Utah's

WATER RIGHT PROCESS

www.waterrights.utah.gov

About Water Rights

The Division of Water Rights ("Division") is the state agency that regulates the appropriation and distribution of water in the State of Utah (Utah Code, Title 73, Chapters 1-6). It is an office of public record for water right documentation. Water right files and records of other State Engineer activities are available for public examination and copying in the Salt Lake City Office and on the Division's web page. The agency was created in 1897 as the Office of the State Engineer. In 1963, the name was changed to the Division of Water Rights, but the public sometimes still refers to the Division as the State Engineer's Office.

All waters in Utah are considered property of the public. A "water right" is the right to divert and use water, limited to: 1) a defined quantity; 2) a defined source; 3) a priority date; 4) defined beneficial use(s); and 5) a specified point of diversion. Principal among these is beneficial use. "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state", (Utah Code 73-1-3). Utah water rights are based on the Doctrine of Prior Appropriation, often stated: "First in time is first in right." This means the water user with the earliest priority date who has continuously used water has the right to divert and beneficially use water from a certain source before any and all others with later priority dates.

The Mission of the Division of Water Rights is to provide order and certainty in the beneficial use of Utah's water.

Information Contained on a Water Right

- ☐ Name of owner. (The Division is **not** the office of public record for ownership.)
- ☐ Filing (priority) date.
- ☐ Quantity of water allowed, generally in cubic feet per second (flow) or acre–feet (annual volume) or both.
- ☐ Source of water – spring, well, stream, etc.
- ☐ Point(s) of diversion – location where water is diverted from its natural source, generally tied to the State Plane Coordinate System or Public Land Survey.
- ☐ Place of use, generally defined by 40-acre tract(s) or metes-and-bounds land description.
- ☐ Period of use. Example: April 1 to September 30.
- ☐ Type and extent of **beneficial use**. Examples: domestic use for two families, irrigation of 15 acres, 250 head of live stock.

Types of Applications

- ☐ **Application to Appropriate Water.** Used to create a new water right.
- ☐ **Application for Permanent Change of Water.** Used to change the point of diversion, place, nature and/or period of use of an existing water right.
- ☐ **Application to Segregate a Water Right.** Used to segregate a portion of an existing water right or application into a separate and distinct water right.
- ☐ **Diligence Claim.** Filed to document a claim that surface water has been in continuous beneficial use since before 1903 or underground water has been in continuous use since before 1935.
- ☐ **Application for Temporary Change of Water.** Used to change point of diversion, place, nature and/or period of use of a water right or a period of time up to one year.
- ☐ **Application for Temporary Appropriation of Water.** Used to appropriate water for a period of time up to one year.

- ☐ **Application to Appropriate for Fixed Time.** Used to appropriate water for a specific period of time.

- ☐ **Application for Exchange of Water.** Used to exchange points of diversion and/or change the place and nature of use for a water right.

- ☐ **Request for Reinstatement and Extension of Time.** Used to request reinstatement for a lapsed application and/or additional time within which to submit proof on an approved application to appropriate water or change a water right.

- ☐ **Application for Non-use of Water.** Used to request authorization from the State Engineer to allow for the non-use of water without becoming subject to statutory forfeiture.

Filing Fees

The cost to file to applications to appropriate, change, exchange water, or for non-use is based on the quantity of water to be diverted. The minimum fee is $150.00 for a quantity up to 0.1 cfs or 20 acre-feet. The maximum charge is $1,000.00 for 23 cfs or greater or for more than 11,500 acre-feet. The fee for a reinstatement or extension of time before 14 years (after application approval) is $50.00; after 14 years, it is $150.00. A segregation application costs $50.00.
Filling a protest cost $15.00. The filing fee for a report of water right conveyance is $40.00.

Information Needed When Applying

- ☐ The proposed place of water use in the form of a property description, such as found on a deed or tax notice, and/or a copy of a county recorder's plat map. Reference to a lot within a subdivision is acceptable only when the description can be readily tied to an exterior section corner or quarter corner.

- ☐ The point where water is to be diverted, tied to an exterior section corner or quarter corner. For example: "North 100 feet and East 500 feet from the SW Corner of Section 16, T5S, R1E, SLB&M."

- ☐ Amount and type of proposed beneficial use. For example: "Irrigation of 20 acres."

- ☐ The proposed source of water. For example: "A 6-inch well, 200 to 400 feet deep."

