

October 10, 2013

Utah Water Users Association
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**MESSAGE FROM THE PRESIDENT
By Voneene Jorgensen**

Greetings to our members and friends in the Utah Water Users Association. The 20th Annual Utah Water Summit being held October 30th at the Utah Valley Convention Center in Provo, Utah is rapidly approaching. We are excited for you to come and join us there. The morning session will include presentations on the Governor's Water Plan Initiative "Utah's Water Future". Governor Gary Herbert will be our honored guest and speaker. Summaries of the public comments made during the public meetings held in July and August and the written comments submitted online will be given in respect to competition for water, growth and infrastructure, funding, agriculture, water law, and recreation and the environment. The public meetings were well attended and the comments shared very interesting. We appreciate everyone who participated. Other special presentations will address canal safety, water and wildfires, international urban water efficiency and the Summit Creek water management plan. We invite you to come and enjoy the day.

Utah is a great place to live, raise our families, recreate and do business. As we plan for Utah's water future, we must be good stewards of the land, natural resources and wildlife. Utah's water future is our challenge, our responsibility, our life!

**WATER & THE LAW
DELTA CANAL V. VINCENT
By Jeffrey R. Gittins
Smith Hartvigsen pllc**

The Utah Supreme Court recently issued its opinion in Delta Canal Company. v. Frank Vincent Family Ranch LC. In this case, Delta Canal Company, Melville Irrigation Company, Abraham Irrigation Company, Deseret Irrigation Company, and Central Utah Water Co. ("DMADC") brought a lawsuit seeking forfeiture of a portion of a water right owned by Frank Vincent Family Ranch LC ("Vincent"). DMADC alleged that Vincent and/or Vincent's predecessor had forfeited about 20% of the water right due to nonuse and/or abandonment.

The district court ruled in favor of Vincent, holding that DMADC was precluded from claiming partial abandonment or partial forfeiture. The district court's ruling was based on its determination that because Vincent had not received his full flow of water each year, Vincent was protected by a statutory exception to forfeiture. Part of the district court's ruling was that Utah law did not recognize partial forfeiture of a water right prior to 2002. DMADC appealed the decision to the Utah Supreme Court.

The Utah Supreme Court began its analysis by examining whether partial forfeiture of a water right existed prior to 2002, which was the year when the Utah legislature amended Utah Code 73-1-4 to explicitly provide for partial forfeiture. The Court noted that the

doctrine of partial forfeiture had been enunciated in several prior Utah Supreme Court opinions, starting in 1897. The Court next concluded that partial forfeiture is inherent in Utah's beneficial use regime, and that the only way to reconcile the forfeiture statute (73-1-4) with the beneficial use statute (73-1-3) is to conclude that partial forfeiture has always existed in Utah law. The Court also noted that many other courts in the western United States have also concluded that partial forfeiture is inherent in the concept of beneficial use.

The Utah Supreme Court next tackled the issue of forfeiture versus abandonment of a water right. The Court reiterated its statements from prior cases that abandonment and forfeiture are distinct legal concepts. Forfeiture is governed by Utah Code 73-1-4. Abandonment, on the other hand, is a common law principle that requires intent by the water right owner to give up the water right (something not required by the forfeiture statute) and does not have a time requirement (like the seven-year period of nonuse required by the forfeiture statute).

Finally, the Utah Supreme Court addressed some additional issues related to forfeiture. The Court instructed that a forfeiture analysis should focus on volume (i.e., acre-feet) of water, and not on acres irrigated or on flow (i.e., cubic feet per second or cfs) limitations of a water right. Perhaps the most interesting paragraph of the opinion is paragraph 41, which states:

"Finally, the number of acres irrigated is not determinative in a forfeiture analysis, though it may be relevant insofar as it indicates whether water usage is beneficial. Farmers may reduce the total acres irrigated to grow a more water-intensive crop, or vice-versa, so long as they beneficially use their full entitlement. The number of acres irrigated need not match the number listed on a proposed determination or a final decree from a general adjudication. The central question in any forfeiture proceeding is whether the appropriator used all of its

water allowance in a reasonable manner and for a beneficial purpose."

This paragraph is interesting because it appears to conflict with the current legal interpretations and policies of the Utah Division of Water Rights.

DMADC has filed a Petition for Rehearing with the Utah Supreme Court, in which DMADC has asked the Court to reconsider portions of the decision. Accordingly, it is still possible that the Court's opinion may be amended. To read the full opinion, use the site below.

<http://www.utcourts.gov/opinions/supopin/Delta1354081613.pdf>

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

**Government Shutdown Affects Utah
Water Users**

You may have noticed that an article by Randy Julander on Utah's water outlook is missing from this newsletter. That is because the government shutdown has affected many federal government agencies including the Natural Resources Conservation Service where Randy is employed. Let's hope that the madness in Congress ends soon and our valuable government employees are able to return to work.

Utah Water Summit Conference

Our President, Voneene Jorgensen described the upcoming Utah Water Summit Conference on October 30 which will be held at the Utah Valley Convention Center located just across the street from the Provo Marriott Hotel at 220 West Center Street in Provo. This should be an exciting conference with Governor Herbert speaking on future water issues for Utah. We have included the registration form on the next page if you are interested in attending. Be sure and fill in your choice for lunch. We look forward to seeing you there.

REGISTRATION FORM
20th ANNUAL
UTAH WATER SUMMIT
October 30, 2013

Name: _____

Job Title: _____

Organization: _____

Address: _____

Telephone: _____

Please return the \$85 registration fee for each participant. The fee will include your choice of Beef or Salmon, continental breakfast, two breaks and free parking. Please indicate your preference for lunch in the space below.

Beef Flank Steak _____

Atlantic Salmon _____

Return this registration form by Oct. 20th to:

Utah Water Users Association
5047 S. Galleria Drive (360 W.) Ste 210
Murray, Utah 84123

If you have any questions, call Carly Burton at 801-268-3065 or Cell (801) 560-2533. Please make checks payable to Utah Water Users Association. Provo Marriott Hotel reservation number is (801)377-4700.
