

2009

Marylin Hamblin v. Kent Jones : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Bradley R. Cahoon, Troy L. Booher, Stewart O. Peay, M. Lane Molen; Snell and Wilmer L.L.P.; Attorneys for Appellant.

Julie I. Valdes, Norman K. Johnson; Assistant Attorneys General; Mark L. Shurtleff; Utah Attorney General; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Marylin Hamblin v. Kent Jones*, No. 20090742.00 (Utah Supreme Court, 2009).
https://digitalcommons.law.byu.edu/byu_sc2/2965

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH SUPREME COURT

MARILYN HAMBLIN, an individual,

Plaintiff,

vs.

KENT JONES, P.E., Utah State Engineer,

Defendant.

Civil No. 20090742-SC

**BRIEF OF APPELLEE
UTAH STATE ENGINEER**

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY
HONORABLE CLAUDIA LAYCOCK
Civil No. 060400639

Bradley R. Cahoon
Troy L. Booher
Stewart O. Peay
M. Lane Molen
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Beneficial Life Tower
Salt Lake City, UT 84101-1004
Attorneys for Appellant/Plaintiff

Julie I. Valdes No. 8545
Norman K. Johnson No. 3816
Assistant Attorneys General
Mark L. Shurtleff No. 4666
Utah Attorney General
1594 West North Temple, #300
Salt Lake City, UT 84116
Telephone: (801) 538-7227
Fax: (801) 538-7440
*Attorneys for Appellee/Defendant
Utah State Engineer*

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

TABLE OF CONTENTS

| | |
|---|----|
| STATEMENT OF JURISDICTION | 1 |
| ISSUE PRESENTED AND STANDARD OF REVIEW | 1 |
| DETERMINATIVE STATUTES | 1 |
| STATEMENT OF THE CASE | 3 |
| STATEMENT OF UNDISPUTED FACTS | 5 |
| SUMMARY OF ARGUMENT | 5 |
| INTRODUCTION | 6 |
| ARGUMENT | 8 |
| I. AS THE DISTRICT COURT CORRECTLY HELD, UNDER UTAH LAW, WATER RIGHT No. 55-11041 FORFEITED BY OPERATION OF LAW ON JANUARY 1, 1985 | 8 |
| II. TO ANALYZE AND DECIDE A CHANGE APPLICATION THE STATE ENGINEER CAN, AND MUST, “EVALUATE,” BUT NOT “ADJUDICATE,” THE UNDERLYING WATER RIGHT | 12 |
| III. AMENDMENTS TO SECTION 73-1-4 DO NOT AFFECT THE STATUS OF PREVIOUSLY FORFEITED WATER RIGHTS, AND THE STATE ENGINEER THEREFORE CORRECTLY DENIED APPELLANT’S CHANGE APPLICATION | 17 |
| A. The Legislature has Designated No Amendment to Section 73-1-4 as Retroactive | 19 |
| B. No Amendment to Section 73-1-4 Meets the Narrow, Restrictive Requirements to be Considered Retroactive | 20 |
| 1. There was no need to “clarify” the previous unambiguous statute. | 21 |
| 2. Additional language in the 1996 amendments was substantive and therefore not retroactive. | 23 |

| | | |
|------------------|--|----|
| C. | The 1996 Amendments to Section 73-1-4 Do Not Help Appellant Because the Forfeiture of Her Water Right, and Reversion of Water Previously Delivered Under that Right, were Accomplished before the Amendments were Enacted. | 27 |
| IV. | EVEN IF, <i>ARGUENDO</i> , THIS COURT FINDS THAT A VERSION OF SECTION 73-1-4 SHOULD APPLY RETROACTIVELY, THIS COURT MAY UPHOLD THE TRIAL COURT’S RESULT ON ALTERNATIVE GROUNDS; NAMELY, THAT APPROVING HAMBLIN’S CHANGE APPLICATION WOULD IMPAIR THE RIGHTS OF OTHERS, THAT WITH OR WITHOUT A FORFEITURE FINDING NO UNAPPROPRIATED WATER IS AVAILABLE FOR HER CHANGE APPLICATION, OR THAT THE APPLICATION MAY NOT BE APPROVED BECAUSE HAMBLIN HAS NO CURRENT USE TO RELINQUISH | 29 |
| A. | Approving Appellant’s Change Application would Impair Other User’s Rights. | 30 |
| B. | With or without a Forfeiture Finding, No Unappropriated Water is Available for Appellant’s Change Application. | 33 |
| C. | Appellant’s Change Application Cannot be Approved because Appellant has No Use to Relinquish. | 34 |
| CONCLUSION | | 38 |
| ADDENDA | | 41 |
| Addendum A | Utah Code Ann. § 73-1-4 (1980). | |
| Addendum B | Utah Code Ann. § 73-1-4 (Michie Supp. 1987). | |
| Addendum C | Utah Code Ann. § 73-1-4 (Michie Supp. 1996). | |
| Addendum D | Utah Code Ann. § 73-1-4 (Lexis Supp. 2002). | |
| Addendum E | Utah Code Ann. § 73-1-4 (West Supp. 2008). | |
| Addendum F | Gen. Sess. S. Journal, Day 38, at 809-10 (Utah 2008) | |
| Addendum G | General Sess. S. Journal, Day 40, at 966-68 (Utah 2008) | |

TABLE OF AUTHORITIES

CASES

| | |
|--|------------|
| <i>B.A.M. Dev., L.L.C. v. Salt Lake County</i> , 2006 UT 2, 128 P.2d 1161 | 28 |
| <i>Baugh v. Criddle</i> , 431 P.2d 790 (Utah 1967) | 10, 11, 22 |
| <i>Bonham v. Morgan</i> , 788 P.2d 497 (Utah 1990) | 7, 13 |
| <i>Brown & Root Indus. Serv. v. Industrial Comm’n</i> . 947 P.2d 671 (Utah 1997) | 24 |
| <i>Butler, Crockett & Walsh Dev. Corp. v. Pinecrest Pipeline Operating Co.</i> , 2004 UT 67, 98 P.3d 1. | 29, 31 |
| <i>Dep’t of Social Serv. v. Higgs</i> , 656 P.2d 998 (Utah 1982) | 28 |
| <i>Drainage Dist. No. 7 of Washington County v. Bernards</i> , 174 P. 1167 (Or. 1918) | 28 |
| <i>Eden Irrigation Co. v. District Court</i> , 211 P. 957, 961 (Utah 1922) | 31 |
| <i>Goebel v. Salt Lake City Southern Railroad Co.</i> , 2004 UT 80, 104 P.3d 1185 | 20, 21 |
| <i>Green River Canal Co. v. Thayn</i> , 2003 UT 50 | 31 |
| <i>Hammond v. Johnson</i> , 66 P.2d 894 (Utah 1937) | 12 |
| <i>Harvey v. Cedar Hills City</i> , 2010 UT 12, 227 P.3d 256 | 20, 21 |
| <i>In re Bear River Drainage Area</i> , 271 P.2d 846 (Utah 1954) | 6 |
| <i>In re the Disconnection of Certain Territory from Highland City</i> , 668 P.2d 544 (Utah 1983) | 24 |
| <i>Jenkins v. Dept. of Water Resources</i> , 647 P.2d 1256 (Idaho 1982) | 16, 17, 37 |
| <i>Krouse v. Bower</i> , 2001 UT 28, 20 P.3d 895 | 1 |
| <i>Manning v. Fife</i> , 54 P. 111 (Utah 1898) | 35 |
| <i>Marshall v. Industrial Comm’n. of the State of Utah</i> , 704 P.2d 581 (Utah 1985) | 28 |

| | |
|--|-------------------|
| <i>Martin v. Hadix</i> , 527 U.S. 343 (1999) | 21 |
| <i>Mosby Irrigation Co. v. Criddle</i> , 354 P.2d 848 (Utah 1960) | 10, 11, 22 |
| <i>Moyle v. Salt Lake City</i> , 176 P.2d 882 (Utah 1947) | 6 |
| <i>Nephi City v. Hansen</i> , 779 P.2d 673 (Utah 1989) | 9, 11, 20, 22, 27 |
| <i>Piute Reservoir & Irrigation Co. v. West Panguich Irrigation & Reservoir Co.</i> , 367 P.2d 855 (Utah 1962) | 32 |
| <i>Rocky Ford Irrigation Co. v. Kents Lake Reservoir Co.</i> , 135 P.2d 108 (Utah 1943) ... | 35 |
| <i>Searle v. Milburn Irrigation Co.</i> , 2006 UT 16, 133 P.2d 382 | 13, 15, 33 |
| <i>Shields v. Dry Creek Irrigation Co.</i> , 363 P.2d 82 (Utah 1961) | 15 |
| <i>State Engineer v. Shepherd</i> , 2005 UT App 450, 128 P.3d 6 | 35 |
| <i>Tanner v. Humphreys</i> , 48 P.2d 484 (Utah 1935) | 31, 33, 34, 35 |
| <i>United States v. Fourth District Court</i> , 238 P.2d 1132 (Utah 1951) | 6, 7, 13, 14 |

STATUTES

| | |
|---|--------------------------------------|
| Utah Code Ann. § 68-3-3 | 1, 19 |
| Utah Code Ann. § 73-1-1 (West 2004) | 20 |
| Utah Code Ann. § 73-1-3 | 1, 7, 30, 36 |
| Utah Code Ann. § 73-1-4 (1980) | 1, 8, 11, 22, 27, 31 |
| Utah Code Ann. § 73-1-4 (Lexis Supp. 2002) | 2, 18, 21, 25 |
| Utah Code Ann. § 73-1-4 (Michie Supp. 1996) | 2, 5, 14, 17, 18, 19, 21, 22, 23, 27 |
| Utah Code Ann. § 73-1-4 (West 2004) | 6, 14, 19, 21 |
| Utah Code Ann. § 73-1-4 (West Supp. 2008) | 3, 9, 18, 25, 26 |

| | |
|---|---|
| Utah Code Ann. § 73-2-1 (West 2004) | 14 |
| Utah Code Ann. § 73-3-3 (1980) | 9 |
| Utah Code Ann. § 73-3-3 (West 2004) | 3, 4, 7, 10, 13, 14, 17, 30, 33, 34, 35, 36 |
| Utah Code Ann. § 73-3-8 (West 2004) | 3, 4, 7, 13, 14, 15, 17, 30, 31, 32, 34, |
| Utah Code Ann. § 78A-3-102 | 1 |

OTHER AUTHORITIES

| | |
|--|-------|
| <i>Black's Law Dictionary</i> (6 th ed. 1990) | 6, 36 |
| Gen. Sess. H. Journal, Day 40, at 966-68 (Utah 2008) | 26 |
| Gen. Sess. S. Journal, Day 38, at 809-10 (Utah 2008) | 26 |

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. §§ 78A-3-102(3)(f) and -102(4) (West Supp. 2009).

ISSUE PRESENTED AND STANDARD OF REVIEW

Can an application to change the place and purpose of use of a water right be granted where it is undisputed that no water has been used under that right for at least 30 years?

The trial court's decision on a question of law is reviewed for correctness. *Krouse v. Bower*, 2001 UT 28, ¶2, 20 P.3d 895.

DETERMINATIVE STATUTES

Utah Code Ann. § 68-3-3 Retroactive effect

No part of these revised statutes is retroactive, unless expressly so declared.

Utah Code Ann. § 73-1-3 Beneficial Use basis of right to use.

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.

Utah Code Ann. § 73-1-4 (1980) Reversion to public by abandonment or failure to use within five years — Extending time. Attached hereto as ADDENDUM A

When an appropriator or his successor in interest shall abandon or cease to use water for a period of five years the right shall cease and thereupon such water shall revert to the public, and may be again appropriated as provided in this title, unless before the expiration of such five-year period the appropriator or his successor in interest shall have filed with the state engineer a verified application for an extension of time, not to exceed five years, within which to resume the use of such water

(Relevant subsections).

Utah Code Ann. § 73-1-4 (Michie Supp. 1996) Reversion to public by abandonment or forfeiture for nonuse within five years — extension of time. Attached hereto as ADDENDUM C

(1)(a) When an appropriator or the appropriator's successor in interest abandons or ceases to use water for a period of five years, the water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified application for an extension of time with the state engineer.

(b)(i) A water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

....

(Relevant subsections).

Utah Code Ann. § 73-1-4 (Lexis Supp. 2002) Reversion to the public by abandonment or forfeiture for nonuse within five years — Extension of time. Attached hereto as ADDENDUM D

(1) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use. The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts. The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).

....

(3)(a) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of five years, the water right or the unused portion of that water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified nonuse application with the state engineer.

....

(c)(i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(Relevant subsections).

Utah Code Ann. § 73-1-4 (West Supp. 2008) Reversion to the public by abandonment or forfeiture for nonuse within seven years — Nonuse application. Attached hereto as ADDENDUM E

(2)(a) When an appropriator . . . abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c), unless the appropriator . . . files a nonuse application with the state engineer.

....

(2)(c)(i) A water right or a portion of a water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least seven years.

....

(2)(c)(v) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:

(A) the right to use the water reverts to the public; and

(B) the water made available by the forfeiture;

(I) first, satisfies other water rights in the hydrologic system in order of priority date; and

(II) second, may be appropriated as provided in this title.

(Relevant subsections).

STATEMENT OF THE CASE

Appellant Marilyn Hamblin seeks to overturn the summary judgment and order entered on *de novo* review by the Honorable Claudia Laycock that denied Hamblin's change application on Water Right 55-11041. (R. at 1197). The question before the trial court on *de novo* review, and before the State Engineer in the administrative action, was whether Hamblin's application to change the place of use and point of diversion for Water Right 55-11041 should be approved. The State Engineer rejected Hamblin's application because it failed to meet the statutory criteria in Utah Code Ann. § 73-3-3 (West 2004) and § 73-3-8

(West 2004).¹ (R. at 645).² The State Engineer detailed the basis for failure to meet the criteria in his Order of the State Engineer for Permanent Change Application Number 55-11041 (a29341) (“Order”), dated January 4, 2008.³ (R. at 650-645).

In the *de novo* review action before the district court, Defendant State Engineer filed a Motion for Summary Judgment requesting the court to deny Hamblin’s change application. (R. at 819-818). The district court granted the State Engineer’s Motion (R. at 1197), and denied Hamblin’s Cross-Motion for Partial Summary Judgment. (R. at 1197). The district court concluded Hamblin did not meet the change application criteria in Utah Code Ann. § 73-3-3(2)(a) or § 73-3-8(1)(a) because, respectively, she was not a person entitled to the use of water and she could not demonstrate that there was unappropriated water in the proposed (new) place of use. (R. at 1198-1197). The court premised its decision on the forfeiture of Water Right 55-11041 in 1985. (R. at 1198) As with all State Engineer decisions on *de novo* review, where Hamblin’s Second Amended Petition for Judicial Review and Fourth Amended Complaint requested an order granting her change application (R. 678), the court ruled on the submitted administrative change application, not Water Right 55-11041 itself.

¹ Because Hamblin’s application was submitted in 2004, the 2004 versions of Sections 73-3-3 and 73-3-8 control. Cited subsections in subsequent versions are, substantively, almost identical, but are numbered differently. Citations are therefore to applicable subsections in Utah Code Ann. §§ 73-3-3 and -8 (West 2004).

² The court Record is Bates numbered in reverse (oldest documents, and last pages first). Thus, the Record citations herein appear with numerically high numbers first.

³ The State Engineer issued this Order on Hamblin’s application upon remand to him by the district court. (R. at 654-653).

STATEMENT OF UNDISPUTED FACTS

1. Ms. Hamblin has not supplied satisfactory title information on Water Right No. 55-11041 to the State Engineer or the district court. For purposes of the Motions for Summary Judgment only, however, the State Engineer does not contest Hamblin's title. (R. at 1224, Transcript of May 12, 2009 Hearing, p. 5-7).

2. Hamblin's water right has not been used for many decades, by stipulation of the parties since at least 1980. (R. at 816).

3. Water users in the Utah Valley, where Water Right 55-11041 is located, have appropriated all available water, and the Utah Valley basin was closed to new water appropriations in 1995. (R. at 837—Mann Aff. ¶ 5).

SUMMARY OF ARGUMENT

The district court correctly ruled that Hamblin's Water Right No. 55-11041 forfeited by operation of law after five years of nonuse from 1980 through 1984. The State Engineer's recognition of this fact as part of his evaluation of Hamblin's change application did not inappropriately "adjudicate" the right. The Legislature did not designate as retroactive the 1996 amendment to the Utah forfeiture statute, Utah Code Ann. § 73-1-4, nor did it so designate any previous or subsequent amendment of the statute. Further, none of the amendments meets the requirements to be considered an exception to the general rule against retroactive application. The amendments were neither procedural nor did they simply clarify a statute in place at the time they were enacted. Even if the 1996 amendments were

somehow retroactive, the changes did not and could not “un-accomplish” the reversion of water under Hamblin’s water right that occurred on January 1, 1985.

