

Division of Water Rights: Data Centers & Water Rights



Water Rights

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HB 76:

Data Centers



WHAT THE BILL REQUIRES:

- Large data centers must submit projected water use, discharge, treatment, and water reuse plans before construction.
- Data centers using 75 acre-feet of water or more annually must report water use and conservation efforts each year.
- Water use information is published online to support transparency and public awareness.
- Division of Water Rights responsible for collecting reports and enforcement.





Data Center Reporting Implemented

WHAT QUALIFIES AS A 'LARGE' DATA CENTER?

- 10,000+ sq ft
- Uses network servers
- Withdraws 75 acre-ft of water annually

REQUIRED CONNECTIONS WITH DWRi

- Pre-construction Notification
- Annual Reporting, due by July 1
- Publicly shared annually by DWRi by Sept. 1



Riparian Law

Land Owner: Right to use a reasonable amount of water as it crosses the property

Influenced by English Law

Lots of available water



Prior Appropriation

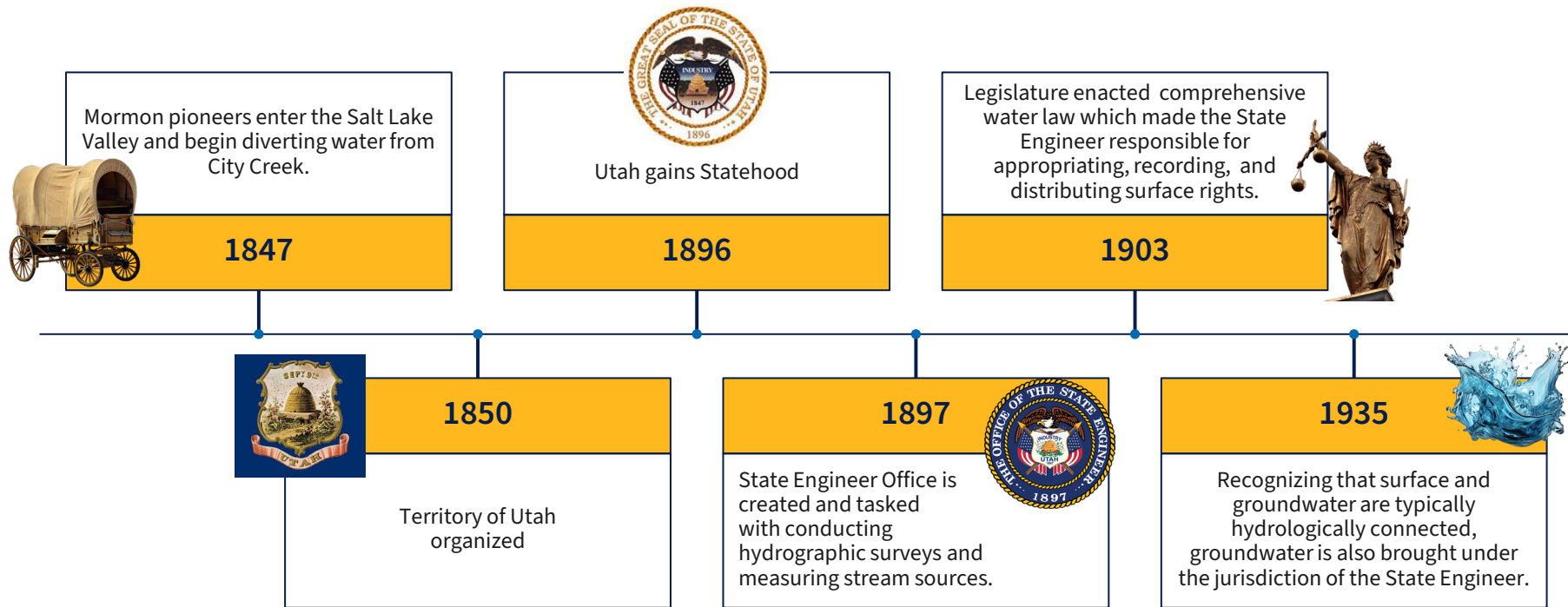
Water Right Owner:
“First in Time, First in Right”

Influenced by Western Mining Law

Scarcity of water, defined amount of water



Evolution of Utah Water Law





What is a Water Right?

