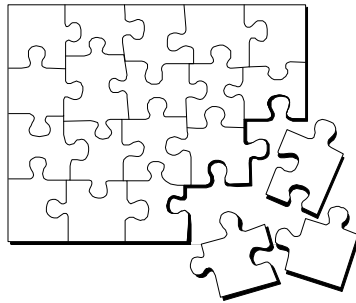


**TRAINING MANUAL
FOR
PREPARING A
“REPORT OF WATER RIGHT
CONVEYANCE”**



**DIVISION OF WATER RIGHTS
OFFICE OF THE STATE ENGINEER**

July 2000

**TRAINING MANUAL
FOR
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JUNE 2000**

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SECTION 1 INTRODUCTION

Utah law states, in part, that:

A water right. . .shall be transferred by deed in substantially the same manner as real estate. The deed must be recorded in the office of the recorder of the county where the point of diversion if the water is located and in the county where the water is used. A copy of the deed or other conveyance which contains a reference to a water right number. . .shall be promptly transmitted by the county recorder to the state engineer for filing. [UCA 73-1-10]

In response to this statute, County Recorder's throughout the state have been transmitting documents to the state engineer "for filing". Not all County Recorder's have equally complied with the statute, and the statute failed to specify the state engineer's responsibilities for processing of the transmitted documents.

As more and more areas of the state were administratively "closed" to new appropriations of water, it became increasingly necessary for persons desiring to develop new water uses and sources to acquire water rights by purchase and recording of the resulting deeds. It became increasingly apparent that the state engineer's resources were insufficient to maintain current records regarding ownership and to fulfill other responsibilities more clearly set forth in the law.

To remedy this situation, House Bill 184 was passed by the 2000 Utah State Legislature and signed into law by the Governor, effective May 1, 2000 (See Appendix A for the full text of HB 184). Under the changed statute, it is now required that a "Report of Water Right Conveyance" be submitted to the state engineer's office before the water right records can be amended to show a change of ownership. The changed statute:

- 1) Requires that specific forms be used for submitting such reports;
- 2) Sets forth the qualifications for persons authorized to prepare the reports; and
- 3) Requires the state engineer to adopt administrative rules specifying:
 - a) conditions under which water right owners may prepare their own reports;
 - b) the information to be included in a report; and
 - c) the procedures for processing of reports by the state engineer.

The required administrative rules, numbered R655-3 , were published May 15, 2000, and became effective July 1, 2000. Appendix B of this manual contains the full administrative rules.

The remaining sections of this manual will provide detailed information specifically intended to guide the training (or self-instruction) of persons desiring to become proficient in the preparation of Reports of Water Right Conveyance.

SECTION 2

THE BASICS OF WATER RIGHTS

2.1 INTRODUCTION

Utah statutes declare all waters in the state to be the property of the public subject to rights to the use thereof. Legislation has created the State Engineer's Office (also called the Division of Water Rights) to be the water rights authority under the direction of the State Engineer to generally administer the measurement, appropriation, apportionment, and distribution of those waters. Records of water rights are located in the Division's offices and are open to the public.

2.2 WATER RIGHT ATTRIBUTES

2.2.1 Beneficial Use

All water rights are based upon and limited by the beneficial use(s) defined therein and physically utilized by their holders. Uses are quantified by amounts and time periods and associated diversion and depletion rates. For example, an irrigation right could be defined as limited to four acres during the period of April 1 to October 31 with a diversion limit of four acre-feet of water per acre, of which 55 percent is consumed (lost to the hydrologic system through plant uptake, evaporation, etc.) and 45 percent is returned (via seepage, runoff, etc.). All of the use may be covered under one right ("sole supply"), or in some cases, several rights together may supplement each other and provide for the beneficial use ("supplemental rights"). For example, stockwatering from January 1 to December 31 for 300 cattle at a diversion rate of 0.028 acre-foot per animal (all of the water is consumed) may require the contribution of several springs, streams and wells as the herd moves for forage. Each supplemental source may be authorized under a separate right, but all are needed together to meet the required supply.

2.2.2 Diversion Quantities

Water rights authorize specific maximum quantities of water that can be diverted from sources at prescribed times to achieve the beneficial use. These quantities are defined by flow in cubic feet per second and/or by annual volume in acre-feet. No matter the described flow rates or annual volumes, no more water may be diverted than can be beneficially used for the authorized purposes under the water rights.

2.2.3 Sources and Places of Use

Water rights authorize diversion from specific sources (i.e., wells, springs, streams, lakes, drains, tunnels, etc.) at defined "points of diversion" and for use in defined locations. Location of the place use is especially important in determining the appurtenance of water rights to land when evaluating ownership documents (see Section 6).

2.2.4 Priority

Utah water law is based on a fundamental principal that those first making beneficial use of a source of water are entitled to continued use in preference to later users (Doctrine of Prior Appropriation). Each water right has a priority date based upon the initial date of use (diligence or decreed rights) or date of initial filing with the State Engineer (Applications to Appropriate). In the event that sources cannot supply all rights, those with the latest priority will be restricted first, regardless of the type of beneficial use.

2.2.5 Ownership

The record of each water right will reflect the entity or entities authorized to make diversion and use of the water and responsible to meet all of the conditions required under the right. This information reflects documents that have been submitted to the state engineer to be made part of the public water right record and may or may not represent the most recent or complete information.

2.3 TYPES OF WATER RIGHTS

There are basically two types of rights: Those established before the state legislature adopted “appropriation” statutes, and those initiated after the adoption of the governing legal code. Statutes requiring the formal “appropriation” of surface waters were adopted in 1903; the requirement was extended to include underground water in 1935. Rights claimed by beneficial use prior to the applicable statute are referred to as “diligence” or “pre-statutory” rights. Those rights established by the formal appropriation process are called “appropriated rights”.

2.3.1 Diligence Rights

The earliest priority water rights are those founded upon the water uses of original settlers and their successors and predicated upon consistent and continuous use. Some of these rights have been made a matter of record through court decrees. Others have been recorded with the state engineer through the filing of claims as part of court-ordered adjudications and as directed by legislation.

Claims to rights to surface water sources established prior to 1903 are called “diligence claims”. Claims to underground water sources established prior to 1935 are called “underground water claims”. The priority of these rights reflects the date the claimant purports that the water was first used. Generally, diligence rights are considered to be “real property” and are conveyed in the same manner as real property. Until confirmed by a court decree (see “Litigation and Adjudication of Water Rights”, below), diligence claims are presumed to be valid but must stand on their own merits if challenged in a court action. The priority date for a pre-statutory right is the date the claimant purports that the water was first used.

2.3.2 Appropriated Rights

Proposals to appropriate surface water after 1903 and underground water after 1935 from any available unappropriated water supply must be initiated through the filing of an Application to Appropriate Water with the state engineer. The priority date is the date that the filing is made, although priority may be lost for lack of diligence in developing under an approved application. Applications to appropriate can be made for permanent projects (in perpetuity), for fixed-time developments (for periods generally ranging from five to twenty years' duration), and for temporary ventures (one year). Applications to appropriate that are approved are subject to specific periods in which to develop the proposed projects and place the water to beneficial use. During the period that an application is being developed, the rights may be conveyed by assignment or by deed. Upon proof of development of the approved uses, certificates are issued, and the rights are "perfected" and must be conveyed by deed. Without completion of development within the designated time frames and/or submission of proof, applications can permanently lapse.

Applications to appropriate that do not meet the criteria of Utah statutes are rejected. Applications to appropriate that propose projects in areas that need investigation or further study may be held without approval pending the availability of such information as is needed.

2.4 APPLICATIONS TO "CHANGE" WATER RIGHTS

Existing rights can be amended to accommodate new projects. Such amendments are initiated through the filing of "change applications" with the state engineer. Change applications can be made for permanent projects (in perpetuity) or for temporary activities (one year) and are subject to the same review, processing, and criteria as described for Applications to Appropriate, above. In most cases, change applications are perfected by the filing of proof and the issuance of a certificate by the state engineer. Change applications cannot be approved if they would result in an enlargement of the beneficial uses or quantities of water utilized under the original water rights.

2.5 APPLICATIONS TO "EXCHANGE" WATER RIGHTS

Applications to exchange appropriated water from one source location to another can be made to facilitate distribution under the affected water right. Generally these applications involve storage waters in reservoir rights or canal company diversions from streams.

2.6 APPLICATIONS FOR NON-USE OF WATER

Once a right is perfected for certain uses, the water right holder or authorized party must continue to consistently utilize the right. If a right is going to be idle for a period of five years or more, it may be protected by filing a nonuse application with the state engineer. Otherwise, statute declares that the right "ceases" and reverts to the public and can be challenged in court proceedings. Non-use applications are filed to protect existing perfected rights that, for various

reasons, are not going to be utilized for a period of five years or more. Inactive rights not protected by non-use applications may still remain valid under certain conditions, such as in cases of extended drought when a supply of water is not available for certain rights.

2.7 LITIGATION AND ADJUDICATION OF WATER RIGHTS

Water rights can be the subject of litigation between individual water users, resulting in subsequent court decrees which could alter the defined uses and limitations of some rights. Such actions can address both small and large water disputes between users. If the state engineer is made a party to the action or if the water users submit court documents to the state engineer in support of their claims, copies of the documents are made a part of the public record.

Sometimes the state engineer is directed by court action to make a determination of all the water rights in a given area. This direction is called an “adjudication order” and the proceedings involve the mapping of sources and uses, and the preparation and receipt for filing of Statements of Water User’s Claim (WUC’s) covering all rights of record, including diligence and decreed rights that had not previously been made a part of the state engineer’s records. All identified claims to water rights are then compiled into “proposed determination” books which are distributed for review to all water claimants and are filed with the court. All interested parties are allowed a period of time to file objections to the proposed determination. Once the objections have been resolved (generally by stipulation or by a court order) the court issues a decree confirming the water rights.

Adjudication proceedings are ongoing in several parts of the state, and Statements of Water User’s Claim may be on file as part of the water right records. The status of such claims would need to be reviewed on an individual basis. Depending on the status of the adjudication proceedings before the court, such claims may or may not be a reliable source of information regarding the water right or its ownership.

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SECTION 3

METHODS OF WATER RIGHT CONVEYANCE

3.1 INTRODUCTION

As with any property, water rights can change ownership. The office of record for ownership of perfected water rights is the county recorder's office for the county or counties where the water is diverted and/or used. If the water is diverted in one county and used in another, documents are to be recorded in both. In Utah, water rights can be owned and transferred separately from the land upon which they are used. Thus, various types of conveyance situations can occur.

3.2 WATER RIGHTS CONVEYED BY "WATER DEEDS"

So-called "Water Deeds" are those which recite only water rights and may transfer such rights in whole or in part. They may contain standard warranty deed, special warranty deed, or quit claim deed conveyance language and may convey a right or rights in whole or in part. In the past, such deeds have exhibited a wide range of descriptive information. Some mention only a flow or percentage of flow under a right. Others describe not only the water right number but also recite specific quantities of flow, diversion allowance, and/or beneficial use. The more exact the information defining the intent of the conveyance, the less likely misinterpretations and conflicts will occur. It is recommended that the language in the suggested "Water Right Deed" format (see Administrative Rules, R655-3-3.2.2, in Appendix B of this manual) be used for this type of conveyance. However, many pre-existing documents that will be addressed in Reports of Conveyance are not consistent with this recommended format and will require the application of professional judgement or additional documentation to interpret.

Execution and recording of a water right deed may separate the ownership of the water right from the ownership of the land where the water is used. Since water rights in Utah can be challenged if not used for a period of five years, the new water right owner may find it necessary to amend the right for use at another location in order to protect the right (see Section 2).

3.3 WATER RIGHTS CONVEYED IN CONJUNCTION WITH LAND

A warranty deed or quit claim deed conveying land may include language that specifically describes the water right(s) intended to be transferred with the land. Such rights can be conveyed in whole or in part. However, if a land deed makes no mention of water rights, water rights used on the land can pass as appurtenances (see Section 6). Land conveyances executed before May 4, 1998, that are silent about water rights could convey that portion of perfected rights (certificates, decree awards, diligence claims, and water user's claims filed in general determination proceedings) described as beneficially used on the deeded land. Land conveyances executed on May 4, 1998, or later, and that are silent as to water rights, could convey not only perfected rights but also approved and as yet unperfected applications where the water right projects are still being developed. "Silent" deeds only convey appurtenant water rights that are in the same name as the

property owner who is transferring the land.

3.4 LAND CONVEYED WITHOUT ASSOCIATED WATER RIGHTS

Land conveyance documents may expressly reserve the associated water rights to the grantor(s)/seller(s). In such events, the land where the water is used may transfer to a new name, but the water right ownership will remain unchanged. Also, land deeds may be executed for property where a water right was historically used, but where a change application has been filed to move the right to another location. For conveyances executed on May 4, 1998, or later, if a change application has been approved prior to the execution of the deed to the historic place of use, the once appurtenant water right has been severed from its historic place of use for title purposes. The right would not pass silently as an appurtenance to the historic place of use.

