

UTAH WATER LAW 101

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I. Background

An understanding of Utah water law must start with a brief overview of the history behind water law. Water law began in Utah with the settlement of the pioneers in 1847. The first settlers in the Salt Lake Valley arrived to a desert with the primary water sources being the canyon streams and the Jordan River. In order to settle the Salt Lake Valley and begin growing crops for food, the available water had to be moved from the surface streams to the settlement locations. This was done by means of ditches and canals that were dug from the streams to the settlements and used to place water on the fields to be irrigated. Thus, the Utah pioneers became the first Anglo-Saxon settlers to practice irrigation on a large scale in the United States. The law that thereafter grew to govern the use of water in Utah was understandably grounded in the need to move and use water in order to survive.

Utah, like most western states where irrigation is a necessity, follows the Doctrine of Prior Appropriation. Prior appropriation began as an organic principal which was later codified into law. The two primary tenants of the prior appropriation doctrine are “first in time is first in right” and “use it or lose it.” In Utah’s earliest days, a right to use water was established simply by diverting the water from a stream or other source and placing it

to beneficial use. The principal was quickly established that the person who first made beneficial use of the water should be entitled to the first right to use the water with a preference over those who came later. This became the primary tenant of the prior appropriation doctrine – “first in time is first in right.” This was a significant change from the water law governing the eastern United States which is based on the Doctrine of Riparian Rights. Basically, the Doctrine of Riparian Rights gives the landowners adjacent to a stream or river the right to use the water. Those who do not live adjacent to the water source do not necessarily have the right to use the water and they certainly do not have any right superior to the riparian owner.

While the right to use water could originally be established by simple diversion and beneficial use, it is important to remember that it was only the first right to use which was obtained. The water resource itself was still considered a communal resources that had to be administered for the good of the community. Today the law is clear, the water resource is the property of the public subject only to the existing rights to use.¹ It is also clear that the limit of the water right obtained is its beneficial use.² Since a water right only establishes the right to use the water which is owned by the public, failure to use the right can, and will, result in the loss of the right and reversion of the resource back to the public for beneficial use by another. Thus, the second tenant of the Prior Appropriation

¹ Utah Code Ann. § 73-1-1.

² Utah Code Ann. § 73-1-3.

Doctrine – “use it or lose it.”

In the early Territorial days, water issues in Utah were addressed by county courts and later, county water commissioners. In 1897 the office of the Utah State Engineer was created to administer all of the waters of the state including the measurement, appropriation, apportionment and distribution of those waters.³ The first complete water code was enacted in 1903. After that time, the right to use surface water could only be obtained by filing application and obtaining a permit from the Utah State Engineer. In 1903 when the water code was enacted, there was not a clear understanding of the nature of groundwater or its connection to the surface water. As a result, most groundwater could continue to be appropriated without the filing of an application until 1935. In 1935, the Utah Supreme Court held that all groundwater, like all surface water, was subject to appropriation.⁴ The same year, the Legislature amended Utah’s water code to require application and permit from the Utah State Engineer for the appropriation of groundwater.

As a permit was not required to obtain a water right in the State of Utah prior to 1903 for surface and prior to 1935 for groundwater, many rights were established with no written record to document the nature and extent of the claimed right. To deal with this

³ Utah Code Ann. § 73-2-1.

⁴ Wrathall v. Johnson, 40 P.2d 755 (Utah 1935).

situation, the Legislature provided for the filing of diligence claims which allowed the owners of early water rights to establish a claim file with the Utah State Engineer. If a diligence claim is filed meeting the statutory form requirements, it is considered prima facie evidence of a vested, perfected water right and the filing is simply accepted by the Utah State Engineer. However, because diligence claims are not subject to the same review as rights appropriated through the State Engineer's application and permit process, they are often more carefully scrutinized by the State Engineer when any effort is made to change the nature of use of these rights. As a result, it is not uncommon for water rights based upon diligence claims be reduced by the State Engineer for various reasons, including lack of historical use or insufficient source.

