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Utah Water Users Association
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MESSAGE FROM THE PRESIDENT
By Tage Flint

Utah’s water users are well into summer and there is no mystery why we use over two thirds of our supplies in four months of the year. Reports are coming in that July was one of the hottest on record and we once again are reminded of the importance of a sufficient water supply. Newspapers are constantly reporting on water woes throughout the west and even some of Utah’s water projects are grabbing headlines. These can only be indicators of things to come as our population increases. We are constantly reminded that the next inevitable drought cycle will be experienced by a larger population than ever before.

I am frequently asked by observant people, how is it that we can continue to grow in population and continue to have an agriculture water demand, and be able to have the water supply for both. The question presses more each year. It seems that our commodity will do nothing but become more of a headline.

My hope is that we receive public support in our planning for Utah’s future water supplies. It will have to be a multi-faceted approach. Conservation will play a prominent role in our supplying additional demands. Innovative applications such as reuse and aquifer storage will become larger scale realities but only make sense in certain areas. New development projects will be needed at the same time public sentiment turns against some proposals. There will always be the reality of a mass balance. There is no new water in the state, it is just a question of how we apply it and how many people we want to support with it.

My confidence is high that the good people in our industry are the ones who will answer these questions. There are no others more qualified.

WATER OUTLOOK
By: Randy Julander

Hot and dry - another summer in Utah. The nice part about summer 2008 is that it is not summer 2007 - hottest on record. In fact, a fairly cool spring extended snowmelt and reduced early season irrigation demand which has, in turn kept reservoir levels a bit higher than in the past few years. We will get back to reservoir levels in a minute or two, in the meantime, there is still some snow left in them thar hills - drifts across Skyline Drive on the Wasatch Plateau stopped a lot of thru traffic for the 4th of July and nearly the 24th summer camping season. On the north slope of the Uinta’s, large drifts and cornices are still visible. Snowpacks at SNOTEL sites melted out a bit later than normal as well. These are indications of more average snowpacks and a bit cooler summer temperatures, all welcome events. On the reservoir storage situation we have the following as of the first of August: Bear - 30%, Weber - 48%, Provo - 85%, Duchesne - 87%, Southeast Utah - 74%, Sevier - 35%, and Southwest Utah - 61% of capacity. The State average is 62% of capacity. Last year, reservoir levels were much lower and demand higher. Summer Precipitation, especially in the north has been below average. We are very nearly past the hottest part of summer and with any luck, the cooler temperature trend will continue and we should go into fall with better carryover than in the past few years.

WATER AND THE LAW
Update It or Lose It-
Ownership and Title Issues
By David B. Hartvigsen
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The Utah Division of Water Rights has been working hard, particularly over the last decade, to improve the accuracy of its water right ownership or “title” records. In discussing title or ownership issues, it is very import to understand that the official “office of record” for title to

water rights in Utah is the County Recorder's Office. That is where all land and water deeds must be "recorded" or placed on file so as to give notice to the world of the current ownership of that property. The Division of Water Rights also maintains title information in its water rights database. However, the Division's records are only a secondary place of record for title, meaning that if there is any difference between the Division's records and the County Recorder's records, the County Recorder's records are the ones that determine actual ownership. The Division's records are there to assist the State Engineer in his administrative duties and are a convenient place for the public to check on title issues, but they are only as accurate and as current as the information provided to the Division by the water right owners themselves.

Prior to July of 2000, the process for getting water right title information to the Division involved having the County Recorders send the Division copies of any newly recorded deed which may affect title to water rights. Unfortunately, there are many land deeds which make no mention of water rights but still convey title to water rights through the legal doctrine of "appurtenance." Therefore, the County Recorders had no way of determining which deeds affected title to water rights and either did not send any deeds to the Division, or they sent a copy of every deed. It ultimately fell upon the water right owners to notify the Division of ownership changes. Therefore, the Division proposed legislation that was enacted and became effective in July of 2000 which shifted the burden of providing the Division with current title information from the County Recorders to the water right owners. To facilitate this, the Division developed Report of Conveyance (or "ROC") forms and associated rules. A ROC must be completed and filed with the Division before any title information on the Division's database will be updated. This must be done before any change applications, extension applications, non-use applications, proofs, or any other filings will be accepted by the Division. In other words, if your name is not listed on the Division's database as the current owner of the water right, you will not be able to file any type of application pertaining to that water right until you get the title updated into your name.

Furthermore, and more importantly, you will obviously not be given notices pertaining to your water right until it is listed in your name **with a current address**. Too many water rights are being lost because the current owners are not receiving critical notices of upcoming deadlines either because title has not been updated to their names or the address listed has not been kept current. This problem came to a head in the

last legislative session and several bills were drafted in response. However, it is not an easy problem to resolve and the issue was assigned to the Executive Task Force on Water Rights, which is currently meeting and studying this issue. The Water Coalition is also addressing the issue. Input is being sought from the County Recorders, title companies, real estate agents, and other groups that are stakeholders in the title transfer process.