Procedure From Application to Certification

- ☐ File the application and pay the fee. The filing date becomes the priority date of the application. An application number and water right number are assigned. For example: "Water Right 12-345 and Change Application a12345."
- ☐ The Division will advertise the application in a newspaper of general circulation for the area for two consecutive weeks. There is then a 20-day period in which protests to the application can be received.
- ☐ If the application is protested, a hearing may be held. Approval of any application will be dependent upon conformity with statutory considerations and local guidelines or policies. A decision may take as long as three months. Decisions on complex or protested applications may take longer.
- ☐ An application for domestic use only, in a non-controversial area, may be approved by the state engineer without advertising.
- ☐ Application forms are available online and assistance is available from Division personnel by appointment.
- ☐ **It is extremely important to notify the Division of all address and water right ownership changes.**

If an Application is Protested

- ☐ The applicant will receive a copy of any protest and will have the opportunity to submit a written response. An application may be protested because of concern for water supply, environment, economics, infringement, speculation, forfeiture, etc.
- ☐ An informal hearing may be held on either protested or unprotested applications at the State Engineer's discretion. If a hearing is to be held, a date and place will be set and all parties duly notified. Hearings are generally held twice per year in each county, as needed. The time to be set for a hearing may depend on this schedule.
- ☐ Hearings are conducted by Division representatives. Both the applicant and protestants may state their positions. Each has the opportunity for rebuttal. Parties may represent themselves or obtain legal counsel.
- ☐ After a hearing, the State Engineer will review the evidence and will approve, reject or hold the application for further study. Approval may be granted with limiting conditions.

- ☐ The applicant and protestants will be notified in writing of the State Engineer's decision.

- ☐ An aggrieved party may file a Request for Reconsideration with the State Engineer within 20 days, and/or an appeal to the District Court within 30 days, of State Engineer's written decision. Rights of reconsideration/appeal are explained in the written decision.

After an Application is Approved

- ☐ After approval, three to five years are generally allowed to develop the source, put the water to beneficial use, and file "proof" showing completion of the development.

- ☐ Sixty days before proof-due date (end of the approval period), the owner(s) will be notified by mail that proof of the developed water right must be submitted to the Division, or an extension of time requested, before the proof-due date.

- ☐ Should the water not be fully developed at this time, a Request for Reinstatement and Extension of Time may be filed. If diligence and reasonable cause for delay are shown and the request is granted, a new proof-due date is set.

- ☐ Failure to file proof or request an extension before the proof-due date will cause an application to lapse. Sixty days are allowed after a final notice of lapsing is issued to request reinstatement of the application.

- ☐ In most cases, proof documentation must be prepared and filed by a Utah-licensed professional engineer or land surveyor employed by the applicant.

- ☐ Upon verification and acceptance of proof, the State Engineer issues a certificate for the diversion and beneficial use(s) shown in the proof, but limited to amounts in the application. A certificated water right is considered "perfected" and acquires the status of real property.

Where to File

Applications may be filed in the Salt Lake Office (where two local region offices are located) or any region office. Division personnel may be available to assist in completing an application. To avoid long waiting times, appointments are recommended.

Region Offices

Utah Lake/Jordan River
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300
801-538-7240

Weber River/Western Utah
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300
801-538-7240

Northern Region Office
1780 North Research Parkway,
Suite 104
North Logan, UT 84341-1840
435-752-8755

Eastern Region Office
State and County Building
152 East 100 North
Vernal, Utah 84078-2126
435-781-5327

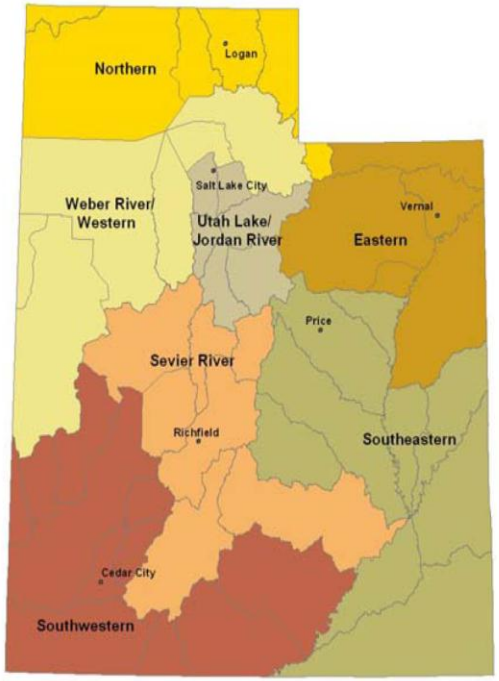
Southern Region Office
130 North Main Street
P.O. Box 664
Richfield, Utah 84701-0664
435-896-4429