II. Appropriation of Water Rights

As noted, since 1903 for surface and 1935 groundwater, water rights in the state of Utah may only be obtained by application and permit from the State Engineer. The process and right to appropriate water, either surface or ground, is governed by statute, administrative rule, and policy. The process to appropriate a new water right in Utah begins with the filing of an application with the Utah State Engineer. There is a form application which may be obtained from the Division of Water Rights either in person or on its website, www.waterrights.utah.gov. The application requires identification of the quantity of water sought, the source of the water, how the water will be used, and where

the water will be used.⁵ A filing fee will be required based upon the amount of water the application seeks to appropriate. The application is reviewed by the regional office of the Division of Water Rights. If the application is correct as to form, the application will be designated for advertising. Notice of all applications properly made to the State Engineer must be published once a week for a period of two consecutive weeks in a newspaper of general circulation in the county where the source of the water supply is located, and, if different from the source, the county where the water will be used.⁶ Notice is also posted on the State Engineer's website. Any interested person may file a protest against the application with the State Engineer within 20 days after the notice is published.⁷ It is then within the State Engineer's discretion to hold a hearing on the application or to make a determination on the written application and protests, if any.

⁵ Utah Code Ann. § 73-3-2.

⁶ Utah Code Ann. § 73-3-6.

⁷ Utah Code Ann. § 73-3-7.

All adjudicative proceedings before the State Engineer are designated as informal agency action.⁸ Hearings are generally held in the county where the water source is located but may be held at another location at the discretion of the State Engineer.⁹ Hearings are open to all parties as well as any interested person who is not necessarily a party to the action.¹⁰ All parties to the proceeding are entitled to introduce evidence, examine or cross-examine witnesses, and present argument.¹¹ The rules of evidence required in a judicial proceeding are not applicable.¹² Formal discovery is prohibited but the State Engineer may issue subpoenas or other orders to compel the production of necessary evidence.¹³ Hearings are held before a panel of hearing officers from the

⁸ Utah Rules of Administrative Procedure R655-6-2.

⁹ Utah Rules of Administrative Procedure R655-6-7.

¹⁰ Utah Rules of Administrative Procedure R655-6-11.

¹¹ *Id.*

¹² Utah Rules of Administrative Procedure R655-6-14.

¹³ *Id.*

Division of Water Rights' staff. The hearing officers will usually include the Assistant State Engineer for adjudications and the Regional Engineer over the area where the water supply is located. The hearing officers will often participate in the hearing process by examining the parties or witnesses.¹⁴ Hearings are recorded and the audio files, together with any written evidence presented, is made available on the State Engineer's website.

¹⁴ Id.

The statutory requirements for approval of an application to appropriate water are set forth in Utah Code Ann. § 73-3-8: (1) there is unappropriated water in the proposed source; (2) the proposed use will not impair existing water rights or interfere with the more beneficial use of water; (3) the proposed plan for use is physically and economically feasible; (4) the applicant has the financial ability to complete the proposed plan for use; and (5) the application was filed in good faith and not for the purpose of speculation or monopoly. If each of these criteria are properly met, it is the duty of the State Engineer to approve the application.¹⁵ Applicants should be aware that in several areas of the state all of the available water is considered to be fully appropriated and such areas are closed to new appropriation.

¹⁵ Utah Code Ann. § 73-3-8.

When a determination is made on an application to appropriate, the State Engineer will issue an Order stating his decision and the reasons for the decision.¹⁶ Any party aggrieved by the State Engineer's decision may, but is not required to, request reconsideration of the decision by filing a written request with the State Engineer within 20 days after the Order is issued.¹⁷ The State Engineer may choose to take action on the request for reconsideration by denying the request, granting the request, issuing a revised order, or setting a date for re-hearing of the application.¹⁸ The State Engineer may also opt to do nothing and the request for reconsideration shall be deemed denied after 20 days thereby making the State Engineer's Order a final agency action.¹⁹ Parties aggrieved by a determination of the State Engineer may also seek judicial review of the decision within 30 days of the final agency action without first seeking reconsideration.²⁰ Thus, judicial review must be sought within 30 days after the State Engineer's Order is issued or, if a request for reconsideration is filed, within 30 days of the request being denied or deemed denied. Judicial review is instigated by filing a Complaint with the appropriate district

¹⁶ Utah Rules of Administrative Procedure R655-6-16.

¹⁷ Utah Rules of Administrative Procedure R655-6-17; Utah Code Ann. § 63-46b-12.

¹⁸ Utah Rules of Administrative Procedure R655-6-17.

