

Art XI Sec. 6 Constitutional Amendment Sub-Group: Second Meeting

June 13, 2018

3:00 PM

Clyde Snow & Sessions

Attendance:

Steve Clyde, Clyde Snow & Sessions – sec@clydesnow.com
Emily Lewis, Clyde Snow & Sessions – eel@clydesnow.com
Paul Ashton, White City – phashton@wcid.org
Boyd Clayton, State Engineer’s Office – boydclayton@utah.gov
John Mabey, Maybe, Wright & James – jmabey@mwjlaw.com
Steve Mecham – sfmecham@gmail.com
Abi Holt, Sandy City – aholt@sandy.utah.gov
Kim Bell, Sandy City – kbell@sandy.utah.gov
Fred Finlinson – fred@fclinlaw.com
Rusty Vetter, Salt Lake City – rusty.vetter@slcgov.com
Ian Girard, Salt Lake City – ian.girard@slcgov.com
John Hiskey – jhiskey@comcast.net
Shawn Guzman, St. George City – shawn.guzman@sgcity.org
Dale Pierson, Rural Water Users Association – dpierson@rwau.net
Mark Stratford, Mark Stratford – markstratford@ogdencity.com
Scott Martin, Snow Christensen & Martineau – shm@scmlaw.com
Amy West, Office of Legislative Council – awest@le.utah.gov
Ruthanne Frost, Office of Legislative Council – rfrost@le.utah.gov

Meeting Summary:

Members of the group reported comments from the Utah League of Cities meeting regarding their opinion on needed modifications to Art. XI Sec. 6 general discussion was had regarding the interworking/overlapping nature of the four working groups and (Surplus Water Sales, Extra-Territorial Jurisdiction, and Private Property rights) and the need to coordinate efforts. The group reviewed Steve Clyde’s 6/14/2018 edits to the proposed amendment.

Assignments for Next Meeting:

Group members are to review the 6/14/18 proposed language and prepare comments for the next meeting. The goal of the next meeting is to solidify draft language to 1) share with the other working groups as a template/direction for discussions; and 2) have something to report to the Natural Resources Interim Committee

Next Meeting:

Thursday 6/21/18 - 9:30 AM
Clyde Snow & Sessions
201 South Main Street
Call-In Line: 1(866)906-7447 – Participant Code 1695142

MINUTES: These minutes are taken contemporaneously as a courtesy record of the group’s conversation. Please excuse any inadvertent attributions, accidental misstatements, or omissions.	MAIN THEMES/USEFUL TOOLS:
Shawn Guzman: Report on League Meeting - Spirited meeting	Coordination with Surplus Sales Group:

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<ul style="list-style-type: none">- Overall question: do we want to touch this?<ul style="list-style-type: none">o Yes but working in concert with the other committees and groups to see if they are addressing several issueso Don't want to get ahead of the other groups ando Those groups may be able to address the more unique Salt Lake City/Wasatch systems <p>John Mabey:</p> <ul style="list-style-type: none">- Always anticipated wherever the water surplus group went – whatever is crafted there we will need to follow <p>Shawn Guzman:</p> <ul style="list-style-type: none">- Don't want the development committee to see us as having the right to alienate and all of the protections- Sensitive to outside claims that cities are hoarding water/accumulating excess water- Reality: Not in our plans or budgets to have excess water <p>Steve Clyde:</p> <ul style="list-style-type: none">- Would it be helpful to see that old Ogden City case<ul style="list-style-type: none">o Cities transfer city system to private <p>Rusty Vetter:</p> <ul style="list-style-type: none">- Unique because we are the biggest- Not unique in supplying water outside the boundaries <p>John Mabey:</p> <ul style="list-style-type: none">- Surplus sales can be addressed in the individual groups- But there are remaining issues that need to be addressed here – such as placing cities and districts on the same ground <p>Mark Stratford:</p> <ul style="list-style-type: none">- In most instances districts and cities are on the same page- However, districts are usually water service only and focused on that mission, whereas city has many demands/needs- One reason to treat cities differently <p>Rusty Vetter:</p> <ul style="list-style-type: none">- How do the cities approach their enterprise fund – are they all the same?- Don't want people to think we are transferring money from the enterprise fund into the general fund- There is misinformation/misunderstanding and we need to clarify that for the public	<p>The Constitutional drafting committee needs to work with an eye of coordinating with the surplus sales agreement working group. Any amendments to Art. XI Sec. 6 needs to work with any changes made to Utah Code Ann. § 10-8-14. Those in both working groups are to report the progress of surplus sales group to constitutional group. It may also be beneficial to use early drafting momentum to first distribute DRAFT constitutional language.</p> <p>Transparency: The group discussed one of the goals of the amendment was to clarify and give the tools to municipalities to be more transparent about service obligations outside their boundaries. Each municipality treats surplus sales differently and goal is for the water user to understand what the ground rules are (intentionally temporary v. more permanent arrangement counting on account retail sales for bond repayment).</p> <p>Obligations to Serve: Want to make any amendments clear that past decision to serve surplus contracts do obligate municipality to serve other areas (i.e. service creep) and the decision regarding whom to serve remains with the municipality.</p>
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<p>Shawn Guzman:</p> <ul style="list-style-type: none">- Any transfers are well noticed <p>Steve Clyde:</p> <ul style="list-style-type: none">- Need to have stepped rate so city residents are not subsidizing the country residents <p>Rusty Vetter :</p> <ul style="list-style-type: none">- It's important we have that ability <p>Paul Ashton:</p> <ul style="list-style-type: none">- Primary questions: do cities still want the protection of the alienation provision? <p>Shawn Guzman:</p> <ul style="list-style-type: none">- I don't think the cities are there yet to remove it- That also presents pitfalls <p>Paul Ashton:</p> <ul style="list-style-type: none">- The proposal today eliminates water works –- No one really know what it is anyway- Need to know what we are defining and what we are protecting/ rights v. commodity- Want to reiterate the worries about judicial interpretation <p>John Mabey:</p> <ul style="list-style-type: none">- I believe Stratton was putting bill forward to protect those who are receiving water outside the boundaries (is the surplus contract terminable?)- Is that still a concern for the cities?- Impression is that the bill will run regardless of the committees' efforts to meet this perceived need <p>Shawn Guzman:</p> <ul style="list-style-type: none">- Primary concern is that we get out ahead of the group- We want to make sure we are not inadvertently creating barriers to legislative fixes <p>Mark Stratford:</p> <ul style="list-style-type: none">- Cities are most likely not going to terminate service- The primary issues is going to be defining the service areas – we don't want to be forced into serving people	<p>Definition of Service Area: A key issue is going to be defining the municipal service area. The group was in agreement it was of the utmost importance to retain municipal authority to define its own service area.</p>
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Shawn Guzman:

- Annexation is one option
- But other areas we don't want to annex – for politics or logistics

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- Sandy is a very good example of that – not annexed
- But some areas that you never expected to come into sandy
- There are some overhead costs where we need to have a rate differential to make the costs outside and inside the service areas

Paul Ashton:

- Really need to define what surplus areas are – SLC serves water into east bench, but those areas are never going to be annexed in
- White City has surplus agreements, but areas we don't want to annex
- Camel nose scenario

Group:

- Cities need to maintain the ability to define the service area and can't be legislatively mandated

Rusty Vetter:

- Did we talk about 10-8-14?
- This addresses the mechanics of what Paul is talking about

Steve Clyde:

- Really need to retain the jurisdiction of the city to define their boundaries
- In the PSC we force them to serve people because they are an monopoly, but we don't want to do that here
- Maybe we need to focus more education about where surplus users can express their voice

??:

- Did HB 124 drive Stratton's Bill
- SC: no

Scott Martin :

- Can someone explain how the surplus bill and the extra-territorial jurisdiction interact?
- HB 124 was seeking things we ultimately couldn't do

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- City service areas have been litigated
- Want to avoid creating a right where there is some kind of takings claim
- Really service areas are often service points
- Don't want to set up the ability to make a takings and push

Steve Clyde:

- Inland port is a good example of taking away self-determination of cities
- Need to be careful of not doing that here

Scott Martin:

- The makeup of the legislature is becoming increasingly developer oriented

Paul Ashton:

- Well I want to say once you have service we want to keep

Boyd Clayton:

- Well people approach this differently and do temporary
- There is a hodge podge of ways that cities service surplus agreements
- The issue is just transparency on what the cities' intentions are

Rusty Vetter:

- What's the appropriate scope of this committee?
- Can we just make recommendations to the 10-8-14 committee

Scott Martin:

- Don't want the legislature to determine service areas
- Retail service areas is where our pipes are and we depend on the revenue to pay back bonds
- Very different than up-canyon

Steve Clyde:

- I think the suggestions regarding having the municipalities define the service boundary should address this

Paul Ashton:

- Why take out water works?

