

# CONSTITUTIONAL AMENDMENT

# D

Shall the Utah Constitution be amended to:

- rewrite a provision relating to municipal water rights and sources of water supply;
- allow a municipality to define the boundary of the municipality's water service area and to set the terms of water service for that area;
- state that a municipality is not prevented from:
  - supplying water to water users outside the municipality's boundary; or
  - entering into a contract to supply water outside the municipality's water service area if the water is more than what is needed for the municipality's water service area; and
- modify the basis upon which a municipality is allowed to exchange water rights or sources of water supply?

## Ballot Title

**FOR**

**AGAINST**

## Legislative Votes

### Utah Senate

27 Yes 0 No 2 Not Present

### Utah House of Representatives

71 Yes 0 No 4 Not Present

## Bill Title & Session

2020 Legislative General Session

House Joint Resolution (H.J.R.) 3

*Proposal to Amend Utah*

*Constitution -- Water Resources of Municipalities*

## IMPARTIAL ANALYSIS

### Current Provisions of the Utah Constitution

The Utah Constitution currently prohibits a municipality from selling or disposing of: (1) its water rights; or (2) its sources of water supply, such as wells, springs, or streams. The term "municipality" includes cities and towns. The current Utah Constitution requires a municipality to retain the municipality's water rights and sources of water supply to supply water to the municipality's residents. The constitution states that a municipality is not prevented from exchanging water rights or sources of water supply for other water rights or sources of water supply of equal value.

The constitution does not mention whether a municipality is allowed to supply water to water users outside the municipality's boundary. Over time the need for water outside municipal boundaries has resulted in a long-standing and widespread practice by many Utah municipalities of supplying water to water users outside the municipality's boundary.

### Effect of Constitutional Amendment D

Constitutional Amendment D rewrites the provision of the Utah Constitution dealing with a municipality's water rights and sources of water supply.

Amendment D allows a municipality to define the boundary of its water service area and to set the terms of water service for that area, including reasonable water service charges. The boundary of a municipality's water service area may be different than the boundary of the municipality.

In addition, Constitutional Amendment D resolves uncertainty about the ability of a municipality to supply water to water users outside the municipality's boundary. The Amendment states that a municipality is not prevented from:

- supplying water to water users outside the municipality's boundary; or
- entering into contracts to supply water outside the municipality's water service area if the water is more than what is needed for the municipality's water service area.

Under the Amendment, a municipality will still not be allowed to sell or dispose of its water rights or sources of water supply. A municipality will continue to be able to exchange water rights or sources of water supply for other water

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rights or sources of water supply. However, any such exchange will require the municipality to determine that the water rights or sources of water supply that the municipality receives in exchange will equally enable the municipality to meet the needs of its water service area.

## Implementing Legislation

If Constitutional Amendment D is approved by voters, a bill passed during the 2019 General Session of the Utah Legislature will also take effect and become law. That bill is H.B. 31, Water Supply and Surplus Water Amendments.

H.B. 31 requires a municipality that provides water to water users outside the municipality's boundary to define the municipality's water service area and to create a map showing that area. The bill requires a municipality to provide water service to all end-use customers within the municipality's water service area in a manner that treats similarly situated customers the same. H.B. 31 also requires a municipality to set reasonable water rates for the water provided by the municipality. The bill requires a municipality that provides water outside its water service area to provide the water only through a contract.

## Effective Date

If approved by voters, Constitutional Amendment D takes effect on January 1, 2021.

## Fiscal Effects

The Legislative Fiscal Analyst has determined that Constitutional Amendment D will have no fiscal effect and will not result in any increase or decrease in revenue or cost to the state or to local governments.

## ARGUMENT IN FAVOR

The Utah Legislature unanimously passed HJR 3, proposing to Amend Utah's Constitution to clarify the circumstances under which a municipality may provide permanent water service outside of its municipal boundaries. Art. XI, §6 was originally adopted as part of the 1896 Constitution to prohibit municipalities from selling, disposing or encumbering their water rights or water works. Instead, municipalities were directed to preserve and maintain these resources for their inhabitants. Municipalities were allowed to exchange water rights or sources of water supply of equal value, and by statute were allowed to provide water currently surplus to the municipality's needs to others outside the municipalities' boundaries, but any such surplus sale was subject to termination.