¹⁹ *Id.*

²⁰ Utah Rules of Administrative Procedure 655-6-18; Utah Code Ann. §§ 63-46b-14 and -15.

court pursuant to the Utah Rules of Civil Procedure.²¹ The Complaint must name the State Engineer and all other appropriate parties as respondents.²² It is generally understood that all timely protestants to the agency action must be named as respondents to the Complaint. However, the protestants may, of course, opt out of participating in the litigation. The district court reviews determinations by the State Engineer on a *de novo* basis.²³ This means the district court judge sits as the State Engineer hearing the evidence anew, as if no decision had been previously made. However, no issue may be raised to the district court that was not previously raised to the State Engineer's level of consciousness during the administrative action.²⁴ One very unique aspect of the law regarding the judicial review of State Engineer decisions is the so-called two-year rule. Pursuant to this rule an action for review of a decision of the State Engineer may be dismissed for failure to prosecute the suit to final judgment within two years after it is filed, or, if an appeal is taken from the district court, within three years after the suit is filled.²⁵ This provision of law has been considered jurisdictional in nature resulting in the mandatory dismissal of actions and, to date, has been consistently upheld by the courts.²⁶

²¹ Utah Code Ann. § 63-46b-15.

²² Utah Code Ann. § 63-46b-14.

²³ Utah Code Ann. § 63-46b-15.

²⁴ *Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998).

²⁵ Utah Code Ann. § 73-3-15.

²⁶ *Jensen v. Morgan*, 844 P.2d 287 (Utah 1992); *Wilson v. Lambert*, 613 P.2d 765 (Utah

1980); *Dansie v. Lambert*, 542 P.2d 742 (Utah 1975); *Provo City v. Hansen*, 601 P12d 141 (Utah 1979).

If an application to appropriate water is approved by the State Engineer, the approval does not itself create a vested right to the use of water. A water right must be certificated before it becomes a vested right. An approved application to appropriate has often been compared to a hunting license. The approval gives the applicant the right to attempt to capture water and place it to beneficial use but it does not guarantee a successful outcome. To obtain a Water Right Certificate – the vested right to use water – the applicant must prove to the State Engineer that he has indeed diverted and beneficially used the water sought. When an application to appropriate is approved, the State Engineer will set a proof due date which gives the applicant a set amount of time in which to place the water to the approved beneficial use. On or before the proof due date, the applicant must file a Proof of Beneficial Use of Water.²⁷ In some instances an applicant will be unable to file Proof within the time allowed by the State Engineer. While recognizing the obligation of the applicant to diligently complete the construction of works and to beneficially use water within the time fixed by the State Engineer, the Legislature provided for extensions of time for filing Proof but not to exceed 50 years from the date of the approval of the application.²⁸ Applicants seeking an extension of time in which to submit proof must show that they have been diligently prosecuting completion of the works and must provide an explanation as to why the water could not

²⁷ Utah Code Ann. § 73-3-16.

²⁸ Utah Code Ann. § 73-3-12.

be put to beneficial use within the time allowed. Applicants must submit a Request for Reinstatement and Extension of Time on or before the Proof due date fixed by the State Engineer.²⁹ A Request for Extension of Time filed within 14 years after the date the application was approved may simply be granted by the State Engineer upon sufficient showing of diligence.³⁰ But, a Request for Extension of Time filed more than 14 years after the approval of the application is subject to public notice and administrative review.³¹

²⁹ Id.

³⁰ Id.

³¹ Id.

When the applicant has placed the water to the approved beneficial use, Proof of Beneficial Use of Water must be filed on the form approved by the State Engineer. Proof documents must be sworn by the applicant and the applicant's proof engineer.³² Proof documents must include maps showing the location of the completed works, the point from which the water is being diverted, and the place where the water is being beneficially used.³³ The information provided on the Proof will be field checked by the State Engineer to verify that the use claimed is valid. Once the applicant has properly shown that the water is being placed to the approved beneficial use, the State Engineer will issue the Certificate of Beneficial Use and a new water right will be in place.

III. Conveying Water Rights

³² Id.

³³ Id.

