



UTAH WATER USERS ASSOCIATION

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UTAH WATER USERS ASSOCIATION

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**MESSAGE FROM THE PRESIDENT
By Jay Mark Humphrey**

What a difference a year makes. Last year, everyone was wondering on how to survive another below average water year. This year is so different from last year and it's looks like it will be a great water year. There may be some local flooding but it is just nice to have a lot of water to use and see the reservoirs fill up. I thought the Utah Water Users Convention was a great success and I would like to thank Carly and Barbara and the convention committee for planning this event. They did a great job. I would also like to thank everyone for attending the convention and I hope everyone that attended it, received something out of it that would improve the way that they manage or deliver their water. Enjoy the spring runoff and the summer growing season.

**WATER OUTLOOK
By Randy Julander**

March was exactly what we wanted and what we didn't want. What's good for the goose may not be good for the gander. In northern Utah, exceptionally warm and dry conditions during the first part of March melted the low elevation snowpack and some of the mid elevation as well and this insures a more sequential melt pattern beneficial to reducing flood potential. Given exceptionally high snowpacks, the worst scenario would be continued wet and cold which postpones melt processes and then tends to have concurrent melting from all elevations which produces high peak flows. So, March was good in that it reduced the peaking potential of rivers and streams in northern Utah by

shifting some streamflow earlier in the season. For example, March inflow to Bear Lake was about 120,000 acre feet in contrast to total April-July inflow to Bear Lake in the drought years of 2001 - 18,000 af, 2002 - 10,000 af, 2003 - 13,000 af and 2004 - 22,000 af. The combined total of these 4 years is about half of what March has put into the lake and there is a lot more runoff where that came from! That is not to say that there will be no high flows, on the contrary we can still expect those as well as the potential for out of bank conditions - the potential has been reduced and that is a good thing. Climatic conditions in April and May will still impact both the peak flows and the overall flow volumes this season and as such, many outcomes are yet possible. Southern Utah on the other hand took a beating. This area started the season with good snowpacks but not exceptional ones. The above average temperatures essentially shifted the entire runoff pattern earlier in the season by about a month or so. Snowpacks that were once in the 120% to 160% of normal are now only near average. The good news is that March streamflow was exceptionally high and much of that was stored in various reservoirs. The bad news is that there is 'only' an average snowpack to produce flows for the rest of the season. Future storms are not likely to substantially replenish snowpacks in the south as all low and most mid elevation snows have melted entirely leaving large geographic areas of very warm soils that would most likely melt any additional accumulations. So for March in southern Utah, water ran off, will still run off but is overall earlier than normal and will likely end earlier as well leaving a bit longer summer.

The operational context is to be aware of this early shift and catch the water now as it may not be there later. Cool and wet would largely benefit southern Utah this spring. Snowpacks are still doing very well in northern Utah ranging between 110% and 168% of normal. In southern Utah, snowpacks range between 82% and 132% of normal. March precipitation was near average at 98%, which brings the seasonal accumulation (Oct-Mar) to 139% of average. Soil moisture is at 78% compared to 64% last year. Reservoir storage is at 62% of capacity, compared to 57% last year. Streamflow forecasts range between 49% and 277% of average.

Great Winter So Far!

By: Brian McInerney

As we've made it to the time of the year where mountain snows begin to melt and runoff may begin at any time, let's reflect.

The 2017 water year has been one of extremes. Precipitation amounts during the meteorological winter (Dec. - Jan. - Feb.) were two to three times what we typically receive across a large section of Utah. Temperature levels skyrocketed up to 23 degrees above average on several occasions. Daily streamflow records were set across Northern Utah. And we had rain, lot's of rainfall, falling just below 9000'. The combination of all these factors contributed to low elevation flooding across large swatches of Box Elder, Weber, and Cache Counties.

So the question remains. Are we going to experience average weather and climate conditions this spring, or will we ride the wild roller coaster that's become the norm, wondering what's behind each turn?

Don't really know at this point.

What do we know?

The Colorado River Forecast Center, part of the National Weather Service has forecasted above to much above average spring snowmelt volume river flows. Soil moisture is above average and even saturated in the Northern watersheds. Additionally, peak flow forecasts call for many Northern rivers to exceed flood stage.

Depending on the weather, this scenario may morph into a mundane, large volume runoff with minimal flood damage, or we could experience one of the biggest spring snowmelt runoff flood events experienced since the early 1980's. The closer we get to

late May, the opaque image that is our spring runoff will become more clear.

Although for now, I'm not betting on average.

