

**Representative Casey Snider** proposes the following substitute bill:

**SECONDARY WATER AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: Carl R. Albrecht

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to secondary water.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ modifies who may meter at strategic points of a system as approved by the state engineer;
- ▶ changes certain caps on grants for secondary water metering; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-10-34**, as last amended by Laws of Utah 2023, Chapter 260

**73-10-34.5**, as last amended by Laws of Utah 2023, Chapter 260



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

27 Section 1. Section **73-10-34** is amended to read:

28 **73-10-34. Secondary water metering -- Loans and grants.**

29 (1) As used in this section:

30 (a) "Agriculture use" means water used on land assessed under Title 59, Chapter 2, Part  
31 5, Farmland Assessment Act.

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

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

35 (c) "Critical area" means an area serviced by one of the four largest water conservancy  
36 districts, as defined in Section [17B-1-102](#), measured by operating budgets.

37 [~~(c)~~] (d) "Full metering" means that use of secondary water is accurately metered by a  
38 meter that is installed and maintained on every secondary water connection of a secondary  
39 water supplier.

40 [~~(d)~~] (e) (i) "Industrial user" means a secondary water user that manufactures or  
41 produces materials.

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

44 [~~(e)~~] (f) (i) "Institutional user" means a secondary water user that is dedicated to public  
45 service, regardless of ownership.

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

48 [~~(f)~~] (g) "Power generation use" means water used in the production of energy, such as  
49 use in an electric generation facility, natural gas refinery, or coal processing plant.

50 [~~(g)~~] (h) (i) "Residential user" means a secondary water user in a residence.

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

53 [~~(h)~~] (i) "Secondary water" means water that is:

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

56 (ii) delivered to and used by an end user for the irrigation of landscaping or a garden.

57           ~~[(f)]~~ (j) "Secondary water connection" means the location at which the water leaves the  
58 secondary water supplier's pipeline and enters into the remainder of the pipes that are owned by  
59 another person to supply water to an end user.

60           ~~[(f)]~~ (k) "Secondary water supplier" means an entity that supplies pressurized  
61 secondary water.

62           ~~[(k)]~~ (l) "Small secondary water retail supplier" means an entity that:

63           (i) supplies pressurized secondary water only to the end user of the secondary water;  
64 and

65           (ii) (A) is a city, town, or metro township; or

66           (B) supplies 5,000 or fewer secondary water connections.

67           (2) (a) (i) A secondary water supplier that supplies secondary water within a county of  
68 the first or second class and begins design work for new service on or after April 1, 2020, to a  
69 commercial, industrial, institutional, or residential user shall meter the use of pressurized  
70 secondary water by the users receiving that new service.

71           (ii) A secondary water supplier that supplies secondary water within a county of the  
72 third, fourth, fifth, or sixth class and begins design work for new service on or after May 4,  
73 2022, to a commercial, industrial, institutional, or residential user shall meter the use of  
74 pressurized secondary water by the users receiving that new service.

75           (b) By no later than January 1, 2030, a secondary water supplier shall install and  
76 maintain a meter of the use of pressurized secondary water by each user receiving secondary  
77 water service from the secondary water supplier.

78           (c) Beginning January 1, 2022, a secondary water supplier shall establish a meter  
79 installation reserve for metering installation and replacement projects.

80           (d) A secondary water supplier, including a small secondary water retail supplier, may  
81 not raise the rates charged for secondary water:

82           (i) by more than 10% in a calendar year for costs associated with metering secondary  
83 water unless the rise in rates is necessary because the secondary water supplier experiences a  
84 catastrophic failure or other similar event; or

85           (ii) unless, before raising the rates on the end user, the entity charging the end user  
86 provides a statement explaining the basis for why the needs of the secondary water supplier  
87 required an increase in rates.

88 (e) (i) A secondary water supplier that provides pressurized secondary water to a  
89 commercial, industrial, institutional, or residential user shall develop a plan, or if the secondary  
90 water supplier previously filed a similar plan, update the plan for metering the use of the  
91 pressurized water.

92 (ii) The plan required by this Subsection (2)(e) shall be filed or updated with the  
93 Division of Water Resources by no later than December 31, 2025, and address the process the  
94 secondary water supplier will follow to implement metering, including:

95 (A) the costs of full metering by the secondary water supplier;

96 (B) how long it would take the secondary water supplier to complete full metering,  
97 including an anticipated beginning date and completion date, except a secondary water supplier  
98 shall achieve full metering by no later than January 1, 2030; and

99 (C) how the secondary water supplier will finance metering.