Utah statutes provide that title to perfected water rights passes by deed in substantially the same manner as real estate.³⁴ Certificated water rights, perfected change applications, diligence rights, water rights represented by water users' claims (if during an adjudication an election has been filed in lieu of filing proof of appropriation), and rights confirmed by Decree fall into this category.³⁵ Often, water rights will transfer as an appurtenance to land deeds. Appurtenancy of a water right is a question of fact. To be appurtenant, there must be unity of title between the land and the water right and the water right must be in use on the property immediately before and at the time of the conveyance or transfer of interest.³⁶ If there is a question of whether the water is appurtenant, it is best to eliminate the speculation by specifically describing the water rights to be conveyed with the land without regard to it is possible appurtenance. Under Utah law, a water right appurtenant to the land is deemed to have passed to the grantee of the land even if the deed is silent regarding the transfer of water rights.³⁷ The only way to avoid the effect of the presumption is for the grantor to expressly reserve the appurtenant water rights in the deed.³⁸

An unperfected application to appropriate is an inchoate interest in real property

³⁴ Utah Code Ann. §73-1-10.

³⁵ Id.

³⁶ *Stephens v. Burton*, 546 P.2d 240 (Utah 1976).

³⁷ Utah Code Ann. § 73-1-11.

and no formal recording of a transfer of title is required.³⁹ Rather, applications may be transferred by assignment filed with the office of the State Engineer.⁴⁰ Such assignment shall impart notice from the time it is filed to all persons of the contents thereof.⁴¹ When a perfected water right is modified by a change of use, the perfected right may be transferred by deed but there should also be an assignment of the pending change application to the buyer. The Utah Supreme Court has held that only perfected water rights are deemed to be appurtenant to land.⁴² Unperfected applications, therefore, cannot transfer by appurtenance.

³⁸ Id.

³⁹ Utah Code Ann. §73-3-18.

⁴⁰ Id.

⁴¹ Id.

⁴² Little vs. Greene & Weed, 839 P.2d 791 (Utah 1992).

Contractual rights, such as long-term leases, or water petitions with water conservancy districts are personal property that should be transferred by assignment. In such cases the underlying exchange application authorizing the use of this contract water should also be assigned to the buyer, to insure that he receives both the contract (the water right) and the approved application that permits its use.⁴³

Stock in mutual water companies is considered personal property even though it represents an interest in a water right which is real property. Accordingly, shares of stock should be transferred pursuant to the articles and bylaws of the company, usually by endorsement and transfer of physical possession of the share certificate. The endorsed certificate should be surrendered to the water company with a request that a new certificate be issued in the name of the assignee.

Deeds and other instruments affecting the title to water rights are to be recorded with the county recorder in the county where the water is diverted.⁴⁴ If the water is used in a different county, then it should also be recorded in the county of use.⁴⁵ Properly

⁴³ Utah Code Ann. § 73-3-18.

⁴⁴ Utah Code Ann. § 73-1-10.

⁴⁵ Utah Code Ann. § 73-1-10.

recorded deed impart notice from the date of recordation to all persons. All subsequent purchasers, mortgagors and lien holders shall take title with notice of its contents and effect.⁴⁶

⁴⁶ Utah Code Ann. § 73-1-12.

Although the county recorder remains the office of record for title, water right ownership must also be updated on the records of the Division of Water Rights by filing a Report of Water Right Conveyance.⁴⁷ There are two forms of Report of Water Right Conveyance. One form is used when 100% of a water right is being conveyed. The other form is used when only a portion of a water right is transferred.⁴⁸ Preparing a Report of Water Right Conveyance for a partial transfer will require knowledge of the beneficial uses being conveyed. A correctly prepared water deed will specify the beneficial uses being conveyed. If the water right was obtained as an appurtenance to real property, maps will need to be filed with the Report of Water Right Conveyance documenting the place of use of the water right conveyed. Except in a few specified instances, a Report of Water Right Conveyance must be prepared and certified by one of the following professionals licensed in Utah: (1) an attorney; (2) a professional engineer; (3) a title insurance producer; or (4) a professional land surveyor.⁴⁹

The Division of Water Rights' ownership records must be current before an owner can take any action on a water right, such as an application to change the right. Often

⁴⁷ Id.

⁴⁸ Utah Administrative Rule R655-3.

⁴⁹ Utah Code Ann. § 73-1-10.

water right ownership records have not been updated with the Division of Water Rights for several years. It is not uncommon to find water rights whose ownership records have not been updated since the right was originally appropriated or decreed. In such cases, the burden is on the current owner (usually the recent buyer) to provide the Division of Water Rights a record of the complete chain of title from the owner on record with the Division to the present owner. This can result in incredibly complex Report of Water Right Conveyance filings and a significant financial burden on the current owner.