The district court correctly based its holding on forfeiture by operation of law, although the court could have rested its decision on other statutory grounds: 1) the change would impair existing water rights; 2) Hamblin has no current use to relinquish; or 3) there was no unappropriated water in the proposed source. Even if, *arguendo*, this Court finds that a version of Section 73-1-4 may apply retroactively, this Court should use one or more of these alternative grounds to uphold the district court decision.

INTRODUCTION

In Utah, water rights are treated as real property “incorporeal hereditaments”⁴ and are, by nature, “usufructory.”⁵ Because the rights are incorporeal, they depend on a “beneficial use” to give them substance and definition. This Court has said:

The right to the use of water, although a property right, is very different from the ownership of specific property which is subject to possession, control and use as the owner sees fit. Such right does not involve the ownership of a specific body of water but is only a right to use a given amount of the transitory waters of a stream or water source for a specified time, place and purpose[.]⁶

⁴ *In re Bear River Drainage Area*, 271 P.2d 846, 848 (Utah 1954); see *Black’s Law Dictionary*, 726 (6th ed. 1990) (“Incorporeal hereditaments” are “right[s] growing out of, or concerning, or annexed to, a corporeal thing [ie. water], but not the substance of the thing itself”).

⁵ *Moyle v. Salt Lake City*, 176 P.2d 882, 889 (Utah 1947); see *Black’s Law Dictionary*, at 1544 (a right in “usufruct” is “[t]he right of using and enjoying and receiving the profits of property that belongs to another”).

⁶ *United States v. Fourth District Court*, 238 P.2d 1132, 1134 (Utah 1951)

(continued...)

The legislature codified this long-standing principle in Utah Code Ann. § 73-1-3: “[b]eneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.” Because beneficial use defines a water right, and because flowing water mixes indiscriminately, the State Engineer is charged with investigating each application he receives,⁷ and may not approve the application if approval would impair other rights.⁸ This is especially important because “as between appropriators, the one first in time . . . [is] first in right[.]”⁹

Permanent change applications, such as Hamblin’s, are requests to change, for an indefinite length of time, the beneficial use’s “point of diversion, place of use, or purpose of use.”¹⁰ The State Engineer, after investigating and evaluating such an application under Utah Code Ann. §§ 73-3-3 and -8, either approves or rejects it. In this case he rejected Hamblin’s application because the right upon which it was based had forfeited. Hamblin appeals that denial, arguing the State Engineer lacks authority to adjudicate the right as forfeited and that changes in the forfeiture law apply retroactively to preclude the forfeiture.

⁶(...continued)
(criticized on other grounds).

⁷ See Utah Code Ann. §§ 73-3-3 and -8 (West 2004); *Bonham v. Morgan*, 788 P.2d 497, 499 (Utah 1990) (State Engineer duties in Section 73-3-8 apply to change applications under Section 73-3-3); see also *United States v. Fourth District Court*, 238 P.2d at 1134 (“the Engineer must investigate and hear evidence of all interested parties and he should approve or reject [appropriation and change] applications.”).

⁸ Utah Code Ann. §§ 73-3-3(2)(b) and -8(1)(b) (West 2004).

⁹ Utah Code Ann. § 73-3-1 (West 2004).

¹⁰ Utah Code Ann. § 73-3-3(1)(a) (West 2004).

The basic disagreement between Hamblin and Utah State Engineer is whether actual beneficial use of an underlying water right impacts the outcome of a change application. Hamblin's water right has not been used for decades—the parties have stipulated to thirty years of continuous nonuse. Thus, the issue before this Court is whether a water right title holder can, by seeking approval of a change application, begin to withdraw more than 39,000,000 gallons of water per year from a water system which has been closed to new uses for fifteen years, and do so based on a water right unused for at least three decades.¹¹

ARGUMENT

I. AS THE DISTRICT COURT CORRECTLY HELD, UNDER UTAH LAW, WATER RIGHT No. 55-11041 FORFEITED BY OPERATION OF LAW ON JANUARY 1, 1985

No water has been used under Water Right 55-11041 for decades, by stipulation of the parties since at least 1980. From 1980 through 1984 two Utah statutes provided:

§ 73-1-4: When an appropriator or his successor in interest shall abandon or cease to use water for a period of five years *the right shall cease and thereupon such water shall revert to the public*, and may be again appropriated as provided in this title, *unless before the expiration of such five-year period the appropriator or his successor in interest shall have filed with the state engineer a verified application for extension of time*, not to exceed five years, within which to resume the use of such water. . . . The provisions of this section are applicable whether such unused or abandoned water is permitted to run to waste or is used by others without right.^[12]

¹¹ Hamblin's change application on Water Right No. 55-11041 is for 120 acre feet (R. at 667), which is the equivalent of 39,000,000 million gallons of water.

¹² Utah Code Ann. § 73-1-4 (1980) (emphasis supplied). Section 73-1-4 allows for nonusers to submit an application to permit the nonuse, which prevents the forfeiture. Plaintiff has never alleged such an application was filed, and the State Engineer has no record of one on the Water Right file. (R. at 835—Mann Aff. ¶ 14).

§ 73-3-3: Any person *entitled to the use of water* may change the place of diversion or use and may use the water for other purposes than those for which it was originally appropriated, but no such change shall be made if it impairs any vested rights without just compensation.^[13]

In *Nephi City v. Hansen*, when the city filed an application to change the points of diversion of water rights which admittedly had not been used for decades, the State Engineer rejected the application on the ground that nonuse led to forfeiture.¹⁴ In response to the city's judicial appeal of the State Engineer's decision this Court held:

There is little question that section 73-1-4 works a forfeiture of Nephi City's four nonconsumptive water rights. These rights were unused for about thirty years. The statute provides, "When an appropriator or his successor in interest shall abandon or cease to use water for a period of five years the right shall cease and thereupon such water shall revert to the public...." Utah Code Ann. § 73-1-4. On the other hand, it permits the State Engineer, upon a showing of "reasonable cause for such nonuse," to extend the time, not to exceed five years, to resume use of the water if application is made before the expiration of the initial period. *Id.* And the statute specifically provides that "the holding of a water right without use by any municipality ... to meet the reasonable future requirements of the public, shall constitute reasonable cause for such nonuse." *Id.* However, no such extension was sought by or granted to Nephi City. Therefore, ***under the plain terms of section 73-1-4, Nephi City's water rights were forfeited for nonuse by operation of law.***^[15]

Since the Utah Supreme Court decided *Nephi City* the forfeiture statute has been amended.¹⁶ The law in place during Hamblin's nonuse in the 1980s, however, contained the "operation of law" language this Court relied on in *Nephi City*. Thus, on January 1, 1985,

¹³ Utah Code Ann. § 73-3-3 (1980) (emphasis supplied).

¹⁴ *Nephi City v. Hansen*, 779 P.2d 673, 674 (Utah 1989).

¹⁵ *Id.* at 674–75 (footnotes omitted) (emphasis supplied).

¹⁶ See Utah Code Ann. § 73-1-4 (West Supp. 2008).

Hamblin's water right forfeited by operation of law as the district court correctly found. Her change application therefore could not be approved because the underlying water right no longer existed when she filed her application. She was not "a person entitled to the use of water" as Section 73-3-3(2)(a) requires and therefore could not meet the fundamental requirement to have the change application approved.

This Court has recognized that a water right may lapse after the passage of time and by operation of law in different contexts. In *Baugh v. Criddle* where a water right was impossible to use due to a fire, the State Engineer informed Baugh that the right forfeited because Baugh failed to comply with the terms of his application for an extension of time in which to resume beneficial use.¹⁷ When the applicant's successor in interest challenged the decision, arguing specifically the State Engineer had no authority to terminate the water right, this Court said: "**the statute** controlled here [effectuating the forfeiture] irrespective of the Engineer's written conclusions and judgment[.]"¹⁸ To underscore its holding, this Court referred to one of its earlier decisions where it said: "The instant application lapsed by reason of . . . failure to submit proof of appropriation on the due date. ***It lapsed in accordance with the express mandate of the statute*** and not because of the action of any state officer."¹⁹

¹⁷ 431 P.2d 790, 791 (Utah 1967).

¹⁸ *Id.* at 791 (emphasis supplied).

¹⁹ *Id.* (quoting *Mosby Irrigation Co. v. Criddle*, 354 P.2d 848, 852 (Utah 1960)) (emphasis supplied). In *Mosby Irrigation Co.*, this Court explained the State Engineer could not reinstate a lapsed application to appropriate water because the application "lapsed by reason of the Canal Company's failure to submit proof of appropriation on the due date. It lapsed in accordance with the express mandate of the statute and not because
(continued...)"

Hamblin is in the same situation as the Plaintiffs in *Nephi City, Baugh*, and the lapsed applicant in *Mosby* this Court relied on in *Baugh*. She had no underlying water right on which to file a change application because her Water Right No. 55-11041 forfeited on January 1, 1985, and the water which had at one time been used under the right reverted to other water users. The only thing that could have prevented this forfeiture and reversion was approval of a series of verified applications for extensions of time (now called nonuse applications).²⁰ The State Engineer, however, has no record that Hamblin or her predecessors in interest filed any such application,²¹ nor is there any reason to believe that if she had filed such applications they would have been approved. When the water that had been delivered under Water Right No. 55-11401 reverted to the public, other water right holders began using it.²² This Court has said, “when the [beneficial] use is abandoned for five years, such water

¹⁹(...continued)
of the action of any state officer.”

²⁰ Utah Code Ann. § 73-1-4 (1980). Approval of such applications, based on reasonable cause for nonuse, preserves the right and provides notice of the right’s validity during periods when no beneficial use occurs.

²¹ R. at 835—Mann Aff. ¶ 14.

²² The 1921 Provo River Decree, which recognized Water Right 55-11041, acknowledged and embodied the principles of beneficial use and forfeiture saying:

[A]ll the rights declared and decreed herein are founded upon appropriation of water necessary for some beneficial use, and all such rights are subject in their exercise to the conditions that they are required and necessary for beneficial uses and all such rights are expressly subject to the limitations and conditions that all of such water is used for some beneficial purpose and is used economically, without waste, and with due care, and is reasonably and fairly necessary for such use.

(continued...)

reverts to the public and may be again appropriated.”²³ Thus, the district court correctly held that Hamblin’s water right was forfeited by operation of law as of 1985 because of nonuse. She was therefore not a person entitled to file a change application, much less have that application approved.

II. TO ANALYZE AND DECIDE A CHANGE APPLICATION THE STATE ENGINEER CAN, AND MUST, “EVALUATE,” BUT NOT “ADJUDICATE,” THE UNDERLYING WATER RIGHT

Hamblin’s first major argument is that the State Engineer cannot consider the status of water rights that underlie administrative applications because to do so is an “adjudication” of the right – for which the State Engineer lacks authority. Hamblin says “[i]t is difficult to understand how the state engineer could deny Ms. Hamblin something to which she is otherwise entitled on the ground that she forfeited her rights and yet not have ‘adjudicated’

²²(...continued)

. . . .

That all the rights declared and decreed herein are awarded for the beneficial uses specified, and none of the parties hereto, or their successors in interest, . . . shall divert any of the waters of said Provo River, or any of its tributaries, except for beneficial use, and ***whenever such use has ceased such party or parties shall cease to divert, and have no right to divert, the said waters, or any part thereof*** [.]

(R. at 871) (emphasis supplied). The court decreed the Hamblin’s right to use water contingent on its continued beneficial use of water under the right, and when the use ended the right ceased. Given this language, Hamblin essentially seeks by her change application to resurrect a water right which “ceased” according to the terms of the Provo River Decree.

²³ *Hammond v. Johnson*, 66 P.2d 894, 898 (Utah 1937).

the issue of whether she forfeited her water right.”²⁴ Hamblin also asserts, incorrectly, that because the State Engineer cannot adjudicate her water right, her title or ownership of the right indicates the right is valid for all purposes and her change application must therefore be approved.²⁵

Hamblin’s argument lacks merit because the State Engineer routinely investigates underlying water rights when processing administrative applications.²⁶ In doing so he does not adjudicate rights, he evaluates them because he must determine whether there is reason to believe the application based on those rights meets the criteria for approval,²⁷ including that approval will not impair other existing rights.²⁸

²⁴ Appellant’s Br. 5.

²⁵ Appellant’s Br. 6 (“[t]his court should reverse the district court’s summary judgment rulings and remand with instructions to enter summary judgment in favor of Ms. Hamblin.”); 23 (“[t]his court should reverse the district court’s summary judgment rulings and remand with instructions to enter summary judgment in favor of Ms. Hamblin.”). If, however, this Court were to reverse the trial court’s grant of summary judgment to the State Engineer, Hamblin would only be back to the starting gate in the change application process where she would still need to prove she meets the requirements to have her change application granted.

²⁶ See Utah Code Ann. § 73-3-8(1) (West 2004); *Bonham v. Morgan*, 788 P.2d at 499; *United States v. Fourth District Court*, 238 P.2d at 1134 (“the Engineer must investigate and hear evidence of all interested parties and he should approve or reject [appropriation and change] applications”) (criticized on other grounds).

²⁷ Utah Code Ann. §§ 73-3-3 and -8 (West 2004); see *Searle v. Milburn Irrigation Co.*, 2006 UT 16, ¶ 23, 133 P.3d 382.

²⁸ Otherwise, because the Utah Lake Basin is closed to new appropriations, some “water brokers” may seek out water rights that are obscure because they have not been used for many years and attempt to use the change application process to revive those rights. The State Engineer has a statutory obligation to vigilantly scrutinize such water

(continued...)

The State Engineer does not dispute that he lacks the authority to “adjudicate” a perfected water right. When a change application comes before him, however, he must evaluate the underlying right to determine that statutory requirements are met before he approves the application.²⁹ Likewise, the State Engineer has general supervisory authority with respect to Utah water rights.³⁰ As he undertakes these responsibilities, “[t]he State Engineer’s decisions,” as this Court has noted, “often have the effect of determining valuable rights.”³¹ “Thus the decision of the Engineer and of the district court on appeal therefrom have the effect of establishing or denying valuable rights but such decisions, except where the issuance of a certificate of appropriation or change is involved[,] do not purport to have

²⁸(...continued)

rights when change applications are filed. He does this to protect the interests of other water right owners in the basin as well as the hydrologic integrity of the basin itself.

²⁹ Utah Code Ann. §§ 73-3-3 and -8 (West 2004). The State Engineer, at all times, retained the authority to evaluate the underlying water right and reject Hamblin’s application. Hamblin states in her argument summary that “[t]he state engineer does not dispute that if a post-1996 version of section 73-1-4 applied here, then the state engineer *lacked authority* to reject the change application. (R. 1183-85.)[.]” (Appellant’s Br. 5-6) (emphasis supplied). She then reiterates this assertion in the main body of the brief. (Appellant’s Br. 12). The State Engineer, however, simply said that Section 73-1-4 “may have” in subsequent changes, established a forfeiture procedure. (R. 1185). But the referenced change in the law implies no specific amendment, and no amendment altered the State Engineer’s authority to evaluate water rights underlying a change application, as outlined in section III.B.2. below.

³⁰ See Utah Code Ann. § 73-2-1(3)(a) (West 2004) (stating the State Engineer is “responsible for the general administrative supervision of the waters of the state and the . . . appropriation, apportionment, and distribution of those waters”); Utah Code Ann. § 73-2-1(3)(b) (stating the State Engineer “may secure the equitable apportionment and distribution of the water according to the respective rights of appropriators”).

³¹ *United States v. Fourth District Court*, 238 P.2d at 1134.

the effect of adjudicating the right to the use of water. . . .”³² Prohibiting the State Engineer from examining the basis for a change application—the underlying water right—could, as this Court said in another context, “turn the state engineer into nothing more than a rubber stamp, approving every change application submitted.”³³ Likewise, “[t]o adequately serve its purpose, the application process must provide some meaningful barrier so that the floodgates remain closed to all applications except those with a sufficient probability of successful perfection.”³⁴

A change application triggers the State Engineer’s evaluation of the right underlying the application. In determining whether to grant or deny such an application the State Engineer looks at all the statutory criteria from Sections 73-3-3 and -8. “If an application does not meet the[se] requirements. . . , it shall be rejected.”³⁵ One criterion is there must be “unappropriated water in the proposed source.”³⁶ Hamblin, citing to *Shields v. Dry Creek Irrigation Co.*,³⁷ says the State Engineer in that matter refused to recognize as forfeited a water right because it was beyond his authority to do so.³⁸ However, in *Dry Creek* the State Engineer refused to judge who, between two claimants, had a right to use water. He declined

³² *Id.* at 1135.

³³ *Searle*, 2006 UT 16, ¶ 45.

³⁴ *Id.*

³⁵ Utah Code Ann. § 73-3-8(1) (West 2004).

³⁶ *Id.* at (1)(a).

³⁷ 363 P.2d 82, 83-85 (Utah 1961).