WATER & THE LAW

Recent Changes to NonProfit Code Will Affect Mutual Water Companies

By

J. Craig Smith

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Reaching all the way back 117 years, to the 1900 decision in *Center Creek Water & Irr. Co. v Lindsay*, the Utah Supreme Court consistently held that shareholders in a nonprofit or mutual water company had a real property interest in the water rights held by the company. However in 2014 the Supreme Court, in *Southam v South Despain Ditch Co.*, held that both any property rights of shareholders and the ability of shareholders to transfer shares were determined by the Utah Revised Nonprofit Corporation Act, which did not recognize a real property right of members including shareholders and provided that shares could only be transferred if the company chose to allow for a transfer. Such restrictions work well for many types of nonprofit corporations, such as a symphony guild, which do not issue shares and membership has no monetary value, but the opposite is true for shareholders of mutual water companies, which are also created under and governed by the Act.

Senate Bill 63, passed during the 2017 legislative session, modifies the Revised Nonprofit Corporation Act to change the default rule on the transferability of shares in a water company from non-transferrable to transferrable. Any restriction on transfers must be in either the Articles or Bylaws of a nonprofit water company. The Bill further specifies that restrictions on the transfer of shares in a water company must be reasonable, adopted in good faith, and for a legitimate purpose, in the best interests of the water company and its shareholders, and not discriminate against any individual shareholder or class of shareholders. The Bill also clarifies that a shareholder in a water company has "an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares in the water company, which is an interest in real property" and has a right to receive his/her proportionate share of the company's water. The Bill also expressly allows a water company to purchase delinquent shares of stock and clarifies the definition for a "water company" to the definitions in the Act.

When these changes to the Act, become effective in a few weeks, unless otherwise provided in the Articles or Bylaws, water company shareholders will, once again, have a real property interest in the water rights of the company. This will allow tax deferred exchanges of water shares, along with land, under Section 1031 of the Internal Revenue Code. Also, restrictions on the transfer of shares imposed through the Articles of Bylaws must be reasonable and nondiscriminatory. Finally, Senator Margaret Dayton, the Bill's sponsor, and Representative Mike Noel, house sponsor, should both be thanked for their work in passing this much needed legislation.

If you have questions or comments the author can be reached at 801-413-1600 or jcsmith@shutah.law.

MESSAGE FROM THE DIRECTORS CORNER

By Carly Burton

UTAH WATER USERS WORKSHOP

I would just like to echo Jay Mark's comments on our recently concluded Workshop in St. George. It looks like we will be coming in over 1000 in attendance which continues to amaze me. It just goes to show that the Utah water community is engaged in the importance of water in Utah. I would like to thank everyone who took the time to fill out the evaluation form that was included in the packet. From the initial comments it looks like 94% of you favored the lunch buffet over the evening banquet so it looks like the buffet will be the norm from now on. I would also like to thank the speakers, sponsors and vendors who helped make the Workshop a great success. I am especially grateful for the work and time that the workshop committee put in to make the topics and speakers top notch. I mentioned in one of the general sessions that we are going to start the transition to a paperless event but I know that will be a work in progress. So next year we will have all of the documents in the folders loaded on USU's and our Association's website. Next year on the registration form we will have a box you can check if you would prefer to access the documents electronically so watch for that change. By the way, next year the

Workshop has been scheduled for March 19-21, 2018. We look forward to seeing you there.

BEAR LAKE UPDATE

As you can conclude from Randy's article, streamflows are expected to be gangbusters this spring in northern Utah, especially in the Bear River Basin. Flows below Cutler Dam have already risen to near record flows, at around 10,000 cfs. Keep in mind the highest flow in 100 years occurred in February, 1986 at a flow of 12,500 cfs so this year has been close. Currently the flow is over 6,000 cfs which is significant because anything above that amount results in conditions above bank full for low lying lands adjacent to the river. It is interesting to note that without PacifiCorp's regulation of Upper Bear River flows into Bear lake, the flow below Cutler would be nearly 10,000 cfs, well above flood stage. Even more significant is the rise in Bear Lake levels so far this spring. The lake has risen nearly 5 feet already and currently is at elevation 5915.52 feet as of April 7. Keep in mind that the average annual lake rise is about 3 feet so any comparison with average will be left in the dust, or should I say mud. The lake is full at elevation 5923.65 feet but it is doubtful that PacifiCorp will allow the lake to fill to the historic maximum. Regardless, the lake will approach full this year and it is likely that PacifiCorp will be making flood control releases beginning sometime in May or early June. Looks like the end of all the sandy beaches for this year.

Bottom line, be ready for a crazy runoff season for all the reservoir operators.