3.5 WATER APPLICATION ASSIGNMENTS

Unapproved applications or approved applications that have yet to be “perfected” (see Section 2) can be “assigned”. Assignments are often submitted only to the state engineer and may or may not be recorded in the county recorder’s office.

3.6 CONVEYANCES BY “TRUSTEE’S DEED” OR “SHERIFF’S DEED”

Frequently, water rights – either by direct recital or as appurtenant to land – are used as collateral for securing loans from individuals or from commercial lending institutions. Such encumbrances are generally documented by the execution and recording of a “Deed of Trust” or similarly named document. A Deed of Trust, by itself, does not convey title. If a default occurs and a foreclosure is exercised, a “Trustee’s Deed” will typically be executed and recorded to consummate the transfer of title. A Report of Conveyance in such circumstances should include both the original document establishing the encumbrance and the resulting conveyance document.

On rare occasions, ownership of a water right may be acquired by virtue of a Sheriff’s Deed. Typically, this would occur when land is seized by a county for failure to pay property taxes and then conveyed in a tax sale. As with a conveyance by Trustee’s Deed, the Report of Conveyance should include all documentation necessary to establish the basis for encumbrance and the final conveyance.

In both instances described above, if a claim is made that a water right is being conveyed as appurtenant to land, the preparer of the Report of Conveyance should provide sufficient documentation, maps and explanatory narrative to clearly set forth the reasoning, principles and statutes employed in making the determination of title reported.

3.7 COURT DECREES AND AWARDS

Some water right ownership issues are so conflicting or vague or undocumented that litigation is required. Court decrees may be issued to define quantities or direct distribution or quiet title. If the state engineer is provided copies of the decrees, they would be made part of the division's records for the water rights involved. Such decrees can also be utilized in updating title. However, they should be interpreted within the extent of the underlying legal actions. They may represent only the interests of the litigating parties; entities that were not involved in the legal proceedings may also have ownership rights. Generally in the cases of divorce, bankruptcy or probate rulings, orders are given for the appropriate parties or representatives to issue deeds to convey title. Quiet title decisions or stipulated agreements may define the ownership interests within the decrees themselves.

3.8 SHARES OF STOCK

Some water rights are held in the names of corporations, mutual water companies or other formal associations. Beneficial use of the water is made by the parties who hold shares issued by the entity owning the underlying water right. Such shares are transferred according to the procedures set forth for securities in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities. Generally, neither the state engineer's records nor the County Recorder's records will include current information regarding the ownership of shares, but are limited to records of ownership of the underlying water right(s). This exception is detailed in Utah Code at Title 73, Section 1-10. Ownership of a share of stock in a water company is not ownership of a water right. It is simply the right to the use of water under rights belonging to the entity that issued the share of stock.

3.9 DOCUMENTS THAT DO NOT CONVEY TITLE

Not all documents provided by the public or recorded and purported to convey title to a water right can be formally recognized. Typical documents will include such items as a "Bill of Sale", a "Sales Contract" or "Purchase Agreement", or an "Escrow Agreement". These documents certainly have validity in the conduct of business transactions and may bind parties to certain contractual obligations. Such documents may even be helpful in interpreting the intent of formal conveyance documents, but they do not suffice as evidence of a conveyance of title.

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SECTION 4

RESEARCHING THE DIVISION OF WATER RIGHTS' RECORDS

4.1 INTRODUCTION

The official water rights records are housed in individual files labeled by the water right number and containing all of the documents relating to the initiation, processing, investigations, modifications, etc. of each right. All information on those files is public record and available for inspection Monday through Friday from 8:00 AM to 5:00 PM at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Additionally, the documents are being electronically scanned and are available for viewing and printout by computer access through the internet system. The division also maintains a database which contains basic information about each right. The database can be accessed by use of public computer terminals in the Division's office or by access through the internet system. Search programs are available at the internet website to locate specific rights.

4.2 COMPUTER SEARCHES OF WATER RIGHTS RECORDS

Depending on what information is available, the Division of Water Rights internet web site (<http://www.nrwrt1.nr.state.ut.us/>) includes several search programs which should be helpful in identifying water rights. Under hot-buttons labeled "Water Rights", then "Queries", (<http://www.nrwrt1.nr.state.ut.us/wrinfr/queries.htm/>) programs are available to search by water right number, by owner or source name, by point of diversion location (POD), and by place of use location (POU).

4.2.1 Searching by Owner's Name or by Name of Source of Water

The available search programs can search the ownership fields in the database to locate rights in a specific name. However, the title information for water rights is based solely on documents filed by the public with the division, and no guarantee can be given regarding accuracy. No direct communication is made between the state office for water right records and the various county recorders' offices for property records.

These programs can also search the source of water fields in the database to locate rights from a specific named source (e.g., "Whispering Spring", "Bear River"). Generally this program is most useful if a source has a unique name and there are not many diversion rights therefrom. Searching for rights from the "Sevier River" would result in an unwieldy number. Searching for rights from "Willow Creek" would result in listing the numerous Willow Creeks in the state.

4.2.2 Searching by Location of Source or Place of Use

When using either the POD or POU programs, a search can be made by section, township and range. In the POD program, searches can be by full section, quarter-section, or by defining a

radius around a defined point within a section, township and range. This search method requires that a legal description of the property is available by section, township, and range, SLB&M or USM, because of the statewide nature of the database. Location searches by county tax or plat identification numbers or subdivision lot numbers or post office addresses are not presently possible. The POD program is most helpful if the diversion point of the right falls on the property being researched. The program can be tailored to search for rights with certain types of source and/or specific uses.

The POU program can search the database for locations of beneficial use of water that may fall on the property being researched. This program is helpful if the source of supply of water is not located on the property where the water is used (e.g., the well is sited on the neighbor's property, or the spring is on U. S. Forest Service land and the water is piped to the cabin property being researched). Place of use descriptions in the database are by 40-acre tracts (e.g., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T25W, R5W, SLB&M), so several rights may overlap, and some may have to be screened out as inapplicable.

4.3 PRIOR TITLE DOCUMENTS

Title documents which have been previously reviewed and processed by the state engineer's staff will generally be found on the files to which they refer. In some cases, these documents will be available for viewing as scanned documents via the internet website. Those that are not scanned can be viewed by examining the paper files. Most such documents will be summarized on forms entitled "Title Abstract" or "Title Summary" also contained in the files. These forms were used by the state engineer's staff for documenting title processing prior to May 1, 2000.

Although research of the available documents on the state engineer's files can be helpful, persons preparing Reports of Conveyance should be aware that the state engineer's office / Division of Water Rights serves only as an office of public record. The water right ownership information contained in those files reflects only that which has been filed with the Division by the public and may or may not be a complete record. Furthermore, there may be several possible interpretations of those documents.

4.4 DIVISION STAFF ASSISTANCE

Although the Division's files and electronic records have been made as accessible as is practically possible, those unfamiliar with the variety of documents contained in those files or with the basic principles of water rights administration will find researching of the records to be difficult. Section 11 of this manual contains some additional information regarding the extent to which Division staff can offer assistance in this regard.

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SECTION 5

WORKING WITH THE COUNTY RECORDER'S OFFICES

5.1 INTRODUCTION

The Office of County Recorder is established by state statute and the duties and responsibilities are set forth in Utah Code at Title 17, Sections 21-1 through 21-5. The County Recorder's Office is the place where documents that establish ownership of water rights are deposited for record. The County Recorders' offices keep records of all conveyance documents that are submitted to them for recording. Most documents that are recorded are assigned a recording number, book number, and page number, along with the date and time of receipt by the recorder.

5.2 SEARCHING FOR CONVEYANCE DOCUMENTS

The counties in the state of Utah do not all have the same resources, but most recorders have indexed their records so that documents can be found by researching one or more of the following elements of a deed or land parcel:

1. Grantor or grantee name
2. Tax serial number, also known as the parcel identification number
3. Legal description with a section, township and range
4. The number from the county property tax notice, also known as the account number.

Some County Recorders maintain a separate set of "water books" for recording of deeds which specifically recite a water right number or other identification. Others simply record those deeds in the chronological order filed along with all other recordable documents. Unless a water right is conveyed as an appurtenance to a parcel of land (see Section 6), it is most likely that the search will have to be focused on the grantor and/or grantee name(s).

County Recorders have set aside a portion of their office space for customers to use when doing research at the recorder's office. The recorders or their employees will also usually be able to assist a customer in finding documents. However, they will not compile a history or abstract for a customer. They will normally copy deeds for a specified cost and will make available the other resources they have. Many of the County Recorders in Utah have a computer software program known as "PMSI" to assist in searching for title conveyance documents.

5.3 SITUATIONS REQUIRING PROFESSIONAL ASSISTANCE

Parties unable to complete their own title research should rely on a licensed professional, normally an employee of a title company, to complete a search or an abstract of title on a parcel of land or related water rights.

VERSION 06/05/00

SECTION 6

HOW TO DETERMINE IF A WATER RIGHT IS APPURTENANT TO LAND

6.1 INTRODUCTION

Utah statutes allow for the conveyance of water rights either with or without the concurrent conveyance of land. Historically, the law has also set forth conditions under which a water right could be conveyed “silently” (without specific recitation in the conveyance document) as a legal appurtenance to the land on which it is used or approved for use. Those conditions are set forth in Utah Code at Title 73, Section 1-11.

The State Engineer’s office has for many years evaluated conveyance documents and related information to determine as correctly as possible the ownership of a water right. The records of the State Engineer have normally been updated only when it became necessary for some administrative action or at the specific request of the water right owner. Complete chains of title were not normally provided to the State Engineer unless a party claiming to be the current owner had some need to demonstrate ownership.

6.2 HOW A WATER RIGHT BECOMES APPURTENANT TO LAND

All *water* is the property of the public until a *right* for its diversion and use is properly established. At that point, the *water right* becomes an appurtenance to its place of use. In general terms, current statutes provide that when a water right has been legally established or *perfected* for use upon a particular parcel of land, or even when a water right has been *approved* for use upon a particular parcel of land, the water right can then be considered to be an appurtenance to that land “for purposes of land conveyances only”. The underlined text is included in the statute because the concept of “appurtenance” has many other legal implications which may not be pertinent to the purposes of this section.

There are several different processes by which a right is established or *perfected* and the right is attached to land. A perfected water right is typically established by one of the following methods:

- 1) “Pre-statutory water rights” are those which have been established by placing water to beneficial use prior to the enactment of “appropriation” statutes. The pre-statutory dates are 1903 for surface water sources and 1935 for underground water sources. This type of right is often called a “diligence right”.
- 2) “State appropriated rights” are those established by the filing of an application with the State Engineer, developing the approved beneficial uses, filing a “proof” of diversion and beneficial use and obtaining a certificate from the State Engineer.

- 3) “Decreed water rights” are those described in and confirmed by an official court decree (usually from a state district court). Such rights are normally based on evidence provided to the court to demonstrate either a diligence or appropriated right exists. Such rights must be interpreted within the context of the larger legal action which leads to the decree.

The place of use to which such rights are legally appurtenant may be defined only by actual practice, or perhaps by proof maps, by hydrographic survey maps prepared by the state engineer’s office, or simply by more or less precise legal land descriptions contained in the documents which establish the rights.

When a new Application to Appropriate Water is *approved* by the State Engineer, or when an Application for Permanent Change of Water is *approved* to relocate all or part of a water right, those rights are also attached or made appurtenant to the approved place of use. Such applications filed after May 4, 1998, should include an “application map” which will define the parcel of land to which appurtenance has been established. For applications filed prior to that date, the place of use defined in the application will have to suffice.

6.3 HOW TO SEARCH PROPERTY FOR APPURTENANT WATER RIGHTS

Depending on what information is available, the Division of Water Rights internet website (<http://www.nrwrt1.nr.state.ut.us/>) includes several search programs which should be helpful in identifying water rights associated with land parcels. Under hot-buttons labeled “Water Rights”, then “Queries”, (<http://www.nrwrt1.nr.state.ut.us/wrinfr/queries.htm/>) programs are available to search by water right number, by owner or source name, by point of diversion location (POD), and by place of use location (POU).

When using either the POD or POU programs, a search can be made by section, township and range. In the POD program, searches can be by quarter-section, or by defining a radius around a defined point within a section, township and range. When using these programs, caution should be exercised because the point of diversion for a right may not be on the property being searched, but the right may still be appurtenant to that land because it does encompass the place of use.

It should be noted that the state engineer does not index water rights point of diversion or place of use by street address, county tax identification number, nor by ownership of shares in water companies or associations.

6.4 PLOTTING PROPERTY DESCRIPTIONS TO DETERMINE APPURTENANCE

There are a number of ways to determine if a specific parcel of land described in a conveyance document has appurtenant water rights. The approach taken will depend in large part on the information available either in the conveyance document itself, from the parties to the transaction, or from other pertinent sources.

In a situation in which no water right is recited or identified in the document, it will usually be necessary to physically plot the property description for the parcel, (often the parcel will already be detailed on a county recorder's ownership plat). The search programs available on the state engineer's internet web site can be used to determine if there are any rights evidently associated with the parcel. As a final check, one should then "overlay" the plot of the parcel on a base map showing the legal places of use for water rights in the same area. The base map may be a proof map or a hydrographic survey map available from the records of the state engineer.