³⁸ Appellant’s Br. 13.

on a small, fully appropriated and fully used spring, to declare one water right holder's use invalid to provide the newly freed "unappropriated" water for Shield's more recent application to appropriate. The State Engineer refused to evaluate and declare the forfeiture of a water right not part of the application, so that Shields could have the "unappropriated water" needed for his approval. This Court affirmed the trial court's ruling.³⁹ Adjudicating a water right that is not the subject of an administrative application is the purview of courts. Evaluating the characteristics of the water right underlying a change or other application presented to the State Engineer, however, is a task the State Engineer can and must perform.

An Idaho Supreme Court decision, *Jenkins v. Dept. of Water Resources*,⁴⁰ explains the need for the State Engineer to evaluate underlying water rights when analyzing a change application:

Based on the foregoing decisions and statute, we conclude that the director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and ***such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights***. While ordinarily abandonment and forfeiture are to be determined in a separate proceeding, it is clear that when a water right is sought to be transferred and protestors allege that it has been abandoned or forfeited, and that to allow resumption of that right would cause some injury, ***a determination of abandonment or forfeiture is necessary for the performance of his powers of determining injury***. The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and ***evidence which demonstrates that the right sought to be***

³⁹ *Dry Creek*, 363 P.2d at 85.

⁴⁰ 647 P.2d 1256 (Idaho 1982).

transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights.^[41]

In Utah the State Engineer functions in the same role as the Idaho Department of Water Resources described above. Also, in Utah, like in Idaho, no change application may impair existing rights.⁴² The *Jenkins* decision illustrates how the State Engineer may, without adjudicating a right, evaluate it in the change application context. The State Engineer need not adjudicate a right to evaluate whether the change application will expand the original right or injure others, whether there is unappropriated water at the proposed place of use, or whether an application should otherwise be approved.⁴³

III. AMENDMENTS TO SECTION 73-1-4 DO NOT AFFECT THE STATUS OF PREVIOUSLY FORFEITED WATER RIGHTS, AND THE STATE ENGINEER THEREFORE CORRECTLY DENIED APPELLANT’S CHANGE APPLICATION

Hamblin’s second main argument is that the 1996 version of Section 73-1-4 is retroactive. Here she misses the issue completely. Once her water right was forfeited by

⁴¹ *Id.* at 1259 (citations omitted) (emphasis supplied).

⁴² Compare *Id.* (citing to the applicable version of an Idaho statute, I.C. s 42-222(1)) (“The director . . . shall approve the change . . . provided no other water rights are injured thereby”), with Utah Code Ann. §§ 73-3-3(2)(b) and -8(1)(b) (West 2004) (*requiring changes not impair other water rights*).

⁴³ The State Engineer routinely considers change applications where, for example, an irrigation use, which may consume 50% of the water applied to the land and return 50% to the system, is changed to a municipal use that is considered 100% consumptive. If he approves such a change he must do so in a manner that keeps the hydrologic system in balance by reducing by half the amount of water that can be put to the municipal use. Otherwise, impairment will result. Rarely, if ever, is the complaint made that such a reduction “adjudicates” the underlying water right and, indeed, no such adjudication occurs—rather, the State Engineer’s actions are part of his evaluation of the water right in the change application context.

operation of law in 1985, and the water previously used under the right reverted to the public for use by others,⁴⁴ no subsequent amendment could alter the accomplished forfeiture and reversion. Put another way, once the water reverted to other users, subsequent amendments impacting reversion do not alter or destroy the vested rights other water right holders have gained in the reverted water. No amendment to Section 73-1-4 has ever indicated that former reversions of water were somehow undone. After Water Right No. 55-11041 forfeited in 1985, approving a change application on the right now would, in effect, give Hamblin a *new* water right in a basin closed to appropriation since 1995.⁴⁵ Ironically, the State Engineer, by his approval, would effectively “adjudicate” as valid a water right lost through admitted nonuse.

Nevertheless, Hamblin makes the retroactivity of changes to Section 73-1-4 the major theme of her Appellant’s Brief,⁴⁶ and the State Engineer, in an abundance of caution, hereafter responds.

Of the four post-1959 substantive changes to relevant portions of Section 73-1-4 (which occurred in 1987, 1996, 2002 and 2008)⁴⁷ Hamblin isolates her arguments to the 1996 version, and asserts the 1996 amendments required a judicial determination before forfeiture

⁴⁴ Utah Code Ann. § 73-1-4 (1980).

⁴⁵ R. at 837—Mann Aff. ¶ 5.

⁴⁶ Appellant’s Br. 12-22.

⁴⁷ Respectively, Utah Code Ann. § 73-1-4 (Michie Supp. 1987); Utah Code Ann. § 73-1-4 (Michie Supp. 1996); Utah Code Ann. § 73-1-4 (Lexis Supp. 2002); Utah Code Ann. § 73-1-4 (West Supp. 2008). The 1980, 1987, 1996, 2002 and 2008 versions of Section 73-1-4 are attached hereto as **ADDENDA A through E** respectively.

occurred.⁴⁸ Because, the 1996 statute is retroactive,⁴⁹ she argues, and no such determination has been made for her water right,⁵⁰ her change application must be approved.⁵¹

This line of reasoning is incorrect for the reasons previously mentioned, and several others. First, the legislature has designated no amendment to Section 73-1-4 as retroactive. Second, none of the Section 73-1-4 amendments meets the narrow and restrictive exceptions to be deemed retroactive. Third, the 1996 amendments to Section 73-1-4 Hamblin relies on do not help her because the forfeiture of her water right, and reversion of water previously delivered under that right, were accomplished before the amendments became law.

A. The Legislature has Designated No Amendment to Section 73-1-4 as Retroactive

Statutes do not apply retroactively unless the legislature explicitly directs retroactive application. Section 68-3-3 states: “No part of these revised statutes is retroactive unless expressly so declared.” Hamblin’s second main argument crumbles under this statute alone because the Legislature never expressly or impliedly designated any amendment to Section 73-1-4 as retroactive. Hamblin makes no assertion to the contrary. Likewise, statutory amendments are presumptively substantive and therefore not retroactive. “Considering the strong presumptions against retroactivity in the law, . . . [the Court] should err on the side of

⁴⁸ Appellant’s Br. 12 and 18.

⁴⁹ Appellant’s Br. 12, 14.

⁵⁰ Appellant’s Br. 4.

⁵¹ Appellant’s Br. 6 and 23.

finding a statute substantive if we have doubt about the issue.”⁵² Thus, Hamblin’s Water Right No. 55-11041 was subject to the statutory requirements in place when it remained admittedly unused for the calendar years 1980, 1981, 1982, 1983, and 1984. On January 1, 1985, according to the forfeiture statute in place at the time,⁵³ as interpreted by this Court in *Nephi City*,⁵⁴ the water right ceased, or forfeited, by operation of law, and the water that had, many years earlier, been used by Hamblin’s predecessors in interest reverted to the public for use by others. Since “[a]ll waters in this state, whether above or under the ground, are . . . the property of the public, subject to all existing rights to the use thereof,”⁵⁵ the reversionary result of nonuse is critical—other water right holders become dependent on the reverted water for their uses. This Court need go no further in its analysis here.

B. No Amendment to Section 73-1-4 Meets the Narrow, Restrictive Requirements to be Considered Retroactive

This Court has stated that recognizing Utah statutes as retroactive is not favored.⁵⁶ “[E]xceptions to this general rule are rare,”⁵⁷ and this Court has recognized only two. Without any reference to the uncommon nature of the exceptions, Hamblin incorrectly argues

⁵² *Goebel v. Salt Lake City Southern Railroad Co.*, 2004 UT 80, ¶ 39, 104 P.3d 1185.

⁵³ Utah Code Ann. § 73-1-4 (1980)

⁵⁴ 779 P.2d at 674-75.

⁵⁵ Utah Code Ann. § 73-1-1 (West 2004).

⁵⁶ *Goebel*, 2004 UT 80, ¶ 39.

⁵⁷ *Harvey v. Cedar Hills City*, 2010 UT 12, ¶ 13, 227 P.3d 256 (citation omitted).

both.⁵⁸ First, courts “will give retroactive effect to statutory amendments that merely ‘clarify the meaning of an earlier enactment.’”⁵⁹ Second, “a statute may be given retroactive effect if it changed prior law in ways that are merely procedural” rather than substantive.⁶⁰ Hamblin asserts the 1996 amendments to Section 73-1-4 are retroactive,⁶¹ but fails to adequately explain why the amendments either clarified the law that existed at the time or were simply procedural. Further, she does not describe why the retroactivity, had it occurred, actually helps her.

1. There was no need to “clarify” the previous unambiguous statute.

Relevant portions of Section 73-1-4 have undergone four substantive amendments since the benchmark 1959 statute, resulting in 1987, 1996, 2002, and 2008 versions of Section 73-1-4.⁶² The statute in place in 1985 applied to the five-year period of nonuse of Hamblin’s water right which ended on December 31, 1984. The 2002 version arguably

⁵⁸ Appellant’s Br. 12, 15-22.

⁵⁹ *Harvey*, 2010 UT 12, ¶ 14 (citation omitted).

⁶⁰ *Id.*; see also, *Goebel*, 2004 UT 80, ¶ 39 (stating retroactivity judgments “should be informed and guided by ‘familiar considerations of fair notice, reasonable reliance, and settled expectations.’”)(quoting *Martin v. Hadix*, 527 U.S. 343, 357-58, (1999)).

⁶¹ Appellant’s Br. 12.

⁶² Utah Code Ann. § 73-1-4 (Michie Supp. 1987); Utah Code Ann. § 73-1-4 (Michie Supp. 1996); Utah Code Ann. § 73-1-4 (Lexis Supp. 2002); Utah Code Ann. § 73-1-4 (West Supp. 2008). Other amendments to the statute occurred in this time frame to wording not relevant here.

applied to the change application Hamblin filed in 2004. Still, Hamblin argues that the 1996 amendments control.⁶³

Hamblin first says that the 1996 version “clarif[ied] that a judicial action is the required mechanism to declare forfeiture, *something left unclear in the 1985 version*.”⁶⁴ However, neither the 1959, nor the 1987, version of the statute was ambiguous in this regard. The 1959 version, in effect until after Hamblin’s right had ceased, said “[w]hen an appropriator or his successor in interest shall abandon or cease to use water for a period of five years *the right shall cease and thereupon such water shall revert to the public*, and may be again appropriated as provided in this title.”⁶⁵ Forfeiture of Hamblin’s right thus occurred by operation of law, a principle recognized by this Court in *Nephi City*,⁶⁶ *Baugh*,⁶⁷ and *Mosby*.⁶⁸ The 1987 statute did not change the substance of that wording. That statute read “[w]hen an appropriator or his successor in interest abandons or ceases to use water for a period of five years, *the right ceases*”⁶⁹ and then “[w]hen the appropriator’s *water right*

⁶³ Appellant’s Br. 12, 14-15.

⁶⁴ Appellant’s Br. 13 (emphasis supplied).

⁶⁵ Utah Code Ann. § 73-1-4 (1980) (emphasis supplied).

⁶⁶ 779 P.2d at 674-75.

⁶⁷ 431 P.2d at 363.

⁶⁸ 354 P.2d at 852.

⁶⁹ Utah Code Ann. § 73-1-4(1)(a) (Michie Supp. 1987) (emphasis supplied).

ceases, the water reverts to the public.”⁷⁰ Neither of these statutes displays any ambiguity as to when the water right ceases or when the water reverts to and becomes vested in other water holders. Since the 1996 version did not “clarify” prior versions, the 1996 version cannot be retroactive.

2. Additional language in the 1996 amendments was substantive and therefore not retroactive.

The 1996 version was the first to say “[a] water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.”⁷¹ This subsection, however, was inserted alongside the retained language mandating forfeiture after five years of nonuse, which read “[w]hen an appropriator or the appropriator’s successor in interest abandons or ceases to use water for a period of five years, the water right ceases and *the water reverts to the public*[.]”⁷²

Hamblin argues the new 1996 language is procedural and that it **requires a judicial** action to “perfect” forfeitures.⁷³ But, if this is so, the change actually alters the rights and duties of the parties and imposes a new substantive regulatory scheme. “Substantive law is

⁷⁰ *Id.* at (4)(b) (emphasis supplied).

⁷¹ Utah Code Ann. § 73-1-4(1)(b)(i) (Michie Supp. 1996).

⁷² *Id.* at (1)(a) (emphasis supplied). Section 73-1-4(5)(a) (Michie Supp. 1996) also added language: “The appropriator’s water right ceases and the water reverts to the public if” one of three requirements involving nonuse applications not met.

⁷³ Appellant’s Br. 18; likewise, she argues the amendment “merely specified who must declare a forfeiture—the judiciary.” *Id.* at 15.

defined as the positive law which creates, defines and regulates the rights and duties of the parties and which may give rise to a cause of action.”⁷⁴ Prior to the change five years of nonuse effected a forfeiture and reversion. At best, from Hamblin’s perspective, the new language imposed an additional obligation or “duty” to go to court. If so, as this Court said in *Brown & Root Industrial Service v. Industrial Commission of Utah*,⁷⁵ the statutory amendment “imposed a new regulatory scheme”⁷⁶ requiring action where none was previously required – and is therefore a non-retroactive, substantive alteration.⁷⁷

Further, while Hamblin argues the 1996 amendment “clarified” the prior statutory framework, if anything the 1996 version needed clarification. The 2002 amendment reenforced the concept of the need for beneficial and automatic forfeiture and reversion, stating: “[w]hen an appropriator . . . abandons or ceases to use all or a portion of a water right for a period of five years, **the water right** or the unused portion of that water right **ceases and**

⁷⁴ *Brown & Root Indus. Serv. v. Industrial Comm’n.*, 947 P.2d 671, 675 (Utah 1997) (citations omitted) (holding an amended workers compensation statute that imposed a new obligation on employees to submit medical expenses within a time frame as a new duty and an alteration to the regulatory scheme).

⁷⁵ *Id.*

⁷⁶ *Id.* at 676.

⁷⁷ Likewise, in *In re the Disconnection of Certain Territory from Highland City*, a statute that added factors to consider when determining disconnection “dealt with the substantive rights of the parties because it changed the substantive criteria for the decision.” 668 P.2d 544, 549 (Utah 1983). Requiring a court action for forfeiture is a new, substantive criterion.

the water reverts to the public[.]”⁷⁸ But, these amendments also emphasized that water users have “a continuing obligation to place all of a water right to beneficial use”⁷⁹ and “failure to place all or part of the water to beneficial use makes possible the allocation and use of [reverted] water consistent with long established beneficial use concepts.”⁸⁰ In other words, if the water right holder doesn’t put all of his water to use others may put it to beneficial use and rely on that use.

By contrast, the 2008 amendments abandoned immediate forfeiture and reversion on completion of a specified period of nonuse. The 2008 statute, representing a sea change, was redrafted to effect forfeiture only upon completion of court action. Upon seven years of nonuse (increased from five), an unused water right, or portion of it, became “*subject* to forfeiture”⁸¹ and “the right to use the water reverts to the public[.]” on “*the date on which the water right is forfeited[.]*”⁸²

Hamblin cannot pretend the 1996 version accomplished something that the 2008 version did.⁸³ All versions of Section 73-1-4 before 2008 explicitly reverted the water upon

⁷⁸ Utah Code Ann. § 73-1-4(3)(a) (Lexis Supp. 2002).

⁷⁹ *Id.* at (1).

⁸⁰ *Id.*

⁸¹ Utah Code Ann. § 73-1-4(2)(a) (West Supp. 2008)

⁸² Utah Code Ann. § 73-1-4(2)(c)(v) (West Supp. 2008).

⁸³ Even under the 2008 version Appellant loses because lack of forfeiture of a right does not mean the right holder is entitled to an approved change application. Utah recognizes no absolute right to approval of a change application; rather a right to have
(continued...)

nonuse—not court action as in the 2008 statute. Like the previous amendments, the 2008 substantive changes were not retroactive. But the law now requires a court action to effect forfeiture *and* reversion. The requirement for court action is an additional substantive requirement. Even if it weren't, however, requiring a court action for forfeiture and reversion of a right in 2008 cannot alter the forfeiture and reversion of a water right that occurred in 1985. At most, the amendment in 2008 applies to water rights that at the time had *not yet* been unused for five years.⁸⁴

If there is ambiguity concerning the retroactive application of amendments to Section 73-1-4, the legislative history of the 2008 amendments settles the matter. As part of enactment of that legislation, the Utah House of Representatives and Senate read identical “intent” language into the record:

[To maximize use and benefits of state water], a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use except as provided in [the amended] Section 73-1-4[.]

[Newly revised Section 73-1-4] is not intended to: (1) change the way the State Engineer evaluates change applications based on historic beneficial use; . . . [or] (3) validate any invalid water rights[.] The amendments made to Section 73-1-4 by [this bill] should be construed to carry out these purposes and policies.^[85]

⁸³(...continued)

such an application approved *if* the applicant meets certain conditions. Where a water right has not been used for decades without any notification to the State Engineer explaining the lack of use, the holder of the right should not have a change application approved because he cannot do so without adversely affecting other water rights.

⁸⁴ Utah Code Ann. § 73-1-4(2)(a) and (2)(c)(i) (West Supp. 2008). The 2008 amendments extended the forfeiture period to seven years and revoked automatic reversion.