A ***water right*** is a right to divert (remove from its natural source), and beneficially use water.

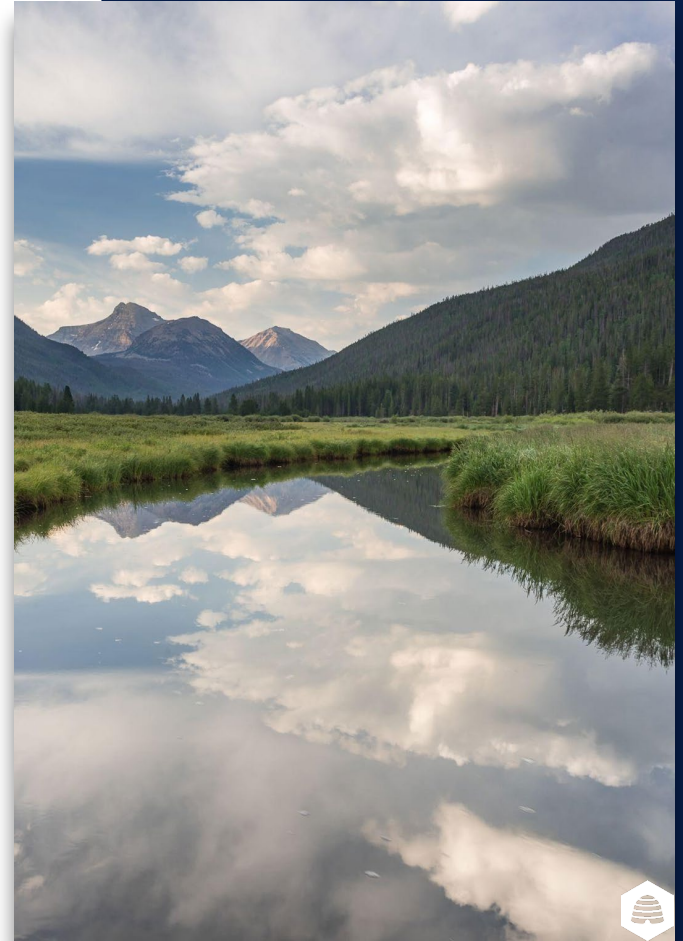
Elements a water right:

- A defined nature of **beneficial use**
- A **priority** date
- A defined **quantity** of water allowed for diversion
- A specified **point of diversion** and **source** of water
- A specified **place** of beneficial use
- **Ownership**
- **Storage** (if applicable)

