

October 1, 2014
Utah Water Users Association
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MESSAGE FROM THE PRESIDENT

By Ivan Ray

Last January / February, KSL Television interviewed a representative of the Utah Farm Bureau from northern Utah. We were in another deep "high pressure and temperature inversion" pattern in the state. The Chairman of the Farm Bureau at the time of the television interview made a request for "Everyone" to fast and pray for more moisture for the 2014 water season. I do not know his religious affiliation, nor did he indicate that his request was for any particular religious denomination, but it worked! He is definitely in good graces with the Deity in charge. The united effort by everyone including "Mother Nature" enabled most of Utah to reach near normal water availability levels and in some areas above normal precipitation. The reservoir storage values for the most part will be better for this year than they were for the year 2013. Thanks to the Utah Farm Bureau and joint efforts of everyone for helping bring more moisture and also for being proactive for water conservation and water quality protection in the State of Utah.

October 28, 2014 will be the Utah Water Users' Association and Utah Water Conservation Forum sponsored annual Utah Water Summit at 220 West Center Street in Provo. The Water Summit continues to grow every year because of the valuable information shared; topics that relate to current issues, prepared by outstanding presenters; and the interaction between all categories of water users. Our State Executive Director, Carly Burton, does not know what to do to stop the spread of the Utah water hungry virus which; when once

caught is very contagious and hard to eradicate. Come join us and catch the water virus spirit. The only vaccine that will work to control its spread is through the attendee participation strain. The price to attend by the way is the lowest in comparison to any other comparable conference in the United States.

It is the wish of the Utah Water Users' Association Board of Directors and the State Executive Director, to involve more people and learn ways through this involvement to better prepare for the year 2025, when we need to show better usage and conservation of quality water. The population of the state will double by the year 2060 according to most forecast indicators. Now that Utah has received recognition for being the "happiest state" in the United States' 50 states, because of economics, work ethic, physical activity and attitude for service; the population may more than double before the year 2060. It is the stewardship of the present generation to create ways to protect, develop and make available sufficient clean water supplies that will be needed for agriculture, municipal, industrial, environmental and recreational needs. Thank you for reading and I hope feeling a motivation to want to get more involved and do more for the beneficial uses of water now and in the future.

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WATER OUTLOOK

By Randy Julander

Been quite a summer! June was hot and dry with precipitation ranging between 1% and 68% of average – what we normally expect in Utah. July on the other hand had near normal precipitation in the south with

above average in the north. Then here comes August which was a monster month with precipitation ranging from 160% in the south to as much as 300% in the north. That is 2 to 8 inches of rain in August – and that is 3 in a row for exceptionally wet Augusts. Now comes September – and the whole state is running between 150% and 250% of normal precipitation! It is so good farmers are praying for the rain to stop so they can dry and bale some alfalfa. All this rain has been good for reservoir storage as water use has declined leaving more in storage. It has also boosted soil moisture to levels we have not seen in many areas of the state at this time of year. Snowpack accumulation is just around the corner, aspens and other vegetation are calling transpiration quits for the year leaving soil moisture in outstanding condition going into the winter season. Statewide reservoir storage looks like it will have about 55% capacity carryover going into next year, a little more than last year – less than what we like but all things considered, in decent shape. Looking forward – should current precipitation patterns hold and they never do (and just because I said that, they likely will) we just might have a decent snowpack year. Still, you are better off flipping a coin to determine how this winter might go. My prediction is the same every year: we will have snow, it will be white and cold – beyond that, your guess is as good as mine – so start looking at how woolly the caterpillars are, how much food the squirrels have stored or whatever – somebody out there will be right. I suspect it will be the feller with the shortest memory.

WHAT'S THE WINTER LOOKING LIKE?

National Weather Service

By Brian McInerney

My colleagues and I at the National Weather Service hear this question daily. Sometimes multiple times a day depending on the day. Typically, we don't have tools to provide a clear view of what's to come in most years. But this isn't a typical year.

Probability wise, we have just experienced our third below average year of low snowpacks and even lower runoff volumes. The probability of having a fourth consecutive year is quite low. Utah's water supply history has many below

average years, but not so many consecutively bad years. Most dry periods typically extend out one to two or even three years and then rebound with a normal to above normal snowpack and runoff. We experienced four consecutive below average years in 2000 - 2004, but it's somewhat of an outlier to have this much grief consecutively. As such, if you were a betting man, it might be a good idea to wager we'll have a normal to above runoff season during 2015.