⁸⁵ Gen. Sess. S. Journal, Day 38, at 809-10 (Utah 2008), Gen. Sess. H. Journal,
(continued...)

The legislative history indicates first that the 2008 amendments did not validate previously invalid rights and, second, that even in the context of the stricter forfeiture requirements, the State Engineer retained his ability to evaluate the beneficial use needed to effect transfers of the place of use, point of diversion, and purpose of use of the underlying water right. Under the current statute the State Engineer has authority to evaluate rather than adjudicate rights underlying change applications to determine whether beneficial use has occurred, and he may deny or condition a change application accordingly.

C. The 1996 Amendments to Section 73-1-4 Do Not Help Appellant Because the Forfeiture of Her Water Right, and Reversion of Water Previously Delivered Under that Right, were Accomplished before the Amendments were Enacted.

Plaintiff's arguments on "substantive" versus "procedural" laws, and which ones may apply retroactively, are inapposite for several other reasons. First, based on the language of the forfeiture statute in place from 1980 to 1984, which said: "[w]hen an appropriator . . . cease[s] to use water for a period of five years the right shall cease and thereupon such water shall revert to the public[,]"⁸⁶ Hamblin's water right was "forfeited for nonuse by operation of law."⁸⁷ Changes to this statute, even if procedural, which occurred years later, cannot revive Hamblin's previously extinguished right.

⁸⁵(...continued)
Day 40, at 966-68 (Utah 2008) (emphasis supplied) (Attached hereto as **ADDENDA F and G** respectively).

⁸⁶ Utah Code Ann. § 73-1-4 (1980).

⁸⁷ *Nephi City*, 779 P.2d at 675.

Moreover, assuming, *arguendo*, retroactivity, a retroactive statute's impact is limited. It is not retroactive upon completed matters, but "future actions"⁸⁸ and "accrued and pending actions[.]"⁸⁹ In 1996, the completed forfeiture and reversion of Water Right No. 55-11041 was not a future, pending, or an accrued action, where "accrued" refers to a mature, but uninitiated, action. New procedural rules "do not affect proceedings completed prior to enactment."⁹⁰ Here, Hamblin argues that a new court judgment is necessary before her right may be considered forfeited.⁹¹ But, in reality, her right ceased and the water reverted to the public years before the 1996 amendment became effective.

Further, Hamblin asserts not only that the 1996 forfeiture statute is procedural and therefore retroactive, but that the retroactivity somehow revives an old, forfeited water right. Her assertion simply goes too far. If she needs the 1996 statute for her property interest to be viable, then the statute is not procedural—it is substantive. Using Hamblin's own cited language, statutes that "enlarge, eliminate or destroy" substantive rights are substantive.⁹² The 1996 statute's language that, upon five years of nonuse a water right ceases and the water reverts to the public, both "destroyed" Hamblin's substantive right and "enlarged" the

⁸⁸ *Marshall v. Industrial Comm'n of the State of Utah*, 704 P.2d 581, 582 (Utah 1985) (citation omitted).

⁸⁹ *Id.*

⁹⁰ *Dep't of Social Serv. v. Higgs*, 656 P.2d 998, 1000-1001 (Utah 1982) (citing *Drainage Dist. No. 7 of Washington County v. Bernards*, 174 P. 1167 (Or. 1918)).

⁹¹ See Appellant's Br. 4 (no judicial forfeiture of 55-11041), 15 and 18 ("judicial action is required to perfect a forfeiture claim and divest someone of vested rights").

⁹² *B.A.M. Dev., L.L.C. v. Salt Lake County*, 2006 UT 2, ¶ 20, 128 P.2d 1161.

rights of other right holders who, upon reversion, immediately began using the reverted water.⁹³

Finally, Hamblin's retroactivity argument hinges on the idea that since no forfeiture action has been filed concerning her water right, the right is valid for all purposes and the change application must be approved, notwithstanding lack of use under the right for decades. Her position requires the State Engineer and this Court to turn a blind eye to nonuse, assume the validity of the right, and ignore the vested rights of the other water users to whom the water that had been delivered under Hamblin's right reverted.

IV. EVEN IF, *ARGUENDO*, THIS COURT FINDS THAT A VERSION OF SECTION 73-1-4 SHOULD APPLY RETROACTIVELY, THIS COURT MAY UPHOLD THE TRIAL COURT'S RESULT ON ALTERNATIVE GROUNDS; NAMELY, THAT APPROVING HAMBLIN'S CHANGE APPLICATION WOULD IMPAIR THE RIGHTS OF OTHERS, THAT WITH OR WITHOUT A FORFEITURE FINDING NO UNAPPROPRIATED WATER IS AVAILABLE FOR HER CHANGE APPLICATION, OR THAT THE APPLICATION MAY NOT BE APPROVED BECAUSE HAMBLIN HAS NO CURRENT USE TO RELINQUISH

The district court ruled that Hamblin's Water Right No. 55-11041 forfeited by operation of law as of 1985 under the version of Section 73-1-4 in effect at that time. The Court also held that because Hamblin's right had been forfeited, she could not demonstrate unappropriated water exists in the proposed source of her new use under her change application and therefore she could not satisfy the requirement in Utah Code Ann. § 73-3-

⁹³ Just as a water user must rely on his own beneficial use to create a water right, (*Butler, Crockett & Walsh Dev. Corp. v. Pinecrest Pipeline Operating Co.*, 2004 UT 67, ¶ 24, 98 P.3d 1), users must maintain the use to prevent the right from forfeiting and the water from reverting to others.

8(1)(a).⁹⁴ The court ruled correctly. In the alternative, however, the court could have granted the State Engineer's summary judgment motion on other grounds. This is so because Hamblin's change application would have, contrary to Section 73-3-8(1)(b),⁹⁵ impaired existing rights. Or, the court could have found that, with or without a forfeiture determination, there was still no unappropriated water in the proposed source, contrary to Section 73-3-8(1)(a).⁹⁶ Or, the court could have found that Hamblin had no current use to relinquish as Section 73-3-3(1)(a)⁹⁷ requires. This Court could use any of these statutes, or a combination of the statutes, as an alternative basis to uphold the trial court's decision.

A. Approving Appellant's Change Application would Impair Other User's Rights.

Section 73-3-3 allows a person "entitled to the use of water" to file a change application. "Beneficial use [is] the basis, the measure, and the limit of all rights to the use of water in this state."⁹⁸ "A water user's appropriations are limited to the amount that can

⁹⁴ (West 2004).

⁹⁵ (West 2004).

⁹⁶ (West 2004).

⁹⁷ (West 2004).

⁹⁸ Utah Code Ann. § 73-1-3 (West 2004).

be put to beneficial use.”⁹⁹ In short, beneficial use matters and continuous beneficial use, or its equivalent,¹⁰⁰ is a pre-requisite to change application approval.

For example, Section 73-3-8(1)(a) and (b)¹⁰¹ require, before a change application may be approved, a showing of “unappropriated water in the proposed source” and that “the proposed use will not impair existing rights.” In a water system closed to new appropriations, the only “unappropriated” water available to the change applicant is the water being used under his own valid right.¹⁰² In 1995 the State Engineer closed to all new appropriations the area where Hamblin’s right is located.¹⁰³ The district court correctly found Hamblin could not meet the “unappropriated water” requirement because her right had been forfeited. But, *even if her right had not been forfeited* she still could not meet the requirement because all of the water in the area was being used by others, and neither Hamblin nor her predecessors in interest ever notified the State Engineer that they had

⁹⁹ *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 34, 84 P.3d 1134; *see Butler, Crockett & Walsh Dev. Corp. v. Pinecrest Pipeline Operating Co.*, 2004 UT 67, ¶ 24; *see also Eden Irrigation Co. v. District Court*, 211 P. 957, 961 (Utah 1922).

¹⁰⁰ Statutes allow the owner of a water right to file a nonuse application with the State Engineer to preserve the validity of a right through extended nonuse periods. *See* Utah Code Ann. § 73-1-4 (1980) and § 73-1-4 (2) to (5) (West 2004). No such application has ever been filed with respect to Water Right No. 55-11041. (R. at 835—Mann Aff. at ¶ 14).

¹⁰¹ (West 2004).

¹⁰² *See Tanner v. Humphreys*, 48 P.2d 484, 487–88 (Utah 1935).

¹⁰³ R. at 837—Mann Aff. ¶ 5.

legitimate reasons for not beneficially using Water Right No. 55-11041 for a period of time.¹⁰⁴

Section 73-3-8(1)(b)¹⁰⁵ requires that the new use approved under a change application “will not impair existing rights.” Impairment results when, in a system closed to appropriation, a right unused for decades is put to use again. Such impairment need not necessarily be based on the prior forfeiture of the water right because when use is discontinued for a long period of time other water right holders will put the water to use and, if and when an area is later closed to new appropriations, no new uses may be made without impairment of other rights.¹⁰⁶

Likewise Hamblin implicitly assumes the State Engineer must carry the burden to prove impairment.¹⁰⁷ Hamblin, however, is affirmatively responsible to prove there is

¹⁰⁴ R. at 835—Mann Aff. ¶ 14.

¹⁰⁵ (West 2004).

¹⁰⁶ The district court declined to adopt this argument partly on the basis that the court lacked sufficient undisputed facts to show impairment would occur. (R. at 1203-1202). Where an area is closed to new appropriation, however, introduction of a new use of 39,000,000 gallons of water per year will, by definition, impair the rights of others in the area. This is particularly true in light of this Court’s ruling in *Piute Reservoir & Irrigation Co. v. West Panguich Irrigation & Reservoir Co.*, 367 P.2d 855, 858 (Utah 1962) (“[We have] never adopted the so-called ‘de minimus’ theory, which we understand to be that an application either to appropriate or change the diversion or use of water should be approved if the effect on prior vested rights is so small that courts will not be concerned therewith.”).

¹⁰⁷ Appellant’s Br. 6 and 23 (“[t]his court should reverse the district court’s summary judgment rulings and remand with instructions to enter summary judgment in favor of Ms. Hamblin.”).

“reason to believe”¹⁰⁸ her change application will not impair existing water rights.¹⁰⁹ And, circumstantial evidence may undermine her evidence.¹¹⁰ Hamblin has made no effort to shoulder this burden. She has yet to offer any evidence, to the State Engineer or the district court, that her change application will not impair vested water rights.

B. With or without a Forfeiture Finding, No Unappropriated Water is Available for Appellant’s Change Application.

*Tanner v. Humphreys*¹¹¹ illustrates the principles that a change applicant must have a valid water right to meet the “unappropriated” water in a system requirement and to show his proposed change will not impair other rights. Ms. Tanner filed an application to change the point of diversion, place, and nature of her use contained in the Provo River Decree (the same decree that recognized Hamblin’s water right).¹¹² Concerning Tanner’s burden this Court said:

In respect to the question as to whether it was necessary to show that there were unappropriated waters in the [new diversion points] sufficient to satisfy the claims of plaintiff in case the [change] application were granted, it appears that the plaintiff is not relying upon unappropriated waters [at the new diversion], but is relying upon an exchange which she proposes to give of her

¹⁰⁸ *Searle*, 2006 UT 16, ¶ 46.

¹⁰⁹ Utah Code Ann. § 73-3-3(7)(a) states “[t]he state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.” In a situation like Hamblin’s, however, impairment would not be the sole reason to reject her proposed change.

¹¹⁰ *Searle*, 2006 UT 16, ¶¶ 53, 56.

¹¹¹ 48 P.2d 484 (Utah 1935).

¹¹² *Id.* at 485.

water at the [former diversion point] for as much as she takes from the [new diversion].^{113]}

Thus, this Court recognized that the Section 73-3-8 requirement for “unappropriated” water is fulfilled by having an applicant relinquish his use at the initial diversion. As this Court said in *Tanner*, “[w]e think that all that the plaintiff asked and *all that she could get was an exchange of the waters* which she had under her right.”¹¹⁴ The water to fill Hamblin’s new, changed use must come from her beneficial use under Water Right No. 55-11041. In a closed system this is the only way a change application can be approved without impairing other rights. Where a water right has not been used for three decades, there is no “unappropriated water in the proposed source” as Section 73-3-8(1)(a) requires for a change application in a closed system, and any use re-initiated under such a right, let alone 39,000,000 gallons per year of use, will, by definition, impair existing rights. Further, regardless of all other considerations, Hamblin’s right lapsed under the terms of the Provo River Decree alone.¹¹⁵

C. Appellant’s Change Application Cannot be Approved because Appellant has No Use to Relinquish.

Another alternative ground this Court could use to uphold the result of the trial court’s ruling is the language of Section 73-3-3(4)(b)(vii), which states that the written application submitted by an applicant—embodying the beneficial use requirement—“shall” set forth “the

¹¹³ *Id.* at 487.

¹¹⁴ *Id.* at 488 (emphasis supplied).

¹¹⁵ *See supra* note 21.

place, purpose, and extent of the *present use*.”¹¹⁶ Likewise, under Section 73-3-3(4)(b)(v) the applicant must provide “the point on the stream or source where the water *is* diverted[.]”¹¹⁷ In other words, to be successful, a change applicant must, as employees in the State Engineer’s Office sometimes say, “give up one to get one.” Otherwise the original right is expanded, and change application approval may not enlarge the underlying right.¹¹⁸

Statutory requirements for the exercise of a privilege such as a change application are strictly construed.¹¹⁹ Section 73-3-3(1)(a) defines a “[p]ermanent change” as “a change for an indefinite period of time with an intent to *relinquish* the original point of diversion, place of use, or purpose of use.”¹²⁰ But, Hamblin has no current use to “relinquish” under Section 73-3-3.¹²¹ The change application statute recognizes beneficial use as the foundation

¹¹⁶ (West 2004) (emphasis supplied).

¹¹⁷ (West 2004) (emphasis supplied). Hamblin argued below that where there’s no current use, the information is not “applicable.” (R. at 808). However, the “if applicable” language to which Hamblin refers was inserted in 2008, after Hamblin submitted her application. (Laws 2008 c. 311, § 2, eff. May 5, 2008). But even if the current version applied, the stream diversion point must be supplied, (*i.e.* is “applicable”), for all rights except those where the use does not require a diversion. Rights without diversions include in-stream water flow rights for fish habitat or for wildlife consumption, etc.

¹¹⁸ See *Rocky Ford Irrigation Co. v. Kents Lake Reservoir Co.*, 135 P.2d 108, 113–14 (Utah 1943); *Tanner v. Humphreys*, 48 P.2d 484, 487 (Utah 1935); *Manning v. Fife*, 54 P. 111, 113 (Utah 1898).

¹¹⁹ *State Engineer v. Shepherd*, 2005 UT App 450 ¶ 9, 128 P.3d 6 (“Generally, when statutory requirements are unambiguous, parties are required to strictly comply with their terms. . . . This principle is no less valid when applied to water rights law.”).

¹²⁰ (West 2004) (emphasis supplied).

¹²¹ The trial court mistakenly focused on the word “original” in the definition,
(continued...)

principle because, to establish a “changed” diversion, place of use, or purpose of use, a water right owner must first “relinquish” his current diversion, place of use or purpose of use.¹²² The verb “relinquish,” like the remainder of the statute, is in the present tense. *Black’s Law Dictionary* defines “relinquish” as “[t]o abandon, to give up, to surrender, to renounce some right or thing,”¹²³ and the verb “change” as “cause to pass from one place to another; exchange.”¹²⁴ The statute requires a present surrender of an existing use.¹²⁵ It indicates a current beneficial use must be given up before as a new beneficial use begins. Hamblin’s change application on Water Right No. 55-11041 was properly denied, among many other reasons, because Hamblin has no current use to extinguish or exchange—she has no use to “give up” to keep the system whole when the new use begins if her change application is

¹²¹(...continued)

believing that as long as the previous place, purpose and diversion were no longer used, no more was required, even if the discontinuation of use occurred decades ago. The court also failed to analyze the definition in conjunction with the other indicia of current use requirements. The statute is present tense, and that, combined with Utah Code Ann. § 73-3-3(4)(b)(vii) (West 2004) (the applicant “shall set forth. . . the place, purpose, and extent of the present use”), and Utah Code Ann. § 73-1-3 (West 2004) (“beneficial use” as “the basis, the measure and the limit” of a water right), indicates a present use must be underway, and then relinquished, to accomplish a “change.”

¹²² Utah Code Ann. § 73-3-3(1)(a) and (4)(b)(v) and (vii) (West 2004).

¹²³ *Black’s Law Dictionary* 1292 (6th ed. 1990).

¹²⁴ *Black’s Law Dictionary* 231 (6th ed. 1990).

¹²⁵ The district court mentioned that it was “unwilling to interpret the statute in this manner without more authority.” (R. at 1203). This Court can create that authority and this case may provide an appropriate opportunity for it to do so.

approved. In this regard, the *Jenkins* decision from the Idaho Supreme Court contains this helpful language:

If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. Other parties may then perfect a water right in those waters. Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, and the junior appropriators move up the ladder of priority. ***If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators.*** Priority in time is an essential part of western water law and to diminish one's priority works an ***undeniable injury*** to that water right holder.^[126]

Although the Idaho Supreme Court contemplated recognition of forfeiture in deciding a change application, the same principle applies whether the right has been forfeited or simply unused for decades while the reverted water is used by others.