III. Changing Water Rights

Water rights are defined by several elements including the source of supply, the point of diversion, the place of use, the period of use, and the nature of use. Often a person who obtains a water right will need to change the place or manner in which the water right is used. Changing the use of a water right will generally require filing an Application for Permanent Change of Water.⁵⁰ Persons entitled to the use of water may make changes in the point of diversion, place of use, or purpose of use of the water right.⁵¹ This may include changing the place of use from one irrigated field to another; changing an irrigation use to municipal or domestic; or changing the point of diversion from a surface source to a well. Of course, these are just a few examples of the type of changes a water right owner may seek. Applications to change a water right must be

⁵⁰ It is also possible to file an Application for Temporary Change of Water for a fixed period of time not to exceed one year. Utah Code Ann. § 73-3-3.

⁵¹ Utah Code Ann. § 73-3-3.

approved by the State Engineer before any change can be made. Persons who change the use of a water without approval of the State Engineer obtain no right to the new use and are guilty of a criminal act.⁵² A change to a water right may not be made if it will interfere with any other vested water right without just compensation.⁵³ When reviewing an application to change a water right the State Engineer will also consider the five criteria set forth in Utah Code Ann. § 73-3-8 noted above.⁵⁴

An Application for Permanent Change of Water seeking to change a point of diversion and/or place of use must include a description of the existing point of diversion and the proposed point of diversion and/or the existing place of use and the proposed place of use. The description(s) must be tied to the U.S.G.S. Land Survey System. The application must also be accompanied by maps tied to the U.S.G.S. Land Survey System showing, as applicable, the existing point of diversion for the right, the proposed new point of diversion, the existing place of use, and the proposed new place of use.

Preparing such information will often require that the applicant retain an engineer or land surveyor to determine and map these points.

⁵² Id.

⁵³ Id.

⁵⁴ Id.; *Bonham v. Morgan*, 788 P.2d 497, 502 (Utah 1990).

When a person owning shares in a water company wants to change the point of diversion, place of use, or nature of use of the water he is entitled to use under the shares, the Application for Permanent Change must be authorized by the water company as the owner of the underlying water right.⁵⁵ Such changes would include a shareholder trying to change water that was previously delivered through a canal system for irrigation use to a well for culinary use. Usually, water company approval is indicated by its signature on the application but it may also be provided by a separate written authorization.⁵⁶ A shareholder seeking to change his right to use a portion of the water owned by the water company must submit a written request for approval to the water company.⁵⁷ The water company is required to provide written notice of its decision regarding the request within 120 days.⁵⁸ If the water company fails to respond within 120 days the shareholder's request is deemed denied.⁵⁹ While this statute appears to place a great amount of control in the hands of the water company, the company may not withhold approval if any potential damage, liability, or impairment that may be caused by the change can be reasonably mitigated without cost to the company.⁶⁰ In other words, if the shareholder is

⁵⁵ Utah Code Ann. § 73-3-3.5.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

willing to pay the costs associated with the change and take the reasonable steps necessary to keep the water company whole, it is not likely that the company can deny a viable application without facing the risk of litigation.

An Application for the Permanent Change of Water is adjudicated by the State Engineer in substantially the same manner as an Application to Appropriate Water. As described above, the application is first reviewed by the State Engineer for correctness; notice of the application is then advertised for two consecutive weeks; the application may be protested by any interested party; the State Engineer may hold an informal hearing; and the State Engineer will issue an Order either granting or rejecting the application. Orders addressing change applications are subject to the same reconsideration and judicial review process as set forth above.

Sometimes, rather than an Application for Permanent Change of Water, a water right holder will be required to file an Application for Exchange of Water in order to place water to the desired use. Again this is common when a party wants to change water that was previously used from a surface source for irrigation to a well for culinary use. An Application for Exchange of Water requests the right to release water into a stream, reservoir, or other water body in exchange for the like quantity of water withdrawn at another point.⁶¹ Such exchanges are commonly seen in the Weber Basin where water right holders may obtain a contract to use water in one of the existing storage reservoirs

⁶¹ Utah Code Ann. § 73-3-20.

and then file an application with the Division of Water Rights seeking to take the like quantity of water from a well.