100 (3) A secondary water supplier shall on or before March 31 of each year, report to the  
101 Division of Water Rights:

102 (a) for commercial, industrial, institutional, and residential users whose pressurized  
103 secondary water use is metered, the number of acre feet of pressurized secondary water the  
104 secondary water supplier supplied to the commercial, industrial, institutional, and residential  
105 users during the preceding 12-month period;

106 (b) the number of secondary water meters within the secondary water supplier's service  
107 boundary;

108 (c) a description of the secondary water supplier's service boundary;

109 (d) the number of secondary water connections in each of the following categories  
110 through which the secondary water supplier supplies pressurized secondary water:

111 (i) commercial;

112 (ii) industrial;

113 (iii) institutional; and

114 (iv) residential;

115 (e) the total volume of water that the secondary water supplier receives from the  
116 secondary water supplier's sources; and

117 (f) the dates of service during the preceding 12-month period in which the secondary  
118 water supplier supplied pressurized secondary water.

119 (4) (a) Beginning July 1, 2019, the Board of Water Resources may make up to  
120 \$10,000,000 in low-interest loans available each year:

121 (i) from the Water Resources Conservation and Development Fund, created in Section  
122 [73-10-24](#); and

123 (ii) for financing the cost of secondary water metering.

124 (b) The Division of Water Resources and the Board of Water Resources shall make  
125 rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
126 establishing the criteria and process for receiving a loan described in this Subsection (4), except  
127 the rules may not include prepayment penalties.

128 (5) (a) Beginning July 1, 2021, subject to appropriation, the Division of Water  
129 Resources may make matching grants each year for financing the cost of secondary water  
130 metering for a commercial, industrial, institutional, or residential user by a small secondary  
131 water retail supplier that:

132 (i) is not for new service described in Subsection (2)(a); and

133 (ii) matches the amount of the grant.

134 (b) For purposes of issuing grants under this section, the division shall prioritize the  
135 small secondary water retail suppliers that can demonstrate the greatest need or greatest  
136 inability to pay the entire cost of installing secondary water meters.

137 (c) The amount of a grant under this Subsection (5) may not:

138 (i) exceed 50% of the small secondary water retail supplier's cost of installing  
139 secondary water meters; or

140 (ii) supplant federal, state, or local money previously allocated to pay the small  
141 secondary water retail supplier's cost of installing secondary water meters.

142 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
143 Board of Water Resources shall make rules establishing:

144 (i) the procedure for applying for a grant under this Subsection (5); and

145 (ii) how a small secondary water retail supplier can establish that the small secondary  
146 water retail supplier meets the eligibility requirements of this Subsection (5).

147 (6) Nothing in this section affects a water right holder's obligation to measure and  
148 report water usage as described in Sections [73-5-4](#) and [73-5-8](#).

149 (7) If a secondary water supplier fails to comply with Subsection (2)(b), the secondary

150 water supplier:

151 (a) beginning January 1, 2030, may not receive state money for water related purposes  
152 until the secondary water supplier completes full metering; and

153 (b) is subject to an enforcement action of the state engineer in accordance with  
154 Subsection (8).

155 (8) (a) (i) The state engineer shall commence an enforcement action under this  
156 Subsection (8) if the state engineer receives a referral from the director of the Division of  
157 Water Resources.

158 (ii) The director of the Division of Water Resources shall submit a referral to the state  
159 engineer if the director:

160 (A) finds that a secondary water supplier fails to fully meter secondary water as  
161 required by this section; and

162 (B) determines an enforcement action is necessary to conserve or protect a water  
163 resource in the state.

164 (b) To commence an enforcement action under this Subsection (8), the state engineer  
165 shall issue a notice of violation that includes notice of the administrative fine to which a  
166 secondary water supplier is subject.

167 (c) The state engineer's issuance and enforcement of a notice of violation is exempt  
168 from Title 63G, Chapter 4, Administrative Procedures Act.

169 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
170 state engineer shall make rules necessary to enforce a notice of violation, that includes:

171 (i) provisions consistent with this Subsection (8) for enforcement of the notice if a  
172 secondary water supplier to whom a notice is issued fails to respond to the notice or abate the  
173 violation;

174 (ii) the right to a hearing, upon request by a secondary water supplier against whom the  
175 notice is issued; and

176 (iii) provisions for timely issuance of a final order after the secondary water supplier to  
177 whom the notice is issued fails to respond to the notice or abate the violation, or after a hearing  
178 held under Subsection (8)(d)(ii).