Shawn Guzman:

- No think of reason to have the alienation provision for cities- we will want to have the flexibility to manage our facilities

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<p>Mark Stratford:</p> <ul style="list-style-type: none">- We have evolved, in that, our water rights are or longer tied to the water works – may not need it anymore <p>Rusty Vetter:</p> <ul style="list-style-type: none">- We haven't thought about water works <p>Boyd Clayton:</p> <ul style="list-style-type: none">- What if someone found water and we want to own the pipes? <p>Steve Clyde:</p> <ul style="list-style-type: none">- When Sandy City went to Metro – we allowed it to happen, but Sandy had to assume a portion of the debt- In SLC it's an integrated system so it would be hard to piece out portions <p>Mark Stratford::</p> <ul style="list-style-type: none">- You could set them up as wholesale customer <p>Rusty:</p> <ul style="list-style-type: none">- Theoretically yes – but skeptical on the reality of that <p>Johns Mabey:</p> <ul style="list-style-type: none">- Can the legislature define designated service area elsewhere? <p>Steve Clyde:</p> <ul style="list-style-type: none">- The change from "its" to "the" was supposed to de-link- Or we could do it in the constitutional – service areas as defined by the City <p>Boyd:</p> <ul style="list-style-type: none">- Not sure what is gained by this? Haven't courts ruled on this? <p>Scott Martin:</p> <ul style="list-style-type: none">- This is the whole that Coleman sees – fixes the perceived inequity that the City could just pull out their contract- Puts them on the same footing as inhabitants of the municipal <p>Mark Statford:</p> <ul style="list-style-type: none">- Lots of people the city is happy to serve –- The problems is the people the city doesn't want serve <p>Steve Clyde :</p> <ul style="list-style-type: none">- We addressed that in sub-section a- Provided a contractual escape hatch for those <p>Paul Ashton:</p> <ul style="list-style-type: none">- Do we need (b)?	
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Steve Clyde:

- (b) is selling water to those people where we have extended our pipes - the east Bench of Salt Lake

Paul Ashton:

- Can the court use b to limit or use as the definition service areas?

???

- Can you please explain the situation with Alta?

Steve Clyde:

- They are a subparagraph (a)
- They have their own pipes but buy water from the city

Paul Ashton:

- This would require cities to look at what they are doing
-

EELewis:

- (a) would also cover the 40 year planning "other demand"

Fred Finlinson:

- Feel like this is good enough we don't need it in the code
- This is clear that the designated service area is defined by the municipality
- If not we could go into the code –but may not need it

Rusty Vetter:

- Line 32 and line 41 – inhabitants and retail customers?
- Seems like it should be one or the other?

Fred Finlinson:

- Do we want inhabitants of customers in general?

Steve Clyde:

- Inhabitants are those who live there
- Retail customers is broader

Rusty Vetter:

- Inhabitants can be viewed as citizens – which would be interpreted as municipal boundaries

Shawn Guzman:

- Can we just take it out?

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Rusty Vetter:

- Almost think citizens have right to that surplus water
- Surplus is surplus when the decision is made

Body :Clayton

- Lots of different ways to do it and thoughts on this

Scott Marin:

- Thought the goal was "equal footing" between corporate boundaries and outside corporate boundaries
- Didn't want the shortage to be born outside the boundaries

Steve Clyde:

- Stratton parade of horrible in the time of drought that someone could use constitution to preference people inside the boundary and force those out of the boundary to stop water use

??:

- Want to clarify that Millcreek and those south of 2100 - on temporary contracts?

Scott Martin:

- No: that's not how it is
- The surplus permits up the canyon have revocable on the contract
- Tried to conflate that with Cottonwood Heights

Mark Stratford:

- One more concern about the extension of pipes being the service area

NEXT MEETING

- **Thursday June 21 9:30 at Clyde Snow & Sessions**
- **Everyone look at language and send back comments**