One other method gazing into future water supply conditions looks south to the equator. During years where the Pacific equatorial ocean waters become much warmer than normal, or a strong El Nino, the desert southwest tends to become wetter and cooler. Is this one of those years? Sadly no. Looks like 2015 will experience a weak El Nino event with very little correlation and resultant forecast skill. No help here.

If somehow we came up with a methodology to accurately predict long term weather conditions, our country would save billions of dollars in lost revenue due to unforeseen hazardous weather conditions. Be it drought, floods, or an abundance of water in the spring, we would be much better off knowing what's in store 6 months out. Scientists are working on this very problem today, but have come up short. But one day we'll have the answer. But for now, we can look out only about a week with any definitive weather forecasts.

Maybe a new crystal ball is in order.

WATER AND THE LAW

CASE LAW UPDATE: *SOUTHAM V. SOUTH DESPAIN DITCH CO.*

By Jeffry R. Gittins

SMITH HARTVIGSEN, PLLC

The Utah Supreme Court recently issued its ruling in the case of *Southam v. South Despain Ditch Company*. This case could have significant impact on how water companies are allowed to regulate and limit share transfers.

This case originates with a share transfer between Jordan School District and Southam's predecessor-in-interest. South Despain's bylaws include restrictions on share transfers, including requirements that (1) South Despain's board of directors must approve all share transfers; (2) a person cannot acquire shares unless they can connect to South Despain's system; and (3) the shares must be sold for a fixed amount of \$1,100 per share. The school district had 23

shares that it no longer needed, and despite being reminded by South Despain of the share transfer restrictions, the school district held a sealed-bid auction for the 23 shares. Two water brokers won the auction with a bid of \$1,945 per share. When the purchasers went to South Despain after the sale, South Despain refused to issue the new certificates to them or to recognize them as shareholders in the company.

This lawsuit ensued. During the course of the litigation, Mr. Southam acquired the water brokers' interest in the shares. The district court ruled in favor of South Despain, and Mr. Southam appealed the decision to the Utah Supreme Court.

In reaching its decision, the Supreme Court relied primarily on a statute contained in the Utah Revised Nonprofit Corporation Act, which provides that "[u]nless otherwise provided by the bylaws, a member of a nonprofit corporation may not transfer (a) a membership; or (b) any right arising from a membership." Because this statute provides that shares in a nonprofit corporation are not generally transferrable unless the bylaws allow share transfers, the Court concluded that restrictions on transfers are not prohibited. Based on this conclusion, the Court summarily dismissed Mr. Southam's arguments that prohibitions on share transfers contradict state policies of beneficial use of water and violate the common law presumption against rules restricting the alienation of real property. Ultimately, the Supreme Court upheld the district court and held that South Despain's restrictions on share transfers are enforceable.

The Court's decision raises issues of concern. For example, the Court's decision seems to signal that water companies can place any restrictions on share transfers, regardless of whether they are legitimate and rational or arbitrary and capricious. Additionally, as pointed out by Mr. Southam, restrictions on share transfers can conflict with principles of free alienation of property and beneficial use of water. Finally, restrictions on share transfers could hamper efforts to put Utah's limited resource of water to its highest and best use. It will be interesting to see if this decision triggers any

legislative action during the next session of the Utah Legislature.

MESSAGE FROM THE DIRECTORS CORNER

By Carly Burton

UTAH WATER SUMMIT CONFERENCE

As our president, Ivan Ray commented in his article, the Utah Water Summit Conference is just around the corner, October 28, 2014 to be exact. The theme for this year is "Your Water-Your Future". We have a great program lined up this year including topics ranging from future growth and meeting future water demands, the water outlook by our famous dynamic duo of Randy Julander and Brian McInerney, securing Utah's economic future for water development, a legislative update and canal safety issues, water conservation and the Bureau's WaterSMART program. If you did not receive the Summit brochure in the mail you can use the form below. You can also get the detailed information on our website at www.utahwaterusers.com. The event will be held at the new Utah Valley Convention Center located across the street from the Marriott Hotel in Provo. We look forward to seeing you there.

REGISTRATION FORM

Name_____

Job Title_____

Organization_____

Address_____

Lunch Preference (Please indicate)

Salmon_____ Beef_____

Please send in the form with \$85 made payable to the Utah Water users Association. Mail to 5047 S. Galleria Drive, Murray, Utah 84123. Registrations received after October 15 will be charged a \$25 late fee. If you need a hotel room the Provo Marriott number is 801-377-4700.
