

January 28,2010

Utah Water Users Association  
Phone 268-3065 Fax 261-4069  
Cell (801) 560-2533  
Editor: Carly B. Burton

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**MESSAGE FROM THE PRESIDENT**  
**By Tage Flint**

I am told that this may be my last message written as the Association President. That causes me to reflect a bit on the last two years. Our Association continues to grow and receive incredible support from its members. Our Annual Conference and Water Summit continue to be well attended and serve as a catalyst for relevant discussion concerning our industry. Our scholarship program has been reinvigorated and we have been able to assist some very qualified students. We have seen a good amount of legislation regarding water in the State of Utah become law. And your Board of Directors has stayed involved and has given excellent direction for our organization. There truly has been a global view taken by our Board instead of any personal agenda. My thanks to Carly and Barbara Burton for their tireless energy in putting our events together and representing us at various meetings and events. Utah State University and Bob Hill deserve thanks for their continued dedication to our conference and to academic contributions to our industry.

Looking forward, there are always issues that will justify the work and input of the Utah Water Users Association. Not the least of which are the bills moving through our Legislature as I write this. Many issues such as canal safety, ground water recharge, adjudication, rain collection, and conversion of use are already being discussed. We will stay diligent in bringing the view of Utah's water users to our legislators. I encourage you to stay involved with your local law makers so that they understand our issues.

Please accept my thanks for all your efforts in bringing our most precious natural resource to its users. I am very proud of our members who as a collective group do an excellent job every day of the year. I look forward to seeing all of you March 15 – 17, 2010 in St George where we will once again meet and compare notes and share experiences.

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**WATER OUTLOOK**  
**By Randy Julander**

It's now late in January. As I write this update, it is snowing outside with more predicted in the days to come. Good news and about time. Yet, the accumulation of snowpack over the past several days in northern Utah has been... how to say this with the best possible spin... barely ahead of average. On January 18, the snowpacks on the Bear were 50%, the Weber – 53%, and the Provo – 53%, and as of today, January 21 – they are: Bear – 52%, Weber – 57% and Provo – 58% of average, an increase of 2 to 5%. The right direction and we are grateful for every drop – but sure envious of southern Utah where over the same time frame the Sevier River went from 86% to 101% and the Virgin from 103% to 140% of average. Now that's a storm we would like to see statewide and repeated frequently over the next few months. The probability of northern Utah digging out of a hole this deep – I'm talking about just getting back to 'average' snowpacks, nothing spectacular, is very small – 10 to 15%. There is also the potential to get worse and thankfully that probability is very small as well. But, as they say, weather happens. The good news is that there is a very high probability (80%) that conditions will improve somewhat – that we won't end up at 50% - more likely we will end up somewhere near the 70% to 80% range in the north. Things are much more optimistic in the south and getting better each day this week. It is entirely possible for the southern end of the state to be in the 120% to 160% of average snowpack in the next couple of days. Now – how can you get worse than 50% snowpacks? – Dry soils. Soil moisture across the state is as dry as we have seen it in the past 5 years. Dry soils mean less runoff. A 50% snowpack may produce much less than 50% runoff with a parched watershed. How about some good news? Reservoir storage is the ace in the hole for northern Utah: Bear – 34%, Weber – 71%, Provo – 88%, Uintah Basin – 85%, SE Utah – 51%, Sevier – 33% and SW Utah – 55% of capacity. With the exception of the Sevier and SW Utah, these numbers are

6% to 22% higher than last year. That is a bit of comfort when looking at far less than stellar runoff conditions. Given the current weather pattern and existing snowpacks in southern Utah, current lower reservoir storage in the region may not be an issue. As always, the future is yet to be written and anything is still possible and I guarantee something will.

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## **WATER AND THE LAW**

### **Utah Supreme Court Allows Late Protestants to Participate in Appeal of State Engineer Decisions By Bryan C. Bryner, Esq.**

The Utah Supreme Court recently ruled in the case of Taylor-West Weber Water Improvement District v. Olds (Case No. 20080504) that a late protestant on a water right application could still participate in a judicial appeal of the State Engineer's decision on the application under certain circumstances. Only an applicant or timely protestant may appeal a State Engineer's decision. As a result, this case opens the door for persons potentially affected by a water right application to be heard in court if another party appeals the State Engineer's decision.

In this case, Roy City filed a late protest on the District's application to appropriate water from several new wells. The State Engineer considered the timely protests as well as Roy City's late protest, but ultimately approved the District's Application albeit only for a ten-year period. The District appealed the State Engineer's ten-year limitation to the trial court, asserting that the State Engineer's ten-year limitation was incorrect. Roy City, as a late protestant, requested to participate in the appeal at the trial court, but its request was denied by the court.

Roy City appealed the denial to the Utah Supreme Court, which held that the Utah Administrative Procedures Act and the Utah Rules of Civil Procedure City allow late protestants such as Roy City to participate in the appeal of the State Engineer's decision as long as a proper party initiates the appeal. In this case, the District was a proper party entitled to appeal the State Engineer's decision.

