

October 25, 2009

Utah Water Users Association
Phone 268-3065 Fax 261-4069
Editor: Carly B. Burton

MESSAGE FROM THE PRESIDENT

**By
Tage Flint**

It is always good to see the water year come to an end with some left in the reservoir for next year. For most of our state, 2009 was the year that brought enough water at the right times. I know a few reporters who claim that water purveyors are never happy. They say that we either have too much or not enough. It is either floods or drought and not a lot in between. I usually try to explain that in Utah, it truly is either feast or famine when it comes to our annual water supply. But 2009 was that rare year in which we didn't complain much either way. We will be able to point at this year and tell the reporters that there was a time when we weren't complaining.

Please take special note of the announcements in this newsletter regarding the Utah Water Summit coming up on December 1st. We will have an excellent program that day and a few changes to the schedule that I think you will enjoy. Between now and then, we will continue to monitor the many topics being discussed by the Legislative Water Rights Task Force. Carly has an update for you any time you would like to call him. There are likely six or more bills that will be filed in the upcoming legislative session as a result of Task Force actions. Additionally, inevitable canal safety discussions and legislation is being watched carefully. Please do not hesitate to contact Carly or me with any items that you would like our Board to take up at its meetings and the Association to address with our lawmakers.

WATER AND THE LAW

**Hamblin v. Clayton, Can the State Engineer Deny a Change Application Based on Nonuse?
by Matthew E. Jensen
Smith Hartvigsen, PLLC**

A foundational principle of Utah Water Law is that beneficial use is the basis, measure, and limit of a water right. A corollary of this principle is that water rights are subject to forfeiture based on nonuse. In other words, Utah Law has, from the earliest water code, applied the principle of "use it or lose it" to water rights. House Bill 51, passed during the 2008 Session of the Utah Legislature, provided protections against forfeiture for many water users. Specifically, it clarified that a water right could not be forfeited without judicial action. H.B. 51 did not answer the question of whether the State Engineer could address nonuse in his review of a Change Application. But one Utah district court has upheld the State Engineer's denial of a Change Application based on past nonuse.

On July 13, 2009, the Fourth District Court for Utah County entered its decision in the case of Hamblin v. Clayton, concluding that, under the law as it existed prior to 1996, a water right is forfeited by operation of law upon nonuse of the water for five years. Because the Hamblin water right had not been used since January 1, 1980, the court concluded that the water right was forfeited as of 1985. The Court further concluded that the State Engineer properly denied a Change Application on that water right because, as a result of the forfeiture, the owner was not a "person entitled to the use of water."

To support its conclusion, the Court first determined that neither the 2008 nor the 1996 amendments to Utah Code section 73-1-4 (the Forfeiture Statute) had retroactive effect. Accordingly, the Court applied the law in effect before 1996, which did not contain any explicit provision requiring judicial action to confirm a forfeiture

of water rights. Because the nonuse of the Hamblin right continued to the present, the Court did not specifically address the provision of the Forfeiture Statute that only allows a forfeiture if an action "is commenced within 15 years from the end of the latest period of nonuse." The Court's decision could be read to suggest, however, that the State Engineer could deny a Change Application based on any five-year period of nonuse prior to 1996, no matter how long ago the nonuse occurred. The decision has been appealed, but if the Court's reasoning stands, a water user can only be sure of the continued existence of a water right with evidence of full beneficial use of the right over the entire history of the water right up to 1996. A copy of the Hamblin v. Clayton decision is available at www.smithhartvigsen.com/resources/hamblin_decision.pdf.

If you would like more information about the impact of the Hamblin case, you may contact the author at 801-413-1600 or mjensen@smithlawonline.com.

WATER OUTLOOK

**By
Randy Julander**

Happy New Water Year! It is the beginning of October and we have started off with a bang. A nice little storm put down 6 inches of snow in the high country of northern Utah to celebrate new years day. Alas, one storm does not a great water year make, but better to score early and often than late to never. Truth be told, most of this early snow will likely melt off anyway - but the silver lining is that it will bump up soil moisture values for next year's runoff which is a great thing. Speaking of soil moisture, the values have hit the bottom and are on the upswing, especially in northern Utah. The south is taking a bit more time as they have had drier/warmer conditions over the summer months. Water year precipitation is as follows: Bear - 102%, Weber - 106%, Provo - 105%, Duchesne - 98%, Price - 99%, SE Utah - 84%, Sevier - 93% and the Virgin - 90% of average. Water year precipitation was pretty much average over most of Utah, it's the streamflow that had wide disparity. This past year has had its winners and losers, so to speak, with northern Utah having decent runoff and ending up with outstanding reservoir carryover. Bear Lake has about 200 KAF more this year than last so even the big pond has made some significant gains. Southern Utah had a mediocre year in terms of runoff and has a mixed bag of reservoir storage - some empty and others...eh...how do you say not so good but not a 3 day dead skunk on asphalt

either? Its not what we want or like but it is what we get and it is a new water year! This one is bound to be better. So what do the great climate gurus predict for Utah's upcoming winter? Warmer than normal and not a clue as to precipitation. Some of the basis for this is the dreaded "El Nino" which is currently mild and getting weaker. So a prudent recommendation would be to consult the Farmers Almanac or get some tea leaves. So, here's to the 'New Year', may it be a duplicate in the north and much better in the south.