179 (e) A person may not intervene in an enforcement action commenced under this  
180 section.

181 (f) After issuance of a final order under rules made pursuant to Subsection (8)(d), the  
182 state engineer shall serve a copy of the final order on the secondary water supplier against  
183 whom the order is issued by:

184 (i) personal service under Utah Rules of Civil Procedure, Rule 5; or

185 (ii) certified mail.

186 (g) (i) The state engineer's final order may be reviewed by trial de novo by the district  
187 court in Salt Lake County or the county where the violation occurred.

188 (ii) A secondary water supplier shall file a petition for judicial review of the state  
189 engineer's final order issued under this section within 20 days from the day on which the final  
190 order was served on the secondary water supplier.

191 (h) The state engineer may bring suit in a court of competent jurisdiction to enforce a  
192 final order issued under this Subsection (8).

193 (i) If the state engineer prevails in an action brought under Subsection (8)(g) or (h), the  
194 state may recover court costs and a reasonable attorney fee.

195 (j) As part of a final order issued under this Subsection (8), the state engineer shall  
196 order that a secondary water supplier to whom an order is issued pay an administrative fine  
197 equal to:

198 (i) \$10 for each non-metered secondary water connection of the secondary water  
199 supplier for failure to comply with full metering by January 1, 2030;

200 (ii) \$20 for each non-metered secondary water connection of the secondary water  
201 supplier for failure to comply with full metering by January 1, 2031;

202 (iii) \$30 for each non-metered secondary water connection of the secondary water  
203 supplier for failure to comply with full metering by January 1, 2032;

204 (iv) \$40 for each non-metered secondary water connection of the secondary water  
205 supplier for failure to comply with full metering by January 1, 2033; and

206 (v) \$50 for each non-metered secondary water connection of the secondary water  
207 supplier for failure to comply with full metering by January 1, 2034, and for each subsequent  
208 year the secondary water supplier fails to comply with full metering.

209 (k) Money collected under this Subsection (8) shall be deposited into the Water  
210 Resources Conservation and Development Fund, created in Section [73-10-24](#).

211 (9) A secondary water supplier located within a county of the fifth or sixth class is

212 exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8) if:

213 (a) the owner or operator of the secondary water supplier seeks an exemption under  
214 this Subsection (9) by establishing with the Division of Water Resources that the cost of  
215 purchasing, installing, and upgrading systems to accept meters exceeds 25% of the total  
216 operating budget of the owner or operator of the secondary water supplier;

217 (b) the secondary water supplier agrees to not add a new secondary water connection to  
218 the secondary water supplier's system on or after May 4, 2022;

219 (c) within six months of when the secondary water supplier seeks an exemption under  
220 Subsection (9)(a), the secondary water supplier provides to the Division of Water Resources a  
221 plan for conservation within the secondary water supplier's service area that does not require  
222 metering;

223 (d) the secondary water supplier annually reports to the Division of Water Resources  
224 on the results of the plan described in Subsection (9)(c); and

225 (e) the secondary water supplier submits to evaluations by the Division of Water  
226 Resources of the effectiveness of the plan described in Subsection (9)(c).

227 (10) A secondary water supplier is exempt from Subsections (2)(a), (2)(b), (2)(c),  
228 (2)(e), (7), and (8) to the extent that the secondary water supplier:

229 (a) is unable to obtain a meter that a meter manufacturer will warranty because of the  
230 water quality within a specific location served by the secondary water supplier;

231 (b) submits reasonable proof to the Division of Water Resources that the secondary  
232 water supplier is unable to obtain a meter as described in Subsection (10)(a);

233 (c) within six months of when the secondary water supplier submits reasonable proof  
234 under Subsection (10)(b), provides to the Division of Water Resources a plan for conservation  
235 within the secondary water supplier's service area that does not require metering;

236 (d) annually reports to the Division of Water Resources on the results of the plan  
237 described in Subsection (10)(c); and

238 (e) submits to evaluations by the Division of Water Resources of the effectiveness of  
239 the plan described in Subsection (10)(c).

240 (11) A secondary water supplier that is located within a critical management area that  
241 is subject to a groundwater management plan adopted or amended under Section [73-5-15](#) on or  
242 after May 1, 2006, is exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8).



