

Boyd Clayton, Deputy State Water Engineer

August 22, 2008

Division of Water Rights

P.O. Box 146300

Salt Lake City Utah 84114-6300

Re: Water Right Title Proposals, Executive Water Taskforce

Boyd, I and others have reviewed the proposals for water right conveyance offered by yourself and Ed Bowler in the July 31, 2008 Water Rights Taskforce. I have further reviewed the amended version issued August 18, 2008. I offer the following comments on the subject:

Facts:

1. All water is owned by the State of Utah.
2. The office of the State Engineer (DWR) maintains records of appropriation and is required to regulate and appropriate the States water by providing an application process and issuance of a certificate.
3. Appropriation of water is made by citizens using an application to appropriate or water users claim.
4. Unapproved applications are considered personal property and are assigned by deed.
5. Approved applications, water users claims, and perfected rights are considered to be real property, are transferred by deed and also silently transferred with the title of land unless otherwise noted in the land sale (quiet title).
6. While the State maintains strict control over the forms and communications in the application process by issuing forms with specific instructions on processing, no such form exists for standardizing information and communications with new owners of water rights.

Problem:

1. The system of communications between water right owners and water rights administrators (DWR) occasionally fails. This failure can be financially disastrous to water users who loose water rights.
2. Communication failure historically occurs due to inadequate communication with DWR and DWR's inability to maintain correct contact information on water rights owners. This is the result of several causes:
 - a) Water Rights owners in many instances are unaware of the requirement to not only record the deed of water assignment at the County Recorders office but also at the Office of the State Engineer.
 - b) Some water rights are assigned by quiet title, as the water right is appurtenant to the sale of land. In those instances Division of Water Rights (DWR) is not aware of many assignments due to the failure of persons to notify DWR of the transaction and update DWR records.

- c) Another breakdown in communications occurs because not all written notices are mailed certified mail to water rights owners. Regular mail delivery does not guarantee water owners have been notified of their responsibilities to take action in order to avoid loss of water rights.
3. The general public is not aware that purchase of water rights involves specific responsibilities in order to maintain the water right. The general public does not understand the need to seek out advice on these matters. As persons are allowed to assign water rights on any quit claim deed, or other similar assignment form, many people are left uninformed of the requirements of water right ownership.
 4. Also many water rights owners are unaware of the numerous regulations and requirements necessary to maintain a water right because they are allowed to purchase applications and certificates for water use on various forms of assignment not issued by the Office of the State Engineer. This is akin to persons selling and purchasing automobiles with a bill of sale and never using a car title issued by the State in the transaction. Thus the State of Utah would never know who the new owners of automobiles were at any given time. Because there is no (car title) with specific instructions on how to process the water rights transaction, persons are left with no mechanism for notifying citizens that they must communicate with DWR and DWR is not notified of the current owners of water rights.

Solutions:

1. The Water Rights Addendum to Deed proposed by yourself and Ed Bowler and amended by David Hartvigsen is a big step forward in correcting the initial communication breakdown between new water owners and the DWR. It appears most appropriate as a rider to land sales to avoid communication breakdowns when the water would be transferred as an appurtenance to the land. However, this rider does not correct the problems that occur when persons are buying, selling, trading, or quit claiming water rights without a land transaction. I suggest DWR develop an assignment form similar to a car title for transactions not involving land. It would be basically official water rights quit claim deed. If it's use were required by law it would eliminate the communication breakdown with new water users. This assignment form (car title) would contain specific information that notifies purchasers and sellers of the water right as to their responsibilities for maintaining the water right and the steps necessary to be informed of those responsibilities.
2. Water rights could be bought, sold, and transacted by persons but they can only be completed by filing a (title form) with DWR. Similar to filing a car title with DMV. Such an instrument with detailed instructions would insure detailed and accurate information to all persons who engage in water rights transactions not just those who are assigning water rights with land. This would also possibly eliminate the need for an ombudsman or information officer to address the questions of new uninformed water owners.

3. The form should contain a warning and notice to water users in large bold letters that they are responsible for becoming aware of the responsibilities and procedures that must be followed to register and maintain their water right. Perhaps a condensed version of the information in DWR's pamphlet titled Utah's Water Rights Process could be printed on the back of the form. I have attached a draft form for review.
4. The problem with notification of persons through regular mail should be addressed by sending all notices that can result in loss of water rights by certified mail. If it is returned as undeliverable then at least some effort should be made to find a correct address before canceling a water right. I would be glad to meet and discuss what those measures might entail.