Where Hamblin has not used Water Right No. 51-11041 for at least 30 years she has no beneficial use to relinquish in exchange for the new use she proposes. Her application should, therefore, be summarily denied.

¹²⁶ *Jenkins*, 647 P.2d at 1259-1260 (citations omitted) (emphasis supplied).

CONCLUSION

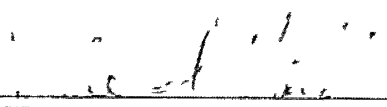
For the foregoing reasons, the Utah State Engineer asks this Court to affirm the district court's judgment.

STATEMENT CONCERNING ORAL ARGUMENT

Because this appeal presents important issues of law about administrative applications to the State Engineer, and the State Engineer's authority to examine the water rights and beneficial uses underlying change applications, he requests oral argument and a published opinion.

DATED this 20th day of May, 2010.

MARK L. SHURTLEFF
Utah Attorney General

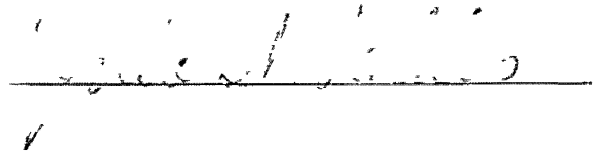


JULIE I. VALDES
NORMAN K. JOHNSON
Assistant Attorneys General
ATTORNEYS FOR DEFENDANT UTAH
STATE ENGINEER

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of **BRIEF OF APPELLEE UTAH STATE ENGINEER**, postage prepaid, this 20th day of May, 2010, to the following:

Bradley R. Cahoon
Troy L. Booher
Stewart O. Peay
M. Lane Molen
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Beneficial Life Tower
Salt Lake City, UT 84101-1004
Attorneys for Appellant/Plaintiff



Addendum A
Utah Code Ann. § 73-1-4 (1980)

UTAH
CODE ANNOTATED
1953

REPLACEMENT

VOLUME 7C

1980 EDITION

Waters and Irrigation

CONTAINING GENERAL AND PERMANENT LAWS
OF THE STATE IN FORCE AT THE CLOSE OF
THE 1980 BUDGET SESSION OF THE
FORTY-THIRD LEGISLATURE

COMPILED, ANNOTATED AND PUBLISHED UNDER
AUTHORITY OF CHAPTER 116, LAWS OF UTAH, 1961

SUPERSEDED

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

appropriated. However, the appropriator does not own the salt. The salt which it seeks is contained within Great Salt Lake, which is a navigable body of water. Because it is a navigable body of water, its bed belongs to the state subject to the control of Congress for navigation in commerce. *Deseret Livestock Co. v. State* (1946) 110 U 239, 171 P 2d 401.

Waters diverted from natural source, applied to irrigation and recaptured before escaping from original appropriator's control, still belong to original appropriator and, if original appropriator has beneficial use for such waters, he may again reuse them and no one can acquire right superior to that of original appropriator. *Smithfield West Bench Irrigation Co. v. Union Central Life Ins. Co.* (1948) 113 U 356, 195 P 2d 249, prior appeal 105 U 468, 142 P 2d 866, distinguished 2 U 2d 170, 271 P 2d 449.

An appropriator of water may in good faith utilize the quantity of water to which he is entitled, although his previous methods of use were inefficient, and resulted in returning surplus or waste water into the stream. *Lasson v. Seely* (1951) 120 U 679, 238 P 2d 418, distinguished 2 U 2d 170, 271 P 2d 449.

In order to preserve his right to use water which he is entitled to use as a shareholder of an irrigation company, a landowner must keep that water not only on his own land, but also under his control. *Lasson v. Seely* (1951) 120 U 679, 238 P 2d 418.

While irrigation water is under his dominion and control, a shareholder in an irrigation company who has the right to draw on a certain portion of the irrigation canal stream is entitled to use it on his own land in such beneficial manner as he sees fit, or he

may use it or any part thereof on other land under his control, or he may lease to others the right to use such water or some portion thereof. *Lasson v. Seely* (1951) 120 U 679, 238 P 2d 418, distinguished 2 U 2d 170, 271 P 2d 449.

The right of an appropriator of public waters to the use thereof is subject to regulation and limited to the amount required with reasonable efficiency to satisfy the beneficial use of his appropriation. *McNaughton v. Eaton* (1952) 121 U 394, 242 P 2d 570.

A change in place of diversion or the place or nature of use or a combination of such changes cannot be made if the vested rights of lower users would be impaired thereby. *East Bench Irr. Co. v. Deseret Irr. Co.* (1954) 2 U 2d 170, 271 P 2d 449.

Who may complain.

Prior appropriator cannot prevent use of surplus waters; that is, he cannot prevent another from using water while he cannot use it or make it available for use. *Cleary v. Daniels* (1917) 50 U 494, 167 P 820.

The grantor of water rights will not be heard to say that his grantee cannot make beneficial use thereof. *Campbell v. Nunn* (1931) 78 U 316, 2 P 2d 899.

Water which is lost by seepage and evaporation before it gets to adverse claimant's land cannot be beneficially used by him, and, therefore, applicant for appropriation of such water, by taking such waters, cannot deprive claimant thereof. *Sigurd City v. State* (1943) 105 U 278, 142 P 2d 154, criticized in *Moyle v. Salt Lake City* (1917) 111 U 201, 176 P 2d 882.

Law Reviews.

What Is Beneficial Use of Water, by Samuel C. Wiel, 3 *Calif. L. Rev.* 460.

73-1-4. Reversion to public by abandonment or failure to use within five years — Extending time. When an appropriator or his successor in interest shall abandon or cease to use water for a period of five years the right shall cease and thereupon such water shall revert to the public, and may be again appropriated as provided in this title, unless before the expiration of such five-year period the appropriator or his successor in interest shall have filed with the state engineer a verified application for an extension of time, not to exceed five years, within which to resume the use of such water and unless pursuant to such application the time within which such nonuse may continue is extended by the state engineer as hereinafter provided. The provisions of this section are applicable whether such unused or abandoned water is permitted to run to waste or is used by others without right. The filing of such application for extension of time shall extend the time during which nonuse may continue until the order

of the state engineer thereon. Such application shall be on a blank to be furnished by the state engineer and shall set forth such information as he may require, including but not limiting to the following: The name and address of applicant; the name of the source from which the right is claimed and the point on such source where the water was last diverted; evidence of the validity of the right claimed by reference to application number in the state engineer's office; date of court decree and title of case; or the date when the water was first used; the place, time and nature of past use; the flow of water which has been used in second-feet or the quantity stored in acre-feet and the time the water was used each year; the extension of time applied for, together with a statement of the reason for the nonuse of such water. Similar applications may be made from time to time, before the date of expiration of the extension next theretofore granted.

Upon receipt of such application the state engineer shall cause to be published, once each week for three successive weeks, in a newspaper of general circulation in the county in which source of water supply is located, a notice of the application, which notice shall apprise the public of the nature of the right for which the extension is sought and the reasons therefor.

Any person interested may at any time after the first publication of such notice and prior to the thirtieth day after completion of publication, file with the state engineer a written protest, together with a copy thereof, against the granting of such extension of time, stating the reasons therefor, which shall be duly considered by the state engineer, and, after such further investigation as the state engineer deems necessary, he shall allow or reject the application.

Such applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for such nonuse. Financial crisis, industrial depression, operation of legal proceedings or other unavoidable cause, or the holding of a water right without use by any municipality, metropolitan water districts or other public agencies to meet the reasonable future requirements of the public, shall constitute reasonable cause for such nonuse.

Sixty days before the expiration of any such period of extension of time, the state engineer shall notify the applicant by registered mail of the date when such period of extension will expire. Before such date of expiration such applicant shall file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and such further information as may be relevant and be required by the blank form which shall be furnished by the state engineer for said purpose, or such applicant shall make application for further extension of time in which to resume use of the water as provided in this section, otherwise such water right shall cease and thereupon the water shall revert to the public.

History: L. 1919, ch. 67, § 6, R. S. 1933, C. 1943, 100-1-4; L. 1945, ch. 134, § 1; 1959, ch. 100-1-4, L. 1935, ch. 104, § 1, 1939, ch. 111, § 1; 137, § 1.

Addendum B
Utah Code Ann. § 73-1-4 (Michie Supp. 1987)

**UTAH CODE
ANNOTATED**

1987 Cumulative Supplement

REPLACEMENT VOLUME 7C

1980 EDITION

Place in Pocket of Corresponding Bound Volume.

Including legislation through the 1987 General Session
and annotations through 732 P.2d 178.
See Preface in Volume 1A.

Edited by
The Publisher's Editorial Staff

THE MICHIE COMPANY
Law Publishers
Charlottesville, Virginia

give the property owner an ownership interest in the water; individuals have no ownership interest as such in natural waters, only the right to put the water to certain uses. J.J.N.P. Co. v. State, By and Through Division of Wildlife Resources (Utah 1982) 655 P 2d 1133.

Law Reviews. — Geothermal Development and Western Water Law, 1979 Utah L. Rev. 773.

Public Land Law Reform — Reflections from Western Water Law, 1982 B.Y.U. L. Rev. 1, A Primer of Utah Water Law, 5 J. Energy L. & Pol'y 165 (1984).

A Primer of Utah Water Law: Part II, 6 J. Energy L. & Pol'y 1 (1985).

The Utah Law of Oil and Gas, 7 J. Energy L. & Pol'y 191 (1986).

73-1-4. Reversion to public by abandonment or failure to use within five years — Extending time [Effective January 1, 1988].

(1) (a) When an appropriator or his successor in interest abandons or ceases to use water for a period of five years, the right ceases, unless, before the expiration of the five-year period, the appropriator or his successor in interest files a verified application for an extension of time with the state engineer.

(b) The extension of time to resume the use of that water shall not exceed five years unless the time is further extended by the state engineer. The provisions of this section are applicable whether the unused or abandoned water is permitted to run to waste or is used by others without right.

(2) (a) The state engineer shall furnish an application blank that includes a space for:

- (i) the name and address of applicant;
- (ii) the name of the source from which the right is claimed and the point on that source where the water was last diverted;
- (iii) evidence of the validity of the right claimed by reference to application number in the state engineer's office;
- (iv) date of court decree and title of case, or the date when the water was first used;
- (v) the place, time, and nature of past use;
- (vi) the flow of water that has been used in second-feet or the quantity stored in acre-feet;
- (vii) the time the water was used each year;
- (viii) the extension of time applied for;
- (ix) a statement of the reason for the nonuse of the water; and
- (x) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the application for an extension of time.

(c) Upon receipt of the application, the state engineer shall publish, once each week for three successive weeks, a notice of the application in a newspaper of general circulation in the county in which source of water supply is located that shall inform the public of the nature of the right for which the extension is sought and the reasons for the extension.

(d) Within 20 days after the notice is published, any interested person may file a written protest with the state engineer against the granting of the application.

(e) In any proceedings to determine whether or not the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Chapter 46b, Title 63.

(f) After further investigation, the state engineer may allow or reject the application.

(3) (a) Applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for such nonuse.

(b) Reasonable causes for nonuse include:

- (i) financial crisis;
- (ii) industrial depression;
- (iii) operation of legal proceedings or other unavoidable cause; and
- (iv) the holding of a water right without use by any municipality, metropolitan water districts, or other public agencies to meet the reasonable future requirements of the public.

(4) (a) If the appropriator or his successor in interest fails to apply for an extension of time, or if the state engineer denies the application for extension of time, the appropriator's water right ceases.

(b) When the appropriator's water right ceases, the water reverts to the public and may be reappropriated as provided in this title.

(5) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

- (i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or
- (ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

History: L. 1919, ch. 67, § 6; R.S. 1933, 100-1-4; L. 1935, ch. 104, § 1; 1939, ch. 111, § 1; C. 1943, 100-1-4; L. 1945, ch. 134, § 1; 1959, ch. 137, § 1; 1987, ch. 161, § 287.

Amended effective January 1, 1988. — Laws 1987, ch. 161, § 287 amends this section effective January 1, 1988. See catchline "Compiler's Notes," below. For provisions of this sec-

tion effective until January 1, 1988, see the bound volume.

Compiler's Notes. — The 1987 amendment, effective January 1, 1988, rewrote and redesignated this section as set out in the bound volume to the extent that a detailed analysis is impracticable.

73-1-6. Eminent domain — For ditches, reservoirs.

Law Reviews. — Eminent Domain and the Federal Oil and Gas Lessee — Lessee's Stand-

ing to Condemn a Right-of-Way, 1984 Utah L. Rev. 391.

73-1-9. Contribution between joint owners of ditch or reservoir.

ANALYSIS

Application.

Addendum C
Utah Code Ann. § 73-1-4 (Michie Supp. 1996)

**UTAH CODE
ANNOTATED**

1996 Supplement

REPLACEMENT VOLUME 7C

1989 EDITION

Place in Pocket of Corresponding Bound Volume.

Edited by
The Publisher's Editorial Staff

**MICHIE
Law Publishers
Charlottesville, Virginia**

73-1-1. Waters declared property of public.

NOTES TO DECISIONS

ANALYSIS

Contamination.
Cited.

Contamination.

Proposed consent decree to settle the state's claim for natural resources damage under § 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., which failed to require containment and management of the contami-

nated water and failed to require further source control, was not just or fair and did not comport with the federal act's requirement to "protect and restore." *Utah ex rel. Dep't of Health v. Kennecott Corp.*, 801 F. Supp. 553 (D. Utah 1992), appeal dismissed, 14 F.3d 1469 (10th Cir.), cert. denied, U.S. , 115 S. Ct. 197, 130 L. Ed. 2d 129 (1994).

Cited in *Little v. Greene & Weed Inv.*, 839 P.2d 791 (Utah 1992); *Provo River Water Users' Ass'n v. Morgan*, 857 P.2d 927 (Utah 1993).

COLLATERAL REFERENCES

Brigham Young Law Review. — Designation and Protection of Critical Groundwater Areas, 1991 B.Y.U. L. Rev. 1393.

Journal of Energy, Natural Resources, and Environmental Law. — The CUP Holds the Solution: Utah's Hybrid Alternative to Water Markets, 13 J. Energy, Nat. Resources & Envtl. L. 159 (1993).

The Upstream Battle in the Protection of Utah's Instream Flows, 14 J. Energy, Nat. Resources, & Envtl. L. 113 (1994).

A.L.R. — Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

73-1-3. Beneficial use basis of right to use.

COLLATERAL REFERENCES

A.L.R. — Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

73-1-4. Reversion to public by abandonment or forfeiture for nonuse within five years — Extension of time.

(1) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to use water for a period of five years, the water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified application for an extension of time with the state engineer.

(b) (i) A water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4 shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree.

(c) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(d) The provisions of this section are applicable whether the unused or abandoned water is permitted to run to waste or is used by others without right.

(2) (a) The state engineer shall furnish an application blank that includes a space for:

- (i) the name and address of the applicant;
- (ii) the name of the source from which the right is claimed and the point on that source where the water was last diverted;
- (iii) evidence of the validity of the right claimed by reference to application number in the state engineer's office;
- (iv) date of court decree and title of case, or the date when the water was first used;
- (v) the place, time, and nature of past use;
- (vi) the flow of water that has been used in second-feet or the quantity stored in acre-feet;
- (vii) the time the water was used each year;
- (viii) the extension of time applied for;
- (ix) a statement of the reason for the nonuse of the water; and
- (x) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the application for an extension of time.

(c) (i) Upon receipt of the application, the state engineer shall publish, once a week for two successive weeks, a notice of the application in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice may be published in more than one newspaper.

(iii) The notice shall inform the public of the nature of the right for which the extension is sought and the reasons for the extension.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(3) (a) Applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

- (i) financial crisis;
- (ii) industrial depression;
- (iii) operation of legal proceedings or other unavoidable cause; and
- (iv) the holding of a water right without use by any municipality, metropolitan water district, or other public agency to meet the reasonable future requirements of the public.

(4) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(5) (a) The appropriator's water right ceases and the water reverts to the public if the:

(i) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(ii) state engineer denies the application for extension of time; or

(iii) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

History: L. 1919, ch. 67, § 6; R.S. 1933, 100-1-4; L. 1935, ch. 104, § 1; 1939, ch. 111, § 1; C. 1943, 100-1-4; L. 1945, ch. 134, § 1; 1959, ch. 137, § 1; 1987, ch. 161, § 287; 1988, ch. 72, § 28; 1995, ch. 19, § 1; 1996, ch. 98, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, redesignated the second sentence of Subsection (1)(b) as (1)(c); subdivided Subsection (2)(c), substituted "two" for "three" before "successive weeks" and added "and where water is to be used" in Subsection

(2)(c)(i); added Subsections (2)(c)(ii), (2)(d)(i), and (2)(d)(ii), and made related and stylistic changes throughout.

