Introduction to Utah Water Law

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Discussing Water Rights: A Utah Tradition
Water rights vs. Water shares

Water right: right granted by the State to use a specific amount of water from a specific source for a beneficial use at a specific place.

Water share: share of stock in a mutual water company that entitles the holder to a portion of the company’s water right(s).

<table>
<thead>
<tr>
<th>How conveyed</th>
<th>Water Right</th>
<th>Water Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appurtenant (generally)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Deed</td>
<td></td>
<td>Endorsement of certificate</td>
</tr>
</tbody>
</table>
Water rights vs. Water shares

**Water Right:**
Certificate of Beneficial Use issued by Division of Water Rights

**Water Share:**
Share Certificate issued by irrigation company
Measuring Water

- Flow
- Volume
Flow

- Rate of water discharged from a source, given in volume with respect to time

- Cubic feet per second ("cfs")

- $1 \text{ cfs} = 448.83$ gallons per minute
Volume

• Measured in acre-feet

• Acre-foot: amount of water necessary to cover one acre of land with one foot of water

• 1 acre-foot = 325,851 gallons

• 1 cfs = 723.97 acre-feet per year = 235,906,348.5 gallons per year
Prior Appropriation Doctrine

• Underlying principle of western water law
• “First in time, first in right”
• The first person to take a quantity of water and put it to **beneficial use** has a higher **priority** than a subsequent user.
• Senior appropriator / senior right
Beneficial Use

• Utah Code section 73-1-3: “Beneficial use shall be the basis, the measure, and the limit of all rights to the use of water in this state."

• Beneficial uses are generally considered to be those uses that promote economic activities
Common Beneficial Uses

- Domestic
- Irrigation
- Stockwatering
- Municipal
- Industrial
- Power generation
- Instream flow
Priority

• Concept that the person first using water has a better right to it than those commencing use later
• Protects beneficial users in order of seniority
• Senior appropriator receives full allocation of water before junior appropriator receives any
• Priority is generally given as a year ("an 1860 right")
Duty of Water

• Quantity of water, determined by the State Engineer, required to satisfy the water requirements for a given use and area

• Concept: only so much water can be beneficially used for an authorized purpose

• Based on irrigation requirements of alfalfa
What is a Water Right?

• Utah Code section 73-1-1: “All waters in this state, whether above or under the ground are hereby declared to be the property of the public.”

• A water right is a right granted by the State to use a specified amount of water from a specified source for a beneficial use in a specified location
Components of a Water Right

- Priority
- Flow / volume
- Source
- Point of diversion
- Type of use
- Period of use
- Place of use
STATE OF UTAH – DIVISION OF WATER RIGHTS – DATA PRINT OUT for 25-3247(A27274)

PRIORITY: 08/31/1961

SOURCE: Underground Water Well

POINT OF DIVERSION -- UNDERGROUND:
(1) N 2100 ft W 135 ft from SE cor, Sec 32, T 11N, R 1E, SLM
DIAIMETER OF WELL: ins. DEPTH: to ft. YEAR DRILLED: WELL LOG? No WELL ID#:

USES OF WATER RIGHT****** EU -- Equivalent Livestock Unit (cow, horse, etc.) ****** EDU -- Equivalent Domestic Unit or 1 Family

SUPPLEMENTAL GROUP NO. 19647. Water Rights Appurtenant to the following use(s):
25-3055 (CERT), 3218 (WJC), 3247 (WJC), 3308 (CERT), 4142 (WJC), 6109 (DIL), 6145 (DRC), 6146 (DRC), 6147 (DRC), 6148 (DRC)

IRRIGATION: Sole Supply: INEVALUATED EU's. Group Total: 17.4 Div Limit: 0.6 acft. PERIOD OF USE: 04/01 TO 10/31

SUPPLEMENTAL GROUP NO. 19675.
25-3247 (WJC)

STOCKWATER: Sole Supply: INEVALUATED EDU's. Group Total: 25.00000 Div Limit: PERIOD OF USE: 01/01 TO 12/31
Point of Diversion

• Point specified in a water right from which water is diverted from source (e.g., a point on a river where the water is diverted into a ditch, or the location of a well where water is diverted from the underground aquifer)

• Described based on public land survey (i.e., section, township, and range)
STATE OF UTAH – DIVISION OF WATER RIGHTS – DATA PRINT OUT for 25-3247(A27274)

WATER RIGHT: 25-3247
APPLICATION/CLAIM NO.: A27274
CERT. NO.: 

OWNERSHIP: 

NAME: Jeffry R. and Lynda A. Gittins
ADDRESS: 152 West 200 South
Smithfield UT 84335

INTEREST: 100%  REMARKS: joint tenants

DATES, ETC.: 

LAND OWNED BY APPLICANT? | COUNTY TAX ID#: 
FILED: 06/02/1955 | PRIORITY: 08/31/1961 | PUR REGN: 05/14/1956 | PUR ENDED: | [NEWSPAPER: |
Protest End: [PROTESTED: No] | [HEARING HELD: | SE ACTION: | ] | [ACTION DATE: 02/25/1960] | [PROOF DUE: 07/31/1963]
EXTENSION: | [ELEC/PROOF: Election] | [ELEC/PROOF: 05/09/1962] | CERT/WUC: 07/20/1964 | LAP, ETC. |
ROLL LETTER: [RENOVATE: | [RECON REQ: | [TYPE: | ] ] ]