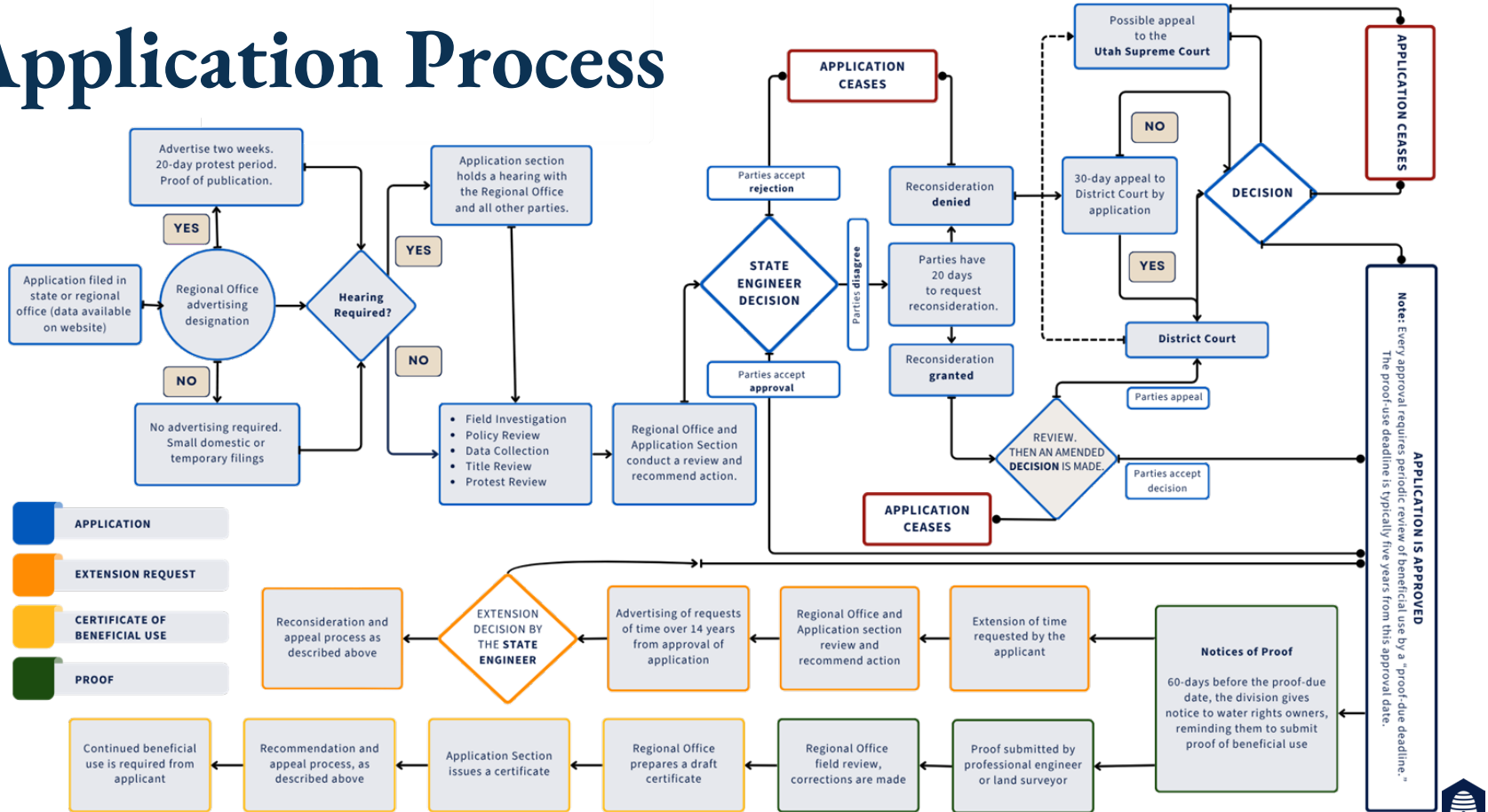


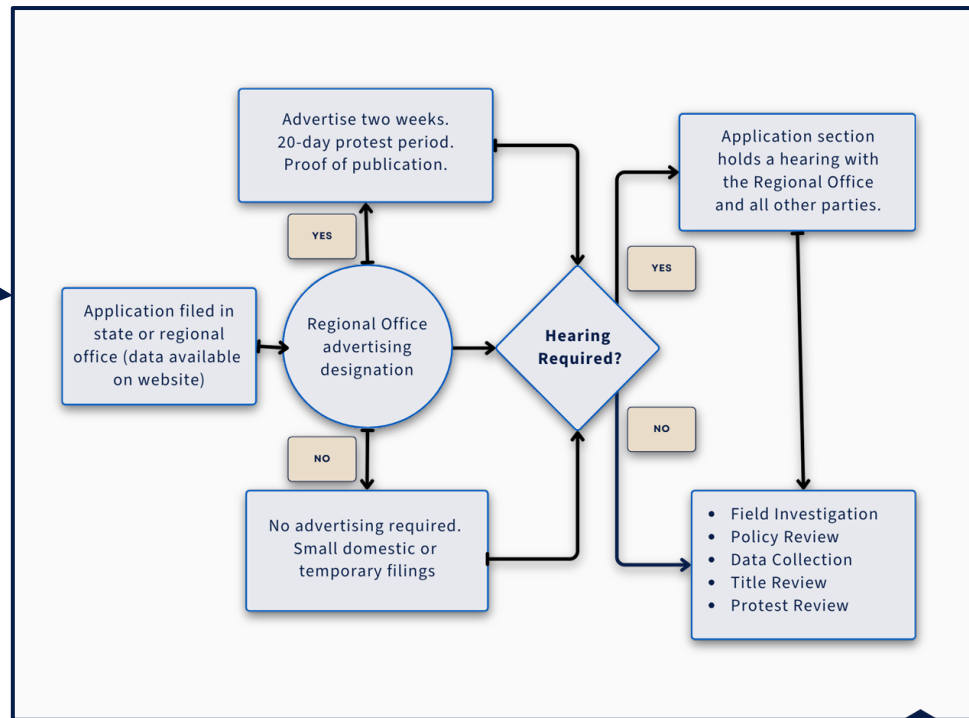
Water & Irrigation

- All waters in the state, above or under the ground, declared property of the public (73-1-1)
- Subject to existing rights (73-1-1)
- Unit of measure - volume or flow (73-1-2)
- Beneficial use basis of right to use (73-1-3)
- Reversion to the public by abandonment or forfeiture (73-1-4)



Application Process