The ruling of this case should encourage persons potentially affected by a water right application to file a protest, even if it is late. While late protestants still may not appeal an adverse decision of the State Engineer, they may nevertheless participate in the appeal if another protestant or the applicant properly initiates the appeal. Thus, just as the State Engineer often considers late protests, late protestants may also have the opportunity to have their concerns heard by

the trial court during an appeal.

However, the Supreme Court noted that the right of a late protestant to participate in an appeal of a State Engineer decision is still limited. First, late protestants must meet the requirements of the Rules of Civil Procedure that would require the late protestant to be affected by a decision in the appeal. Second, the court may limit the issues that the late protestant may raise in the appeal. Third, the late protestant may only raise issues that he raised in the proceedings before the State Engineer.

In spite of these limitations, the Supreme Court's ruling allows late protestants on a water right application to have some influence in an appeal brought by another party. As a result, one would be wise to file a protest, even if it is late. But because the late protestant's influence on the appeal proceedings may be limited, all persons who may be affected by a water right application should endeavor to file their protest on time.

If you have any questions, the author may be contacted at [bbryner@smithlawonline.com](mailto:bbryner@smithlawonline.com) or 801-413-1600.

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## **MESSAGE FROM THE DIRECTORS CORNER**

**By: Carly Burton**

## **SAD NEWS FOR THE WATER COMMUNITY**

It is with regret that I report to you in the water community the untimely death of Earl Staker. Earl died on January 8, 2010 after a courageous battle with cancer. I have a special place in my heart for Earl because he and I came from Carbon County. In fact, he and I were both born in Spring Canyon, Utah. Earl graduated from Utah State University with a degree in civil engineering. He retired from the Utah Division of Water rights after 33 years of dedicated service. He was Deputy State Engineer at the time of his retirement. He was the first Engineer-Manager of the Price River Water Improvement District in Price. He also worked for the Intermountain Power Project in Delta as a water rights specialist. He was also Executive Director of the Utah Water Users Association for many years and I was privileged to follow in his footsteps after he retired from our Association in 1998. He was serving as a trustee for the Weber Basin Water Conservancy District at the time of his death. Earl was a valuable and respected member of the water community and will be dearly missed by his friends and colleagues.

## 2010 LEGISLATIVE SESSION UPDATE

As of January 28, the session is only 4 days old and already there are controversies emerging for water related bills. Currently there are at least 17 water related bills that have been introduced and at least 5 more that are being requested for introduction. The water related bills introduced so far are as follows:

<b>Bill #</b>	<b>Bill Title</b>
<b>HB33</b>	Groundwater Recharge & Recovery Act Amendments
<b>HB34</b>	Water Storage Projects
<b>HB54</b>	Property Tax Exemption for Water Facilities
<b>HB60</b>	Water Conveyance Facilities Safety Act
<b>HB69</b>	State Engineers Plugging of Wells Repealer
<b>HB80</b>	Public Access to Private Stream Beds
<b>HB84</b>	Water Banking
<b>HB98</b>	State Engineer Bonding Requirements
<b>HB226</b>	Well Driller's License - Pump Installation
<b>HB229</b>	Water Right General Adjudication Amendments
<b>HB231</b>	Water Rights Priorities in Times of Shortage
<b>HJR 1</b>	Joint Resolution Amending Provision On Municipal Water Rights
<b>HJR 2</b>	Joint Resolution on Property Tax Exemption for Water Facilities
<b>SB20</b>	Local District Amendments
<b>SB69</b>	Water Companies and Water Right Change Requests

Other Bill requests that have not yet been introduced include the following:

- \* Canal and Irrigation Safety and Inspections
- \* Canal Safety
- \* Change Application for Water Rights
- \* Water Right Change Application Amendments
- \* Water Right Amendments

The most controversial bill so far is HB 60 (Water Conveyance Facilities Safety Act) which has been introduced by Representative Hunsaker. This bill was drafted following the tragedy in Logan when 3 family members died as a result of a mudslide above their home.

Several of us in the water community have been working on legislation that seeks a way to assist canal companies develop management plans and maintenance programs to improve the canal and related facilities they manage. The bill proposes to make the management plan a voluntary effort for canal companies and the completed plan would be submitted to the Utah Department of Water Resources for inventory only. The Division would not evaluate or critique the contents of the plans but require a plan be submitted as a condition for qualifying for water funding from the revolving loan program administered by the Board of Water Resources. We were also trying to craft language that would allow for the information to be exempt from public review. On January 26 the bill was introduced into the House Natural Resources committee but after lengthy debate, the committee voted to hold the bill for further study. So I guess its back to the drawing board for now. If you have any issues or concerns with current or proposed bills before the legislature you can get on the Utah Legislative website at [www.le.utah.gov](http://www.le.utah.gov).

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