PD BOOK: [25-3] | MAP: [36d] | [PUR DATE:] 

Type of Right: Application to Appropriate Source of Info: Proposed Determination Status: Water User’s Claim

LOCATION OF WATER RIGHT: 

FON: 0.67 cfs | SOURCE: Underground Water Well

POINT OF DIVERSION -- UNDERGROUND:
(1) N 2180 ft W 135 ft from SE cor, Sec 32, T 13N, R 1E, SLBM
Type of Use

- What the water is used for (i.e., the beneficial use)
- Irrigation: Number of Acres Irrigated
- Stockwatering: Equivalent Livestock Units ("ELUs")
- Domestic: Equivalent Domestic Units ("EDUs")
IRRIGATION: 51.2 acres

STOCKWATER: 50.0000 Stock Units
Period of Use

- When the water can be used
- Varies with the type of use
- May also vary based on location

- Stockwatering, municipal, domestic, and industrial are generally year-round
- Irrigation is generally April 1\textsuperscript{st} – October 31\textsuperscript{st}
PERIOD OF USE: 04/01 TO 10/31

PERIOD OF USE: 01/01 TO 12/31
Place of Use

• Specific location documented in the water right where the water is to be used

• Generally given in quarter-quarter sections (40 acres)
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RUSH LETTER: | [RENOVATE: ]| [RECON REQ: ]| [TYPE: ]|

PD ROOM: [25-3]| MAP: [36d]| [PUR DATE: ]

Type of Right: Application to Appropriately
Source of Info: Proposed Determination
Status: Water User’s Claim

LOCATION OF WATER RIGHT: 

FLOW: 0.67 cfs
SOURCE: Underground Water Well

COUNTY: Cache
COMMON DESCRIPTION: Smithfield

POINT OF DIVERSION -- UNDERGROUND:
(1) N 2100 ft W 135 ft from SE cor, Sec 32, T 13N, R 1E, SLEN
DIAMETER OF WELL: ins. DEPTH: to ft. YEAR DRILLED: WELL LOG? No WELL ID#: 

Comment:

USES OF WATER RIGHT -------- ELU -- Equivalent Livestock Unit (cow, horse, etc.) -------- EDU -- Equivalent Domestic Unit or 1 Family

PLACE OF USE: 

-------- NORTH WEST QUARTER -------- NORTH EAST QUARTER -------- SOUTH WEST QUARTER -------- SOUTH EAST QUARTER -------- Section

k NW | NE | SW | SE | NW | NE | SW | SE | NW | NE | SW | SE | NW | NE | SW | SE | NW | NE | SW | SE | SE | Totals

Sec 32 T 13N R 1E SLEN k | | | | | | | | | | | 1.5000 | (15.9000) | | | | | k 17.4000

SUPPLEMENTAL GROUP NO. 19675.
25-3247(REC)

STOCKHATER: Sole Supply: UNEVALUATED ELDG Group Total: 25.00000 Div Limit: PERIOD OF USE: 01/01 TO 12/31
The State Engineer

- Head of the Utah Division of Water Rights
- Administers water appropriation applications
- Distribution
- Dam Safety
- Well Drillers
- Stream Alterations
- Geothermal Power
- Enforcement
Application to Appropriate

• Many areas of the state are closed to appropriation, especially large applications
• Advertising and 20-day protest period (small applications may be exempted)
• Order of the State Engineer
• Request for Reconsideration / court review
• Utah Code §§ 73-3-2 and 73-3-8
Change Application

• Change the point of diversion, place of use, type of use, and/or period of use
• Permanent vs. temporary
• Advertising and 20-day protest period (small applications may be exempted)
• Order of the State Engineer
• Request for Reconsideration / court review
• Utah Code §§ 73-3-3 and 73-3-8
General Adjudication

- Court action to determine all water rights in a given area
- Hydrographic survey maps
- Water User’s Claims
- Proposed Determination
- Objections
- Decree
Abandonment and Forfeiture

• “Use it or lose it”

• Utah Code 73-1-4: “When an appropriator or the appropriator's successor in interest abandons or ceases to use all **or a portion** of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture ....”

• Only a court can adjudicate forfeiture
Abandonment and Forfeiture

Several exceptions, including:

- If the water right is being used under a lease or other agreement
- If the water right’s place of use is contracted under an approved state agreement or federal conservation fallowing program
- If the surface water or groundwater source fails to yield sufficient water to satisfy the water right
- If the water is unavailable because of the water right’s priority date
- If the water right subject to an approved change application and the applicant is diligently pursuing certification
- If the water right owned by public water supplier and is being held for reasonable future water requirement of the public
• Utah Code section 73-1-4
• “When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture . . . unless the appropriator or the appropriator's successor in interest files a nonuse application with the state engineer.”
• A nonuse application is an application made to the Utah State Engineer under which a water right owner may cease using the water right for up to seven years without the water right becoming subject to forfeiture.
Questions?

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