The 1996 amendment, effective April 29, 1996, in Subsection (1)(a), substituted "water right ceases and the water reverts to the public" for "the right ceases"; added Subsection (1)(b), and redesignated subsequent subsections accordingly; redesignated former Subsection (5) as Subsection (4) and former Subsection (4) as Subsection (5); added Subsection (5)(iii), and made stylistic changes throughout the section.

NOTES TO DECISIONS

ANALYSIS

Constitutionality
Forfeiture of rights.

Constitutionality.

Forfeiture of water rights by nonuse under this section does not violate Utah Const., Art. XI, § 6, because the constitution only prohibits the voluntary, intentional disposition of water rights, whereas a forfeiture under this section is involuntary. *Nephi City v. Hansen*, 779 P.2d 673 (Utah 1989).

Forfeiture of rights.

Town's leasing of its water right in violation

of Utah Const., Art. XI, § 6, did not work a statutory forfeiture of the town's water right where the water was apparently contaminated and generally unsuitable for culinary use and the lease arrangement at least insured that the water was beneficially used for irrigation, with no actual loss to the town's citizens because the technology to render the water usable for town purposes was apparently not available during the term of the lease. *Eskelsen v. Town of Perry*, 819 P.2d 770 (Utah 1991).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — *Nephi City v. Hansen* The Utah Supreme Court Sidesteps Public Trust Principle in Allowing

Forfeiture of Municipal Water Rights, 11 J. Energy L. & Pol'y 369 (1991).

73-1-10. Conveyance of water rights — Deed — Filing and recordation of deed — Exception.

(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 of diversion of the water from its natural channel is situated and in the county where the water is applied.

(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.

(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.

History: L. 1919, ch. 67, § 16; R.S. 1933 & C. 1943, 100-1-10; L. 1943, ch. 105, § 1; 1945, ch. 134, § 1; 1959, ch. 137, § 1; 1996, ch. 51, § 2.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, subdivided and designated as Subsection (1) the existing para-

graph; deleted "except when they are represented by shares of stock in a corporation, in which case water shall not be deemed to be appurtenant to the land" in Subsection (1)(a); added Subsection (2); and made stylistic changes.

NOTES TO DECISIONS

ANALYSIS

Rights represented by shares of stock.
Cited.

Rights represented by shares of stock.

Where beneficiaries of a trust deed covering both land and irrigation company stock did not take possession of the stock certificate, and thus did not perfect their security interest in

the stock, their priority was inferior to that of subsequent creditors whose predecessor took possession of the certificate and transferred possession of it to the creditors. *Associates Fin. Servs. Co. v. Sevy*, 776 P.2d 650 (Utah Ct. App. 1989).

Cited in *Little v. Greene & Weed Inv.*, 839 P.2d 791 (Utah 1992).

73-1-11. Appurtenant waters — Use as passing under conveyance.

(1) A 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 grantor may specifically reserve a right to the use of water, or any part of the water in the conveyance, or the grantor may convey the right to the use of water in a separate conveyance document.

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

History: L. 1919, ch. 67, § 15; R.S. 1933 & C. 1943, 100-1-11; 1996, ch. 51, § 3.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, subdivided the

existing paragraph as Subsections (1) to (3), added Subsection (4), and made stylistic changes.

Addendum D
Utah Code Ann. § 73-1-4 (Lexis Supp. 2002)

**UTAH CODE
ANNOTATED**
RECEIVED

AUG 16 2002

UTAH STATE LAW LIBRARY

2002 Supplement

REPLACEMENT VOLUME 7C

1989 EDITION

Place in Pocket of Corresponding Bound Volume.

Edited by
the Publisher's Editorial Staff



LexisNexis™

CHAPTER 1

GENERAL PROVISIONS

| Section | | Section | |
|-----------|--|----------|--|
| 73-1-4. | Reversion to the public by abandonment or forfeiture for nonuse within five years — Extension of time. | | Deed — Exceptions — Filing and recording of deed — Report of water right conveyance. |
| 73-1-4.5. | Authorization for water companies to allocate water rights lost by forfeiture or nonuse — Redemption and retirement of water shares. | 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. |
| 73-1-10. | Conveyance of water rights — | | |

73-1-1. Waters declared property of public.

NOTES TO DECISIONS

ANALYSIS

Contamination.
Cited.

Contamination.

Proposed consent decree to settle the state's claim for natural resources damage under § 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., which failed to require containment and management of the contami-

nated water and failed to require further source control, was not just or fair and did not comport with the federal act's requirement to "protect and restore." Utah ex rel. Dept of Health v. Kennecott Corp., 801 F. Supp. 553 (D. Utah 1992), appeal dismissed, 14 F.3d 1489 (10th Cir.), cert. denied, 513 U.S. 872, 115 S. Ct. 197, 130 L. Ed. 2d 129 (1994).

Cited in Little v. Greene & Weed Inv., 839 P.2d 791 (Utah 1992); Provo River Water Users' Ass'n v. Morgan, 857 P.2d 927 (Utah 1993).

COLLATERAL REFERENCES

Brigham Young Law Review. — Designation and Protection of Critical Groundwater Areas, 1991 B.Y.U. L. Rev. 1393.

Journal of Energy, Natural Resources, and Environmental Law. — The CUP Holds the Solution: Utah's Hybrid Alternative to Water Markets, 13 J. Energy, Nat. Resources & Envtl. L. 159 (1993).

The Upstream Battle in the Protection of

Utah's Instream Flows, 14 J. Energy, Nat. Resources, & Envtl. L. 113 (1994).

Journal of Land, Resources and Environmental Law. — Ability and Responsibility of State Engineer Regarding Reallocation of Water Rights, 20 J. Land, Resources & Envtl. L. 41.

A.L.R. — Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

73-1-3. Beneficial use basis of right to use.

NOTES TO DECISIONS

Cited in Longley v. Leucadia Fin. Corp., 2000 UT 69, 9 P.3d 762.

COLLATERAL REFERENCES

A.L.R. — Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within five years — Extension of time.

(1) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use. The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts. The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).

(2) As used in this section, "public water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

(a) a municipality, water conservancy district, metropolitan water district, irrigation district created under Section 17A-2-7, or other public agency;

(b) a water company regulated by the Public Service Commission; or

(c) any other owner of a community water system.

(3) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of five years, the water right or the unused portion of that water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified nonuse application with the state engineer.

(b) (i) A nonuse application may be filed on all or a portion of the water right, including water rights held by mutual irrigation companies.

(ii) Public water supply entities that own stock in a mutual water company, after giving written notice to the water company, may file nonuse applications with the state engineer on the water represented by the stock.

(c) (i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that occur after the entry of the decree.

(iv) A proposed determination by the state engineer in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has been filed within the time allowed in Chapter 4, Determination of Water Rights.

(d) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(e) The provisions of this section are applicable whether the unused or abandoned water or a portion of the water is permitted to run to waste or is used by others without right with the knowledge of the water right holder, provided that the use of water pursuant to a lease or other agreement with the appropriator or the appropriator's successor shall be considered to constitute beneficial use.

(f) The provisions of this section shall not apply:

(i) to those periods of time when a surface water source fails to yield sufficient water to satisfy the water right, or when groundwater is not available because of a sustained drought;

(ii) to water stored in reservoirs pursuant to an existing water right, where the stored water is being held in storage for present or future use; or

(iii) when a water user has beneficially used substantially all of a water right within a five-year period, provided that this exemption shall not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights.

(g) Groundwater rights used to supplement the quantity or quality of other water supplies may not be subject to loss or reduction under this section if not used during periods when the other water source delivers sufficient water so as to not require use of the supplemental groundwater.

(4) (a) The state engineer shall furnish an application requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the date the water was last diverted and placed to beneficial use;

(iv) the quantity of water;

(v) the period of use;

(vi) the extension of time applied for;

(vii) a statement of the reason for the nonuse of the water; and

(viii) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the nonuse application.

(c) (i) Upon receipt of the application, the state engineer shall publish, once a week for two successive weeks, a notice of the application in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall inform the public of the nature of the right for which the extension is requested and the reasons for the extension.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(5) (a) Nonuse applications on all or a portion of a water right shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

(i) demonstrable financial hardship or economic depression;

(ii) the initiation of recognized water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;

(iii) operation of legal proceedings;

(iv) the holding of a water right or stock in a mutual water company without use by any public water supply entity to meet the reasonable future requirements of the public;

(v) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan;

(vi) situations where all or part of the land on which water is used is contracted under an approved state agreement or federal conservation following program;

(vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment; or

(viii) any other reasonable cause.

(6) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable, of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(c) Upon receipt of the applicant's properly completed, verified statement, the state engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if so, shall issue a certificate of resumption of use of the water as evidenced by the resumed beneficial use.

(7) The appropriator's water right or a portion of the water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the nonuse application; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

History: L. 1919, ch. 67, § 6; R.S. 1933, 100-1-4; L. 1935, ch. 104, § 1; 1939, ch. 111, § 1; C. 1943, 100-1-4; L. 1945, ch. 134, § 1; 1959, ch. 137, § 1; 1987, ch. 161, § 287; 1988, ch. 72, § 28; 1995, ch. 19, § 1; 1996, ch. 98, § 1; 2001, ch. 136, § 1; 2002, ch. 20, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, redesignated the second sentence of Subsection (1)(b) as (1)(c); subdivided Subsection (2)(c); substituted "two" for "three" before "successive weeks" and added "and where water is to be used" in Subsection

(2)(c)(i); added Subsections (2)(c)(ii), (2)(d)(i), and (2)(d)(ii); and made related and stylistic changes throughout.

The 1996 amendment, effective April 29, 1996, in Subsection (1)(a), substituted "water right ceases and the water reverts to the public" for "the right ceases"; added Subsection (1)(b), and redesignated subsequent subsections accordingly; redesignated former Subsection (5) as Subsection (4) and former Subsection (4) as Subsection (5); added Subsection

(5)(a)(iii); and made stylistic changes throughout the section.

The 2001 amendment, effective April 30, 2001, in Subsection (4)(a) added "or by any form of electronic communication through which receipt is verifiable," in Subsection (4)(b)(i) added "in a manner prescribed by the state engineer," and made stylistic changes.

The 2002 amendment, effective May 6, 2002, rewrote this section.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Forfeiture of rights.

Constitutionality.

Forfeiture of water rights by nonuse under this section does not violate Utah Const., Art. XI, § 6, because the constitution only prohibits the voluntary, intentional disposition of water rights, whereas a forfeiture under this section is involuntary. *Nephi City v. Hansen*, 779 P.2d 673 (Utah 1989).

Forfeiture of rights.

Town's leasing of its water right in violation of Utah Const., Art. XI, § 6, did not work a statutory forfeiture of the town's water right where the water was apparently contaminated and generally unsuitable for culinary use and the lease arrangement at least insured that the water was beneficially used for irrigation, with no actual loss to the town's citizens because the technology to render the water usable for town purposes was apparently not available during the term of the lease. *Eskelsen v. Town of Perry*, 819 P.2d 770 (Utah 1991).

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — *Nephi City v. Hansen*: The Utah Supreme Court Sidesteps Public Trust Principles in Allowing

Forfeiture of Municipal Water Rights, 11 J. Energy L. & Pol'y 369 (1991).

73-1-4.5. Authorization for water companies to allocate water rights lost by forfeiture or nonuse — Redemption and retirement of water shares.

(1) (a) If a water right, to which a mutual water company holds title, ceases or is lost due to forfeiture or abandonment for lack of beneficial use, in whole or in part, the water company shall, through procedures consistent with this section, and as defined in the company's articles of incorporation or bylaws, apportion the loss to each stockholder whose failure to make beneficial use caused the loss of the water right.

(b) The water company shall make an apportionment if the Utah Division of Water Rights or a court of proper jurisdiction makes a final decision that a loss has occurred.

(c) The water company shall also reduce the amount of water provided to the shareholder in proportion to the amount of the lost water right during an appeal of a decision that reduced the company water rights, unless otherwise ordered by a court of proper jurisdiction.

(d) The water company may take any action under this Subsection (1), whether the loss occurred:

(i) under Utah Code Annotated Section 73-1-4, including losses that occur as part of a general determination under Title 73, Chapter 4, Determination of Water Rights; or

(ii) through any other decision by a court of proper jurisdiction.

(2) (a) If the water company apportions a water right under Subsection (1), a sufficient number of shares to account for the water right lost, including necessary transport or "carrier water" losses, shall be treated by the water company as shares redeemed by the company from the stockholder responsible for the loss.

(b) The number of shares owned by that shareholder shall be reduced accordingly on the records of the company.

(c) Upon the redemption, the authorized shares of the company shall be reduced by the amount of shares that were redeemed under this Subsection (2).

(3) The redemption and retirement under this section of shares belonging to a stockholder does not relieve the stockholder of liability for unpaid assessments on the stock or debts the shareholder may owe to the water company.

History: C. 1953, 73-1-4.5, enacted by L. 2002, ch. 19, § 1. came effective on May 6, 2002, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 2002, ch. 19 be-

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) A recorded deed of a water right shall from the time of its recording 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.

Addendum E
Utah Code Ann. § 73-1-4 (West Supp. 2008)

West's
**Utah Code
Annotated**

Titles

71 to 73

2008

Cumulative Annual Pocket Part

For Use In 2008–2009

Supplementing 2004 main volume

Includes Laws through the
57th Legislature, General Session

THOMSON
UNIVERSITY OF UTAH
JOHNNY LAW LIBRARY
AUG 07 2009
SERIALS

Research References

ALLR Library

109 A.L.R. 395, Subterranean and Percolating Waters; Springs; Wells.

89 A.L.R. 210, Right of Appropriator of Water to Recapture Water Which Has Escaped or Is

Otherwise No Longer Within His Immediate Possession.

Notes of Decisions

Discretion of trial court 14.5
Parties 13.5

Summit, Wasatch, Sanpete, and Juab Counties, 2004, 98 P.3d 1, 506 Utah Adv. Rep. 17, 2004 UT 67. Waters And Water Courses ⇨ 152(2)

1. In general

State, acting as trustee rather than owner, has assumed the responsibility of allocating the use of water for the benefit and welfare of all the people. In re Uintah Basin, 2006, 133 P.3d 410, 548 Utah Adv. Rep. 22, 2006 UT 19, rehearing denied. Waters And Water Courses ⇨ 127

The sine qua non of making a valid appropriation is to apply the water attempted to be appropriated to some beneficial use. In re Uintah Basin, 2006, 133 P.3d 410, 548 Utah Adv. Rep. 22, 2006 UT 19, rehearing denied. Waters And Water Courses ⇨ 133

12. Title or ownership in water

Alleged defect in pipeline operating company's title to water rights did not support individual property owner's claim to those rights; title depended solely on owner's own rights. In re General Determination of Rights to Use All of Water, Both Surface and Underground, Within Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, and Juab Counties, 2004, 98 P.3d 1, 506 Utah Adv. Rep. 17, 2004 UT 67. Waters And Water Courses ⇨ 133

13.5. Parties

Landowner's water use claim (WUC) belonged to property owners who operated and maintained water pipeline system, not to owner personally; owner failed to object to state engineer's determination of water rights, and owner asserted claim on the basis of 27 homes. In re General Determination of Rights to Use All of Water, Both Surface and Underground, Within Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis,

14.5. Discretion of trial court

Appellate court would narrow discretion of trial court in determining whether using water rights to irrigate natural vegetation constituted beneficial use. Factual issues were complex, legal principles were evolving, and trial court had special ability to weight contradictory evidence, assess credibility and demeanor, and make factual findings, but state was vitally interested in water use. In re General Determination of Rights to Use All of Water, Both Surface and Underground, Within Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, and Juab Counties, 2004, 98 P.3d 1, 506 Utah Adv. Rep. 17, 2004 UT 67. Waters And Water Courses ⇨ 152(12)

15. Sufficiency of evidence

Evidence did not support landowner's assertion that he filed water user's claim (WUC) on his own behalf, rather than for pipeline users collectively. Evidence showed that owner designated water users' association as claimant, never objected or sought to clarify that he alone had water rights, put his signature on one document as member of board of directors of water users' association, and listed priority date that occurred long before he took possession of his property. In re General Determination of Rights to Use All of Water, Both Surface and Underground, Within Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, and Juab Counties, 2004, 98 P.3d 1, 506 Utah Adv. Rep. 17, 2004 UT 67. Waters And Water Courses ⇨ 152(8)

(i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and

(ii) is:

(A) a public entity;

(B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission;

(C) a community water system:

(I) that:

(Aa) supplies water to at least 100 service connections used by year-round residents; or

(Bb) regularly serves at least 200 year-round residents; and

(II) whose voting members:

(Aa) own a share in the community water system;

(Bb) receive water from the community water system in proportion to the member's share in the community water system; and

(Cc) pay the rate set by the community water system based on the water the member receives; or

(D) a water users association:

(I) in which one or more public entities own at least 70% of the outstanding shares; and

(II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.

(c) "Shareholder" is as defined in Section 73-3-3.5.