Southwestern Region Office

585 North Main Street
P.O. Box 506
Cedar City, Utah 84721-0506
435-586-4231

Southeastern Region Office

319 North Carbonville Road , Suite B
P.O. Box 718
Price, Utah 84501–2303
435-613-3750



Miscellaneous Information

- ☐ A perfected water right is deemed valid as long as water is diverted and put to beneficial use as allowed under the right.
- ☐ The mere filing of a water right application does not grant approval to divert and use water. A water right application must go through the appropriation process and be approved by the State Engineer before water can be legally diverted and used under that application.
- ☐ A perfected water right is considered real property. It may be sold, transferred, divided or traded, similar to real estate. An approved application or a perfected water right may be silently conveyed as appurtenant to the land where it is used unless it is specifically reserved in a deed conveying the authorized place of use.
- ☐ A water right or any portion thereof, not used for a period exceeding seven consecutive years is subject to forfeiture. If use is to be discontinued, a nonuse application may be filed to protect a water right from forfeiture

Glossary of Commonly-Used Terms

- **Acre-foot (AF or ac-ft).** Unit commonly used to measure a volume of water, equal to 43,560 cubic feet or 325,851 gallons of water. One acre-foot will cover one acre of land (approximately the area of a football field) one foot deep.

- **Adjudication.** This is a judicial proceeding. Under an order of the court, the State Engineer evaluates and defines the water rights in a hydrologic area. A report of the inventoried rights ("Proposed Determination") is presented to the district court. The Proposed Determination is subject to public review and judicial amendment and may eventually be signed by the judge as a court decree.

- **Advertising.** Posting notice of a water right application. Notice is posted for two consecutive weeks in a newspaper that serves the county in which the diversion is located and water is used.

- **Application.** Generally refers to an Application to Appropriate Water, but may also refer to any form or process used for change, exchange or non-use applications.

- **Beneficial use.** Application of water to a useful, beneficial purpose. By statute, beneficial use shall be the basis, measure, and limit of rights to the use of water in the state.

- **Certificate.** A document issued by the State Engineer that attests a water right has been perfected.

- **CFS (or cfs).** A measurement of flow rate in cubic feet per second, equal to 448.83 gallons per minute. Also known as a "second-foot."

- **Change.** The process or application by which a water right is changed with respect to point of diversion, place, nature and/or period of use. A change is made under established rights and does not change ownership of the right.

- **Consumptive use.** The portion of diverted water that is consumed or depleted by beneficial use and does not return to the local hydrologic system.

- **Approval.** Granting of authority to proceed with construction of diversion works, diversion and beneficial use of water as proposed in an application.

- **Decreed right.** A water right that has been identified and deemed valid by a court decree.

- ☐ **Extension.** The process or form by which a water user can request additional time to complete an approved project and submit proof.

- ☐ **Exchange.** The process or application by which a water user may release water into a stream, reservoir, or other body of water in exchange for a like quantity withdrawn at another point. An exchange is made under established rights and does not change ownership of the right.

- ☐ **Lapse.** Invalidation of an application for failure to show proof or obtain an extension of time.

- ☐ **Non-use.** Failure to divert and beneficially use all or a part of a perfected water right. If non-use persists for a period of seven years or more, the water right can cease as provided in statute.

- ☐ **Perfected.** Generally, a water right that has been certificated, decreed, or is evidenced by a Diligence Claim or Statement of Water User's Claim filed in a general adjudication.

- ☐ **Point of diversion.** The point at which water is diverted from its natural source. Examples include stream or spring diversion structures, wells, and reservoir outlets.

- ☐ **Priority.** The "place in line" a given right has for access to a source of water, as compared to other rights to the same supply. This date is generally the date the application was filed with the Division, unless subsequently modified.

- ☐ **Proof.** Documented certification by a registered professional engineer or licensed land surveyor that the water under an application has been developed and placed to beneficial use.

- ☐ **Proof Affidavit.** Documentation and mapping submitted by an applicant testifying that a small domestic use application has been developed and placed to beneficial use.

- ☐ **Proof-due date.** The date fixed by approval of an application by which proof must be filed or an extension of time requested.

- ☐ **Protest.** Document that states opposition to approval of an application or requests certain limiting conditions be included in an approval.

- **Water right number.** A unique number assigned to an established water right or to a proposed water right under an application to appropriate, or to a segregated portion thereof. It is formatted as a two-digit number representing a hydrologic area, followed by a one- to five-digit serial number.

Utah
Department of Natural Resources
Division of Water Rights

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