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Utah Water Users Association
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MESSAGE FROM THE PRESIDENT
By Ivan Ray

As I travel from Rich County in the North to Kane County in the South and Millard County in the West to Uintah County in the East and all counties in between, it feels so good to watch, as people make efforts to conserve our precious water resources in Utah. I have heard that in the water year of 2013 some water districts, municipalities, companies, associations, farmers, individuals and even religious organizations conserved as much as twenty five percent of their available water resources. Innovations relating to new and better ways of doing things and technological improvements are becoming ever more prevalent as people become more conscientious about the fact that we could run out of water in some areas of Utah in the near future. Our Governor, Gary Herbert, has asked us to be more conservation minded; make do with less and be efficient with what we have. The people of this state are unique, in that they know how to overcome challenges and create efficient ways to solve problems. Replenishing water storage in the approximately 17 major reservoir storage facilities in the state annually is critical. The Utah Water Users Association supports and is in favor of developing more water storage projects in partnership with the Bureau of Reclamation sponsored facilities within the state, as well as potential smaller state sponsored projects. It is difficult during times of federal budget restraints, but not impossible. The Board of Directors of the Association is pleased with the efforts of everyone involved in the water community to

work together, get along and arrive at the common goal to conserve, preserve and create new ways for water development and uses. Let us share ideas and learn from one another about better methods for water distribution and uses as we meet and communicate throughout the state at various times. Enjoy your summer and appreciation for water availability.

WATER OUTLOOK
By Randy Julander

The snow is gone – the last SNOTEL site melted out on June 13. Rivers and streams across the state are all now well into recession flow and are at or quickly approaching base flow conditions. In northern Utah (Weber and Bear Watersheds) stream flow has been near normal. The Provo and Uintah Basins are a bit below average with central Utah watersheds coming in with below to well below normal stream flow. In southern Utah, many streams had no snowmelt response at all – that is to say they remained in a declining base flow condition with little to no increase in flow due to snowmelt. Nothing to normal pretty well characterizes the state of runoff this year. June precipitation continued the pattern of nothing or next to nothing in the south, central and even up into the Uintah Basin whereas the Bear, Weber and Wasatch Front received normal to a bit above normal precipitation. Soil moisture patterns are reflective of both snowmelt and precipitation patterns with the Bear and the Weber basins still having adequate moisture and the remainder of the state being in an exceptionally dry condition. Boy O’ Boy – glad we have reservoirs and delivery systems.

WHAT COULD HAVE BEEN
National Weather Service
By Brian McInerney

WATER AND THE LAW
Central Utah Water Conservancy
District v. Jensen
By Jeffrey R. Gittins
Smith Hartvigsen, PLLC

When we look back on weather patterns that shaped the 2014 water supply season, there was a point in time where our water year hung in the balance. That time was early February, and only part of the state received the fruits of the event.

For the past three years, the dreaded high pressure ridge remains our constant companion during the winter months. This dominant weather pattern has rooted itself over the western US and eastern Pacific Ocean for long extended periods. Yes, we've seen small blips where the ridge vanished and we enjoyed the stormy conditions, but it comes back with a vengeance time after time since the fall of 2011.

The ridge reappeared once again in late October after a very stormy late summer and fall of 2013. The wild weather pattern we experienced during the late summer and early fall months spawned massive flash flooding all across the state and Colorado. Hoping this wet pattern would continue into the cold season, our nemesis the ridge came back and set up shop without any trace of moving through January. As a result, Utah's snowpacks were dismal at that time.

Then something wonderful occurred to those in the north. The ridge broke down and in its place an atmospheric river originating near Hawaii roared into Northern Utah. This river brought copious amounts of precipitation to the area. The Logan Drainage received up to 2 feet of water in a few short weeks. While the north celebrated, Southern Utah continued to languish in dry hot conditions. Unfortunately, the atmospheric river did not make it to the south, only north, on its easterly trajectory. This seemed especially cruel given that the south had not seen any significant storm activity since early December.

After the February storms were once again replaced by the dreaded ridge, Northern Utah saw dramatically improved water supply conditions. Not great, but improved. While Southern Utah remains waiting for its turn sometime soon

In 2011, the Utah Supreme Court issued its opinion in the *Jensen v. Jones* case, in which the Court held that the State Engineer could not consider alleged forfeiture in determining whether or not to grant a change application. The Court did not, however, determine whether the water right owned by Jensen had actually been forfeited.

A few months after the Supreme Court's decision, Central Utah Water Conservancy District ("CUWCD") initiated a separate lawsuit in district court against Jensen seeking to have Jensen's water right declared forfeited. In March 2014, the district court issued a ruling in which the court concluded that the Jensen water right was forfeited for nonuse.

The district court first addressed Jensen's argument that CUWCD should be estopped from bringing the forfeiture action because a lawsuit alleging forfeiture should have been brought before Jensen spent significant time and money pursuing the change application. Although the court acknowledged these costs, the court concluded that the legal standard of "manifest injustice" had not been met and that Jensen had not materially altered their course of conduct based on the CUWCD's alleged inaction. The court also noted that the doctrine of beneficial use was established to protect the public and Utah's limited water resources, and therefore it was in the public interest to allow CUWCD to pursue its forfeiture claim.

The court next addressed the primary issue of whether the Jensen water right had been forfeited. The court focused primarily on Jensen's inability to produce any documents, records, or evidence that she or her predecessors had beneficially used the water right for at least 25 years, as well as prior acknowledgments that no beneficial use had occurred. Although Jensen urged the court to balance the requirement of beneficial use of water against the public policy of protecting property rights, the court declined to do so, concluding that Utah Code section

73-1-4 did not require or allow any such balancing. The court also rejected Jensen's arguments that forfeiture should not apply due to alleged unavailability of water in the source and due to the pending change application.

In May 2014, the district court entered a final judgment in the case. Jensen has since appealed the district court's decision, although it is currently unknown whether the appeal will be heard by the Utah Supreme Court or the Utah Court of Appeals. If the district court's ruling is upheld, it will surely result in an end to the still-pending case regarding the State Engineer's denial of the change application.

It will be interesting to see what effect, if any, the court's ruling will have on future legislative considerations of legislation relating to the State Engineer's authority to review beneficial use and nonuse in the context of a change application.

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MESSAGE FROM THE DIRECTORS CORNER

By Carly Burton

UTAH WATER SUMMIT CONFERENCE

We are currently finalizing the agenda for the Utah Water Summit which will be held on October 28, 2014. Due to positive feedback from all who attended last year we will be holding the conference again at the Utah Valley Convention Center in Provo. This year's theme is "Your Water - Your Stewardship". The conference will focus on future water development from several points of view including agriculture, M&I users, environmental and other water use disciplines. We will also focus on legislative developments with an emphasis on canal safety legislation that has been passed in recent years. Water conservation and its importance to future water development will also be discussed. The water outlook and the federal WATERSMART program will also be on the program agenda. We will be posting the program on our website in a few weeks and we will also be mailing out brochures on this event. Our website is www.utahwaterusers.com. We look forward to seeing you there.

NWRA UPCOMING EVENTS

NWRA will be holding its summer meeting in Flagstaff, Arizona on July 28-30, 2014. We hope you have registered for this event, but if you have not, you can go to the website at nwra@nwra.org. The annual meeting will be held in San Diego at Hotel Del Coronado on November 11-13, 2014. In case you have never attended at "The Del" it is a remarkable venue for the annual conference and is the most popular of all NWRA event destinations. We look forward to seeing you there. Again, you can go their website for more information.

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