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Utah Water Users Association  
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**MESSAGE FROM THE PRESIDENT**

**By Blair Hamilton**

We start a new year with many challenges and different problems to be solved. We rely on our collective wisdom to find solutions. Our members are solid in their resolve to overcome what may be in their paths for success. Our water storage in many areas is bright. As always, other factors seem to be of concern. Our upcoming water workshop in March at St George should be a very good source of giving us information to face many of our problems. Our special thanks go to Carly, Barbara and the committee for their work in planning the workshop. Let us all work in harmony to aid one another in the new year. Thank you for your support in our past endeavors.

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**WATER OUTLOOK**

**By Randy Julander**

It's the middle of January and snowpacks across the state are terrible. As good as they were last year – they are that bad this year. That's the bad news and unless you are just coming out of a coma – news you already know. The good news? – its not quite a 1977 yet! And we have storms coming for the latter half of January – at least we will be getting something (even a blind squirrel finds an acorn once in awhile). Statistically when snowpacks start off very low – less than 75% of normal, they have a high probability of improvement through the remaining winter months – about 80% of the time they increase. (Translation: Snowpack's stink but they will likely not stink as much by April 1) The average increase is 20 to 30% which would put our snowpacks at 50% to 80% of normal. The bad news is they have a small probability (10%) of getting back to average or higher. But, on the other hand, these are just meaningless statistics based on historical observations and we live in Utah where anything is possible. The

bad news is that included in that 'anything is possible'... is the possibility that things could get worse. Other factors that play in this situation are: current streamflow, soil moisture and reservoir storage. Streamflow is still above average in many locations from the phenomenal runoff of last spring and summer – store it while you have it. Soil moisture is near average condition – not great but at least not parched dry. Reservoir storage – that is the ace in the hole for this year, statewide at 84% of capacity means that many could fill with winter flow alone, a nice place to be considering the potential of low snowmelt flows this spring. Water managers should carefully assess conditions as winter progresses to spring with that potential in mind. This might just be a good time to employ the 'prevent defense' option.

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**WATER & THE LAW**

**ARE YOU READY FOR THE CANAL SAFETY  
PLAN DEADLINE?**

**By**

**David B. Hartvigsen - Smith Hartvigsen pllc**

In response to the tragic loss of life when a landslide breached the Logan & Northern Canal in Logan on July 11, 2009, the Utah State Legislature passed two canal safety bills – 2010 House Bill 298, *Land Use Authority Notification of Canal Development*, and 2010 House Bill 60, *Water Conveyance Facilities Safety Act* (Act). The Utah Association of Conservation Districts (UACD) has helped the Logan & Northern Irrigation Company (LNIC) and the Logan, Hyde Park and Smithfield Canal Company (which is allowing LNIC to use part of its canal to get water around the breach) complete a joint Safety Plan on their canal systems. Though a confidential and protected document under the Act, it follows the template plan that is now available to all

irrigation companies through UACD and the Utah Division of Water Resources (DWRe).

The purpose of House Bill 298 was to ensure that residential construction projects within close proximity to a canal do not proceed until the canal owner has been given an opportunity to review the project. Thus the canal owner can protect the integrity of the canal system and assist homeowners and developers to safeguard adjacent water structures. Canal owners had until July 1, 2010 to provide a general description of their canal, including contact information, to each county or municipality in which the canal operates. **If you haven't provided this information yet, the sooner the better**, because a homeowner or developer could argue that damages or losses could have been avoided if this information had been timely provided.

The purpose of House Bill 60 was to encourage canal owners to identify the risks associated with their canal systems and to develop solutions to reduce or eliminate those risks. This information is to be documented in a Water Conveyance Facility Safety Management Plan ("Safety Plan") by **no later than May 1, 2013**. As a means of promoting compliance with the Act, DWRe may only provide financial assistance to canal companies that have met this deadline, with some limited exceptions. If your canal company has not yet started on the inspections needed for the Safety Plan, **you should be including funding in this year's budget and assessments to get that work done because this summer is the last summer before the deadline to do the inspections and field work**. It is very difficult to assess site conditions and certain of the risk factors when the canal is under a blanket of snow.

In January 2011, UACD partnered with various state, federal, and private organizations, including the Strawberry-Highline Canal Company, DWRe, and the U.S. Bureau of Reclamation, to produce a Safety Plan template. Canal companies can use this template as they develop their own Safety Plan. The template, as well as the full text of House Bills 60 and 298, are available online at: <http://www.water.utah.gov/WaterConveyance/default.html>.

The main canal risk factors that must be addressed in the Safety Plan are slope instability and storm water. Subsection 4 of House Bill 60

places the responsibility on the municipalities to identify storm water inlets into canals and estimate the maximum flow that could occur at each inlet. As canal companies have sought to obtain this information from local governments, it has become apparent that many cities do not have accurate data nor up-to-date maps of their storm water drainage systems. City governments and canal companies have begun to work more closely together for comprehensive storm water management.

