

April 26, 2012

Utah Water Users Association
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MESSAGE FROM THE PRESIDENT
By Voneene Jorgensen

Greetings from the Utah Water Users Association. It is such a pleasure to be associated with you, the members and to get together as friends and be enlightened on the water issues that affect us all. Your efforts and service to your customers and shareholders are of great value. We want to thank all of you that attended the UWUA Workshop in St. George last month and hope you found the sessions informational and enjoyable. We appreciate the presenters that volunteered their time and shared their expertise on important topics that are beneficial to us in our field of work. Thanks to the sponsors for their financial assistance that help support the workshop and the Association's scholarship program. Appreciation also goes to the vendors and their willingness to share updated information and technical expertise that help solve problems water purveyors often encounter on a daily basis. A special thanks goes to Carly and Barbara Burton and the Planning Committee that worked diligently to organize and plan the agenda and activities. Everyone who attended contributed to the overwhelming success of this year's Utah Water Users Workshop. We thank you and welcome you all back again next year!!

"dam, that hurts". Precipitation in March was about half the average with long stretches of nothing in between. The hot winds at the end of March took a huge toll on snowpacks with decreases of 5% or more with no appreciable runoff. Snowmelt that is occurring is being sucked into dry soils bringing them close to saturation but not producing significant streamflow at this time. Looking forward to April weather is not very promising – the Climate Prediction Center forecast is for basically warm and dry. So, with snowpacks sitting at 50% of normal and no diddly squat in sight means very poor runoff conditions with forecasts ranging from the 30% to about 60% of normal. Ya – now yall are looking back on the troubles of last year's runoff and where to put all that water and maybe wishing you could have a few more of those kind instead of the 'ol lump of coal' in the stocking this year. The bright spot in this string of if it weren't for bad luck I'd have no luck at all situation is reservoir storage – about 88% of capacity statewide and filling fast. Keep that reservoir surcharge as high as you can for as long as you can because it looks like summer is going to be long and dry – possibly to exceed the bloviation of the political season if that is possible. Expect early melt, low volumes, shorter flow duration and lower peak flows. This season is basically over before it starts so turn your optimism to next year with the hope we swing back to wetter conditions.

WATER OUTLOOK
By Randy Julander

March was not kind to Utah. It was typical Utah weather, but not kind. We melted snowpack instead of accumulating more. This was uniform across all basins of the state, some more than others. Take the Monticello area – down to 15% of average snowpack on April 1. Quoting the fish who swam directly into a concrete wall

WATER & THE LAW
WHO OWNS YOUR WATER RIGHTS?
By
J. Craig Smith - Smith Hartvisgen pllc

Understandably, water rights are very important to the water users who hold them. Water rights are also very valuable. In recent years, water rights have traded for \$45,000 per acre foot in the New Harmony area between

Cedar City and St. George, \$15,000 per acre foot in the Erda area in Tooele County and \$6,000 per acre foot in rural areas such as Beaver and Sanpete Counties. More importantly, for those who own both land and water, without water their land would be nearly valueless.

In light of water's importance and value, it is likely surprising to many that a number of articles have recently appeared in prestigious legal journals arguing that water, unlike land, cannot be owned and the holding of a water right should not be a protected private property right which cannot be taken away without just compensation guaranteed under both the United States and Utah Constitutions. For example, in the Fall 2010 edition of the Duke Environmental Law and Policy Forum, Professor Shelley Ross Saxer of Pepperdine University School of Law, argues in her article, "The Fluid Nature of Property Rights in Water," that water rights should be re-categorized as "contract rights or licensing rights, revocable by the government for the public good" (pg. 52-3). In other words, a water right could be diminished or taken away completely without compensation if the government decided that a greater need for water existed elsewhere. Professor Saxer is not alone in urging that ownership of this critical public resource should not rise to the level of a protected private property right. Other legal scholars have reached similar conclusions. See, for example, "Unbundling Property in Water" in the Alabama Law Review, Vol. 59:3 679 2008.

The basis for this emerging school of thought is that unlike land, water is transitory and not fixed and the water itself cannot be owned by a private individual or entity. All that can be owned is the right to use water, which is highly regulated and subject to loss through nonuse. For example, under Utah law, "All waters in this state, whether above or underground, are hereby declared to be property of the public, subject to the existing rights to the use thereof." Utah Code Ann. §73-1-1. While Utah is among, if not the leading state in protecting property rights in water rights, this concept of public ownership coupled with a legal doctrine known as the "public trust doctrine," provides a plausible legal basis to not recognize private property rights in water.

The public trust doctrine has its origins in English common law, but has been recognized by the United States Supreme Court to classify waterways and land under waterways as held in trust for the public and not subject to sale or transfer by the government to private ownership. In fact, attempts to so transfer such waterways and land are void in violation of public policy as such are needed by the public in perpetuity.