A second approach would apply in a situation in which the water right number is recited in the document, but the grantee is to receive only the part appurtenant to a defined land parcel. Again, the property description should be plotted and overlaid on a base map which defines the legal place of use of the right. If the entire place of use is not encompassed within the conveyed parcel, geometric or graphic calculations will be required to determine the portion appurtenant to the conveyed parcel.

Any maps used in making such determinations must be attached to the Report of Conveyance in which the documentation is reported to the state engineer.

6.5 CONVEYANCE AS APPURTENANT OR RESERVATION OF RIGHTS

Much of the confusion related to the interpretation of conveyance documents is associated with documents that are unclear as to the intent of the seller/grantor to convey or to reserve appurtenant water right(s). A careful review of each document is necessary to determine what portion of a water right may have been conveyed.

Legislation effective May 4, 1998, amended Utah Code Title 73-1-11 to give some clarification to interpretation of such deeds. For deeds executed either before or after May 4, 1998, if a grantor deeds land to which a water right is appurtenant and makes no mention of a reservation of any or all of the appurtenant right, all of the water right is transferred silently. For deeds executed prior to May 4, 1998, if a deed contains a specific conveyance of any part of an appurtenant right and does not contain a specific reservation of the remainder, it is presumed that the entire appurtenant water right is conveyed. For deeds executed on or after May 4, 1998, and containing a specific partial conveyance of an appurtenant right, the remainder of the right is considered to be reserved to the grantor. Conversely, for a deed executed on or after May 4, 1998, which specifically reserves a partial interest in an appurtenant right, the remainder is presumed to be conveyed.

In some situations, conveyances will be recorded in "concurrent" filings. Typically these filings consist of a warranty deed which conveys land and reserves "any and all water rights", and a quit claim deed conveying a water right interest. Often the grantees are not common to both deeds. Such filings, even if recorded such that the land deed is senior (first recorded), are generally treated as a single filing. If the land deed is first recorded and contains no reservation, it might be construed that the appurtenant right has been conveyed in its entirety and no interest remains

to be conveyed by any later recorded (junior) deed. In such cases, preparers of Reports of Conveyance would be advised to obtain supplemental documentation in support of the interpretation adopted.

6.6 BEYOND APPURTENANCE

Once it has been established that a water right is legally appurtenant to a parcel of land, there is still at least one more condition that must be satisfied before a conveyance of the right by appurtenance can occur. That condition is called “*unity of title*”. Unity of title means that the title to the water right and the title to the land are held by the same owner(s). For example, the land may be held in a family trust while the water rights are held by individual family members. Or, the land may be held in joint tenancy by a husband and wife, and the water rights held in the name of one spouse only. In such cases, a partial conveyance may occur by appurtenance, or there may be no conveyance at all. The preparer of a Report of Conveyance reporting such conveyances should be prepared to justify any interpretations made.

VERSION 06/05/00

SECTION 7 CONVEYANCES TRANSFERRING ONLY A PORTION OF A WATER RIGHT

7.1 INTRODUCTION

Under current Utah statutes, a single water right may have several owners, each holding some defined interest in the water right. When an owner holds only a partial interest in a water right and conveys all or part of that partial interest, or when an owner holds a full interest but conveys only a partial interest, there are special considerations that must be made to properly interpret those conveyances.

A special Report of Conveyance form is used when only a portion of a water right is conveyed (see Section 10). It must be noted that, even though a particular grantor may be conveying his/her entire “*right, title and interest*”, that interest may not represent the entire water right as described in the records of the state engineer.

7.2 DETERMINATION OF BENEFICIAL USE CONVEYED

As was detailed in Section 2 (The Basics of Water Rights), the basis, the measure and the limit of a water right is determined by the beneficial use(s) which are sustained by that right. When water right conveyance documents transfer only a partial interest in a particular right, the conveyed interest may be defined in the documents in several ways, including:

- 1) Rate of flow (e.g., “*0.1 cfs*” or “*44.8 gpm*”);
- 2) Volume of diversion allowance (e.g., “*2.5 acre-feet*”);
- 3) Percentage or fractional interest in right (e.g., “*an undivided 25% interest*” or “*a 1/3 interest*”).

In each case, it will ultimately be necessary to quantify the interest conveyed in terms of beneficial use (See Section 2). If the water right involved sustains only a single beneficial use, the determination of the beneficial use conveyed is usually accomplished by a relatively simple proportioning of the conveyed interest. Consider the example of a water right for 2.5 cfs for the irrigation of 100 acres of land in an area in which the irrigation “duty” (See Section 2) is set at 4.0 acre-feet per irrigated acre. In this example, partial conveyances are relatively simple to reduce to beneficial use.

However, if a water right sustains two or more beneficial uses (for example, 100 acres of irrigation, stockwatering of 150 cattle and domestic use for three families), or is the subject of a pending change application which proposes the development of multiple beneficial uses, the conveyed beneficial uses cannot be as readily determined. In this event, there are at least two alternatives that may be pursued:

- 1) Proportion the conveyed interest among all the sustained beneficial uses.
- 2) Obtain an affidavit or other document from the parties to the original conveyance which will clarify the intent in terms of beneficial use.

The first alternative can be problematic in several respects. First, the assumption of proportionate conveyance may be contrary to the actual intent of the parties. For example, a seller intending to sell a portion of the irrigation use under a particular water right and/or change application may be construed to have sold all or part of a domestic use required for an occupied home retained by the seller. Second, the acquired interest thus determined may result in the divided ownership of an “indivisible” unit. In the case of a single-family domestic use, a partial interest cannot be segregated (See Section 8 regarding “segregations” of partial interests). For these reasons, the second alternative will be the preferred course of action in most circumstances.

7.3 MULTIPLE GRANTORS/GRANTEES

Conveyance documents listing multiple grantors or multiple grantees may require special considerations. These considerations are especially difficult if the multiple grantors did not acquire their respective interests jointly or if the distribution of conveyed interests among the several grantees is not specified.

7.3.1 Multiple grantors with independently acquired interests

Consider a situation in which Party A has received 0.25 acre (1.0 acre-foot), Party B has received 0.50 acre (2.0 acre-feet), and Party C has received 1.25 acre (5.0 acre-feet), respectively, in a common irrigation right. The three parties are then listed as common grantors on a conveyance to Party D for 0.375 acre (1.50 acre-foot) in the subject right. Lacking other information, it is not possible to accurately determine how each grantor’s interest is to be reduced. The options are to:

- 1) Reduce each grantor’s interest by 1/3 of the conveyed amount (0.125 acre/0.50 acre-foot);
- 2) Reduce each grantor’s interest proportionately (1/8, 2/8 and 5/8 of the conveyed amount, respectively);
- 3) Obtain an affidavit or other document from the parties to the original conveyance which will clarify the intent in terms distribution of the conveyance.

If either of the first two alternatives is chosen, the professional preparing the Report of Conveyance should be prepared to justify the interpretation adopted.

7.3.2 Multiple grantees with unspecified distribution of interests

Unless otherwise specified in the conveyance documents or supporting documentation, grantees are believed to take title in proportion to the number of grantees listed. Under current statutes, multiple grantees are considered to receive title as “tenants in common” unless the language in the conveyance documents implies or specifies “joint tenancy” (as provided by statute at UCA

57-1-5) in which case the joint interest is considered to be equal and undivided. As described above, such divisions of interest may have the effect of creating divided interests in indivisible units (such as domestic uses). This situation may or may not become a problem, depending upon the grantees' intent regarding possible "segregation" of their respective interests (See Section 8).

7.4 MULTIPLE RIGHTS IN A SINGLE CONVEYANCE DOCUMENT

Documents conveying partial interests (or a combination of partial and full interests) in several water rights are not uncommon. Such documents may become difficult to interpret, especially if the conveyed amount is defined only in terms of flow (cfs/gpm) or diversion allowance (acre-feet) and the deed does not specify the manner in which the conveyed interest is to be distributed from among the several rights. If the available documents do not make clear the intent of the grantor, it is recommended that an affidavit or other document be acquired to clearly set forth the intents of the parties to the original conveyance.

7.5 PARTIAL CONVEYANCE BY APPURTENANCE TO LAND

See Section 6 of this manual for additional information regarding conveyance by appurtenance to land. Generally, if a conveyance document recites a description of land to which water rights are legally appurtenant, and the deed is "silent" as to water rights conveyed and/or retained, and the grantor holds title to both the land and the appurtenant water right(s) at the time of conveyance, then the appurtenant water right(s) are conveyed in proportion to the portion of the defined place of use conveyed. Under "pending" applications (See Section 2), the defined place of use will be determined by the pertinent "application map" which has been filed with the state engineer in support of the application.

7.6 PARTIAL CONVEYANCE BY SOURCE

In some instances, a conveyance document will recite a full or partial interest in a particular source of water or point of diversion. For example:

- 1) *"An undivided 20% interest in Pinecone Spring located. . ."* ;
- 2) *"One-third of that certain well located South 50 feet and West 1310 feet from the SW Corner of Section 5. . ."*

Generally, if such conveyances fail to specify a "water right", it has been common practice to conclude that no water right interest is conveyed, although some rights of access to or use of the source or diversion facilities may be. It may be the intent of the parties that the grantee assumes the obligation to acquire and change a water right in order to take advantage of the access or use thus granted.

In some instances, the conveyance may recite a specific interest in a particular water right with multiple sources, together with some interest in one or more of the sources. For example:

- 1) “1.0 acre of irrigation from WUC 11-1234 and a 20% interest in Pinecone Spring. . .” [water right 11-1234 being a right for 10 acres of irrigation from four springs, one of which is “Pinecone Spring”];
- 2) “5 AF of water right 96-321 and 1/3 of the Bulldog Well located in Section 5. . .” [water right 96-321 is a right for irrigation from three wells all located in said Section 5].

In these cases, the quantity of water right conveyed may be determined relatively easily and the recital of the source may appear as a “special condition” or “restriction”. Generally, the state engineer leaves the resolution of such special conditions to the parties to the conveyance and is primarily interested in the ownership interest in the water right.

7.7 PARTIAL CONVEYANCES OF “SUPPLEMENTAL” WATER RIGHT(S)

Section 2 of this manual defines the concepts of “supplemental” and “sole supply” water rights. Some conveyances may recite a full or partial interest in a supplemental right for which there is no defined sole supply. In such cases, although the recital may appear to clearly specify a quantity of water right being conveyed, it is not always possible to determine the beneficial use which has been conveyed.

In some cases, if the grantor(s) holds a full interest in the entire supplemental group, the conveyance document may be construed to establish and convey a sole supply for the water right described. For example, consider imaginary water right 82-432 in “Whispering Spring” which is part of a supplemental group of rights used together for stockwatering of 200 head of cattle, all owned by Party A, who executes a deed conveying:

“All of Whispering Spring, a stockwatering right for 36 head of cattle (1.0 acre-foot) under water right 82-432 in the records of the State Engineer.”

In this example, the document would be construed to convey 100% of the listed right and to establish a sole supply for the right. However, in many cases such conveyances do not contain sufficient information to determine the specific intent and effects of the conveyance. While the facts that documents have been executed and recorded will suffice to establish that some water right interest has been relinquished and received, that interest must be determined in respect to beneficial use and sole supply before the state engineer can consider any requests for segregation or other administrative action related to either the acquired or retained interest (see Section 8).

Lacking sufficient specificity in the original conveyance documents, these may be supplemented with affidavits or “corrective” conveyance documents sufficient to establish the requisite beneficial use and sole supply conveyed. It should be noted that any affidavits or other documents purported to specify a “sole supply” for a heretofore “supplemental” water right must be executed by all owners of record of the supplemental group.

7.8 PRIOR RECORDS FAILING TO SPECIFY BENEFICIAL USE

There will be many cases in which prior conveyance documents – including those already processed and reflected on the records of the state engineer – will fail to adequately specify the beneficial use(s) conveyed or owned. Typically, for those documents already contained in the state engineer’s records, the ownership interest will be defined only as an undivided percentage or proportionate interest, or as an acre-foot amount in a water right and/or a pending change application. In many instances, the parties to the prior documents will not be available for consultation or designation of the intent of the prior documents. In those circumstances, the professional preparing/certifying the Report of Conveyance will be expected to observe any pertinent statutes, prior case law, or commonly accepted “rules of reasonableness” in determining effect. The certifying professional should include sufficient narrative comments with the Report of Conveyance to clarify the principles employed in making the determination reported.

7.9 INTERNAL INCONSISTENCY IN CONVEYANCE DOCUMENTS

Some conveyance documents may recite interests in a manner which is internally inconsistent. For example, a document may recite both a beneficial use and a flow or diversion allowance which do not coincide with one another:

- 1) *“Five acre-feet of water for irrigation of 2.5 acres and domestic use for one family.”*
- 2) *“0.01 cfs from Flinger Spring for 40 acres of irrigation and 20 head of cattle.”*

In these examples, the diversion allowance (“*Five acre-feet*”) and flow (“*0.01 cfs*”) are each insufficient for the beneficial uses recited. It may be argued that the more restrictive element of the deed should rule, but whereas beneficial use constitutes the defining element of a water right by statute, it should generally be considered the controlling factor in such cases. If reason exists to doubt such an interpretation reflects the true intent and understanding of the seller and/or the buyer, additional documentation (affidavits or “corrective” conveyance documents) should be obtained to clarify the conveyance.