A water company may be exempt from the requirement of adopting a Safety Plan depending on the type of water conveyance facility owned by the company. Natural channels and pipelines are not considered water conveyance facilities according to House Bill 60. In addition, since the bill was meant to address the risks to population and infrastructure, canals that don't have any potential risk locations may also be exempt. A potential risk location is defined as a segment of a water conveyance facility that, if it were to fail, would create a high probability of causing loss of human life or extensive damage to infrastructure. To determine if their canals have potential risk locations, canal companies must consider the following parameters: location, elevation, soil conditions, structural instability, water volume or pressure, or other conditions. Each parameter must be evaluated in relation to existing and future urban development.

This article was a joint effort by Gordon Younker (435-753-6029 x31) and Kerry Van Dyke (435-637-0041 x103) of UACD, Eric Millis (801-538-7230) and others at DWRe, and David Hartvigsen of Smith Hartvigsen, PLLC (801-413-1600). If you have questions, please feel free to contact any of these authors. A copy of the legislative preview article may be found at

[www.SmithHartvigsen.com/resources/articles.aspx](http://www.SmithHartvigsen.com/resources/articles.aspx) in the Legislation Issues section under Water Law.

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## **CONCERN OVER LEGISLATIVE CHANGES - OPINION TO UTAH WATER USERS NEWSLETTER**

by  
**Jared G. Parkinson**

**Concerning: Utah Code §73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.**

Recently the Utah Executive Water Task Force agreed to support legislation to amend Utah Code §73-3-3. As an attorney representing the interests of private water right owners- I am concerned about the impact on Utah water rights.

First, the amendments give the State Engineer authority to consider forfeiture in change applications. In *Jensen v. Jones* the Utah Supreme Court held that the State Engineer, as an executive officer does not have the judicial authority to adjudicate water rights during change applications. The amendment reverses this decision, granting judicial powers to an executive branch official to rule upon the mobility of water rights, the most valuable private property in Utah. The potential consequences are enormous; increased cost and delay in change applications, price increase in water rights, irrigation rights held by municipalities may be restricted, and a major shift from private control over water rights to control by government entities because senior water rights get restricted under a change to the benefit of junior water rights held by government entities.

Second, the amendments redefine a "person" who has authority to file change applications, contrary to the holding in *Salt Lake City v. Big Ditch Irrigation Company*, wherein "one with an entitlement to use the water may file a change application." Those who use water under an entitlement (like shareholders in irrigation companies, exchange rights and contract rights) may no longer have authority to seek administrative changes.

With the bulk of water rights in Utah held by private individuals, I am concerned that the persons directly impacted are unaware of the potential impacts. The Task Force consists primarily of representatives of large public water suppliers, not private water owners. As such, it is no surprise that public water suppliers are expressly exempt from the changes by holding water rights for future use. These amendments cut the legs off water rights that have not recently been placed to full beneficial use – stripping the ability to move this water to the highest and best use. The impact will hit developers who seek water on

the market to meet municipal demands, financial institutions who hold water after foreclosure, municipalities who need water for future use, shareholders who do not use all their water, individuals or trusts who have reduced their operations and hope to sell excess water rights, and attorneys who represent private water right owners. In a conservative State that favors private property rights, it is surprising that this legislation is even considered.

Please speak with your local Representative or call the Governor about this proposal. If you wish to support rejection of these amendments, please call or write. If you have questions call Jared Parkinson at (801) 808-3377, or e-mail him at [waterlawpc@gmail.com](mailto:waterlawpc@gmail.com).

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**MESSAGE FROM THE  
DIRECTORS CORNER**

**By Carly Burton  
UPCOMING CONFERENCES**

**UINTAH BASIN WATER SUMMIT**

This one day conference will be held on February 8, 2012 at the Crossroads Senior Center in Roosevelt, Utah. For more information contact the Duchesne County Chamber of Commerce at (435)722-4598 or e-mail Irene Hansen at [dcac3@ubtanet.com](mailto:dcac3@ubtanet.com).

**RURAL WATER USERS**

This conference will be held on February 27 thru March 2, 2012 at the Dixie Conference Center in St. George. For more information call (801) 756-5123 or check their website at [www.rwau.net](http://www.rwau.net).

**CONTINUING LEGAL SEMINAR**

This conference will be held on March 12, 2012 at the Lexington Motel (formerly the Holiday Inn) in St. George. For more information call Jack or Don Barnett at (801) 292-4662.

**UTAH WATER USERS WORKSHOP**

If you have not yet received the brochure in the mail, the Utah Water Users Workshop will be held on March 12-14, 2012 at the Dixie Conference Center in St. George. The information on the conference can be found at [www.utahwaterusers.com](http://www.utahwaterusers.com) or [www.utahwaterusers.org](http://www.utahwaterusers.org). You can register on-line with the USU Conference center at <http://conference.usu.edu/uwuw> or mail the registration form to: Conference Registration Services, Utah State University 5005 Old Main Hill, Logan Utah 84322-5005 or call Maddison Nelson at (435) 797-0423.