

CONVEYANCE OF WATER RIGHTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

AN ACT RELATING TO WATER AND IRRIGATION; PROVIDING THAT FOR PURPOSES OF CONVEYANCES OF LAND A WATER RIGHT EVIDENCED BY CERTAIN DOCUMENTS IS APPURTENANT TO LAND; PROVIDING WHERE A WATER RIGHT IS APPURTENANT TO LAND; PROVIDING THAT WHEN PART OF A WATER RIGHT IS CONVEYED IN A LAND CONVEYANCE DOCUMENT, THE PORTION NOT CONVEYED IS PRESUMED TO BE RESERVED; AND PROVIDING THAT THE AMOUNT OF A WATER RIGHT CONVEYED AS AN APPURTENANCE TO LAND IS PROPORTIONATE TO THE CONVEYED PORTION OF THE WATER RIGHT'S AUTHORIZED PLACE OF USE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**73-1-10**, as last amended by Chapter 51, Laws of Utah 1996

**73-1-11**, as last amended by Chapter 51, Laws of Utah 1996

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **73-1-10** is amended to read:

**73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recordation of deed.**

(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 [place] point of diversion of the water [~~from its natural channel~~] is [~~situated~~] located and in the county where the water is [~~applied~~] used.

(c) A certified copy of the deed, or other instrument, transferring the water right shall be

promptly transmitted by the county recorder to the state engineer for filing.

(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 ~~[subsequent purchasers, mortgagees, and lien holders]~~ 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, ~~[Utah]~~ Uniform Commercial Code - Investment Securities.

Section 2. Section **73-1-11** is amended to read:

**73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.**

(1) A water right ~~[to the use of water]~~ appurtenant to land shall pass to the grantee of the land~~[-]~~ and, if the right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the right was exercised next preceding the time of the execution of its conveyance. ~~(2) Prior to conveyance, all unpaid assessments must be paid by the grantee. (3) The~~ unless the grantor ~~[may]~~:

(a) specifically ~~[reserve a]~~ reserves the water right ~~[to the use of water,]~~ or any part of the water right in the land conveyance~~[-]~~ or the grantor may convey document;

(b) conveys a part of the water right in the land conveyance document; or

(c) conveys the water right ~~[to the use of water]~~ in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.

(2) (a) If the water right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the water right was exercised next preceding the time the land conveyance was executed.

(b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

(3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.

(4) The right to the use of water evidenced by shares of stock in a corporation shall not be deemed appurtenant to ~~[the]~~ land.

(5) (a) This Subsection (5) governs land conveyances executed on or after May 4, 1998, and has no retrospective operation.

(b) For purposes of land conveyances only, a water right evidenced by any of the following documents is appurtenant to land:

(i) a decree entered by a court;

(ii) a certificate issued under Section 73-3-17;

(iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;

(iv) a water user's claim executed for general determination of water rights proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section 73-3-16;

(v) an approval for an application to appropriate water issued under Section 73-3-10;

(vi) an approval for an application to permanently change the place of use of water issued under Section 73-3-10; or

(vii) an approval for an application to exchange water issued under Section 73-3-20.

(c) For purposes of land conveyances only, the land to which a water right is appurtenant is the authorized place of use of water as described in the:

(i) decree;

(ii) certificate;

(iii) diligence claim;

(iv) water user's claim;

(v) approved application to appropriate water;

(vi) approved application to permanently change the place of use of water; or

(vii) approved exchange application.

(d) If a grantor conveys part of the water right in a land conveyance document pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the grantor.

(e) If the land conveyed constitutes only a portion of the authorized place of use for the water right, the amount of the appurtenant water right that passes to the grantee shall be proportionate to

the conveyed portion of the authorized place of use.