(d) "Water company" is as defined in Section 73-3-3.5.

(e) "Water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

(i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency;

(ii) a water company regulated by the Public Service Commission; or

(iii) any other owner of a community water system.

(2)(a) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c), unless the appropriator or the appropriator's successor in interest files a nonuse application with the state engineer.

(b)(i) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.

(ii) After giving written notice to the water company, a shareholder may file a nonuse application with the state engineer on the water represented by the stock.

(c)(i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least seven years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree, but does not bar a claim for periods of nonuse that occur after the entry of the decree.

(iv) A proposed determination by the state engineer in an action for general determination of rights under Chapter 4, Determination of Water Rights, bars a claim of forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has been filed within the time allowed in Chapter 4, Determination of Water Rights.

§ 73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years—Nonuse application

(1) As used in this section:

(a) "Public entity" means:

(i) the United States;

(ii) an agency of the United States;

(iii) the state;

(iv) a state agency;

(v) a political subdivision of the state; or

(vi) an agency of a political subdivision of the state.

(b) "Public water supplier" means an entity that:

- (v) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:
- (A) the right to use the water reverts to the public, and
 - (B) the water made available by the forfeiture:
 - (I) first, satisfies other water rights in the hydrologic system in order of priority date; and
 - (II) second, may be appropriated as provided in this title.
- (d) This section applies whether the unused or abandoned water or a portion of the water is:
- (i) permitted to run to waste; or
 - (ii) used by others without right with the knowledge of the water right holder.
- (e) This section does not apply to:
- (i) the use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;
 - (ii) a water right if its place of use is contracted under an approved state agreement or federal conservation following program;
 - (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;
 - (iv) a water right when water is unavailable because of the water right's priority date;
 - (v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
 - (A) the water is stored for present or future use; or
 - (B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct;
 - (vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 1 Determination of Water Rights;
 - (vii) except as provided by Subsection (2)(g), a water right:
 - (A)(I) owned by a public water supplier;
 - (II) represented by a public water supplier's ownership interest in a water company; or
 - (III) to which a public water supplier owns the right of use; and
 - (B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);
 - (viii) a supplemental water right during a period of time when another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require use of the supplemental water right; or
 - (ix) a water right subject to an approved change application where the applicant is diligently pursuing certification.
- (f)(i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.
- (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service area:
- (A) is the area served by the community water system's distribution facilities; and
 - (B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.
- (g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:
- (i) the public water supplier submits a change application under Section 73-3-3; and
 - (ii) the state engineer approves the change application.
- (3)(a) The state engineer shall furnish a nonuse application form requiring the following information:

- (i) the name and address of the applicant;
 - (ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;
 - (iii) the quantity of water;
 - (iv) the period of use;
 - (v) the extension of time applied for;
 - (vi) a statement of the reason for the nonuse of the water; and
 - (vii) any other information that the state engineer requires.
- (b)(i) Filing the nonuse application extends the time during which nonuse may continue until the state engineer issues an order on the nonuse application.
- (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse from the application's filing date until the approved application's expiration date.
- (c)(i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.
- (ii) The notice shall:
- (A) state that an application has been made; and
 - (B) specify where the interested party may obtain additional information relating to the application.
- (d) Any interested person may file a written protest with the state engineer against the granting of the application:
- (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (e) In any proceedings to determine whether the nonuse application should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (f) After further investigation, the state engineer may approve or reject the application.
- (4)(a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of time not exceeding seven years if the applicant shows a reasonable cause for nonuse.
- (b) A reasonable cause for nonuse includes:
- (i) a demonstrable financial hardship or economic depression;
 - (ii) the initiation of water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;
 - (iii) operation of legal proceedings;
 - (iv) the holding of a water right or stock in a mutual water company without use by any water supply entity to meet the reasonable future requirements of the public;
 - (v) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or
 - (vi) the loss of capacity caused by deterioration of the water supply or delivery component of the applicant submitted with the application a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment.
- (5)(a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant by mail or by any form of electronic communication through which receipt is verifiable, of the date when the nonuse application will expire.
- (b) An applicant may file a subsequent nonuse application in accordance with this section.

Laws 1919, c. 67, § 6; Laws 1928, c. 101, § 1; Laws 1939, c. 111, § 1; Laws 1945, c. 134, § 1; Laws 1959, c. 137, § 1; Laws 1987, c. 100, § 287; Laws 1988, c. 72, § 24; Laws 1995, c. 19, § 1, eff. May 1, 1995; Laws 1996, c. 98, § 1, eff. April 24, 1996; Laws 2001, c. 136, § 1, eff. April 30, 2001; Laws 2002, c. 20, § 1, eff. May 6, 2002; Laws 2003, c. 329, § 1, eff. May 5, 2003; Laws 2007, c. 136, § 37, eff. April 30, 2007; Laws 2007, c. 329, § 460, eff. April 30, 2007; Laws 2008, c. 380, § 1, eff. May 5, 2008; Laws 2008, c. 382, § 2138, eff. May 5, 2008.

Codifications R.S. 1933, § 100-1-4; C. 1943, § 100-1-4.

Addendum F
Gen. Sess. S. Journal, Day 38, at 809-10 (Utah 2008)

| | | | |
|-------------|------------|------------|--------------|
| Fife | Goodfellow | Greiner | Hickman |
| Jenkins | Jones | Killpack | Knudson |
| Madsen | Mayne | McCoy | Niederhauser |
| Peterson | Romero | Stephenson | Stowell |
| Van Tassell | Waddoups | Walker | |

Absent or not voting were: Senators
Hillyard Valentine

1st Sub. S.B. 278 was transmitted to the House for consideration.

* * *

S.B. 288, CONDOMINIUM OWNERSHIP ACT AMENDMENTS, was read the third time, explained by Senator Waddoups, and passed on the following roll call:

Yeas, 26; Nays, 0; Absent, 3.

Voting in the affirmative were: Senators

| | | | |
|----------|------------|--------------|-------------|
| Bell | Bramble | Buttars | Christensen |
| Davis | Dayton | Dmitrich | Eastman |
| Fife | Goodfellow | Greiner | Hickman |
| Jenkins | Jones | Killpack | Madsen |
| Mayne | McCoy | Niederhauser | Peterson |
| Romero | Stephenson | Stowell | Van Tassell |
| Waddoups | Walker | | |

Absent or not voting were: Senators
Hillyard Knudson Valentine

S.B. 288 was transmitted to the House for consideration.

* * *

S.B. 294, COMMUNITY DEVELOPMENT AND RENEWAL AMENDMENTS, was read the third time

On motion of Senator Buttars, the bill was circled

SECOND READING CALENDAR

1st Sub. H.B. 106, CLEAN AIR AND EFFICIENT VEHICLE TAX INCENTIVES, was read the second time. Senator Bell explained the bill.

On motion of Senator Bell, the bill was circled.

* * *

H.B. 279, TAX INCENTIVES FOR MILITARY MEMBERS, was read the second time.

On motion of Senator Eastman, the bill was circled.

* * *

1st Sub. H.B. 40, SAFE DRINKING WATER REVISIONS, was read the second time. Senator Stowell explained the bill.

On motion of Senator Stowell, the following substitute bill replaced the original bill:

2nd Sub. H.B. 40 Safe Drinking Water Revisions (S. Anderson)

Senator Hickman commented.

On motion of Senator Stowell, the bill was circled.

* * *

2nd Sub. H.B. 51, WATER RIGHT FORFEITURE PROTECTION, was read the second time.

On motion of Senator Dayton, the following substitute bill replaced the original bill:

5th Sub. H.B. 51 Water Right Amendments (P. Painter)

Senator Dayton explained the bill. Senator Van Tassell commented.

On motion of Senator Dayton, under suspension of the rules, 5th Sub. H.B. 51, WATER RIGHT AMENDMENTS, was considered read the first, second and third times and passed on the following roll call:

Yeas, 26; Nays, 0; Absent, 3.

Voting in the affirmative were: Senators

| | | | |
|----------|---------|---------|------------|
| Bell | Bramble | Davis | Dayton |
| Dmitrich | Eastman | Fife | Goodfellow |
| Greiner | Hickman | Jenkins | Jones |

| | | | |
|------------|--------------|------------|----------|
| Killpack | Knudson | Madsen | Mayne |
| McCoy | Niederhauser | Peterson | Romero |
| Stephenson | Stowell | Van Tassel | Waddoups |
| Walker | Valentine | | |

Absent or not voting were: Senators

| | | |
|---------|-------------|----------|
| Buttars | Christensen | Hillyard |
|---------|-------------|----------|

5th Sub. H.B. 51, as amended, was returned to the House for further consideration

On motion of Senator Dayton, the Senate voted to include the following intent language in the Senate Journal.

INTENT LANGUAGE FOR 5TH SUB. H.B. 51

Because our state policy is to secure the maximum use and benefit of our scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use except as provided in Section 73-1-4 as amended by 5th Substitute H.B. 51, "Water Right Amendments." The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial uses.

5th Substitute H.B. 51, "Water Right Amendments" is not added to

- (1) change the way the State Engineer evaluates change applications based on historic beneficial uses;
- (2) provide a mechanism for public water suppliers to hoard water beyond the amount of water needed in the next 40 years by persons within the public water supplier's projected service area;
- (3) validate any invalid water rights;
- (4) promote or allow for speculation in water rights; or
- (5) provide a mechanism for any out-of-state person or entity to acquire water rights in Utah for the purpose of providing water in another state.

The amendments made to Section 73-1-4 by 5th Substitute H.B. 51, "Water Right Amendments," should be construed to carry out these purposes and policies.

On motion of Senator Bramble and at 3:35 p.m. the Senate adjourned.

The Senate was called to order at 4:10 p.m. with President Valentine presiding.

STANDING COMMITTEE REPORTS

Mr. President:

February 27, 2008

Without committee review, the Judiciary, Law Enforcement, and Criminal Justice Committee has returned S.B. 51 IMPACT FEES – PUBLIC SAFETY FACILITY, by Senator G. Bell, to the Rules Committee; and

Without committee review, the Judiciary, Law Enforcement, and Criminal Justice Committee has returned S.B. 102, ANIMAL TORTURE OFFENSE, by Senator G. Davis, to the Rules Committee; and

With committee review, the Judiciary, Law Enforcement, and Criminal Justice Committee has returned S.B. 106, JUVENILE CUSTODY MAINTENANCE AMENDMENTS, by Senator D. Peterson, to the Rules Committee without committee recommendation, and

The Judiciary, Law Enforcement, and Criminal Justice Committee has returned S.B. 154 PROTECTIVE ORDER – CRIME OF INDUCING BREACH, by Senator S. McCoy to the Rules Committee without recommendation with the following amendments:

1. Page 1, Line 27 through Page 2, Line 28:

- 27 (1) Any person who is ~~{the respondent or defendant~~
~~subject}~~ a party to a protective order, child
 28 protective order, ex parte protective order, or ex parte child
 protective order issued under Title ; and

With committee review, the Judiciary, Law Enforcement, and Criminal Justice Committee has returned S.B. 266, PROCESS SERVERS – AGE RESTRICTIONS, by Senator J. Greiner, to the Rules Committee without recommendation; and

The Judiciary, Law Enforcement, and Criminal Justice Committee has returned 1st Sub. H.B. 109, SEX OFFENDER LAW AMENDMENTS, by Representative G. Hughes, to the Rules committee.

With committee review, the Judiciary, Law Enforcement, and Criminal Justice Committee has returned H.B. 264, PROHIBITION OF CITATION QUOTAS, by Representative N. Hansen, to the Rules Committee without recommendation; and

The Judiciary, Law Enforcement, and Criminal Justice Committee has returned H.B. 339, HUMAN TRAFFICKING AMENDMENTS, by

Addendum G
General Sess. S. Journal,
Day 40, at 966-68 (Utah 2008)

* * *

On motion of Representative Andersen, the House voted to concur in the Senate amendments to **2nd Sub. H.B. 40, SAFE DRINKING WATER REVISIONS.**

2nd Sub. H.B. 40, as amended by the Senate, passed on the following roll call:

Yeas, 69; Nays, 0; Absent or not voting, 6.

Voting in the affirmative were: Representatives

| | | | |
|--------------|-----------|----------------|---------------|
| Aagard | Allen | Andersen | Barrus |
| Bigelow | Bird | Biskupski | Brown |
| Chavez-Houck | D. Clark | S. Clark | Cosgrove |
| Daw | Dee | Donnelson | Dougall |
| Draxler | Duckworth | Ferry | Janice Fisher |
| Julie Fisher | Fowlke | Frank | Froerer |
| Garn | Gibson | Gowans | Greenwood |
| Grover | Hansen | Harper | Hemingway |
| Hendrickson | Herrod | Holdaway | Hughes |
| Hunsaker | Hutchings | Johnson | King |
| Kiser | Last | Lockhart | Mascaro |
| McGee | McIff | Menlove | Morgan |
| Morley | Moss | Neuenschwander | Newbold |
| Noel | Oda | Painter | Ray |
| Riesen | Sandstrom | Shurtliff | Snow |
| Sumsion | Tilton | Walker | Webb |
| Wheatley | Wiley | Wimmer | Winn |
| Curtis | | | |

Absent or not voting were: Representatives

| | | | |
|--------|----------|---------|--------|
| Bowman | Dunnigan | Litvack | Mathis |
| Seelig | Urquhart | | |

2nd Sub. H.B. 40, as amended by the Senate, transmitted to the Senate for signature of President.

* * *

On motion of Representative Painter, the House voted to concur in the Senate amendments to **5th Sub. H.B. 51, WATER RIGHT AMENDMENTS.** On motion of Representative Painter, under suspension of the rules, the House voted to consider **5th Sub. H.B. 51** read the first, second, and third times by short title.

5th Sub. H.B. 51, as amended by the Senate, passed on the following roll call:

Yeas, 65; Nays, 5; Absent or not voting, 5.

Voting in the affirmative were: Representatives

| | | | |
|-----------|---------------|--------------|----------------|
| Aagard | Allen | Andersen | Bigelow |
| Bird | Biskupski | Brown | Chavez-Houck |
| D. Clark | S. Clark | Cosgrove | Daw |
| Dee | Donnelson | Draxler | Duckworth |
| Dunnigan | Janice Fisher | Julie Fisher | Fowlke |
| Frank | Froerer | Garn | Gowans |
| Greenwood | Grover | Hansen | Harper |
| Hemingway | Hendrickson | Herrod | Holdaway |
| Hughes | Hunsaker | Hutchings | Johnson |
| King | Kiser | Last | Litvack |
| Lockhart | Mascaro | McGee | McIff |
| Morgan | Morley | Moss | Neuenschwander |
| Newbold | Noel | Oda | Painter |
| Ray | Riesen | Sandstrom | Shurtliff |
| Snow | Sumsion | Tilton | Walker |
| Webb | Wheatley | Wiley | Wimmer |
| Curtis | | | |

Voting in the negative were: Representatives

| | | | |
|--------|-------|--------|---------|
| Barrus | Ferry | Gibson | Menlove |
| Winn | | | |

Absent or not voting were: Representatives

| | | | |
|----------|---------|--------|--------|
| Bowman | Dougall | Mathis | Seelig |
| Urquhart | | | |

5th Sub. H.B. 51, as amended by the Senate, transmitted to the Senate for signature of President.

INTENT LANGUAGE FOR 5TH SUB. H.B. 51

On motion of Representative Painter, the House voted to print the following intent language upon the pages of the House Journal.

Because our state policy is to secure the maximum use and benefit of our scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use except as provided in Section 73-1-4 as amended by 5th Substitute H.B. 51, "Water Right Amendments." The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts.

Fifth Substitute H.B. 51, "Water Right Amendments," is not intended to:

- (1) change the way the State Engineer evaluates change applications based on historic beneficial use;
- (2) provide a mechanism for public water suppliers to hoard water beyond the amount of water needed in the next 40 years by persons within the public water supplier's projected service area;
- (3) validate any invalid water rights;
- (4) promote or allow for speculation in water rights; or
- (5) provide a mechanism for any out-of-state person or entity to acquire water rights in Utah for the purpose of providing water in another state.

The amendments made to Section 73-1-4 by 5th Substitute H.B. 51, "Water Right Amendments," should be construed to carry out these purposes and policies.

CONCURRENCE CALENDAR

On motion of Representative Harper, the House voted to concur in the Senate amendments to **1st Sub. H.B. 252, CHARITABLE SOLICITATIONS ACT AMENDMENTS.**

1st Sub. H.B. 252, as amended by the Senate, passed on the following roll call:

Yeas, 68; Nays, 0; Absent or not voting, 7.

