



Utah Water Rights Basics

Natural Resources, Agriculture, and Environment Primer | September 12, 2023

The following discusses at a high-level the basics of water rights in Utah and is not an exhaustive overview. For more detailed information, please contact the staff of the Natural Resources, Agriculture, and Environment Interim Committee.

What is a Water Right?

In Utah water belongs to the public.ⁱ The right to use the water is referred to as a “water right.”ⁱⁱ Utah, like most western states, has adopted the appropriation doctrineⁱⁱⁱ - which means that the right to use water is determined by a priority system when water is distributed first to the person with the oldest beneficial use of the water, then to the person with the next oldest use, and so on, referred to as “first in time, first in right.”

WATER RIGHTS:

“first in time, first in right”

“use it or lose it”

What are Elements of a Water Right?

The elements of a water right include:

- Quantity of water allowed for diversion by flow rate (e.g., cubic feet per second) or volume (e.g., acre feet)
- Point of diversion and source of water
- Priority of right (e.g., senior v. junior right)
- Period of use
- Nature, extent, and place of beneficial use^{iv}

What is Beneficial Use?

A water right requires that the water be used for a beneficial use, described as “use it, or lose it.” Statute makes clear that “[b]eneficial use shall be the basis, the measure and the limit of all rights to use water in the state.”^v Beneficial use of water goes beyond promoting economic activities to include such things as, under certain conditions, water that is saved in specific agricultural contexts or water allowed to remain in a stream for conservation purposes.^{vi}

Water rights are only approved rights until the person proves that the person has put the water to beneficial use, thus making the water rights perfected. Statute addresses how a person proves beneficial use of water to the state engineer. Once the state engineer determines that the water is used as contemplated by the approved water rights application, the state engineer issues a certificate of appropriation finalizing the water right.^{vii}

How to Obtain a Water Right?

The Utah Constitution provides: “All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby

recognized and confirmed.”^{viii} Water rights are generally created in certain basic ways in Utah:^{ix}

- Diligence claim, which is based on use that occurred before March 12, 1903, for surface water and March 22, 1935, for ground water. After these dates, statute requires written application for a water right.^x
- Application to appropriate water, if use of the water has not yet been appropriated, a person may file an application to appropriate water with the state engineer.^{xi}

Other sources of water rights include water rights derived from federal reserve rights for federal lands such as Indian reservations.^{xii}

Significant portions of the state are “closed” to new appropriations of water. Elements of a water right may need to change. In these instances, new diversions and uses of water are accomplished by modifying an existing water right through a change application submitted to the state engineer.^{xiii}



Utah Code § 73-1-10 provides that a water right may be “transferred by deed in substantially the same manner as is real estate.”

Can You Lose a Water Right?

If a person fails to use water under a water right for seven years, the water right is subject to forfeiture. The statute provides for a process to implement forfeiture.^{xiv} There are exceptions to forfeiture that include use under a lease or other agreement, failure of a water source to yield sufficient water to satisfy the water right, nonuse water rights kept by a public water supplier for reasonable future use by the public, and a filed application for nonuse.^{xv}

May You Use Water Without Directly Owning a Water Right?

One of the ways to have access to use of water is through ownership of a water share.^{xvi} Water or irrigation companies are formed to pool water rights and transfer title to the company to better facilitate and maintain water distribution to shareholders. There are other methods to secure the right to use water such as by contract, leasing, water banking, or

being the retail user of water obtained from a retail water supplier.

What is a State Engineer’s Role?

The state engineer, who is also the director of the Division of Water Rights,^{xvii} has a variety of duties and powers. The state engineer has statutory responsibility for the measuring and reporting of water use data.^{xviii}

General Adjudications

Statute directs the state engineer to survey water diversions and uses and submit a determination of water rights to a court, who issues a final decree once objections to a proposed determination are resolved.^{xix} This process is called a general adjudication.

Powers and Duties in General

To ensure that water in Utah is distributed according to existing water rights, the state engineer organizes distribution systems and appoints river commissioners to oversee the distributions.^{xx}

In addition to overseeing water rights, the state engineer also oversees items such as dam safety, water well drillers, stream alterations, geothermal power, and enforcement.^{xxi}

ⁱ Utah Code § 73-1-1.

ⁱⁱ Use of water generally includes diverted water - water withdrawn from a natural water system and used. Depleted water is diverted water that is consumed by plants, humans, or livestock and not returned to a water system. Return flow is the diverted water that is not depleted that returns to the natural water system. *See* How Utah Water Works: An Overview of Sources, Uses, Funding, and Pricing, OLRGC Briefing Paper (Nov. 2012).

ⁱⁱⁱ For a history of Utah’s water law, *see* Swenson, A Primer of Utah Water Law, Part 1 & 2, J. of Energy Law & Pol’y (1984 & 1985).

^{iv} *See, e.g.*, Gittins, Introduction to Utah Water Law, Smith Hartvigsen, PLLC, <https://smithhartvigsen.com/wp-content/uploads/2020/02/IntroductiontoUtahWaterLaw.pdf> (last visited 9/7/2023); VF Law, Important Concepts Regarding Water in Utah, <https://vf-law.com/2020/03/23/important-concepts-regarding-water-in-utah/> (last visited 9/7/2023).

^v Utah Code § 73-1-3.

^{vi} *See e.g.*, Utah Code §§ 73-3-30 & 73-10g-208.

^{vii} *See* Utah Code, Title 73, Chapter 3, Appropriation; Water Resources Plan, Chapter 8 (Utah Division of Water Resources December 2021).

^{viii} Utah Const. Article XVII. In addition to this provision, the Utah Constitution addresses property taxes and water rights in Utah Const. Article XIII, Section 3 and municipal water rights in Utah Const. Article XI, Section 6.

^{ix} Before 1939, a person could obtain a water right by use that is adverse to a valid right. *See* Water Resources Plan, note vii.

^x *See* Water Resources Plan, note vii.

^{xi} *See, e.g.*, Utah Code §§ 73-3-2 & 73-3-8.

^{xii} *See* Water Resources Plan, note vii.

^{xiii} *See* Utah Code, §§ 73-3-3 & 73-3-8; Water Resources Plan, note vii.

^{xiv} *See* Utah Code § 73-1-4.

^{xv} *See* Utah Code § 73-1-4; Gittins, note iv.

^{xvi} *See* Gittins, note iv.

^{xvii} *See* Utah Code § 73-2-1.2.

^{xviii} *See, e.g.*, Utah Code §§ 73-1-21, 73-2-1, 73-2-11, 73-5-4, and 73-5-8.

^{xix} *See* Water Resources Plan, note vii.

^{xx} *See* Water Resources Plan, note vii.

^{xxi} *See* Gittins, note iv.