7.10 SPECIAL CAUTIONS RELATED TO CONVEYANCE OF “PROPORTIONATE” INTERESTS

Documents which convey fractional or percentage undivided interests in water rights can be especially difficult to interpret. For example, if Party A acquires an undivided 50% interest in a right and subsequently executes a document to convey a 40% interest to Party B, it may not be clear whether the conveyed percentage is to be applied to the entire water right or only to the interest held by Party A. In the first case, Party B would receive a full 40% of the total right; in the second, Party B receives only 20% (40% of 50%) of the right, a significant difference.

A second potential problem occurs when Party A acquires a specified percentage interest in a water right, then Party A (or another owner) segregates a portion of the water right (see Section

8). Party A then conveys a percentage interest to Party B. Does Party B receive the recited percentage of the “original” water right, or of the “reduced” water right as defined after the segregation? For example, assume that Party A acquires an undivided 40% interest in water right 11-123, a right for the irrigation of 100 acres. Party A then segregates 20 acres of that interest in order to file a change application, reducing water right 11-123 to 80 acres. Party A then conveys to Party B a 10% interest in water right 11-123. What is conveyed to Party B? Ten acres or eight acres?

In nearly all such cases, it will be necessary to obtain additional documents from the parties to enable a determination of the intent of the conveyance in terms of beneficial use.

VERSION 06/05/00

SECTION 8 WATER RIGHT SEGREGATIONS

8.1 INTRODUCTION

This section will explain briefly the concept of water right segregations and the manner in which segregations must be considered in assembling and reporting a chain of title to water rights. An understanding of protocols used in numbering water rights and applications, as well as an understanding of “pending” versus “perfected” applications, will be essential to a full understanding of this discussion. Those subjects are described in detail in Section 3 of this manual.

8.2 WATER RIGHT SEGREGATION DEFINED

Simply stated, a water right segregation is an administrative action taken by the state engineer to separate some portion (“the child right”) of a water right from the original right (“the parent right”) and to reduce the original right accordingly. Typically, a segregation reduces all quantified elements of the parent right, including the beneficial use(s), any defined flow restrictions, and/or the associated diversion allowance(s). The limited exceptions to this rule are defined in the following paragraphs.

8.3 WATER RIGHT SEGREGATIONS: WHY & WHEN

There are generally three situations in which a water right segregation will be necessary:

- 1) An owner of a partial interest in a water right or pending Application to Appropriate desires to separate that partial interest in order to file an application or a proof;
- 2) An owner of a full interest in a water right or pending Application to Appropriate desires to separate some portion in order to file an application or a proof;
- 3) The state engineer determines that some quantified element of a water right or pending Application to Appropriate requires removal or adjustment (e.g., a beneficial use “duty” has been amended, a beneficial use has been reduced or lapsed for non-use, or a proof has been filed documenting beneficial uses lesser than those originally described in a pending application).

Typically, only the first two situations will be encountered in preparing a Report of Conveyance. In the case of a perfected water right, the segregation will be documented by the preparation of a “Statement of Ownership Segregation” which will be located on the file created for the child right. For a pending Application to Appropriate, an “Application to Segregate” will be filed to document the separation of the child right. The “Statement of Ownership Segregation” or

“Application to Segregate” will each contain the new water right number (and application number, in the case of the pending application), and a description of the beneficial uses and other quantified elements separated from the parent water right. In both cases, the file for the parent right will contain a document called a “segregation tabulation” (informally called a “segtab” or “green sheet”) which will list all segregations from that right along with summary totals of the elements remaining in the parent right (flow, diversion allowance, beneficial uses).

While less common, the third described circumstance may arise. In this case, there is no child right created and no new water right or application numbers are assigned. The amendments to the right will be documented only with one or more entries on the segregation tabulation (segtab/green sheet), such as: “*Reduction due to proof*”; “*Reduction due to adjudication survey*”; or “*Adjustment of domestic use duty to current policy amount*”..

8.4 ESTABLISHING CHAIN OF TITLE TO SEGREGATED RIGHTS

The following scenario describes a typical situation:

- 1) Party A is conveyed a right for 0.50 acre of irrigation (2.0 acre-feet) in water right numbered **11-1234**, a perfected right, and the state engineer’s records have been endorsed to show that conveyance.
- 2) Party A requests the state engineer’s office assist in preparing an Application for Permanent Change (“change application”) to enable a change to the point of diversion, place and nature of use of the deeded interest such that he may drill his own well and use the right for domestic use for one family (0.45 acre-foot), stockwatering of two horses (0.056 acre-foot), and irrigation of 0.3735 acre (1.494 acre-foot).
- 3) The state engineer’s office prepares a Statement of Ownership Segregation and assigns Party A’s interest a new water right number, **11-3456**.
- 4) Party A files a change application proposing the described changes to his water right and the application is assigned number **a12345**.
- 5) Party A conveys some or all of the 2.0 acre-foot interest to Party B.

It is at point 5) that a Report of Conveyance will be required to amend the records to reflect the interest conveyed to Party B. It is also at this point that a number of errors may occur and special considerations must be made.

First, it should be noted that, although Party A took title in water right **11-1234** as an owner of a partial interest, the conveyance to Party B must reference the segregated water right by its own number, **11-3456**. The adequacy of the conveyance documents will depend upon several factors.

8.4.1 Conveyance of the Entire Segregated Right

If the intent of Party A is to convey the entire water right and change application to Party B, the conveyance must merely recite the water right number of the child right (e.g., “*all right, title and interest in water right 11-3456*” , or, “*2.0 acre-feet in water right 11-3456*”). It is not necessary that the pending change application be recited in the document, although it may be.

If the conveyance document recites the interest in the parent right (e.g., “*2.0 acre-feet of water right 11-1234*”) without any reference to the child right (e.g., “*now on the records of the State Engineer as water right 11-3456, change application a12345*”), the conveyance document is not adequate to convey title and must be supplemented by a “corrective” or “replacement” document, properly executed and recorded as required by statute. This can be especially problematic if Party A has retained some interest in the parent right (11-1234) which will be inadvertently conveyed by the improperly prepared document.

8.4.2 Partial Conveyance of the Segregated Right

In the event that Party A wishes to convey only a portion of the segregated right and pending change application, the requirements for an adequate conveyance document are somewhat more complex. For such a document to be acceptable, it must recite, at minimum, the following:

- 1) The numbers of the child water right and change application being conveyed;
- 2) The partial interest in the child right which is to be conveyed, in a manner that will enable determination of the portion of the beneficial use(s) being conveyed;
- 3) The partial interest in the pending change application which is to be conveyed, in a manner that will enable determination of the portion of the beneficial use(s) being conveyed.

For example, the deed might recite the conveyed interest as follows:

“One acre-foot of water right 11-3456, change application a12345; being a right to irrigate 0.25 acre under the water right and a right for domestic use of one family and irrigation of 0.1375 acre under the change application.”

If this minimal amount of information is not provided by the conveyance document(s), supplemental documentation must be provided with the Report of Conveyance to enable determination of the beneficial use(s) acquired.

VERSION 06/05/00

SECTION 9

HOW TO COMPILE A “CHAIN OF TITLE”

9.1 INTRODUCTION

Many Reports of Conveyance will report two or more conveyance documents whereby ownership passes through several parties. A complete “chain of title”, for the purposes of a Report of Conveyance, is simply a grouping of such documents whereby a particular ownership interest is demonstrated to be conveyed from one party already recognized as the owner on the state engineer’s records, through one or more intervening owners, thence to a final party seeking to have the ownership recorded in the state engineer’s files.

Figure 9.1 is a flow chart depicting the general process and considerations that will be encountered in assembling the conveyance documents that will constitute a complete chain of title.

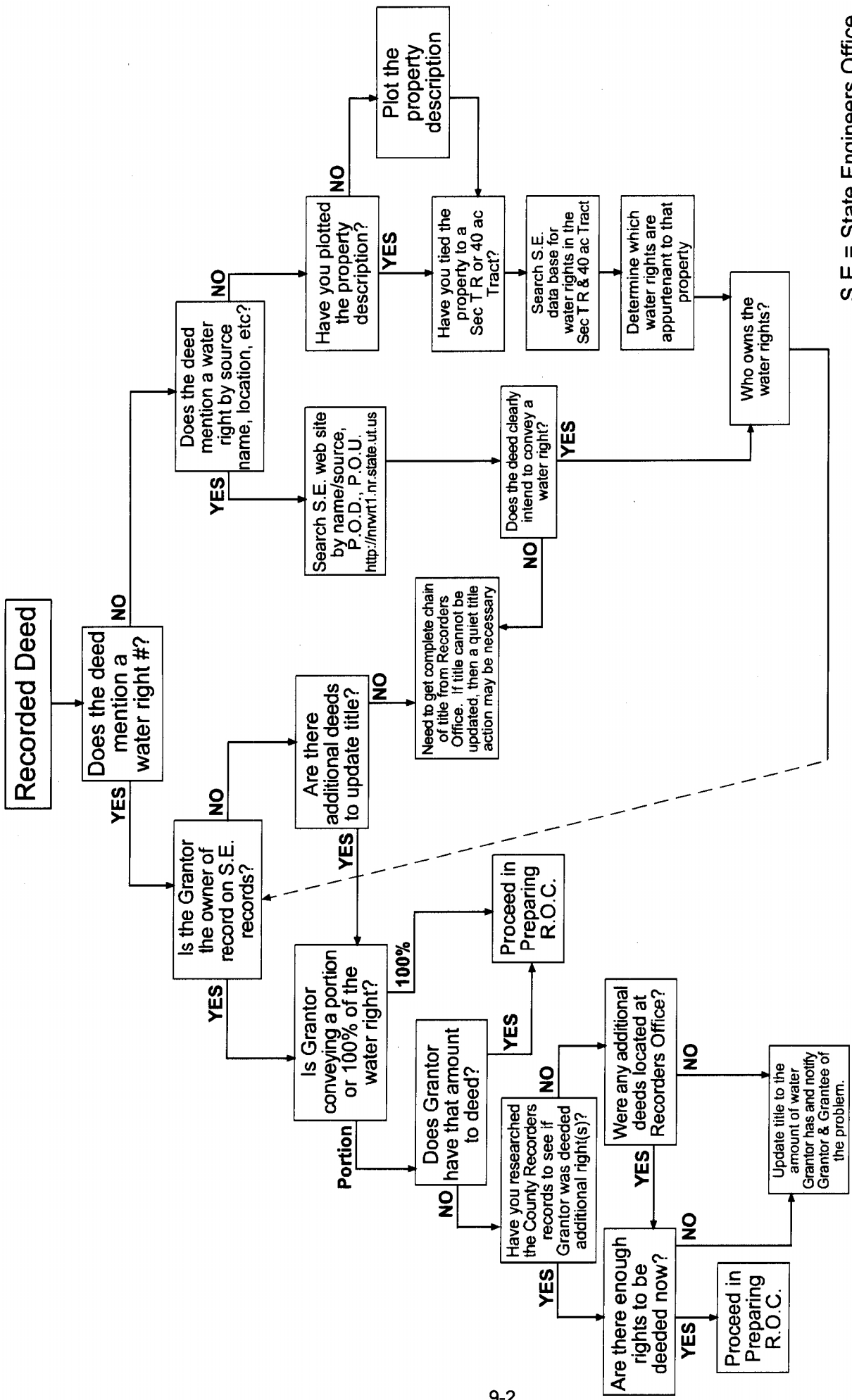
9.2 COMPILING A CHAIN OF TITLE

In compiling a chain of title, the starting point is a review of the state engineer’s records to determine the presently recognized owner(s) of the right(s) in which you are interested.. Keep in mind that the state engineer’s office will have only processed the deeds provided by the county recorder’s office or by the public. There may be other conveyance documents that have not been received or processed by the state engineer’s office.

If the available documents do not constitute a full chain of title to the person currently claiming ownership, the next step is to search the records of the county recorder’s office. Under Utah Code, 73-1-10, water rights are to be transferred by deed whether conveyed with property by appurtenance or by water right number. All such deeds must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used (See Sections 3 and 5 of this manual for additional information).

A typical complete chain of title will have the following characteristics:

- 1) The grantor(s)/seller(s) on the first document in the chain will be same as the owner(s) currently shown in the state engineer’s records.
- 2) The grantee(s)/buyer(s) on the first document will be the same as the grantor(s)/seller(s) on the second document, with this pattern repeating through all successive documents.
- 3) Although the language used may vary through the successive documents, the same identifiable ownership interest will be recited in each document.



S.E. = State Engineers Office
 Water Rights
 P.O.D. = Point of Diversion
 P.O.U. = Place of Use
 Sec T R = Section Township
 Range

Figure 9.1

- 4) The grantee(s)/buyer(s) in the final document will be listed in the Report of Conveyance as the party currently requesting an ownership update on the state engineer's records.

