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## **MESSAGE FROM THE PRESIDENT**

**By Voneene Jorgensen**

Governor Herbert addressed the attendees at the Utah Water Users Association's annual workshop in St. George last month wherein he talked of the importance of water to the people and the economy of the State. The Governor wants to develop a "roadmap" for water use and development in Utah and is asking for public participation in preparing that roadmap. He has asked a "Group of Six" to conduct public meetings throughout the State to get public input on critical water issues. The Group of Six are Dennis Strong, Bob Morgan, Tim Hawkes, Warren Peterson, Tage Flint and Voneene Jorgensen. Those public meetings will be held this summer in different locations throughout the State. We hope that you will be excited to come and participate in the meeting being held closest to you. This is a great opportunity to become involved and express your ideas on critical water issues. Conservation, competition for water, water and agriculture, recreation, water development-getting water to the people, funding of water infrastructure, protecting the environment and water law are all critical water issues. Please come join us as we prepare the Governor's Roadmap. We look forward to visiting with you and listening as you share your ideas. We appreciate the Governor and his desire to plan for future water use and development for the State of Utah.

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## **WATER OUTLOOK**

**By Randy Julander**

Well, what we didn't want and were afraid might be now close to reality. Last summer was long, hot and dry – every Water Managers nightmare.

Precipitation basically shut off in March and didn't pick up until late July. Snowpacks, already much below normal, shriveled like salted slug on hot asphalt. Snowpacks this year are very close to what they were last year and we expect less streamflow from them, particularly in southeast Utah due to very dry soil conditions. Less streamflow and less reservoir storage puts a lot of pressure on water management. December was great but March was the third consecutive month of way below normal snow accumulation. So low in fact that on this month's snow surveys it was common to see the sampling holes and snowshoe tracks from the previous month. Virtually all sites, even at high elevation are currently melting snow – not good for early April. Snow packs across the state are low (51% for southeast Utah to 86% on the Beaver River) and dropping fast. March precipitation was much below normal statewide ranging from 44% to 63% of average. This brings the year to date precipitation to below normal statewide at 77%. Current soil moisture saturation levels in runoff producing areas are: Bear –73%, Weber – 72%, Provo – 73%, Uintah Basin – 51%, SE Utah – 48%, Sevier – 64% and SW Utah – 63% of saturation. Soil moisture values are near normal in northern Utah and very dry in the southeast. Low snow packs and dry soils will lead to lower runoff efficiency and less stream flow this season. Reservoir storage is down 17% from last year's figures and similar to 2010 and 2011. General runoff conditions are much below average across the state and are expected to continue declining. Surface Water Supply Indices range from 4% for Joes Valley to 47% for the lower Sevier. Water managers should prepare for early stream flow, shorter duration, longer irrigation season, low

volumes and low peak flows. The best we can hope for at this point is an exceptionally wet spring that would delay water use across the state. The National Climate Prediction Center forecast is for warm and dry.

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**WATER & THE LAW**  
**THE DEMISE OF 2013 SENATE BILL 109**

**By David B. Hartvigsen**  
**Smith Hartvigsen pllc**

One of the most significant bills of the 2013 Session of the Utah Legislature was Senate Bill 109 "Change Application Procedures" sponsored by Sen. Ralph Okerlund and Rep. Lowry Snow. In fact, Rep. Daniel McCay stated on the House Floor that this was probably the most important policy decision before the Legislature this year. But despite extensive work and debate over the last several years, the Legislature's final move was to send the bill back for more study between now and next session.

You may recall that for the last four years, the State Engineer has requested that the scope of his review of historical beneficial use in acting upon change applications (that is, his "gatekeeper" role "to keep out bad water rights") be clearly defined by statute. In 2011, the Utah Supreme Court issued the *Jensen v. Jones* opinion that concluded that the State Engineer currently lacks statutory authority to consider nonuse of a water right when ruling on a change application. As a result, the Water Coalition and Executive Water Task Force helped prepare a proposed bill in the 2012 session (SB187) that would give the State Engineer statutory authority to act as a gatekeeper and consider the amount of water that is "available to be changed based on use or nonuse." A second Supreme Court decision, in the case of *Salt Lake City v. Big Ditch Irrigation Co.* raised another issue with the change application process involving who can file a change application. SB187 also addressed this issue. SB187 did not make it through the full legislative process in 2012 and was reincarnated as SB109 in the 2013 session. Another change application bill was introduced in the 2013 session as HB123 by Rep. Kay McIff. It addressed, among other things, the issue of shareholder rights regarding change applications on water rights held by water companies.

