

SECONDARY WATER AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to secondary water.

Highlighted Provisions:

This bill:

- ▶ modifies who may meter at strategic points of a system as approved by the state engineer; 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

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

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

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

(1) As used in this section:

(a) "Agriculture use" means water used on land assessed under Title 59, Chapter 2, Part



28 5, Farmland Assessment Act.

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

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

32 (c) "Full metering" means that use of secondary water is accurately metered by a meter
33 that is installed and maintained on every secondary water connection of a secondary water
34 supplier.

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

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

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

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

43 (f) "Power generation use" means water used in the production of energy, such as use
44 in an electric generation facility, natural gas refinery, or coal processing plant.

45 (g) (i) "Residential user" means a secondary water user in a residence.

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

48 (h) "Secondary water" means water that is:

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

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

52 (i) "Secondary water connection" means the location at which the water leaves the
53 secondary water supplier's pipeline and enters into the remainder of the pipes that are owned by
54 another person to supply water to an end user.

55 (j) "Secondary water supplier" means an entity that supplies pressurized secondary
56 water.

57 (k) "Small secondary water retail supplier" means an entity that:

58 (i) supplies pressurized secondary water only to the end user of the secondary water;

59 and

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

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

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

66 (ii) A secondary water supplier that supplies secondary water within a county of the
67 third, fourth, fifth, or sixth class and begins design work for new service on or after May 4,
68 2022, to a commercial, industrial, institutional, or residential user shall meter the use of
69 pressurized secondary water by the users receiving that new service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 (i) commercial;

107 (ii) industrial;

108 (iii) institutional; and

109 (iv) residential;

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

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

114 (4) (a) Beginning July 1, 2019, the Board of Water Resources may make up to
115 \$10,000,000 in low-interest loans available each year:

116 (i) from the Water Resources Conservation and Development Fund, created in Section
117 73-10-24; and

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

119 (b) The Division of Water Resources and the Board of Water Resources shall make
120 rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

121 establishing the criteria and process for receiving a loan described in this Subsection (4), except
122 the rules may not include prepayment penalties.

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

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

128 (ii) matches the amount of the grant.

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

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

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

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

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

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

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

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

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

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

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

150 (8) (a) (i) The state engineer shall commence an enforcement action under this
151 Subsection (8) if the state engineer receives a referral from the director of the Division of

152 Water Resources.

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

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

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

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

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

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

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

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

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

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

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

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

180 (ii) certified mail.

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

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

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

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

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

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

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

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

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

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

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

206 (9) A secondary water supplier located within a county of the fifth or sixth class is
207 exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 Subsection (13) if:

246 (i) the system has no storage and relies on stream flow;

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

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

250 or

251 (iii) the system has:

252 (A) [~~1,000~~] 2,500 or fewer users; and

253 (B) a mix of pressurized lines and open ditches.

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

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

260 Section 2. **Effective date.**

261 This bill takes effect on May 1, 2024.