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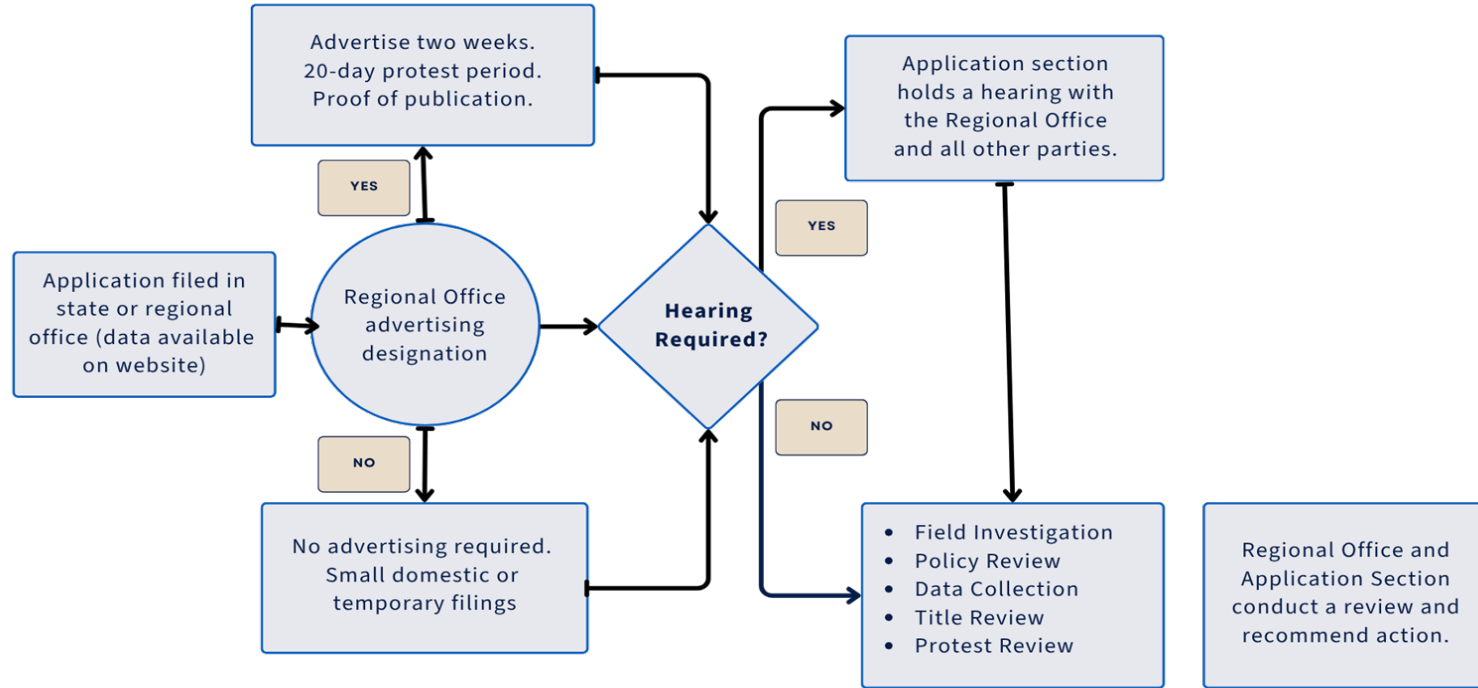


ADMINISTRATIVE HEARINGS

Administrative hearings provide a forum for state engineer to ask additional questions, collect evidence and testimony regarding the proposed project. This is a valuable tool that helps the state engineer determine if the application meets all applicable statutory criteria.