9.3 PARALLEL CHAINS OF TITLE

Some chains of title may “diverge” into two or more parallel chains which may later “re-converge” into a single serial chain. For example:

- 1) Party A is the owner of record of 100% of a particular water right on the records of the state engineer.
- 2) In three separate documents, Party A conveys a 30% partial interest to Party B, a 20% partial interest to Party C, and a 15% third partial interest to Party D. At this point, the chain has diverged into four parallel chains, with Party A retaining a 35% interest. The three documents should be reported in the order in which they were recorded.
- 3) Party A, Party C and Party D, each in separate documents, convey their respective interests to Party B. The chain has now re-converged back to a single owner. Again, the three documents should be reported in recording order.

9.4 COMMON PROBLEMS IN COMPILING CHAINS OF TITLE

Determining the intent of some conveyance documents can be very difficult. In other cases, the documents themselves are flawed such that they prevent compilation of a proper chain of title. Some commonly encountered problems may include:

- 1) The document recites the wrong water right number. In some cases, this will be a simple typographical error. In others, the deed will recite the “parent” number instead of the “child” number (see Section 8). Additional documents are required to cure this defect.
- 2) The document was not recorded or was recorded “out of order”. This is common when a quit claim deed is improperly believed to pass “after acquired title” (see Utah Code 57-1-10 and 73-1-12). Generally, additional documents are required. Statute does not permit “re-recording” of the same document to correct recording order (57-3-106[3][a]).
- 3) The grantor on the conveyance document is not the same as the grantee on the previous document (e.g. Title was received under a business name, trust, etc., but attempts to convey as an individual). Additional documents are required.
- 4) The conveyance document is recorded in the wrong county or is not recorded in both counties where it is diverted and used (see Utah Code 73-1-10). In such cases, a single document can be recorded in more than one county where required.

- 5) A document recites a greater interest than the grantor(s)/seller(s) have acquired by prior conveyances. In the case of a quit claim deed, whatever interest is held at the time of “delivery” of the deed will be conveyed (see Utah Code 57-1-13). In the case of a warranty deed (see Utah Code 57-1-12), additional documents may demonstrate a case in which “after acquired title passes” (see Utah Code 57-1-10).

VERSION 06/05/00

SECTION 10

PREPARING A REPORT OF WATER RIGHT CONVEYANCE

10.1 INTRODUCTION

In compliance with Section 73-1-10 Utah Code Annotated, as amended (see Appendix A of this manual), water right owners must submit to the state engineer a report of water right conveyance to update the ownership records on the state engineers files.

The state engineer's office will provide two separate forms for the professional or individual to use in preparing the required reports. The first form, consisting of a single two-sided page, will be for 100% conveyance of a water right. The second form, being two, two-sided pages, will be for conveyance of a partial interest in a right. It should be noted that, even if an owner is conveying 100% of his/her owned interest, this may or may not represent the entire water right.

10.2 INSTRUCTIONS FOR COMPLETION OF REPORT OF CONVEYANCE FORMS

Following are general instructions for completion of the two types of report forms. These instructions are offered as general guidelines only. The party completing the form may find it necessary to attach additional documentation or narrative in order to assemble a report that is acceptably complete for filing.

10.2.1 Multiple Rights Conveyed in a Common Chain of Title

With limited exceptions, a separate Report of Conveyance will be required for each individual water right for which the state engineer's records are to be updated. Title changes on two or more water rights may be reported on a single Report of Conveyance under the following conditions:

- 1) The chain of title for all affected water rights is 100% identical for all affected rights.
- 2) Title to each and every affected water right is conveyed 100% to the final grantee listed in the report. There are no partial conveyances nor reservations.
- 3) The preparer of the report includes an identified exhibit (e.g., "Exhibit A") which lists all water rights affected by the Report of Conveyance.
- 4) Instead of entering a water right number on each page of the Report of Conveyance, the preparer will reference the summary document (e.g., "See Exhibit A") attached to the report.
- 5) When a fee is charged, a separate fee must be paid for each water right affected by the Report of Conveyance.

Personnel of the Division of Water Rights reviewing such reports will enter a “remark” in Section C of the report indicating that the executed “original” of the report is filed on the lowest numbered water right affected. Other files will contain photocopies of the report.

10.2.2 Report Forms for 100% Conveyance of a Water Right

SECTION A. CONVEYANCE SUMMARY

This section is used to provide summaries of the individual conveyance documents being reported. At the top right hand corner of the form, enter the page number and the water right number (Example: “Page 1 of 10 ” and “**WATER RIGHT NO. 83-1234**”). The remainder of this section provides space to summarize up to three conveyance documents. If more than three documents are being reported, additional pages bearing Section A must be attached to the report. The documents being reported should be listed in order of effective date with the earliest document listed first and the most recent document last.

The document summaries are to be completed as follows (numbers correspond to the numbered items within Section A):

1. Indicate the type of document by an “X” or describe the conveyance document under “Other”
2. Obtain this information directly from the conveyance document and County Recorder’s stamp. If the signature date and the notarization date differ, the notarization date should be used as the “date signed”.
3. Grantor: List the grantor name(s) exactly as it appears on the conveyance document. Any differences between the grantor name(s) on the document and on the state engineer’s water right file must be rectified using appropriate affidavits, etc..
4. Grantee: List grantee name(s) exactly as it appears on the conveyance document.
5. Mailing Address: List current mailing address(es) of grantee(s). (*Grantee[s] should be informed that, if at anytime their address changes, they must notify the state engineer’s office in writing of the new address so that correspondence is sent to a correct address. The state engineer’s office will send official notices regarding administrative actions only to the owner and address of record on the water right records.*)
- 6a. Pending Change Applications: List any pending change applications that are associated with the water right.

- 6b. Non-Use Applications: List any non-use applications that are associated with water right. *(Such applications may not be recited on the conveyance documents and must be identified by independent research of the state engineer's records [See Section 4]. When 100% of a water right is conveyed, all associated applications of this type are considered to be conveyed as well. While change applications may be withdrawn by the new owners, non-use applications can be satisfied by the filing of a verified statement of Resumption of Use and other information as required by the state engineer.)*
7. Special Conditions of Conveyance: List any special conditions which help define the intent or limits of the conveyance document. Examples of special conditions may include: a) specific conveyance or reservation of water sources, diversion or conveyance works, or rights-of-way; b) rights of reversion to grantor(s) under Deed of Trust, purchase agreement or sales contract; or c) conveyance by appurtenance to place of use.

SECTION B. CERTIFICATION

Complete this section with the information requested. The certification section is to be completed by the preparer and signed by both the grantee/owner and by the professional preparing or supervising the preparation of the report. If the grantee is preparing the form as allowed under State Administrative Rule R655-3-3 (see Appendix B), completion of the lower portion (area in **bold type**) is not required.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICE USE ONLY

This section is to be completed by personnel of the state engineer's office.

10.2.3 Report Forms for Partial Conveyance of a Water Right

Again, please note that although a chain of title may convey 100% of a particular party's interest in one or more water rights, such conveyances may or may not convey the water right in its entirety. Independent research of the state engineer's records may be necessary to determine if the conveyed interest represents a full or partial interest in a particular right (see Section 4).

At the top right hand corner of the form, list the water right number.

SECTION A. WATER RIGHT INTEREST CONVEYED

The numbers used herein coincide with the numbered items in this section of the form.

1. NEW OWNER(S): List the name(s) exactly as it appears on the final conveyance document listed in Section D of the report.
2. MAILING ADDRESS: List current mailing address(es) of the new owner(s).

3. *(Grantee[s] should be informed that, if at anytime their address changes, they must notify the state engineer's office in writing of the new address so that correspondence is sent to a correct address. The state engineer's office will send official notices regarding administrative actions only to the owner and address of record on the water right records.)*
4. **BENEFICIAL USES:** List the sole supply limit for each use that is acquired by the grantee/new owner. (See Section 2 for details regarding "sole supply" definitions.)
5. **DIVERSION LIMIT:** List any diversion amount deeded to the grantee in cfs, acre-feet or other units as may be applicable. If no diversion limit is recited in the conveyance document(s), no amount must be listed. A figure will be calculated by the state engineer's personnel as needed utilizing current "duties" for the listed beneficial uses (see Section 2).
- 5a. **Pending Change Applications:** List any pending change applications that are associated with this water right.
- 5b. **Non-Use Applications:** List any pending non-use applications that are associated with this water right.
(Such applications may not be recited on the conveyance documents and must be identified by independent research of the state engineer's records [See Section 4]. When an interest in a water right is conveyed, all associated applications of this type are considered to be conveyed proportionally as well. While change applications may be withdrawn by the new owners, non-use applications can be satisfied by filing of a verified statement of Resumption of Use and other information as required by the state engineer.)
6. **SPECIAL CONDITIONS OF CONVEYANCE:** List any special conditions which help define the intent or limits of the conveyance document. Examples of special conditions may include: a) specific conveyance or reservation of water sources, diversion or conveyance works, or rights-of-way; b) rights of reversion to grantor(s) under Deed of Trust, purchase agreement or sales contract; or c) conveyance by appurtenance to place of use.

The next part of the form is to be completed only if the grantee is receiving any portion of a pending change application (approved or unapproved). Although the new owner may have no interest in retaining any aspect of such an application, *the acquired interest must be identified.*

7. **BENEFICIAL USES:** In the "Total Use" column, list the beneficial use(s) from the change application acquired by the new owner. In the "Sole Supply Limit" column list the beneficial use(s) supported under the subject change application without benefit of any supplemental right(s). If the changed water right is to be used supplementally with other water rights, the total use may be greater than the "Sole Supply Limit". Otherwise,

the figures should be the same.

8. **DIVERSION LIMIT:** List any diversion amount deeded to the grantee in cfs, acre-feet or other units as may be applicable to the change application. If no diversion limit is recited in the conveyance document(s), no amount must be listed. A figure will be calculated by the state engineer's personnel as needed utilizing current "duties" for the listed beneficial uses (see Section 2).
9. **SPECIAL CONDITIONS OF CONVEYANCE RELATED TO CHANGE APPLICATIONS:** List any special conditions which help define the intent or limits of the conveyance document. Examples of special conditions may include: a) specific conveyance or reservation of water sources, diversion or conveyance works, or rights-of-way; b) rights of reversion to grantor(s) under Deed of Trust, purchase agreement or sales contract; or c) conveyance by appurtenance to place of use. *It should also be indicated in this item if the new owner(s) has no interest in retaining any acquired interest in the pending change application(s).*

SECTION B. CERTIFICATION

Complete this section with the information requested. The certification section is to be completed by the preparer and signed by both the new owner(s) and by the professional preparing or supervising the preparation of the report. If the new owner is preparing the form as allowed under State Administrative Rule R655-3-3 (see Appendix B), completion of the lower portion (area in **bold type**) is not required.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICE USE ONLY

This section is to be completed by personnel of the state engineer's office.

SECTION D . CONVEYANCE SUMMARY SHEET

This section is used to provide summaries of the individual conveyance documents being reported. At the top right hand corner of the form, enter the page number and the water right number (Example: "Page 1 of 10 " and "**WATER RIGHT NO. 83-1234**"). The remainder of this section provides space to summarize up to four conveyance documents (two per side). If more than four documents are being reported, additional pages bearing Section D must be attached to the report. Documents should be reported by effective date with the earliest document listed first and the most recent document last. The document summaries are to be completed as follows (numbers correspond to the numbered items within Section D):

1. Indicate the type of document by an "X" or describe the conveyance document under "Other"

2. Obtain this information directly from the conveyance document and County Recorder's stamp. If the signature date and the notarization date differ, the notarization date should be used as the date signed.
3. Grantor: List the grantor name(s) exactly as it appears on the conveyance document. Any differences between the grantor name(s) on the document and the state engineer's water right file must be rectified using appropriate affidavits, etc..
4. Pending Change Applications: List any pending change applications (approved or unapproved) on the subject water right. (*Such applications may not be recited in the document and may have to be identified by independent research of the state engineer's records.*)
5. Portion of Beneficial Uses Conveyed: List the amount and type of beneficial use under the water right that was conveyed by this document. If applicable, indicate the amount of each type of beneficial use that was conveyed with any pending change associated with the water right conveyed. *If the conveyance document fails to specify this information, it may be necessary to provide additional documentation as described in Section 7.*
6. Diversion Limit: List any diversion amount deeded to the grantee in cfs, acre-feet or other units as may be applicable. If no diversion limit is recited in the conveyance document(s), no amount must be listed. A figure will be calculated by the state engineer's personnel as needed utilizing current "duties" for the listed beneficial uses (see Section 2).
7. Grantee(s): List grantee name(s) exactly as it appears on the recorded conveyance document.
8. Mailing Address: List current mailing address(es) of grantee(s). (*Grantee[s] should be informed that, if at anytime their address changes, they must notify the state engineer's office in writing of the new address so that correspondence is sent to a correct address. The state engineer's office will send official notices regarding administrative actions only to the owner and address of record on the water right records.*)
9. Special Conditions of Conveyance: List any special conditions which help define the intent or limits of the conveyance document. Examples of special conditions may include: a) specific conveyance or reservation of water sources, diversion or conveyance works, or rights-of-way; b) rights of reversion to grantor(s) under Deed of Trust, purchase agreement or sales contract; or c) conveyance by appurtenance to place of use.

