

October 15, 2010

Utah Water Users Association
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Editor: Carly B. Burton

MESSAGE FROM THE PRESIDENT

By Blair Hamilton

For many of us we have just finished another water year. With fall upon us and winter just ahead, this will give us the opportunity to assess the past year and then look to what we can do in future years to make our water use more successful. Our association stands ready to assist anyone and everyone to help and provide solutions to water problems. The upcoming Water Summit November 30th at Provo and the Water Users Workshop at St. George in March, 2011 are designed to help members in their endeavors. We invite all to come and participate in these events.

32%, Weber River – 22%, Provo River – 17%, Duchesne Basin – 29%, SE Utah – 22%, Sevier River – 25% and SW Utah – 22% - pretty normal compared to the past few years.

Reservoir storage is at: Bear River – 32%, (-2% compared to last year) Weber River – 62%, (-5%) Provo River – 82%, (-3%) Duchesne Basin – 81%, (-3%) SE Utah – 46%, (-4%) Sevier River – 22% (+3%) and SW Utah – 54% (+1%) of capacity. So reservoir storage is down a bit compared to last year but remember that water use last year was delayed substantially due to a cool, wet spring – so these current numbers are really more indicative of a more normal water use pattern.

What do the climatological indicators predict for the current year? A pretty significant La Nina pattern is in place (second only to El Nino in the book of busted forecast pattern excuses) which typically indicates much dryer conditions in the south and average or maybe even a bit above normal conditions in northern Utah. Don't bet the farm – do keep track of snow and water supply conditions through the year at:

<http://www.ut.nrcs.usda.gov/snow/>

WATER OUTLOOK

By Randy Julander

Well, it's a new water year and the optimist's thinking is always 'this water year will be better than the last' whereas the pessimist's thoughts turn to politics. Last year wasn't terrible nor was it by any measure outstanding. More or less average, a few ups and a few down's but by and large an OK kind of year. Toward the end of summer, things began to dry out a little compared to other years and this latest heat wave at the end of September has encouraged a bit more water use but storms are on the way. As we look at 2010 water year end precipitation: Bear River – 86%, Weber – 84%, Provo – 89%, Duchesne – 81%, Price - 82%, Southeast Utah - 102%, Sevier – 99% and the Virgin - 99% of average. Current soil moisture values are (percent of saturation): Bear River –

Water and the Law

How Does the Law Treat Lost Share Certificates in Water Companies?

By Matthew E. Jensen

Smith Hartvigsen, PLLC

When the pioneers settled Utah in the 1800s, they often banded together to construct common water diversion, storage, and distribution facilities. Over time, these associations of water users were incorporated into nonprofit mutual water

corporations. In these companies, the water rights are held in the name of the corporation for the benefit of its members. Shares of stock were issued to signify how much water each individual is entitled to receive. In most cases, to transfer the shares of stock, the shareholder would need to endorse the certificate to a new owner. Thus, the certificate was critical to establish and transfer ownership of the shares and the attendant right to water delivery.

This system works well in most cases, but it presents a challenge whenever a certificate is lost, destroyed, or stolen. Under the Uniform Commercial Code, a portion of which is applicable to transfers of shares of stock in a water corporation, the corporation cannot simply reissue the share with impunity. If the lost or stolen certificate is later discovered, the corporation would usually need to honor both the replacement certificate and the original. Because shares of a water corporation represent a right to delivery of a proportionate share of the corporation's water rights, dilution of the shares in this manner is especially unpalatable to the other shareholders. To account for these risks, many water corporations have a series of requirements before they will issue a replacement certificate. For example, many corporations require the person requesting a new certificate to post or obtain a perpetual bond to protect the corporation in the event the original certificate surfaced. Recently, however, it has become more and more difficult to secure such a bond.

To address this difficulty, the Executive Water Task Force has recently approved a draft bill in an attempt to streamline this process. There is not yet a sponsor for the bill, but it is expected to be presented to the 2011 Utah State Legislature for consideration. The present draft of the bill continues to give the corporation the ability to establish its own requirements for issuing a new certificate in its Articles of Incorporation or Bylaws. Without such requirements, however, the new law would provide some options for the water corporation to both protect itself and allow a new share to be issued. For example, the proposed bill would give the water corporation the option to, at the expense of the person requesting the new certificate, publish and mail notice of the request to issue a replacement certificate. The bill then

outlines a process that the corporation can use to resolve share ownership disputes. There will undoubtedly be further revisions of the bill before it is passed, but it is a step toward solving this challenge that often faces water corporations and shareholders.

If you would like more information about lost share certificates, you may contact the author at 801-413-1600 or mjensen@smithlawonline.com.

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

Central Utah Project Funding in Jeopardy

On October 8th the Salt Lake Tribune published an article indicating that the Obama Administration had stated that no funding would be available for the Central Utah Project from next year's Federal budget. Senator Orrin Hatch and Representative Jim Matheson both expressed great concern over this issue. Federal agencies including the Department of the Interior usually budget about \$40 million per year for the project. Federal funding requests have been submitted recently and final budget requests will be submitted in January.

Don Christansen, general manager of the district, indicated that \$450 million is still needed to complete the final project segment in order to convey water from the Uintah Basin to the Wasatch Front.

A resolution is being prepared by the Utah Council of Governments in support of continued funding for the project which will be submitted to Utah's Congressional Delegation in the near future. Any water user entity who benefits from Central Utah Project water is strongly encouraged to contact their congressional representative to request continued funding for the project.

UTAH WATER SUMMIT CONFERENCE

The 17th Annual Utah Water Summit Conference will be held on Tuesday, November 30th at the Provo Marriott Hotel in Provo, Utah. This year's theme is "Diverse Water Users Interests in Utah - Conflict or Compromise?" The conference will focus on the agricultural community and the ongoing issues associated with the conversion of agricultural water to M&I use. The program agenda will include the following topics:

- A. Conservation impacts from conversion of agricultural use to M&I use.
- B. Water supply trends and impacts to water users.
- C. Panel - Conversion issues from the agricultural perspective.
- D. Upcoming Legislative issues and potential impacts to the agricultural community.
- E. Panel - Conversion issues from the M&I perspective.

In addition, we have invited Marcus Faust, Washington D.C. council, to be our keynote speaker during the lunch session. Mr. Faust represents several of the large water districts as a lobbyist and has great knowledge of the congressional process.

We will be mailing out the program brochures which includes a registration form during the second week in October. We have also posted the conference information on our website at:

www.utahwaterusers.com.

You can also register by filling out the attached registration form. We hope to see you there.

REGISTRATION FORM Seventeenth Annual Utah Water Summit November 30, 2010

"Diverse Water Users Interests in Utah Conflict or Compromise?"

Name: _____

Job Title: _____

Organization: _____

Address: _____

Telephone: (____) _____

Please return a \$75 registration fee for each participant. The fee will include your choice of Beef Medallions ___or Salmon____ continental breakfast, two breaks and free parking. Please indicate your preference for lunch. Return this registration form by November 10th to:

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

Registrations received after November 20th will be charged a \$25 late fee. If you have any questions, call Carly Burton at (801)268-3065 or cell phone (801) 560-2533. Please make checks payable to Utah Water Users Association.