Insurance Risks of Water Organizations

**By
B. Darrell Child
Olympus Insurance Agency
Salt Lake City**

In July of this year we witnessed the powerful destructive force that arises when the North Logan Canal breached, flooded several homes and unfortunately several lives were lost.

For many years many water organizations have relied upon insurance to protect the assets of their water companies and to assure that the shareholders of the company have water for many years into the future.

Since the time of the North Logan Canal breach some water organizations have asked what they can do to protect against similar risks, which may arise from their water companies.

The risks include both the liability that may arise when an unfortunate event occurs, but also the need to protect the assets of the water organization. The goal of effective insurance planning is make sure that the water organization can continue with their historic mission to deliver affordable water to the shareholders of their organization.

In the absence of insurance or inadequate insurance the assets of the water company may be lost or diminished. The most valuable asset of most water organizations is the water right or the share of water that may be delivered by the water company. If a major loss arises the water company may not be able to continue their historic mission or may be required to pay a substantial cost to continue to provide water. This could also result in claims against individual board members, which allowed the assets of the water company to be lost due to inadequate insurance.

The process of securing insurance is relatively simple. A few basic questions are reviewed, and a premium is quoted according to the need and operations of the water company.

The board and the members of the company can then have the piece of mind, knowing that if an unfortunate event arises an insurance company will respond.

For many years we have worked with the members of the Utah Water Users and would be glad to provide more information about how to secure proper insurance. Please contact us at 801-486-1146 or email brainc@olyins.com

Utah Water Summit

We have scheduled Tuesday, December 1, 2009 at the Davis Conference Center in Layton for the 16th annual Utah Water Summit conference. This year's theme is "Mitigating Risk in a Growing Urban Environment". This theme was chosen to address concerns of canal safety and maintenance as result of the tragedy that occurred this summer where three people died from a mudslide near the USU Campus. The first half of the day will focus on canal safety from various private, city, state and federal perspectives as well as canal improvement success stories, legislative issues, liability issues and future challenges in canal safety. As an added bonus, we are hopeful that Governor Gary Herbert will be our keynote speaker during the lunch session. You can register by filling out the form you receive in the mail, using the form on our website at www.utahwaterusers.com or filling out the form below:

MESSAGE FROM THE DIRECTORS CORNER

**By
Carly Burton**

**2010 Utah Water Users Workshop
March 15-17, 2010
Dixie Center, St. George, Utah**

The 2010 workshop begins Tuesday morning, March 16, with a continental breakfast at 7:30 AM. General Session A is the first presentation at 8:30 AM, followed by seven concurrent topics through the next one and a half days. A banquet will be held Tuesday evening, March 16th. The workshop ends at noon on March 17th. More information is available on the workshop web site (<http://extension.usu.edu/uwuw/>) [including a list of presentation topics, registration and lodging.](#)

Questions? Contact Bob Hill at (435)797-2791 or email to robert.hill@usu.edu

Early-registration will begin in late October 2009 and continue through February 12, 2010. Regular registration will be accepted from February 13 through March 9, 2010. On-site registration begins Monday, March 15th, from 2 to 7 PM and continues at 7 AM both Tuesday and Wednesday mornings, March 16th and 17th.

This year, for the first time ever, on-line registration for the workshop with a credit card will be available beginning the last week of October 2009. This will be through the workshop web site at URL: <http://extension.usu.edu/uwuw/>.

In conjunction with the workshop, a golf tournament will be held at the Sun River Golf Course, south of St. George, on Monday, March 15th, beginning at 8:30 AM. Registration for the tournament is required. For more golf tournament information, contact John Mann, (801)255-9517 or (801)707-1769 or johnmann@utah.gov.

16th Annual Utah Water Summit

**"Mitigating Risk in a Growing Urban Environment"
December 1, 2009
Davis Conference Center**

Name: _____

Organization: _____

Address: _____

E-mail: _____

Phone #: _____

Please return the \$75 registration fee for each participant. For lunch please indicate your choice of Grilled Beef Medallions__or Grilled Halibut____. Return this form by November 20th to the address down below. Registration after November 20th will be \$100.

Utah Water Users Association
5047 S. Galleria Drive
Murray, Utah 84123