10.3 SUPPORTING DOCUMENTATION

In addition to the completed report forms, as described above, an acceptably complete Report of Conveyance will also include the following:

- 1) Clear and legible copies of all conveyance documents as described in the “Conveyance Summary” sections of the report (Section A in the case of full conveyance forms; Section D in the case of partial conveyance forms), assembled by effective date (execution date or recording date, as may be appropriate). In the case of recordable documents, the copies provided must bear the County Recorder’s stamp and indexing information. Affidavits, etc., provided in support or clarification of a particular conveyance document should be located in the report adjacent to the document(s) to which they refer.
- 2) Clear and legible copies of any maps used or prepared in determining conveyance of a water right interest by appurtenance to place of use. Such maps should comply with State Administrative Rule R655-5-4.3, and all applicable subsections thereof. Maps submitted must bear sufficient information to readily determine their relationship to the water right interest portrayed and to any conveyance documents to which the map pertains.
- 3) Any narrative or explanatory statements deemed necessary to clarify the statutes, rules, court findings, etc. which have been employed by the preparer of the report in arriving at the conclusions reported.

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SECTION 11

WORKING WITH DIVISION OF WATER RIGHTS' STAFF AND SUBMITTING A REPORT OF CONVEYANCE

11.1 INTRODUCTION

The previous sections of this training manual have described in detail the technical aspects of the research and documentation necessary to prepare an “acceptably complete” Report of Conveyance. This section will offer some informal guidelines for working with personnel of the state engineer’s office / Division of Water Rights and will explain the manner in which the completed report is to be submitted.

11.2 WORKING WITH THE STAFF OF THE DIVISION OF WATER RIGHTS / STATE ENGINEER’S OFFICE

The legislation by which Section 73-1-10 of Utah Code was amended to require the filing of Reports of Conveyance was motivated by the fact that the state engineer’s staff was spending an inordinate amount of time doing “title work”. While the importance of maintaining accurate ownership records is not to be minimized, it was recognized that such work was not within the tasks mandated to this office and was interfering with the accomplishment of those tasks that were statutorily mandated.

Obviously, it would be counter-productive and self-defeating if the state engineer’s staff were to now spend an equivalent amount of time assisting in the preparation of Reports of Conveyance as was previously spent in doing basic title work. For this reason, the amount of assistance that can be offered to those preparing reports must be limited. Therefore, except in the case of very simple reports, a group of specific professionals has been designated to prepare the required reports. Those professionals are expected to have a substantial understanding of the principles and statutes governing conveyance of title to property and mapping of standard legal descriptions.

11.3 LIMITATIONS ON STAFF ASSISTANCE

Rather than attempt to itemize those areas in which the state engineer’s staff can provide assistance, it will be simpler to identify some specific areas in which assistance typically cannot be provided:

- 1) Staff will not be able to complete any part of the Report of Conveyance form(s) that are designated for completion by the preparer.

- 2) Staff will not provide forms for nor assist in the preparation of deeds, assignments, affidavits or other conveyance documents.
- 3) Current statute (as of May, 2000) requires County Recorders to transmit to the state engineer's office copies of all recorded documents specifically conveying interests in water rights. Most of the regional offices of the Division of Water Rights have maintained and will continue to maintain some kind of filing and/or indexing of the documents thus transmitted. Persons preparing Reports of Conveyance can be given access to such documents and/or indices, but staff will not be available to conduct or assist in basic title research nor to offer interpretation of documents.
- 4) Each regional office maintains files of the water rights administered within that region. However, the "official files" for all water rights are those maintained in the Division's main office in Salt Lake City. All information contained in the official files are considered to be public information and copies are available (at designated costs) to all interested parties. However, staff in regional offices cannot give assurances that their local files are complete replicas of the official files, nor do regional staff have access to files or documents related to water rights from other regions.

With the foregoing exceptions, the state engineer's staff in both the regional offices and the main office will provide assistance to persons assembling and preparing Reports of Conveyance. Current report forms will be available as will copies of this training manual (see Section 10 for detailed instructions on report completion).

The several regional offices, together with their addresses, telephone numbers and hydrologic areas administered are tabulated below.

TABLE 11.1 – DIVISION OF WATER RIGHTS REGIONAL OFFICES

REGION	ADDRESS	TELEPHONE	HYDROLOGIC AREAS SERVED
Utah Lake/Jordan River	1594 West North Temple, Ste. 220 PO Box 146300 SLC, UT 84114-6300	(801)538-7421	51, 53, 54, 55, 59, 57
Weber River/Western Utah	1594 West North Temple, Ste. 220 PO Box 146300 SLC, UT 84114-6300	(801)538-7421	15, 16, 17, 18, 31, 35

Northern	1780 N Research Parkway, Ste.104 Logan, UT 84321-1940	(435)752-5327	11, 13, 21, 23, 25, 29
Eastern	152 East 100 North Vernal, UT 84078-2126	(435)781-5327	41, 43, 45, 47, 49
Southeastern	453 South Carbon Avenue PO Box 718 Price, UT 84501-0718	(435)637-1303	01, 05, 09, 90, 91, 92, 93, 94
Sevier River / Southern	130 North Main PO Box 563 Richfield, UT 84701-0563	(435)896-4429	61, 63, 65, 66,67,68, 95
Southwestern	585 North Main, Ste. 1 PO Box 506 Cedar City, UT 84721-0506	(435)586-4231	14, 19, 69, 71, 73, 75, 77, 81, 85, 89, 97

11.4 SUBMITTING A REPORT OF CONVEYANCE

Once the preparer of a Report of Conveyance has completed all necessary forms and has assembled and properly organized all supporting documentation (conveyance documents, maps, narratives, etc.), the entire package may be submitted either by hand-delivery or by mail to any of the Regional Offices of the Division of Water Rights or directly to the main Division office in Salt Lake City. At the submitter's option, reports may be deposited by certified mail.

Although due care will be taken to assure proper receipt and tracking of submitted reports, submitters are advised to keep a full photocopy record of all documents until assurance is given that the report has been received and found to be acceptably complete. Section 12, following, describes the review and acceptance process.

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SECTION 12

THE REPORT REVIEW AND ACCEPTANCE PROCESS

12.1 INTRODUCTION

As required by statute (see Appendix A of this manual and Utah Code 73-1-10), the state engineer has adopted administrative rules (see Appendix B of this manual) which set forth the information that must be contained in a Report of Conveyance and the manner by which the state engineer's staff will process such reports. This section will provide some additional detail regarding that procedure. Whereas the Report of Conveyance requirement is relatively new, the practices and procedures described herein are adopted on an interim basis and will be subject to amendment as more experience is acquired.

12.2 THE REPORT OF CONVEYANCE REVIEW AND ACCEPTANCE PROCESS

The state engineer's office provides standard forms that are to be acceptably completed before a Report of Conveyance will be accepted as "filed". It will be the preparer's responsibility to submit the appropriate form(s) to document either a conveyance of a *portion* of a water right or of *100%* of a water right. By administrative rule (R655-3-4), true copies of the reported conveyance documents, along with any maps compiled by the preparer to determine conveyance by appurtenance, must accompany the report. Section 10 of this manual details proper preparation of a Report of Conveyance.

12.2.1 Hand-Delivered Reports

If a Report of Conveyance is hand-delivered to a regional office of the Division of Water Rights (see Section 11), the regional office staff will briefly review the report to insure that the correct forms have been used and have been completed, and that the proper documentation is attached along with the appropriate filing fee. If the Report of Conveyance is not found to be acceptably complete, the regional staff will return the report along with the filing fee and an explanation of the deficiency.

If time permits, this initial review in the regional office may be conducted in the presence of the submitting party and a verbal explanation of any deficiencies may be given. Otherwise, the review will occur as time allows and if deficiencies are noted, the submitter will be contacted later, either in writing or otherwise, as may be most efficient. In any case, incomplete or deficient reports will be returned to the submitter/certifying professional.

When an initial review of the Report of Conveyance shows the report to be satisfactorily complete, the regional staff will modify the computerized database records in accordance with the report. Regional staff can then assist, as may be requested, in making ownership segregations, preparing segregation applications, and/or preparing change applications. The

Report of Conveyance will be promptly forwarded to the Salt Lake office of the state engineer for a complete and final review.

12.2.2 Reports Filed by Mail

If a Report of Conveyance is mailed to any of the Division of Water Rights regional offices, it will be promptly forwarded to the Salt Lake office for a complete review. No local review will occur and no action will be taken by the region staff to amend the local records nor the computerized database.

Reports mailed to the Division's main office in Salt Lake City will be transmitted to the appropriate personnel for a complete and final review. All correspondence regarding deficiencies or other problems will originate in the Salt Lake City office.

12.3 AMENDMENTS TO STATE ENGINEER'S RECORDS

Changes to the computerized database made by regional staff are considered temporary until the final review of the Report of Conveyance is complete and the report filed in the master file in the Salt Lake City office. If it is determined that a problem exists in the Report of Conveyance during final review, the state engineer's staff will return the report with an explanation of why it is not acceptably complete. All pending actions before the state engineer regarding the subject water rights (change applications, time extensions, etc.) will be held until the deficiency is corrected and the Report of Conveyance is resubmitted and determined to be acceptably complete.

Amendments to the state engineer's records will be based on Reports of Conveyance adjudged to be complete and accurate. However, such amendments do not constitute a guarantee nor assurance of complete and accurate title. If such assurance is desired, a qualified professional should be retained to conduct and certify a thorough opinion of title.

12.4 CONFLICTING REPORTS OF CONVEYANCE

If, at the time of filing a Report of Conveyance, there is a conflicting Report of Conveyance or other conflicting ownership information, the state engineer's office will return the Report of Conveyance to the submitter. All parties with evident conflicting claims to ownership will be notified of the situation, in writing or otherwise, as may be deemed most efficient. All pending actions before the state engineer regarding the subject water rights (change applications, time extensions, etc.) will be held until the conflicting claims have been resolved. Resolution of conflicting claims will be the responsibility of parties claiming ownership, not of the state engineer's office.

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APPENDICES

APPENDIX A
GOVERNING STATUTE

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.

(1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.

(c) (i) A copy of the deed or other conveyance which contains a reference to a water right number for a water right evidenced by any document listed in Subsection 73-1-11(5) shall be promptly transmitted by the county recorder to the state engineer for filing.

(ii) The state engineer may designate regional offices to receive copies of deeds or other conveyances transmitted pursuant to Subsection (1)(c)(i). A county recorder may not be required to transmit documents to more than one regional office.

(d) A recorded deed of a water right shall from the time of its filing in the office of the county recorder constitute notice of its contents to all persons.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

(3) (a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.

(b) The report of water right conveyance shall be on forms provided by the state engineer.

(c) The report shall be prepared by:

(i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:

(A) an attorney;

(B) a professional engineer;

(C) a title insurance agent; or

(D) a professional land surveyor; or

(ii) the water right owner as authorized by rule of the state engineer.

(d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.

(e) The state engineer shall adopt rules that specify:

(i) the information required in a report of water right conveyance; and

(ii) the procedures for processing the reports.

Amended by Chapter 36, 2000 General Session

APPENDIX B
ADMINISTRATIVE RULES

R655. Natural Resources, Water Rights.

R655-3. Reports of Water Right Conveyance

R655-3-1. Scope and Purpose.

R655-3-2. Definitions.

R655-3-3. When a Water Right Owner is Authorized to Prepare a Report of Conveyance.

R655-3-4. Content of the Report of Conveyance.

R655-3-5. Procedures of Processing a Report of Conveyance.

R655-3-1. Scope and Purpose.

These rules are issued pursuant to Section 73-1-10 which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the amount of water use allowed by the water right expressed in terms of the purpose(s) to which the water may be applied. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated by the water right (e.g. 40 acres).

CHANGE APPLICATION - as allowed by Section 73-3-3, any person entitled to the use of water may make permanent or temporary changes in the point of diversion, place of use, or nature of use of a water right by making application upon forms furnished by the state engineer

DIVERSION LIMIT - the total volume of water in acre feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to meet the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

PROFESSIONAL - for the purposes of this rule, a person, as specified in Section 73-1-10, who is licensed in Utah as an attorney, a professional engineer, a title insurance agent, or a professional land surveyor.

REPORT OF CONVEYANCE - a report of water right conveyance to the state engineer as required by Section 73-1-10.

R655-3-3. When a Water Right Owner is Authorized to Prepare a Report of Conveyance.

A water right owner may prepare a Report of Conveyance without the certification of a professional in the situations described below in subsections 3.2, 3.3, and 3.4. In all other situations, a Report of Conveyance must be prepared by or under the direct supervision of, and certified by, a professional.

3.1 On each of the documents (deed, marriage certificate, divorce decree, death certificate, or probate document) required in the situations described in subsections 3.2, 3.3, and 3.4, the name appearing on the document (the grantor in the case of a deed) must be exactly the same as the name of the water right owner as shown on the division's records. If there are differences in the names, the discrepancy may be addressed by attaching to the Report of Conveyance affidavits executed by the appropriate parties asserting that the persons named are one and the same.