During the course of this year's session, four new "substitute" versions of SB109 were prepared. The first substitute version added a "swing out provision"

for municipalities whereby the municipalities had the option of having the courts or the Property Rights Ombudsman perform the gatekeeper role of determining whether or not there had been any nonuse. It also gave cities a special process to give them finality of this issue of nonuse so that they could move forward knowing exactly how much water was being dedicated for a specific development project. Substitute #2 refined some of the new concepts added in Substitute #1 and then specified that the special swing out provisions for the municipalities terminated in 2016 at the end of a three-year test period. Substitute #3 merged the shareholder rights provisions from HB123 into SB109. Adoption of Substitute #2 was delayed as Substitute #3 was being developed and before it could be officially adopted, an effort was made to insert an extensive procedure for processing shareholder change applications. This effort resulted in Substitute #4 being adopted in the morning of the last day of the session in place of Substitute #1.

There are three particularly interesting things about the evolution of SB109, starting with last year's SB187 and ending with Substitute #4. The first is that the gatekeeper authority the State Engineer was seeking was significantly limited by the end of this evolution. He could look at nonuse only when a change application was protested and then, only if all of the parties agreed to allow him to address the nonuse issue. Otherwise, the issue would be addressed by swinging out to the courts or the Ombudsman and then the parties would proceed with the State Engineer for the rest of the change application process. If the change application was not protested, the State Engineer would not be able to act as a gatekeeper and would have to proceed with the change application without looking at nonuse.

The second interesting thing is that initially members of the House of Representatives felt like they were cut out of the policy making process because they were essentially told that the bill had been through extensive development, negotiations, and review by the water community and therefore the bill (SB109 and Substitutes #1 and #2) shouldn't be changed by the House. Ironically, in the end, the same water community felt like they had been cut out of the policy making process by the House because they were not going to see Substitute #3 or #4 before those versions were presented on the floor of the House for adoption. The third item is that through this process, a very detailed and complex proposal evolved ... without

review by, and input from, the general membership of the water community. The process, though cumbersome, appeared to be generally fair. However, substantial opposition was generated because the water community was not given the chance to be involved in the process.

It appears that these three factors, in some combination or another, doomed Substitute #4 in the waning hours of the session. Substitute #4 was adopted and passed the House late in the morning of the last day of the session and was sent over to the Senate for the Senate to "concur" with the changes made by the House. It was immediately "circled," or placed on hold, by the Senate. Later in the afternoon, it was uncircled and then the Senate, without debate, refused to accept the House changes. That is, the Senate refused to accept Substitute #4 over Substitute #1 which the Senate had previously approved. When there is a stalemate such as this, a "conference committee" with three Senators and three Representatives is appointed to try to work out a mutually agreeable compromise. However, in the few hours that remained in the session, it appears that this conference committee process was simply not pursued by the Senate and the bill was left to die as the session ended at midnight on March 14th.

One final point is that there was no mention of the issues addressed by SB109 in the official list of issues to be worked on by the Legislature during the interim. There were rumors that these critical issues might be addressed in the "Veto Override Session," but it now appears that an Override Session is unlikely. So, we may be left with the current status of no State Engineer authority to review non-use for a quite a while. It will be interesting to see when and where these issues are raised again and which version of SB109 comes up for discussion.

Your questions or comments are invited. The author can be reached at 801-413-1600 or david@smithlawonline.com.

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**MESSAGE FROM THE  
DIRECTORS CORNER**

**By Carly Burton**

**St. George Workshop**

The Utah Water Users Workshop held last month was a great success. We broke attendance records once again, with over 850 registrants, exhibitors,

co-sponsors and speakers. We achieved this success in spite of 16 federal agency speakers who were prohibited from participating due to federal cutbacks. Thanks to our amazing Workshop Committee, we were able to replace the topics without any negative impacts to the quality of the Workshop. We would like to sincerely thank everyone who participated to make this the most successful Workshop ever. A special thanks to Governor Herbert for his timely discussion on future water needs in Utah. Next year's Workshop will be held on March 17 - 19, 2014 so be sure and mark your calendar.

**Utah Water Summit**

This year's Utah Water Summit Conference will be held at the Provo Marriott Hotel on Wednesday, October 30, 2013. Governor Herbert has expressed great interest in participating in the program. Meeting the future water needs of Utah will be the focal point of the conference.

**Legislative Update**

David Hartvigen, in his article, described the crazy evolution of SB109 which eventually failed to pass. Other bills of interest included:

- HB29 - Adjudication of Water Rights
- HB36 - Storm Water Capture Amendments
- HB73 - Water Easement Amendments
- HB166 - Water Rights Amendments
- HB215 - Water Quality Amendments
- HB326 - Division of Water Rights Amendments
- HB358 - Instream Flow Amendments
- HB360 - Water & Irrigation Revisions
- HJR14 - Joint Resolution on Water Rights
- SB30 - Water & Irrigation Amendments
- SB101 - Division of Water Rights Revisions
- SB115 - Water Development Commission Amend.
- SB276 - Water Conservancy District Capital Assess.
- SCR8 - Concurrent Res. for the Provo Res. Canal

A more detailed review of these bills can be found on our website at [www.utwaterusers.com](http://www.utwaterusers.com). Matthew Jensen with the firm of Smith Hartvigen prepared this summary

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