

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



5, Farmland Assessment Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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,

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

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

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

(ii) matches the amount of the grant.

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

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

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

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

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

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

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

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

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

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

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

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

Water Resources.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) certified mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) (a) Notwithstanding the other provisions of this section and unless exempt under Subsection (9), (10), or (11), to comply with this section, a secondary water supplier is not required to meter every secondary water connection of the secondary water supplier's system, 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.