restricted Account."

380 (2) The restricted account consists of:

381 (a) voluntary contributions received;

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

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

384 (3) The state treasurer shall:

385 (a) invest the money in the restricted account by following Title 51, Chapter 7, State
386 Money Management Act; and

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

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

391 (a) to assist a secondary water supplier, as defined in Section 73-10-34, to comply with
392 Subsection 73-10-34(4);

393 (b) beginning July 1, 2020, and ending June 30, 2040, in the total amount of up to
394 \$10,000,000 each year; and

395 (c) in accordance with Subsection 73-10-34(7)(b).

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

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

399 (b) criteria for determining eligibility for assistance under this section, specifically

400 including factors such as the size of the secondary water supplier's budget, the secondary water
401 supplier's ability to contribute to the cost of complying with Subsection [73-10-34\(5\)](#), and the
402 water rates that would have to be charged to cover the secondary water supplier's contribution
403 to the costs.