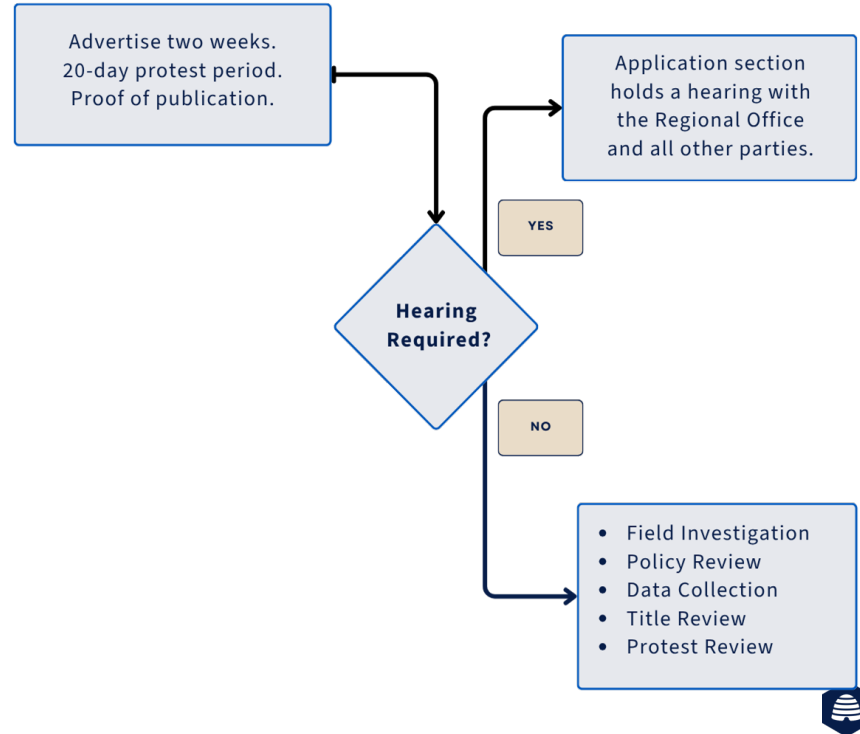


When is a Hearing Held?



What is the purpose of a hearing?

To collect additional information and data relative and pertinent to the application for the state engineer to determine if the application meets applicable statutory criteria.





APPROVAL CRITERIA & PROCESS

The water rights application process helps ensure proposed projects are reviewed in accordance with Utah law. Applications undergo technical evaluation to determine whether the proposed use can be approved without impairing existing rights and that it meets statutory criteria.



Approval Criteria

The Standard by which the State Engineer evaluates applications seeking approval is the “reason to believe standard” outlined in **Searle v. Milburn Irrigation Co., (2006)**

“...placing a fairly low burden on a party seeking approval...”



STATE ENGINEER HAS A DUTY TO APPROVE IF:

Application Criteria is Met

1. Reason to believe unappropriated water in the source
2. Proposed use will not impair existing rights
3. Physically and economically feasible
4. Financial ability to complete the proposed work or project
5. Good faith and not for purposes of speculation or monopoly
6. Not detrimental to the public welfare
7. Complies with adopted groundwater management plan



Case Law

W. Water, LLC v. Olds (2008)

“...the State Engineer concluded that the Original Application was filed for speculation or monopoly because the only proposed beneficial use for the water was a plan to sell it to others.

Indeed, the applicants had ‘no lands, facilities, customers, or contracts.’”



Additional Considerations

Utah Code Ann. §73-3-8

(1)(a) It shall be the duty of the State Engineer to approve an application if there is reason to believe:



With Conditions



Additional Considerations

Utah Code Ann. §73-3-8

(1)(c) If an application does not meet the requirements of this section, it shall be rejected.





Approval: With Conditions

In some cases, an application may be approved with specific conditions to help protect existing water rights and to meet all applicable statutory criteria. These conditions become part of the approval and must be followed by the applicant.



Additional Considerations

- Diversion, Depletion, and Reduction.
- Meter, Measure, and Report
- Well Abandonment
- Retiring Prior Use
- Maintaining Shares
- Use of facilities not owned
- Municipal Right Considerations
- Distribution regulation





Thank You



Water Rights

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