243 (12) If a secondary water supplier is required to have a water conservation plan under  
 244 Section 73-10-32, that water conservation plan satisfies the requirements of Subsection (9)(c)  
 245 or (10)(c).

246 (13) (a) Notwithstanding the other provisions of this section and unless exempt under  
 247 Subsection (9), (10), or (11), to comply with this section, a secondary water supplier is not  
 248 required to meter every secondary water connection of the secondary water supplier's system,  
 249 but shall meter at strategic points of the system as approved by the state engineer under this  
 250 Subsection (13) if:

251 (i) the system has no or minimal storage and relies primarily on stream flow;

252 (ii) (A) the majority of secondary water users on the system are associated with  
 253 agriculture use or power generation use; and

254 (B) less than 50% of the secondary water is used by residential secondary water users;

255 or

256 (iii) the system has a mix of pressurized lines and open ditches and:

257 (A) 1,000 or fewer users~~[, and]~~ if any part of the system is within a critical area; or

258 (B) ~~[a mix of pressurized lines and open ditches.]~~ 2,500 or fewer users for a system  
 259 not described in Subsection (13)(a)(iii)(A).

260 (b) (i) A secondary water supplier may obtain the approval by the state engineer of  
 261 strategic points where metering is to occur as required under this Subsection (13) by filing an  
 262 application with the state engineer in the form established by the state engineer.

263 (ii) The state engineer may by rule, made in accordance with Title 63G, Chapter 3,  
 264 Utah Administrative Rulemaking Act, establish procedures for approving strategic points for  
 265 metering under this Subsection (13).

266 Section 2. Section 73-10-34.5 is amended to read:

267 **73-10-34.5. Grant money for existing secondary water metering to facilitate full**  
 268 **metering -- Other grants.**

269 (1) As used in this section:

270 (a) "Applicant" means a secondary water supplier or group of secondary water  
 271 suppliers that applies for a grant under this section.

272 (b) "Board" means the Board of Water Resources.

273 (c) "Division" means the Division of Water Resources.

274 (d) "Project" means the purchase or installation of a meter for a secondary water  
275 system that as of May 4, 2022, provides secondary water service that is not metered.

276 (e) "Secondary water" means the same as that term is defined in Section 73-10-34.

277 (f) "Secondary water connection" means the same as that term is defined in Section  
278 73-10-34.

279 (g) "Secondary water supplier" means the same as that term is defined in Section  
280 73-10-34.

281 (2) (a) The board may issue grants in an amount appropriated by the Legislature in  
282 accordance with this section to an applicant to fund projects for meters on secondary water  
283 systems that before May 4, 2022, provide secondary water service that is not metered.

284 (b) The board may not issue a grant under this section to fund:

285 (i) metering of secondary water for service that begins on or after May 4, 2022; or

286 (ii) the replacement or repair of an existing secondary water meter.

287 (c) Notwithstanding the other provisions of this section, the board may issue a grant  
288 under this section to a secondary water supplier to reimburse the secondary water supplier for  
289 the costs incurred by the secondary water supplier that are associated with installing meters on  
290 a secondary water system on or after March 3, 2021, but before May 4, 2022, except that the  
291 grant issued under this Subsection (2)(c):

292 (i) shall be included in calculating the total grant amount under Subsections (3)(a)  
293 through (c);

294 (ii) may not exceed 70% of the costs associated with a project described in this  
295 Subsection (2)(c), including installation and purchase of meters; and

296 (iii) shall comply with Subsection (6).

297 (3) (a) A secondary water supplier with 7,000 secondary water connections or less is  
298 eligible for a total grant amount under this section of up to [~~\$5,000,000~~] \$10,000,000.

299 (b) A secondary water supplier with more than 7,000 secondary water connections is  
300 eligible for a total grant amount under this section of up to [~~\$10,000,000~~] \$20,000,000.

301 (c) If a secondary water supplier applies for a grant as part of a group of secondary  
302 water suppliers, the total grant amount described in Subsection (3)(a) or (b) applies to each  
303 member of the group and is not based on the number of secondary water connections of the  
304 entire group.

305 (d) (i) Subject to the other provisions of this section, a grant may not exceed the  
306 following amounts for the costs associated with a project, including installation and purchase  
307 of meters:

- 308 (A) for calendar year 2022, 70% of the costs of a project;
- 309 (B) for calendar year 2023, 70% of the costs of a project;
- 310 (C) for calendar year 2024, 65% of the costs of a project;
- 311 (D) for calendar year 2025, 60% of the costs of a project; and
- 312 (E) for calendar year 2026, 50% of the costs of a project.

