Water Supply / Surplus Water Committee

Observations:

1. The Utah Constitution prohibits municipalities from alienating their water rights, water supply, or water works. Alienation is defined in the constitutional provision as selling, leasing, disposing either directly or indirectly those resources. Exchanges of equal value are not prohibited. Municipalities are charged under the constitution to use their water resources to serve the municipality’s inhabitants with water at reasonable charges (Article XI Section 6).
2. Cities are authorized by statute to sell surplus product or capacity “to others beyond the limits of the municipality” (10-8-14(2)(d)).
3. Local districts have no constitutional prohibition on alienating water and facilities but districts can only be created for a limited number of purposes (one of which is water services) and are generally limited by statute to provide services “within its boundaries” (17B-1-202). Like municipalities local districts are authorized un 17B-1-906 to sell surplus product or capacity services to others beyond the local district boundary.
4. Water Conservancy Districts have broad authority to contract with others for joint operations, sales, lease … (17B-2A-1004(2)).
5. Providing water service outside the boundary of a municipality is a fairly common practice among Utah cities. The extent to which districts are providing services outside their boundary is less well known but is known to be occurring.
6. Although a city is generally protected against legislatively created oversite groups (Constitution Article VI, Section 28), the public service commission (PSC) has ruled that if the city purchases a utility providing service outside the city which was subject to PSC oversite the jurisdiction continues until the PSC decides it is no longer necessary.
7. The Utah Supreme Court in Platt v. Town of Torrey found that charges for service outside a municipality must be based on some rational basis (not arbitrary). This does not mean the charges must be limited to the minimum required to provide the service or based on the actual cost to provide the service, just that the rate be reasonable meaning there must be some rational basis.
8. Cities may be giving different water customers outside their boundaries different expectations about the service to anticipate and that view may change with time. Since all such service necessarily relies on a finding by the municipality that they have surplus to make available, any time based assurances provided by a city in contract or otherwise to customers outside their boundary are likely ultra vires. The only way they can assure customers outside their boundary that service will continue is to operate in a way that the surplus capacity persists and the elected leaders of the municipality remain supportive of making it available outside their boundary. No Utah court has addressed what limits may apply to either the termination or continuation of service outside of a city’s political boundaries.
9. While municipalities may choose to make their rate setting process for those outside their boundary appear transparent and include input from those paying the rates they are under no statutory or constitutional obligation to do so. If those customers don’t like the service they are receiving their choice is to seek it elsewhere or seek a court review of the rate as “reasonable”. In Platt v. Town of Torrey the court articulates that they are the arbitrator of reasonable rates both for city residents (who also have a right to municipal government intervention) and those outside the city who have no other forum. Cities don’t have water franchise authority outside their boundary and customers outside their boundary have essentially excluded themselves from representation in the municipality’s function by failing to annex.
10. Water Service outside a city’s boundary complicates state water planning since numbers reported may or may not include surplus water sales. Potentially affected values are: population, connections, wholesale deliveries. This issue is further complicated when developments employ master meters to circumvent drinking water rules within a development.
11. Issues associated with retail delivery of water to a particular area are not necessarily the same as circumstances where a city has a wholesale contract or a contract for water use in an area that is not part of a retail delivery system.