3.2 Ownership changes which involve simple water rights conveyances.

3.2.1 A deed which conveys an entire water right and which specifically identifies the water right being conveyed by the state engineer's water right number (for example 43-1638).

3.2.2 A deed which conveys more than one water right and which meets the criteria of paragraph 3.2.1 for each water right conveyed.

3.2.3 A deed which conveys a portion of a water right and which conforms to the following suggested Water Right Deed format:

3.2.3.1 The deed must be clearly labeled "WATER RIGHT DEED".

3.2.3.2 The deed must contain standard warranty deed or quit claim deed conveyance language.

3.2.3.3 The deed must be limited to the conveyance of water rights and must convey only one water right.

3.2.3.4 The deed must contain all of the information necessary to clearly identify the water right conveyed. The deed must show the water right number. If this interest in the water right has been segregated from another water right, the deed must show the currently assigned water right number. The water right number will be the basis for identifying the water right, however, the deed may also show other numbers pertinent to the water right such as a diligence claim number, an application number, an award number from a decree, etc.

3.2.3.5 The deed must name a grantee. (The name of the grantee as shown on the deed will be the name used to update the division's records.)

3.2.3.6 The deed must show the current mailing address for the grantee. (This will be the address to which the division will mail official notices regarding administrative actions on the water right.)

3.2.3.7 The deed must describe the beneficial uses conveyed by type and amount. For example:

Irrigation	38.50 acres
Stockwatering	10 cattle or equivalents
Domestic	1 family

(The division will use the beneficial use information to update the water right ownership.) The volume of water conveyed in acre feet or the flow rate conveyed in cubic feet per second or gallons per minute, is not required on the deed. However, if it is shown on the deed, it must be consistent with the beneficial use(s) shown on the deed.

3.2.3.8 If there are multiple grantors and/or multiple grantees, the deed must clearly indicate the interest conveyed from each grantor and/or the interest acquired by each grantee.

3.2.3.9 The deed must list by number any approved or unapproved pending change applications which are associated with the water right. The deed must also describe the type and amount of beneficial use associated with each of these applications that is being conveyed with the water right. For example:

Irrigation	20.50 acres
Stockwatering	5 cattle or equivalents
Domestic	1 family

3.2.3.10 The deed must be signed by all grantors, notarized, and recorded in the county where the water is diverted and in the county where the water is used. If the water is diverted or used in more than one county, the deed must be recorded in each county where the water is diverted or used.

3.2.4 Reports of Conveyance prepared by water right owners may be based on more than one deed in the chain of deeds as long as each deed complies with the requirements of 3.2.1, 3.2.2, or 3.2.3.

3.3 Name changes which are due to marriage or divorce

3.3.1 In the case of marriage, a water right owner's name may be changed from the prior or

maiden name to the married name. The Report of Conveyance must be accompanied by a copy of the marriage certificate.

3.3.2 In the case of divorce, a water right owner's name may be changed from the married name to the prior or maiden name. The Report of Conveyance must be accompanied by a copy of the divorce decree.

3.3.3 To add or remove a spouse, the water right ownership may be updated according to the procedure described in 3.2 above.

3.4 Ownership changes which are due to the death of the water right owner

3.4.1 When the water right is held in joint tenancy, the ownership may be updated to remove the name of the deceased joint tenant. The Report of Conveyance must be accompanied by a copy of the death certificate.

3.4.2 When the water right is not held in joint tenancy and there is only one successor to the deceased and the probate document clearly defines the distribution of the estate, the ownership may be updated to the successor. The Report of Conveyance must be accompanied by a copy of the probate document.

R655-3-4. Content of the Report of Conveyance.

A Report of Conveyance must have sufficient documentation presented in a standard statement format to demonstrate the chain of title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right. The Report of Conveyance shall be submitted on forms provided by the state engineer. The information required in a Report of Conveyance for most ownership transactions includes the information described below and any other information deemed necessary by the state engineer to process the report.

4.1 Information required on all Reports of Conveyance

4.1.1 The type of conveyance document.

4.1.2 The date the document was signed and the county recorder information.

4.1.3 The grantor name(s) as it appears on the conveyance document.

4.1.4 The grantee name(s) exactly as it appears on the conveyance document.

4.1.5 The current mailing address of the grantee.

4.1.6 Any pending change applications or non-use applications associated with the conveyance document.

4.1.7 Any special conditions of the conveyance document

4.1.8 Unless the Report of Conveyance is prepared by the water right owner as allowed by R655-3-3, it must include a certification by a professional stating that (s)he has prepared or supervised the preparation of the Report of Conveyance, that the report is true and accurate to the best of the preparer's knowledge, and that the attached documents evidence the ownership interest of the grantee. The certification must include the professional's name, profession, license number, and phone number. The certification also requires the name and phone number of the grantee.

4.2 In addition to the information described in 4.1, a Report of Conveyance which involves conveyance of only a portion of the water right must also include the following information:

4.2.1 The amount and type of each beneficial use that was conveyed by this document.

4.2.2 If applicable, the amount of each type of beneficial use associated with any pending change that was conveyed by the documents.

4.2.3 The diversion limit conveyed as applicable (see sub section 3.2.3.7).

4.3 The supporting information which must accompany each Report of Conveyance include the following items:

4.3.1 Maps (if needed to establish water right appurtenance to land or to establish the portion

of the water right conveyed by appurtenance)

4.3.2 Any explanatory narrative deemed necessary by the certifier.

4.3.3 Any necessary affidavits

4.3.4 Copies of all conveyance documents listed on the summary sheet.

4.3.4.1 Conveyance documents (deeds, etc.) must bear county recorder's stamp with all recording information (document number, book, page, recording date, etc.).

4.3.4.2 Documents must be legible.

4.3.4.3 Documents must be arranged in chronological order by recording date/number.

R655-3-5. Procedures for Processing a Report of Conveyance.

5.1 Upon receiving a Report of Conveyance and the prescribed fee, the state engineer shall review the Report to see that it is acceptably complete. A Report of Conveyance is acceptably complete if the Report includes all the information and material required in section R655-3-4 which is necessary to update the water right ownership records of the state engineer to the name of the person claiming water right ownership and which does not conflict with other water right ownership information of record with the state engineer.

5.2 If a Report of Conveyance is acceptably complete, the state engineer shall file the Report and update the water right ownership records according to the Report.

5.3 If a Report of Conveyance is not acceptably complete, the state engineer shall return the Report with an explanation of why it is not acceptably complete. The state engineer may not file the Report and update the water right ownership records unless the Report is resubmitted with the necessary information and material.

KEY: water right, conveyance, ownership

APPENDIX C

USE THIS CONVEYANCE REPORT FORM WHEN ONLY A PORTION OF THE WATER RIGHT IS CONVEYED.

SECTION A. WATER RIGHT INTEREST CONVEYED

1. NEW OWNER(S): _____

2. MAILING ADDRESS: _____

The above party(s) own the following portions of the water right as described above:

3. BENEFICIAL USES:	Sole Supply Limit	
Irrigation	_____	(ac)
Stockwatering	_____	(ELUs)
Domestic	_____	(families)
Municipal	_____	(ac ft)
Industrial	_____	(ac ft)
Other _____	_____	

4. DIVERSION LIMIT: _____

5a. Pending Change Applications: _____

 b. Non-Use Applications: _____

6. SPECIAL CONDITIONS OF CONVEYANCES: _____

The above party(s) own the following hereafter portions of the change applications listed above:

7. BENEFICIAL USES:	Total Use		Sole Supply Limit
Irrigation	_____	(ac)	_____ (ac)
Stockwatering	_____	(ELUs)	_____ (ELUs)
Domestic	_____	(families)	_____ (families)
Municipal	_____	(ac ft)	_____ (ac ft)
Industrial	_____	(ac ft)	_____ (ac ft)
Other _____	_____		_____

8. DIVERSION LIMIT: _____

9. SPECIAL CONDITIONS OF CONVEYANCES RELATED TO CHANGE APPLICATIONS: _____

This report is only used to update ownership interest records. If a change is desired in any other aspect of the water right, a change application must be filed.

SECTION B. CERTIFICATION

I, _____, certify that I retained _____ to prepare and submit this Report of Water Right Conveyance on my behalf as the owner described in Section A or as the representative of the owners described in Section A. **If this report was prepared as authorized by Administrative Rule R655-3- 3, I further certify that the information contained herein or attached hereto is true and accurate to the best of my knowledge.**

Signature Date Phone No. _____

I, _____, certify that I am licensed as a _____ in the State of Utah, that my license number is _____, that I have reviewed the attached documents and have prepared this Report of Water Right Conveyance or that it was done under my direct supervision, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge. I further certify that the documents attached hereto evidence the ownership interest of the "New Owner(s)", named in Section A, in the water right interest listed in Section A:

Signature Date Phone No. _____

Address: _____
This report was prepared for the purpose of updating the records of the Division of Water Rights. This report is not a title opinion based on a complete title search. It does not warrant or guarantee title to water rights.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICIAL USE ONLY

Received: ____/____/____ Filed: ____/____/____ Reviewed by: _____
Database Changed: ____/____/____ by: _____
File Changed : ____/____/____ by: _____
New File Number based on a Segregation _____
Remarks: _____

AMOUNT OF WATER RIGHT RETAINED _____

No agency of the State of Utah warrants or guarantees title to certain water rights. The water right ownership information of record in the State Engineer's Office concerning this water right is based on the information which has been submitted by this Report of Water Right Conveyance.

SECTION D. CONVEYANCE SUMMARY SHEET **WATER RIGHT NO. _____**
USE THIS SUMMARY WHEN ONLY A PORTION OF THE WATER RIGHT IS CONVEYED.

1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
 Other: _____
 2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____
 3. Grantor _____

4. Pending Change Applications: _____

5. Portion of Beneficial Uses Conveyed:

	From Water Right:		From Pending Change Applications:
	Sole Supply Limit		Sole Supply Limit
Irrigation	_____ (ac)		_____ (ac)
Stockwatering	_____ (ELUs)		_____ (ELUs)
Domestic	_____ (families)		_____ (families)
Municipal	_____ (ac ft)		_____ (ac ft)
Industrial	_____ (ac ft)		_____ (ac ft)
Other _____	_____		_____

6. Diversion Limit _____
 7. Grantee(s) _____
 8. Mailing Address _____
 9. Special Conditions of Conveyance _____

1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
 Other: _____
 2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____
 3. Grantor _____

4. Pending Change Applications: _____

5. Portion of Beneficial Uses Conveyed:

	From Water Right:		From Pending Change Applications:
	Sole Supply Limit		Sole Supply Limit
Irrigation	_____ (ac)		_____ (ac)
Stockwatering	_____ (ELUs)		_____ (ELUs)
Domestic	_____ (families)		_____ (families)
Municipal	_____ (ac ft)		_____ (ac ft)
Industrial	_____ (ac ft)		_____ (ac ft)
Other _____	_____		_____

6. Diversion Limit _____
 7. Grantee(s) _____
 8. Mailing Address _____
 9. Special Conditions of Conveyance _____

SECTION D. CONVEYANCE SUMMARY SHEET

WATER RIGHT NO. _____

USE THIS SUMMARY WHEN ONLY A PORTION OF THE WATER RIGHT IS CONVEYED.

1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
 Other: _____

2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____

3. Grantor _____

4. Pending Change Applications: _____

5. Portion of Beneficial Uses Conveyed:

	<u>From Water Right:</u>		<u>From Pending Change Applications:</u>
	Sole Supply Limit		Sole Supply Limit
Irrigation	_____ (ac)		_____ (ac)
Stockwatering	_____ (ELUs)		_____ (ELUs)
Domestic	_____ (families)		_____ (families)
Municipal	_____ (ac ft)		_____ (ac ft)
Industrial	_____ (ac ft)		_____ (ac ft)
Other _____	_____		_____

6. Diversion Limit _____

7. Grantee(s) _____

8. Mailing Address _____

9. Special Conditions of Conveyance _____

1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
 Other: _____

2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____

3. Grantor _____

4. Pending Change Applications: _____

5. Portion of Beneficial Uses Conveyed:

	<u>From Water Right:</u>		<u>From Pending Change Applications:</u>
	Sole Supply Limit		Sole Supply Limit
Irrigation	_____ (ac)		_____ (ac)
Stockwatering	_____ (ELUs)		_____ (ELUs)
Domestic	_____ (families)		_____ (families)
Municipal	_____ (ac ft)		_____ (ac ft)
Industrial	_____ (ac ft)		_____ (ac ft)
Other _____	_____		_____

6. Diversion Limit _____

7. Grantee(s) _____

8. Mailing Address _____

9. Special Conditions of Conveyance _____

REPORT OF WATER RIGHT CONVEYANCE

WATER RIGHT NUMBER _____

USE THIS CONVEYANCE REPORT FORM WHEN 100% OF THE WATER RIGHT IS CONVEYED.