Notwithstanding this prohibition on permanently disposing or committing water rights, as growth and populations increased many municipalities throughout the State extended their retail water infrastructure outside their boundaries and began providing retail water service to customers who are not inhabitants of the municipality. Providing retail service outside a municipality's boundaries filled a need by allowing development to occur in unincorporated areas lacking alternative sources of retail water service. However, all such extension of services outside a municipality's boundaries remained subject to termination because of the prohibition contained in Art XI, §6. The lack of long-term consistency in water supply created economic uncertainty in the marketplace, which uncertainty can be eliminated by amending the original 1896 provision to validate the existing practices of many municipalities.

With approval of H.J.R. 3, legislation defines the process for a municipality to provide retail water service outside its boundaries by ordinance that will define the geographical boundaries of its designated service area; which area may include the municipality, and areas outside a municipality's boundaries where it had extended its water infrastructure thus providing permanent retail water service within a designated service area, at reasonable rates set by ordinance. Municipalities are further authorized to provide by contract surplus water to areas outside its designated service area. Any such surplus sales contract is subject to termination, as H.J.R. 3 retains the constitutional prohibition on municipalities permanently disposing of their water rights or sources of supply, and mandates that municipalities preserve and maintain these critical assets for the inhabitants of its designated service area.

Unanimously approved by both the Senate and the House, H.J.R. 3, also retained authorization to exchange water right or water sources that will equally enable the municipality to meet the needs of its designated service area. A municipality may also exchange water works to allow economies of scale in providing critical infrastructure.

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The sponsors recommend passage of this amendment to validate the long-standing practice of many municipalities of providing retail water service outside their boundaries creating economic certainty of continued service to these areas at reasonable rates.

-Senator Ralph Okerlund and Representative Keven Stratton

No rebuttal was submitted to the argument in favor of Constitutional Amendment D.

No argument was submitted against Constitutional Amendment D.

## FULL TEXT OF CONSTITUTIONAL AMENDMENT D

### PROPOSAL TO AMEND UTAH CONSTITUTION -- WATER RESOURCES OF MUNICIPALITIES

2019 General Session

#### Utah Constitution Sections Affected:

AMENDS:

#### ARTICLE XI, SECTION 6

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Utah Constitution, Article XI, Section 6, to read:

#### **Article XI, Section 6. [Municipal water rights and sources of water supply.]**

~~[No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water rights, or sources of water supply, for other water rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.]~~

~~(1) A municipality that owns, acquires, or controls water rights or sources of water supply to supply water to the public:~~

~~(a) may not directly or indirectly lease, sell, alienate, or dispose of any of those water rights or sources of water supply;~~

~~(b) shall preserve and maintain those water rights and sources of water supply to supply water to the municipality's inhabitants and others within the municipality's designated water service area; and~~

~~(c) may by ordinance designate the geographic limits of the municipality's water service area and define the terms of service, including water service charges that are reasonable.~~

~~(2) Nothing in Subsection (1) may be construed to prevent a municipality from:~~

~~(a) supplying water to retail consumers outside the municipality's boundary but within the municipality's designated water service area for reasonable charges established by ordinance;~~

~~(b) contractually committing to supply water outside the municipality's designated water service area, if the water supplied is in excess of the water needed for the municipality's designated water service area; or~~

~~(c) exchanging water rights or sources of water supply for other water rights or sources of water supply that the municipality determines will equally enable the municipality to meet the needs of its designated water service area.~~

#### Section 2. **Replacing previous resolution -- Submittal to voters**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law and to withdraw and not submit to voters H.J.R. 1, Proposal to Amend Utah \_\_\_\_\_ Constitution -- Municipal Water Resources, passed during the 2019 General Session. This joint resolution replaces and supercedes H.J.R. 1, Proposal to Amend Utah Constitution -- Municipal Water Resources.

#### Section 3. **Contingent effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2021.