Some possible solutions are starting to take form, including concepts such as using a required water right deed form generated by the Division, using a mandatory water right disclosure form attached to every land deed, eliminating the "appurtenance" doctrine, and listing on every water right deed the tax ID number of the parcel of land to which the water right is, or is proposed to be, attached. This is an important issue and the Task Force, the Water Coalition, the Division, and your legislators would like your ideas and your concerns about this process. With the change to ROCs in 2000, a major step was taken to address this problem, but the process is still not working well, so another step forward is needed. The more water right owners and other stakeholders that are involved in the process, the more likely this next step will be a step forward and not a step backwards. You can get involved directly or through the Utah Water Users Association - but please get involved.

If you would like more information about this issue, you may contact the author at 801-413-1600 or david@smithlawonline.com or subscribe to our newsletter at www.SmithHartvigsen.com.

Message From The Directors Corner By Carly Burton

Legislative Update

As you will recall in our last newsletter, there were 26 water related bills that were introduced in this past legislative session of which 14 passed and 12 failed. Several bills which failed to be passed have been targeted for further study. A Legislative Water Task Force chaired by Mike Styler has been created to review several failed bills which needed further study. The list of issues being studied are listed below.

HB225 - This bill addresses the process of certifying water rights being held for the future use by public water supplies. The new approach is to allow a public water supplier to file proof of use on a portion of a water right that has been put to beneficial use. Any unused portion of the water right could then be reserved for future use.

Adjudication Process - This proposed amendment to 73-4-3 of the Utah Code would require the State Engineer to

prepare the names and addresses of all water right holders of record in the State Engineers office including those water right holders who have notified the State of correct and updated addresses which would be filed with the court. The updated record of name and addresses can be submitted at any time during the adjudication process either by petition of the State Engineer to the court or by the petitioner. This proposed action would greatly improve the accuracy of the process.

SB269-Water Rights Ombudsman - The water community including the Board of Directors of the Association, has continued to take a stand against creation of a Water Rights Ombudsman. This position is also endorsed by the Water Task Force who recommended to not implement the concept of an Ombudsman.

Water Right Title Transfer - One of the nagging problems in the State Engineers office as discussed in David Hartvigsen's article is to document updated water rights ownership related to title transfers. The process involves the buyer, seller, realtor, title company, county recorder, and finally, the State Engineers office. This issue is a greater problem when small acreage and water right transfers occur and the new owner may be unaware of the process to update records into the State Engineers office. For large water right holders, this problem is not as serious because large entities have access to attorneys, engineers or others who have expertise in the process. Members of the task force addressed this issue and proposed attaching a water rights addendum to the deed of sale. This addendum sheet would state if water rights were being transferred and would list the type of water conveyance by water right number, shares in an irrigation company, district or other entity. The Task Force also discussed potential Legislation which could require the respective county recorders office to submit the water rights addendum to the State Engineers office as part of the documentation of new title transfers. Additional discussion on this issue will continue.

Utah Supreme Court Decision - Public Access To State Water Bodies

In a July 18, 2008 landmark decision, the Utah Supreme Court overturned a District Court decision regarding whether or not the public should be allowed access to streams and rivers in Utah in non-obtrusive ways. The court determined that the scope of the public's easement in state water bodies allows the public to (1) engage in all recreational activities that utilize the water body and (2) walk or otherwise touch privately owned beds of state water bodies incidental to all recreational rights provided for the state's easement.

The court concluded that the scope of the state easement provides the public the right to float, hunt, fish and participate in all lawful activities that utilize the water source. The court further concluded that the public may utilize the beds of state water bodies so long as they do so reasonably and cause no unnecessary injury to the landowner. If you would like a copy of the ruling, contact our office or call Mike Qualey at the Attorney General's office.

NWRA ACTIVITIES Clean Water Act Update

The National Water Resources Association held its summer conference in Stevenson, Washington on July 28th-30th, 2008. One of the topics discussed was an update of activities related to the proposed amendment to the Clean Water Act. Earlier this year we reported on proposed federal legislation by Senator James Oberstar, which would amend provisions of the Clean Water Act to increase federal jurisdiction by changing the term "navigable" waters of the United States to "all waters" of the United States. Several of you assisted us by sending in letters of concern to Utah's congressional delegation. Recently Senator Oberstar sent a letter to the Administrator of EPA in which he expressed concerns that current enforcement of permits is negatively impacted because of recent Supreme Court decisions which resulted in the original Oberstar proposed legislation. In addition, ECOS (the Environmental Council of the States) has proposed amendments to the two current bills which have stalled in both the House and the Senate. NWRA officials suggested that environmental groups may be willing to support amendments to the existing bills, to restore "navigable" waters" in the definition and to support an exclusion for agriculture. The Federal Affairs Committee of NWRA will follow this issue closely in the months ahead.