Sincerely,


Lee R. Brown

UTAH STATE OFFICIAL RECORD

Conveyance of Water Rights

This form must accompany any Bill of Sale, Quit Claim Deed, Warranty Deed or other instrument intended to transfer a Utah Water Right from one owner to another, including water rights appurtenant to the sale of land under Utah State Code 73-1-10 and 73-1-11.

Once filled out and completed, this form must be recorded along with the other forms of conveyance in the County Recorders Office of the county in which the water right is located and also recorded with the Office of the State Engineer at: 1594 West North Temple, Ste.220 P.O. Box 146300 Salt Lake City Utah 84114-6300.

Tax parcel Number:

- NO WATER RIGHTS ARE BEING CONVEYED WITH THIS PARCEL
 WATER RIGHTS ARE BEING CONVEYED WITH THIS PARCEL

The following water rights are hereby included with the conveyance of the referenced property and are to be conveyed without warranty:

1. Type of Water Right:
- | | | | |
|--|---|----------------|----------|
| Unapproved Application | Water Right # _____ | Quantity _____ | acre ft. |
| Approved Application | Water Right # _____ | Quantity _____ | acre ft. |
| Water Users Claim | Water Right # _____ | Quantity _____ | acre ft. |
| Certificated Water Right | Water Right # _____ | Quantity _____ | acre ft. |
| Municipal water in _____ | City _____ | | |
| County Water in the _____ | County Water Conservancy District _____ | | |
| Special Service Dist. Water in the _____ | Special Service Dist. _____ | | |
| _____ Shares in the _____ | Water Company _____ | | |
| Stock Watering _____ | ELU'S _____ | | |
| Industrial _____ | Acre ft. _____ | | |

Grantor:
Address:

Signature:

Date:

Grantee:
Address:

Signature:

Date:

* Notice to Grantee: Water Rights require specific responsibilities and actions be taken in order to maintain your rights. The laws and regulations are complex and numerous

Many citizens loose their water rights each year due to noncompliance. A summary of the process is outlined on the back of this form. Read it and become familiar with it.

Summary of Common Responsibilities and Actions Necessary to Maintain Water Rights

1. Citizens can file an application to appropriate water in a water district open to appropriation. They may not begin to appropriate the water until it is approved by the State Engineer. Districts closed to appropriation require citizens to purchase an existing approved water application or proven (certificated water right) before using a water resource. The transaction must be recorded in the County in which the water resides and also at the State Engineers Office. (Cite statute)
2. An application for appropriation if approved by the State Engineer then requires a citizen to diligently place the water right to beneficial use within a 3 year time period unless a reasonable cause for delay can be proven by the applicant and a request for extension of time to submit proof of beneficial use is made within the allotted time and granted by the State Engineer. Water Users will not be allowed more than 14 years to request extensions with out a new request and public notice to allow others to protest the application. (Cite statute)
3. A Change application must be filed within ____ days when water is diverted to a different place of use or taken from a different point of diversion than authorized under the original approved application. (Cite statute)
4. Failure to use all or part of a water source under an approved application will result in only that amount of water actually put to beneficial use when submitting proof for a certificate of Beneficial Use. (Cite statute)
5. Failure to use all or part of a water source for 7 years that is under a certificate of Beneficial Use (proven water right) will result in cancellation of the unused portion of the water right if such lack of use is brought to the attention of the State Engineer through a complaint filed by a citizen. (Cite statute)
6. Cancellation of a proven water right for failure to use for 7 years can be avoided by filing a Non Use form with the State Engineer's Office and receiving approval for non use prior to the greater of 5years of continuous non use or the filing of a complaint by a citizen. (Cite statute)
7. Failure to notify the Division of Water Rights of address changes and all transfers of property can result in loss of water rights due to miscommunication.

NOTICE!

**These Responsibilities and actions are only a summary of some of the more common challenges facing water users and owners of water rights. For more complete information contact the Division of Water Rights at 1594 West North Temple, Ste.220 P.O. Box 146300, Salt Lake City, Utah
Zip Code 84118-6300 or call (801) 538-7240**