

January 25, 2017
Utah Water Users Association
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MESSAGE FROM THE PRESIDENT

By Jay Mark Humphrey

I hope everyone had a great Holiday Season. As we begin a new year, it is nice to reflect on how we managed to get through another below average water season. Water managers need to look at the condition our water delivery infrastructure is in and what needs to be repaired, replaced or modified to make the upcoming water season deliveries better. It is nice to have winter and see above average snow pack accumulating in the mountains throughout the state. I hope everyone will have a great water season in 2017 and hope to see you at the Utah Water User Convention in St. George.

WATER OUTLOOK

By Randy Julander

Water year 2017 started off with October and November both warm and dry and here was great concern about the lack of snow, a continuation of the drought and Ski Resorts not being able to open. Well, December rolls around and suddenly snowpacks are above average across the state. It's a jack rabbit pattern that seems familiar for the past few years, warm fall's and abrupt snow accumulation in December and January. Unfortunately, the past few years the rest of the water year has been less than stellar and it remains to be seen if the current year follows that pattern. That

said, it's much better to score early and often than late to never and the state is in fantastic shape snow wise thus far with more storms coming. As of January 6 snowpacks range from 104% on the Escalante to 173% over the Duchesne. That's an awesome start to the year. This puts us in the 40% to 50% range of our normal April 1 snowpack peaks – nearly halfway home with 3 accumulations months to go and storms on the way. Not bad, but we still have over half of our snowpack yet to come and that future is quite uncertain. Everyone is hoping for a big one this year, pretty much like we do every year, but until the check is in the bank and cleared with funds authorized... we will have to sit fidgeting excitedly in our chairs hoping for the best. Soil moisture for the most part is above normal, the only exceptions being the Dirty Devil which is a bit below average. So – great snowpack, excellent soil moisture – conditions are looking really good so far. Reservoir storage is 40% of capacity statewide compared with 50% last year – in pretty good shape. The Sevier River Basin has some storage deficiency especially in Gunnison, Piute and Sevier Bridge reservoirs. Streamflow forecasts reflect both the outstanding snowpack and soil moisture conditions ranging mostly between 100% and 130% of average. All in all, we really like where we stand. If anyone would like to receive the Monthly Utah Water Supply Outlook

Report, just shoot me your Email address to: Randy.Julander@ut.usda.gov and we will be happy to send it to you.

Great Winter So Far!
By: Brian McInerney

Okay, so let's start this newsletter with a bit of positive waves. We've got copious snow falling on a regular basis. The fact that it's overlying dry soils shouldn't sway the fact that we've got snow and lots of it. When we look at the water supply forecasts done by the CBRFC, we find that 125% snowpack is expected to yield near 100% of average runoff volume in the northern watersheds. And while the south lags behind a bit, the potential for improvement is not far off.

Not to be a wet blanket on all this positive info, it is important to note that last year an active weather pattern through the end of January morphed into a very inactive high pressure dominated pattern. We're hoping at this early date, that the progressive pattern will continue through spring and we'll reap the benefit a large snowpack melting late through a cold rainy spring.

Why is this so, you ask? Why are we receiving more storms this year than the past 5 years? Well, if you ask the meteorologists I work with at the National Weather Service, they'll mention that we've had an open door for the low pressure systems off of the Aleutian Islands to sweep through, in addition to multiple atmospheric rivers to tap tropical moisture and interact with the cold air from the Northern reaches. There's more to it, but suffice to say, the high-pressure ridge has resided out in the Pacific for most of the winter in a reduced role both in size and strength.

Also, the skiing has been fabulous. Just sayin.

WATER & THE LAW

CASE LAW UPDATE: BRESEE V. BARTON

**By Jeffrey R. Gittins – SMITH
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The Utah Court of Appeals recently issued its opinion in the case of *Bresee v. Barton*. The case dealt with issues of joint use of a pipeline and condemnation of an easement for water use.

The Bresees owned a piece of land that was surrounded on three sides by the Bartons' farmland. The Bartons irrigated their farmland with a combination of water from an irrigation company and water from a well on their property. Both sources of water were conveyed in a mainline through the Bartons' property. The Bresees also owned shares in the irrigation company, but did not have a way to convey their irrigation water to their property other than by using the Bartons' mainline. The Bresees (like their predecessors) entered into agreements with the Bartons under which the Bresees could convey their irrigation water through the Bartons' mainline in exchange for the Bartons being allowed to farm part of the Bresees' property. After a few years, a dispute arose between the Bartons and the Bresees, and the agreement was terminated. Shortly thereafter, the Bresees entered onto the Bartons' property, dug down to the mainline, installed a T-connection, and ran a water line back to the Bresees' property. Upon discovering this action, the Bartons removed the T-connection and restored the mainline to its prior state.

The Bresees then filed an action in district court claiming an easement to convey their water through the mainline. The Bresees relied on various legal theories, including eminent domain (condemnation). The district court first granted summary judgment against the Bresees, determining that the Bresees did not have an easement to use the Bartons'

mainline. Following a trial, the district court again determined that the Bresees had no easement to access the Bartons' mainline, and consequently ruled in favor of the Bartons. The district court awarded trespass damages, punitive damages, and attorney fees to the Bartons. The Bresees appealed the decision to the Court of Appeals.

In its decision, the Court of Appeals reviewed Utah Code section 73-1-6, which gives a private right of condemnation for reservoirs, dams, canals, ditches, pipelines, and other water conveyance facilities. The Court noted prior case law that condemnation is allowed only if the plaintiff "does not interfere with the rights and use of the defendant's water." In this case, the Bartons had asserted that if the Bresees used the mainline, it would interfere with the Bartons' use of their water shares and water rights. The Bartons' assertions were supported by affidavit testimony. Although the Bresees had attempted to counter the Bartons' assertions through affidavit testimony of their own, the Bresees' affidavits had been struck by the district court because the affidavits contained legal conclusions, lacked foundation, and included inadmissible hearsay. This effectively meant that the Bartons' claims of interference were undisputed. Accordingly, the Court of Appeals concluded that the district court had properly concluded that the Bresees could not condemn an easement in the mainline due to the considerable interference that would result to the Bartons. Accordingly, the Court of Appeals upheld the district court's ruling in favor of the Bartons.

The author can be contacted at 801-413-1600 or jgittins@smithlawonline.com. He also has a water rights blog at www.utahwaterrights.blogspot.com.

MESSAGE FROM THE DIRECTORS CORNER

By Carly Burton

Water Users Workshop

The workshop committee has been hard at work and we have another great program lined up for the March Workshop. If you did not receive the workshop brochure in the mail you can go to our website at utahwaterusers.com and get information on the topics, registration information, hotels and other pertinent information. The Workshop is going to be March 20-22, 2017 at the Dixie Convention Center in St. George. On Monday, March 22 we will hold the golf event as well as the bike ride event. Due to overwhelming response in the evaluation form from last March, **we will not be having a Tuesday evening banquet.** Instead we will be having a lunch buffet on Tuesday. To register on-line go to conference.usu.edu/uwuw/. You can also register via e-mail at register.online@usu.edu. Or phone USU conference services at 800-538-2663 or 435-797-0421. Registrations must be submitted by March 16, 2017. You can also register by mail at:

USU Conference Registration Services

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