In water rights, the California Supreme Court relied on the public trust doctrine to prohibit the draining of Mono Lake by those holding water rights by which they could draw down the level of the lake. See National Audubon Society v. Superior Court of Alpine County, 658 P2d 709 (Cal. 1983), commonly referred to as the "Mono Lake case." Closer to home in Colorado, two ballot initiatives will be voted on this fall. These initiatives #3 and #45 respectively state:

"An amendment to the Colorado constitution concerning the public's rights in the water of natural streams, and, in connection therewith, making public ownership of such water legally superior to water rights, contracts, and property law; granting unrestricted public access along and use of natural streams and their stream banks up to the naturally wetted high water mark; prohibiting the state from transferring its water rights; allowing the state government to manage others' water rights, while requiring state government to act as steward of and to protect, enforce, and implement public ownership of water; and allowing any Colorado citizen to sue to enforce the amendment."

"An amendment to the Colorado constitution concerning public control of water, and, in connection therewith, allowing appropriative water rights to be limited or curtailed by prohibiting any use of water that would irreparably harm the public ownership interest in water; expanding the right to appropriate water for beneficial use to all water within Colorado, including nontributary groundwater and not limited to unappropriated water, subject to the public ownership interest; requiring water users to return water unimpaired after use to the public so as to protect the natural environment and the use and enjoyment of water by the public; requiring state government to act as steward of and to protect, enforce, and implement the public ownership interest; and allowing any Colorado citizen to sue to enforce the amendment."

While Colorado is not Utah and articles in law journals are not binding and do not carry the force of law, there is obviously a trend. Where this trend will go is not known. Perhaps it is simply the "flavor of the month" and will soon pass. Perhaps it is the shape of things to come. In any event, a protected private property right in a water right is not a given and water right holders should keep this in mind as water public policy is debated and laws are made.

**MESSAGE FROM THE
DIRECTORS CORNER
By Carly Burton**

Utah Water Users Workshop

As you may be aware, this makes the first year that our Association has assumed the primary role in organizing and conducting our annual workshop in St. George.

We are happy to report that new records were set in attendance (816) and corporate co-sponsors (26) during the March event. We have received many positive responses including recommendation of topics for the March 18-20, 2012 workshop. We would like to thank all of the workshop planning committee for their help. The planning committee includes Association board members, the U.S. Bureau of Reclamation, the U.S. Geological Survey, Natural Resources Conservation Service, Utah Division of Water Rights, Utah Division of Water Resources, Division of Drinking Water, Division of Water Quality and the Utah Department of Agriculture and Food.

We would also like to thank the 34 exhibitors and the 26 corporate co-sponsors for stepping up to make the workshop a financial success. Special thanks to the USU Conference Center for their efficient handling of the on-line registration process. We are very appreciative of the many speakers who presented interesting and valuable topics for the attendees.

Finally, we would like to thank the Dixie Center for providing an outstanding venue for our event. If you did not fill out an evaluation sheet and you are interested in a topic for next year just e-mail us at utahwaterusers@aol.com or at carlybarbara@q.com. We have also posted many of the speaker presentations on our website at www.utahwaterusers.com.

**BOARD OF DIRECTORS
UTAH WATER USERS ASSOCIATION
APRIL 26, 2012**

Several attendees at the St. George Workshop wanted information about the make-up of the Board of Directors of the Association. The newly elected President of the Utah Water Users Association is Voneene Jorgensen. The First Vice-President is Ivan Ray, and the Second Vice-President is Dan Davidson. The 31 board members and areas or users they represent are listed as follows:

COUNTY/GROUP	NAME
Box Elder/Cache/Rich	Voneene Jorgensen Bob Fotheringham
Davis/Morgan/Summit/Weber	Ivan Ray Rodney Banks Dee Alan Waldron
Salt Lake/Tooele	LeRoy Hootin Richard Bay Jerry Hurst
Utah/Wasatch	Blair Hamilton Chris Finlinson Mike Davis
Juab/Millard/Piute/ Sanpete Sevier/Wayne	Clyde Bunker Brad Jensen
Beaver/Garfield/ Iron Kane/ Washington	Ronald W. Thompson
Carbon/ Emery/ Grand/ San Juan	Jay Mark Humphrey Norman Johnson
Daggett/ Duchesne/Uintah	Scott Wilson Gawain Snow
Water Conservancy Districts Metropolitan Groups	Mike Wilson Tage Flint
Water Users Associations	Mark Kettle G. Keith Denos Jeremy Sorenson
Cities/ Counties	Dan McKonkie
Canal/ Ditch/Irrigation Cmpanies Irrigation Districts	Terel Grimley Dan Davidson (Vacant)
Industries	Claudia Conder Steve Schnoor
State Agencies	Dennis Strong
NWRA Board of Directors	Terel H. Grimley Ronald W. Thompson
NWRA State Executive	Carly B. Burton