IV. Limitations on Changes

Several factors can limit the changes that can be made on a given water right. As noted, a water right is limited to its beneficial use.⁶² A water right can not be expanded by the filing of a change application. The source of supply is one of the critical elements of a water right which will affect the ability to use and to change the water right. Questions regarding source can often impair a water right owner's ability to change an existing water right particularly if the owner seeks to change the right from a surface source to a groundwater well. If the existing surface source for a water right is a stream which runs continuously throughout the year, it is likely that the water right will be fully satisfied in most years. However, if the source is an intermittent or ephemeral stream which falls off dramatically, or even dries up after the seasonal run-off is spent, it is likely that the water right will not receive its full allocation in most years. In such cases even senior water rights may be curtailed, not because of priority but because nature does not supply the resource to fulfill the right.

⁶² Utah Code Ann. § 73-1-3.

The law will not permit a water right holder to improve his water right by moving the point of diversion to a more reliable source of water.⁶³ Therefore, when an application is filed to move an existing surface water right to a groundwater well the State Engineer will critically examine the surface water supply to determine if the right was historically fulfilled by the source. If the State Engineer has reason to believe that the water right did not historically receive its full allocation from the surface source, the State Engineer will reduce the right to its historical use and only allow diversion of water from the groundwater well in the amount he believes was supplied by the surface resource. This will often require that the water user install a meter on the well and file reports showing the amount of water withdrawn. River commissioners keep records of deliveries and stream flow data for surface water resources in many parts of the state. These reports are published annually and are kept on file with the Utah State Engineer. When contemplating the purchase of a surface water right with the intention of changing the point of diversion to a groundwater well, it is advisable to examine these reports to determine if the surface source has historically produced sufficient water to satisfy the water right.

Water rights are often changed to accommodate a change in the nature of use, most often and irrigation use to a domestic or municipal use. This may result in a perceived reduction in the water right. Most water rights include a return flow

⁶³ Rocky Ford Irrigation Co. v. Kents Lake Reservoir Co., 135 P.2d 108, rehearing, 140 P.2d 638 (Utah 1943).

component which must be maintained when the water right is changed in order to keep downstream users whole. Different types of water use each have an assumed return flow. For example, it is generally assumed that irrigation consumptively uses 50% of the water that is diverted from the source. Meaning 50% of the water diverted for irrigation use is returned to the drainage basin for appropriation and use by others. Domestic use is assumed to be about 20% consumptive while municipal use may be considered 100% consumptive. When changes from a surface water source to a groundwater source also include a change in the nature of use, the amount of water that the State Engineer will allow to be withdrawn from the well may be modified to accommodate the return flows of the historical use.

The same may be true for changes that include a change in the period of use. Again, in most instances we are addressing changes from a surface source for irrigation use to a groundwater well for domestic or municipal use. Most water rights are limited to a specific period of use. Water rights for irrigation may only be diverted from the source and used during the irrigation season, generally April 1 to October 31. When the irrigation season ends, no additional water may be diverted from the source. When such water rights are changed to domestic or municipal use, the right must be available for use year-round. While there is no express statutory authority to expand the period of use for a water right, the State Engineer has generally allowed the conversion of irrigation water rights to domestic or municipal use. In doing so, however, the State Engineer will impose conditions on the groundwater withdrawal to prevent the consumption of more water

under the right over the course of a year than was historically consumed during the seasonal use.

Finally, the right to change the use of water represented by shares in an irrigation company from the historical surface source to a groundwater well may be limited. As discussed, the right to file change applications on water rights held by a mutual water or irrigation company rests with the company not the individual shareholder.⁶⁴ Shareholders must obtain approval of the water company to change the water they use subject to their shares.⁶⁵ It can be difficult for an irrigation company to have the water removed from its irrigation ditches and diverted from another source. Any reduction in the amount of water in the company's irrigation ditches can potentially result in harm to the company and its shareholders. As such, when allowing changes from its existing surface source to an outside source, irrigation companies will usually require that a portion of the water right be left in the company ditches to continue to act as carrier water and to account for seepage loss. This will, of course, reduce the amount of water that the shareholder can withdraw from the new source. This may again require that the water user monitor the well and regularly report diversions.

⁶⁴ East Jordan Irrigation Co. v. Morgan, 860 P.2d 310 (Utah 1993).

⁶⁵ Utah Code Ann. § 73-3-3.5.