313 (ii) Beginning with calendar year 2027, a grant under this section shall consist of  
314 providing a meter or funding to obtain a meter, which may not exceed the following for costs  
315 associated with the project:

- 316 (A) for calendar year 2027, 40% of the costs of a project;
- 317 (B) for calendar year 2028, 30% of the costs of a project;
- 318 (C) for calendar year 2029, 20% of the costs of a project; and
- 319 (D) for calendar year 2030, 10% of the costs of a project.

320 (e) A secondary water supplier may pay the secondary water supplier's portion of the  
321 costs of a project through a loan from the board under Section 73-10-34 by filing a separate  
322 application with the board.

323 (f) A meter purchased with grant money received under this section shall allow for data  
324 communication between the meter and other devices designed to manage use of secondary  
325 water that is:

- 326 (i) open and available to an end user; and
- 327 (ii) open so that it can integrate with third-party providers.

328 (4) (a) (i) To obtain a grant under this section, an applicant shall submit an application  
329 with the division during a period of time designated by the board.

330 (ii) If there remains money described in Subsection (2) after the grants for applications  
331 submitted during the time period described in this Subsection (4)(a) are awarded, the board  
332 may designate one or more additional time periods so that the entire amount described in  
333 Subsection (2) is awarded by December 31, 2024.

334 (b) An application submitted to the division shall include:

- 335 (i) a detailed project cost estimate including meter costs and installation costs;

336 (ii) a total number of pressurized secondary water connections in the applicable  
337 secondary water supplier's system;

338 (iii) the number of meters to be installed under the grant;

339 (iv) a detailed estimated secondary water use reduction including:

340 (A) average lot size calculations;

341 (B) average irrigated acreage; and

342 (C) estimated water applied before the project versus after completion of the project;

343 (v) the timeline for purchase and installation of meters under the project;

344 (vi) an agreement to:

345 (A) provide an educational component for end users as determined by the division by  
346 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
347 either on a monthly statement or by a customer specific Internet portal that provides  
348 information on the customer's usage more frequently than monthly; or

349 (B) bill according to usage using a tiered conservation rate and provide an educational  
350 component described in Subsection (4)(b)(vi)(A); and

351 (vii) additional information the board considers helpful.

352 (5) (a) The division shall:

353 (i) review and prioritize an application submitted under Subsection (4); and

354 (ii) recommend to the board which applicants should be awarded a grant under this  
355 section.

356 (b) In prioritizing applications under this Subsection (5), the division shall rank the  
357 applicants on the basis of the following weighted factors:

358 (i) 60% weight based on the ratio of estimated water use reduction divided by total  
359 state investment;

360 (ii) 20% weight based on an applicant facing current or potential water shortages when  
361 installation of meters and subsequent water use reductions will result in delaying or eliminating  
362 the need for new water development; and

363 (iii) 20% weight based on a project's accelerated construction schedule, prompt start,  
364 and prompt finish.

365 (6) As a condition of receiving a grant under this section, the recipient shall enter into  
366 an agreement with the board to use the grant money. The agreement shall:

367 (a) be executed by no later than December 31, 2024; and

368 (b) require that the grant money be spent by December 31, 2026, and the project  
369 completed under the terms of the grant.

370 (7) Notwithstanding the other provisions of this section, the board may issue a grant to  
371 a secondary water supplier:

372 (a) that installed meters on secondary water connections before May 4, 2022;

373 (b) that has not otherwise received a grant under this section;

374 (c) for the purpose of water conservation; and

375 (d) in an amount not to exceed \$2,000,000.

376 (8) Notwithstanding the other provisions of this section, the board may issue a grant to  
377 or convert a grant previously issued to a secondary water supplier described in Subsection  
378 73-10-34(13)(a)(iii) from money appropriated under this section to fund a project that is an  
379 alternative to metering, such as lining ditches or improving head gates, if the secondary water  
380 supplier establishes to the satisfaction of the board that the alternative project will conserve  
381 more water than is expected to be conserved through metering.

382 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
383 consistent with this section, the board may make rules establishing the procedure for applying  
384 for a grant under this section.

385 Section 3. **Effective date.**

386 This bill takes effect on May 1, 2024.