SECTION A. CONVEYANCE SUMMARY

- 1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
Other: _____
- 2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____
- 3. Grantor _____
- 4. Grantee(s) _____
- 5. Mailing Address _____
- 6. a. Pending Change Applications _____
b. Non-Use Applications _____
- 7. Special Conditions of Conveyance _____

-
- 1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
Other: _____
 - 2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____
 - 3. Grantor _____
 - 4. Grantee(s) _____
 - 5. Mailing Address _____
 - 6. a. Pending Change Applications _____
b. Non-Use Applications _____
 - 7. Special Conditions of Conveyance _____

-
- 1. Assignment _____ Warranty Deed _____ Quitclaim Deed _____ Sheriff's Deed _____ Trustees Deed _____
Other: _____
 - 2. Date Signed ___/___/___ Date Recorded ___/___/___ Book ___ Page # ___ Recorder's # _____
 - 3. Grantor _____
 - 4. Grantee(s) _____
 - 5. Mailing Address _____
 - 6. a. Pending Change Applications _____
b. Non-Use Applications _____
 - 7. Special Conditions of Conveyance _____

SECTION B. CERTIFICATION

I, _____, certify that I retained _____ to prepare and submit this Report of Water Right Conveyance on my behalf as the current water right owner described in Section A or as the representative of the current owners described in Section A. **If this report was prepared as authorized by Administrative Rule R655-3- 3, I further certify that the information contained herein or attached hereto is true and accurate to the best of my knowledge.**

Signature Date Phone No. _____

I, _____, certify that I am licensed as a _____ in the State of Utah, that my license number is _____, that I have reviewed the attached documents and have prepared this Report of Water Right Conveyance or that it was done under my direct supervision, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge. I further certify that the documents attached hereto evidence the ownership interest of the current water right owner(s), named in Section A:

Signature Date Phone No. _____

Address: _____

This report was prepared for the purpose of updating the records of the Division of Water Rights. This report is not a title opinion based on a complete title search. It does not warrant or guarantee title to water rights.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICIAL USE ONLY

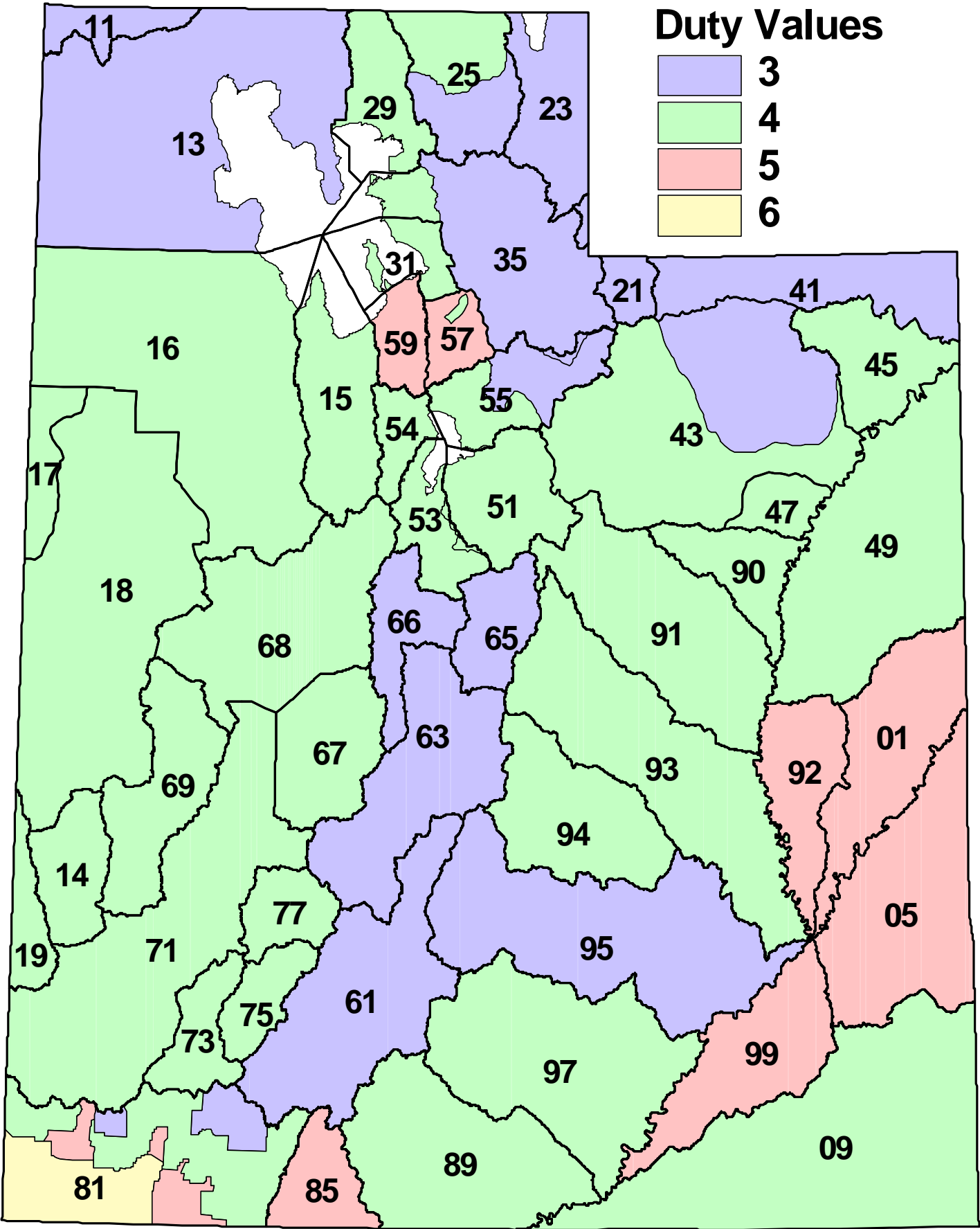
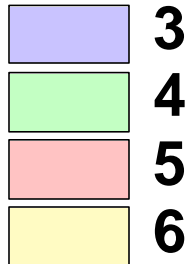
Received: ____/____/____ Filed: ____/____/____ Reviewed by: _____
Database Changed: ____/____/____ by: _____
File Changed : ____/____/____ by: _____
New File Number based on a Segregation _____

Remarks: _____

No agency of the State of Utah warrants or guarantees title to certain water rights. The water right ownership information of record in the State Engineer’s Office concerning this water right is based on the information which has been submitted by this Report of Water Right Conveyance.

APPENDIX D

Duty Values



APPENDIX E

Water Use Information for Water Right Applications

The diversion figure in water right applications is the quantity of water expressed as a flow rate in cfs (cubic feet per second) and/or as a volume in acre-feet to be taken from a well, river, spring, etc. for the required purpose. The depletion figure is the quantity of water consumed which will be lost to the hydrologic system through said use. Depleted water does not return to the surface water sources or underground aquifers via seepage, drainage, etc. but is consumed in the growth of plants and animals, evaporation, and transmission away from the area. The following figures are used for general quantification. As new data is available, these figures may change. If applicants provide specific figures based on design criteria, testing data, monitored measurements, etc. which differ from these amounts, such information will be reviewed and considered. One cubic-foot per second equals about 450 gallons per minute. One acre-foot of water equals 325,851 gallons.

DOMESTIC (inside use only): Water diversion for a fulltime (permanent residence) use is evaluated at 0.45 acre-foot per family. Parttime (seasonal or recreational) use is equated at 0.25 acre-foot per family. Depletion is generally 20% if using a septic tank or drain field system. It varies if the residence is connected to a community sewage system depending on the treatment method used and its distance away from the diverted source.

IRRIGATION (any outside watering): This purpose includes watering of crops, lawns, gardens, orchards, and landscaping. The [diversion amount \(irrigation duty\)](#) ranges from 2 acre-feet per acre in cool, mountain meadow areas to 6 acre-feet per acre in low, hot southern areas of the state. Higher, cooler valleys are generally 3 acre-feet per acre, and lower moderate areas 4 or 5 acre-feet per acre. If land is subirrigated or supplemented by other rights or supplies, the diversion rate may be less than average for the area. Generally the irrigation season is described as April 1 to October 31 and/or the general frostfree period in the area. Some court decrees and early rights authorize differing periods. Depletion varies considerably due to differing soils, temperatures, wind factors, etc. and can range from about 40% to about 70%. Figures are taken from available studies (particularly "Consumptive Use of Irrigated Crops in Utah", Research Report 145, [tables from which are accessible on the internet](#)).

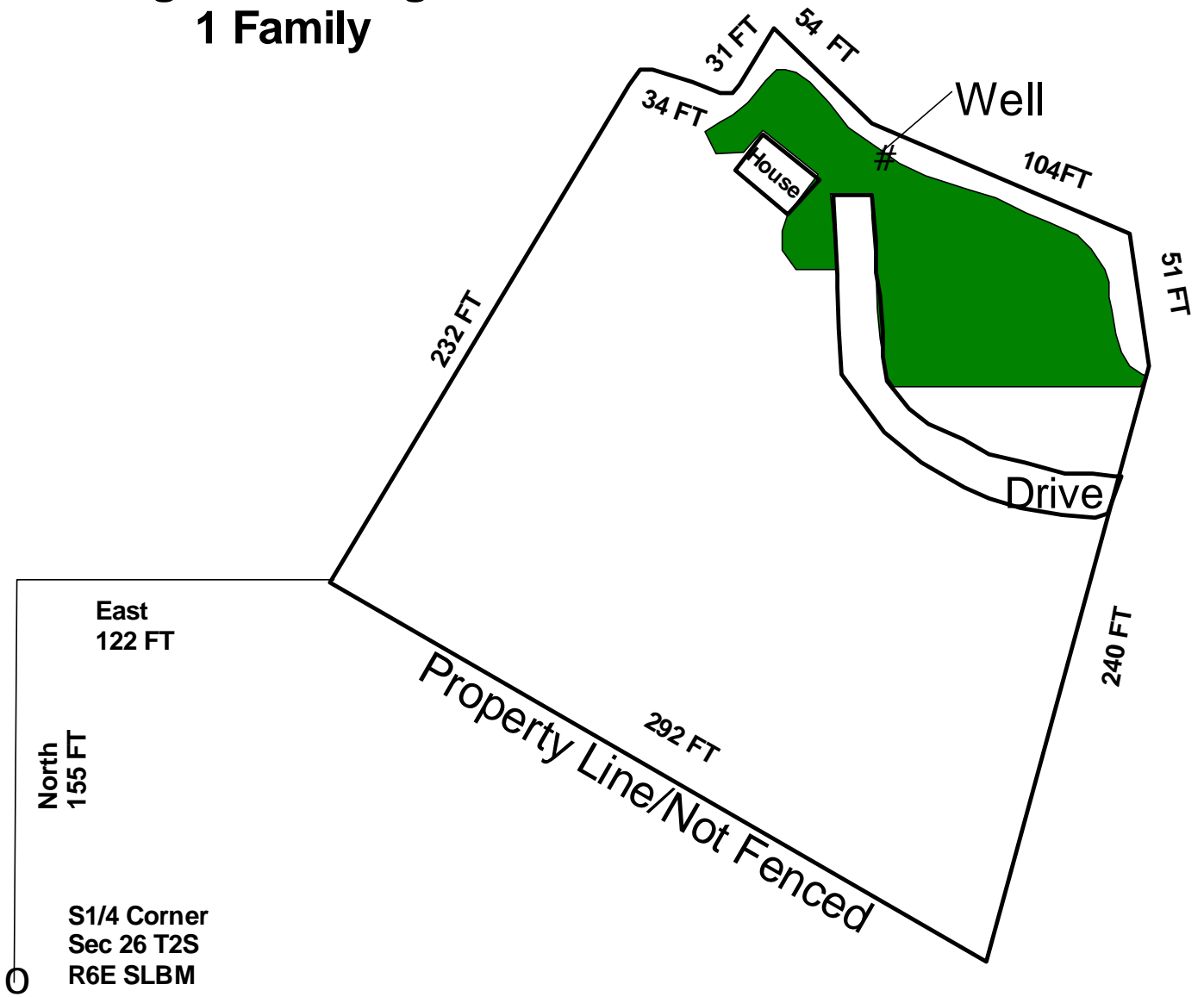
STOCKWATERING: The diversion figures for this purpose are based on year-round watering. Stock operations for lesser or intermittent periods would need adjustment accordingly. Water diverted for this use is generally considered to be 100% depleted by the animal, evaporation, phreatophytes, and/or waste water collection.

cow or horse	0.028	acre-foot
sheep, goat, swine, moose, or elk	0.0056	acre-foot
ostrich or emu	0.0036	acre-foot
llama	0.0022	acre-foot
deer, antelope, bighorn sheep, or mt. goat	0.0014	acre-foot
chicken, turkey, chukar, sagehen, or pheasant	0.00084	acre-foot
mink or fox (caged)	0.00005	acre-foot

INDUSTRIAL, COMMERCIAL, RECREATIONAL, COMMUNITY AND MINING: Projects are evaluated on an individual basis. Parameters include method of processing or manufacturing, number of employees, length of workshift and period of operation, type of waste processing and/or discharge, and types of employee and/or public facilities (showers, food preparation, etc.). The [Utah State Administrative Rules for Public Drinking Water Systems \(particularly R309-203\)](#) are guidelines for such estimates.

EXAMPLES

**Total Irrigated Acreage of .20
1 Family**



Total Irrigated Acreage of .20

1 Family

.08 Acres
1 Family

.12 Acres