Voting in the affirmative were: Representatives

| | | | |
|--------------|----------------|-----------|---------------|
| Aagard | Allen | Andersen | Barrus |
| Bigelow | Bird | Biskupski | Brown |
| Chavez-Houck | D. Clark | S. Clark | Cosgrove |
| Daw | Donnelson | Dougall | Draxler |
| Duckworth | Dunnigan | Ferry | Janice Fisher |
| Julie Fisher | Fowlke | Frank | Froerer |
| Garn | Gibson | Gowans | Greenwood |
| Grover | Hansen | Harper | Hemingway |
| Hendrickson | Herrod | Holdaway | Hughes |
| Hunsaker | Hutchings | Johnson | Kiser |
| Last | Lockhart | Mascaro | McGee |
| McIff | Menlove | Morgan | Morley |
| Moss | Neuenschwander | Newbold | Noel |
| Oda | Painter | Ray | Riesen |
| Sandstrom | Shurtliff | Snow | Sumsion |
| Tilton | Walker | Webb | Wheatley |
| Wiley | Wimmer | Winn | Curtis |

Absent or not voting were: Representatives

| | | | |
|--------|--------|----------|---------|
| Bowman | Dee | King | Litvack |
| Mathis | Seelig | Urquhart | |

1st Sub. H.B. 252, as amended by the Senate, transmitted to the Senate for signature of President.

* * *

On motion of Representative Wiley, the House voted to concur in the Senate amendments to **1st Sub. H.B. 304, SALES AND USE TAX REVENUES FOR QUALIFIED EMERGENCY FOOD AGENCIES.**

1st Sub. H.B. 304, as amended by the Senate, passed on the following roll call:

Yeas, 67; Nays, 0; Absent or not voting, 8.

Voting in the affirmative were: Representatives

| | | | |
|--------------|----------------|-----------|---------------|
| Aagard | Allen | Andersen | Barrus |
| Bigelow | Bird | Biskupski | Brown |
| Chavez-Houck | D. Clark | S. Clark | Cosgrove |
| Daw | Donnelson | Dougall | Draxler |
| Duckworth | Dunnigan | Ferry | Janice Fisher |
| Julie Fisher | Fowlke | Frank | Froerer |
| Garn | Gibson | Gowans | Greenwood |
| Grover | Hansen | Harper | Hemingway |
| Hendrickson | Herrod | Holdaway | Hughes |
| Hunsaker | Hutchings | Johnson | King |
| Kiser | Litvack | Lockhart | Mascaro |
| McGee | Menlove | Morgan | Morley |
| Moss | Neuenschwander | Newbold | Noel |
| Oda | Painter | Ray | Riesen |
| Sandstrom | Shurtliff | Snow | Sumsion |
| Walker | Webb | Wheatley | Wiley |
| Wimmer | Winn | Curtis | |

Absent or not voting were: Representatives

| | | | |
|--------|--------|--------|----------|
| Bowman | Dee | Last | Mathis |
| McIff | Seelig | Tilton | Urquhart |

1st Sub. H.B. 304, as amended by the Senate, transmitted to the Senate for signature of President.

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

NAR INC vs. AUBRIE VERMILLION

CASE NUMBER 070908175 Debt Collection

CURRENT ASSIGNED JUDGE
ROBERT K HILDER

PARTIES

Plaintiff - NAR INC
Represented by: DAVID W SCOFIELD
Represented by: THOMAS W PETERS

Defendant - AUBRIE VERMILLION
Represented by: RONALD W ADY

Other Party - NEIL B BAIRD
Represented by: DEREK A COULTER

ACCOUNT SUMMARY

| | | |
|---------------|--------------|--------|
| TOTAL REVENUE | Amount Due: | 490.75 |
| | Amount Paid: | 490.75 |
| | Credit: | 0.00 |
| | Balance: | 0.00 |

| | | |
|-----------------|------------|--------|
| BAIL/CASH BONDS | Posted: | 300.00 |
| | Forfeited: | 0.00 |
| | Refunded: | 0.00 |
| | Balance: | 300.00 |

REVENUE DETAIL - TYPE: COMPLAINT OK-2K

| | | |
|--|----------------|-------|
| | Amount Due: | 50.00 |
| | Amount Paid: | 50.00 |
| | Amount Credit: | 0.00 |
| | Balance: | 0.00 |

REVENUE DETAIL - TYPE: JURY DEMAND - CIVIL

| | | |
|--|----------------|-------|
| | Amount Due: | 75.00 |
| | Amount Paid: | 75.00 |
| | Amount Credit: | 0.00 |
| | Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | | |
|--|-------------|-------|
| | Amount Due: | 40.00 |
|--|-------------|-------|

CASE NUMBER 070908175 Debt Collection

| | |
|----------------|-------|
| Amount Paid: | 40.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

| | |
|----------------|-------|
| Amount Due: | 10.00 |
| Amount Paid: | 10.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

| | |
|----------------|-------|
| Amount Due: | 30.00 |
| Amount Paid: | 30.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | |
|----------------|------|
| Amount Due: | 0.25 |
| Amount Paid: | 0.25 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | |
|----------------|------|
| Amount Due: | 0.25 |
| Amount Paid: | 0.25 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

| | |
|----------------|-------|
| Amount Due: | 10.00 |
| Amount Paid: | 10.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: APPEAL

| | |
|----------------|--------|
| Amount Due: | 225.00 |
| Amount Paid: | 225.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | |
|----------------|-------|
| Amount Due: | 50.25 |
| Amount Paid: | 50.25 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

BAIL/CASH BOND DETAIL - TYPE: CASH BOND: Civil, Mi

| | |
|------------|-----------------|
| Posted By: | DEREK A COULTER |
| Posted: | 300.00 |

| | |
|------------|--------|
| Forfeited: | 0.00 |
| Refunded: | 0.00 |
| Balance: | 300.00 |

CASE NOTE

PROCEEDINGS

06-01-07 Filed: Complaint
06-01-07 Filed: Complaint 0-2K
06-01-07 Filed return: Summons (Ten Day)
 Party Served: Aubrie Vermillion
 Service Type: Personal
 Service Date: May 29, 2007
06-04-07 Judge JUDGE COLLECTION assigned.
06-04-07 Fee Account created Total Due: 50.00
06-04-07 COMPLAINT 0K-2K Payment Received: 50.00
 Note: Code Description: COMPLAINT 0K-2K
06-18-07 Filed: Answer (Aubrie Vermillion) @V
 AUBRIE VERMILLION
 June 18, 2007
06-18-07 Filed: Demand Civil Jury
06-18-07 Fee Account created Total Due: 75.00
06-18-07 JURY DEMAND - CIVIL Payment Received: 75.00
 Note: Code Description: JURY DEMAND - CIVIL
06-29-07 Note: File fwd to Judge Lewis' clerks
06-29-07 Filed: Entry of Appearance (Derek A Coulter for Assignor) @V
07-03-07 Note: File fwd to Judge Barrett's clerks
07-03-07 Filed: Motion to Quash And/or Limit Subpoena Duces Tecum @V
 Filed by: COULTER, DEREK A
07-09-07 Filed: Neil B Baird's Amended Motion to Quash and/or Limit
 Subpoena Duces Tecum @V
 Filed by: BAIRD, NEIL B
07-23-07 Filed: Defendant's Motion to Compel Discovery from Neil B.
 Baird & for Sanctions for Failure to Attend at his Deposition
 or Produce All of the Documents Subpoenaed @V
 Filed by: VERMILLION, AUBRIE
07-23-07 Filed: Defendant's Memorandum in Support of Her Motion to
 Compel Discovery from Neil B. Baird & for Sanctions for Failure
 to Attend at his Deposition or Produce All of the Documents
 Subpoenaed (hearing requested) @V
08-02-07 Notice - NOTICE for Case 070908175 ID 11182219
 We are unable to enter the default judgment/certificate in this
 case for the following reasons:

 An Answer has been filed by the defendant.

Date: _____

District Court Clerk

08-02-07 Filed: Copy of Default Rejection Notice @V
08-06-07 Filed: Motion for Summary Judgment @V
Filed by: NAR INC,
08-06-07 Filed: Memo in Support of Pltff's Motion for Summary Judgment @V
08-06-07 Filed: Affidavit of Neil G. Baird, D.D.S. @V
08-06-07 Filed: Certificate of Service @V
08-08-07 Filed: Certificate of Service @V
08-08-07 Filed: Affidavit of David J. Saxton @V
08-08-07 Filed: Motion for Protective Order @V
Filed by: NAR INC,
08-08-07 Filed: Memo in Support of Pltff's Motion for Protective Order @V
Filed by: NAR INC,
08-20-07 Filed: Defendant's Motion & Memorandum to Extend the Time to
Respond to the Plaintiff's Motion for Summary Judgment @V
Filed by: VERMILLION, AUBRIE
08-21-07 Filed: Request to Submit for Decision (Motion for Summary
Judgment) @V
08-29-07 Filed: Request to Submit for Decision (Motion for Protective
Order) @V
08-29-07 Filed: Memo in Opposition to Deft's Motion & Memo to Extend the
time to Respond to the Pltff's Motion for Summary Judgment @V
Filed by: NAR INC,
09-04-07 Filed: Defendant's (Ex Parte) Motion & Memorandum to Extend the
Time to Respond to the Plaintiff's Motion for Summary Judgment
@V
Filed by: VERMILLION, AUBRIE
09-05-07 Filed: Notice of Change of Address (ATP) @V
09-10-07 Note: File sent to DC Judge for consideration of Plaintiff's
Motion for Summary Judgment (Request to Submit filed 8/21/07),
Plaintiff's Motion for Protective Order (Request to Submit
filed 8/29/07), and Defendant's Motion & Order to Extend Time
to Respond
09-10-07 Note: to Motion for Summary Judgment. %
09-11-07 Minute Entry - MINUTE ENTRY AND ORDER
Judge: ROBERT K HILDER
Plaintiff's Motion for Summary Judgment was submitted for decision
on August 21, 2007. On August 20, 2007, defendant submitted his
first Motion to enlarge the time for response. That Motion is
without merit, and is DENIED. On September 4, 2007, defendant
submitted a second Motion to enlarge time, which also fails to state
a reasonable basis to extend the time to respond to plaintiff's

motion in a simple collection case. That Motion is also DENIED, and the court has this date signed the plaintiff's proposed Order granting Summary Judgment. The court has not granted defendant's "Motion to Compel Discovery from Neil B. Baird," neither has the court signed the proposed Order granting plaintiff's Motion for Protective Order. As to the Motion to Compel, Neil Baird is not a party to this action, and plaintiff's counsel has expressly denied that it represents Dr. Baird. Therefore, a motion to Compel is inappropriate. Defendant has also issued a subpoena to Dr. Baird, and plaintiff has objected and sought a protective order, but if plaintiff does not represent Dr. Baird, the court does not understand counsel's role in objecting to the subpoena. Dr. Baird may move to quash, and maybe plaintiff has issues of confidentiality, but at present the court does not see how those issues are before this court, but the court will address further motions that explain the unusual posture of this matter.

Date: _____

Judge ROBERT K HILDER

09-11-07 Filed order: MINUTE ENTRY & ORDER @V
Judge JUDGE COLLECTION
Signed September 11, 2007
09-17-07 Filed order: Order (Granting Motion for Summary Judgment) @V
Judge JUDGE COLLECTION
Signed September 11, 2007
09-17-07 Filed order: Judgment (Aubrie Vermillion)
Judge JUDGE COLLECTION
Signed September 11, 2007
09-17-07 Case Disposition is Judgment
Disposition Judge is JUDGE COLLECTION
09-18-07 Judgment #1 Entered \$ 1158.54
Creditor: NAR INC
Debtor: AUBRIE VERMILLION
1,034.25 Principal
63.29 Interest
11.00 Process Service Fee
50.00 Filing Fees
1,158.54 Judgment Grand Total
09-18-07 Filed judgment: Judgment @J
Judge JUDGE COLLECTION
Signed September 11, 2007
09-21-07 Filed: Notice of judgment @V
09-22-07 Note: End of Volume 1.
10-01-07 Filed: Declaration of Aubrie Vermillion @V
10-01-07 Filed: Pltiff's Memo in Support of Her Rule 59 Motion @V
10-01-07 Filed: Def's Motion to Compel Discovery from Neil B. Baird & for

Sanctions for Failure to Attend at His Deposition for Produce all of the Documents Subpoenaed @V

10-17-07 Filed: Memorandum in Opposition to Defendant's Motion for a New Trial under Rule 59 of the Utah Rules of Civil Procedure @V

10-19-07 Filed: Neil B. Baird's Memorandum in Opposition to Defendant's Motion to Compel Discovery and Motion for Sanctions @V

10-19-07 Filed: Notice to Submit Neil Baird's Motion to Quash Subpoena Duces Tecum @V

10-29-07 Filed: Request to Submit for Decision (Defendant's Rule 59 Motion) @V

11-05-07 Filed: Defendant's Reply Memorandum in Support of Her Rule 59 Motion (hearing requested) @V

11-05-07 Filed: Defendant's Motion to Strike the October 19 2007 Memorandum of Dr Baird @V
Filed by: VERMILLION, AUBRIE

11-05-07 Filed: Defendant's Memorandum in Support of Her Motion to Strike the October 19 2007 Memorandum of Dr Baird @V

11-08-07 Note: File sent to DC Judge for consideration of Neil B Baird's Motion to Quash Subpoena Duces Tecum (Notice to Submit filed 10/19/07) and Defendant's Rule 59 Motion (Request to Submit filed 10/29/07). %

11-14-07 Filed: Motion to Strike Defendant's Reply Memorandum @V
Filed by: NAR INC,

11-14-07 Filed: Memorandum in Support of Plaintiff's Motion to Strike Defendant's Reply Memorandum @V

11-14-07 Filed: Certificate of Service (Motion to Strike, Memo) @V

11-15-07 Filed: Neil B Baird's Reply Memorandum in Opposition to Defendant's Motion to Compel Discovery and Motion for Sanctions @V

11-20-07 Notice - NOTICE for Case 070908175 ID 11290828
ARG ON PENDING MOTIONS is scheduled.
Date: 12/07/2007
Time: 03:30 p.m.
Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84114-1860
Before Judge: ROBERT K HILDER

11-20-07 ARG ON PENDING MOTIONS scheduled on December 07, 2007 at 03:30 PM in Fourth Floor - N45 with Judge HILDER.

12-03-07 Filed: Request to Submit for Decision (Plaintiff's Motion to Strike Defendant's Reply Memorandum) @V

12-07-07 Filed: Affidavit of Attorney's Fees and Costs

12-07-07 Minute Entry - Minutes for ARGUMENT/PENDING MOTIONS
Judge: ROBERT K HILDER
Clerk: lindav
PRESENT
Plaintiff(s): NAR INC
Plaintiff's Attorney(s): RANDOLPH CHIP G SHANER JR

Defendant's Attorney(s): RONALD W ADY
Other Parties: DEREK A COULTER
Video
Tape Count: 3:50

HEARING

COUNT: 3:50

After hearing all motions, court ordered case taken under advisement. Court will notify parties of decision in writing.

01-03-08 Filed: Partial Transcript of hearing dated 12-7-07, Jeri Kearbey, CCT

01-03-08 Note: Case still on tracking for Under Advisement from 12/3/2007.

04-21-08 Filed order: Ruling And Order
Judge ROBERT K HILDER
Signed April 21, 2008

04-21-08 SCHEDULING CONFERENCE scheduled on May 19, 2008 at 09:00 AM in Fourth Floor - N45 with Judge HILDER.

04-21-08 Notice - NOTICE for Case 070908175 ID 11437436
SCHEDULING CONFERENCE is scheduled.

Date: 05/19/2008

Time: 09:00 a.m.

Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84114-1860

Before Judge: ROBERT K. HILDER

04-21-08 Judge ROBERT K HILDER assigned.

05-01-08 Notice - NOTICE for Case 070908175 ID 11449360
SCHEDULING CONFERENCE.

Date: 05/29/2008

Time: 09:00 a.m.

Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84114-1860

Before Judge: ROBERT K. HILDER

The reason for the change is Counsel's request.

Robyn from Fabian and Clendenin will send notice

05-01-08 SCHEDULING CONFERENCE scheduled on May 29, 2008 at 09:00 AM in Fourth Floor - N45 with Judge HILDER.

05-05-08 Filed: Amended Notice of Scheduling Conference

05-29-08 Minute Entry - Minutes for SCHEDULING CONFERENCE

Judge: ROBERT K HILDER

Clerk: lindav

PRESENT

Defendant's Attorney(s): RONALD W ADY
Other Parties: DEREK A COULTER
Video
Tape Count: 9:22

HEARING

COUNT: 9:22

Court reserved issues of sanctions and fees. Court ordered counsel given 60 days to take Dr. Baird's deposition relating to Dr. Baird's motion and 10 days to make determination regarding motion to amend.

Court ordered case continued for a telephone conference.
TELEPHONE CONFERENCE is scheduled.

Date: 07/11/2008

Time: 08:30 a.m.

Location: Fourth Floor - N45

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

before Judge ROBERT K HILDER

05-29-08 Notice - NOTICE for Case 070908175 ID 11474981

TELEPHONE CONFERENCE is scheduled.

Date: 07/11/2008

Time: 08:30 a.m.

Location: Fourth Floor - N45

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

before Judge ROBERT K HILDER

Court to initiate phone call:

Ronald Ady: 530-3122

Derek Coulter: 501-0321

Randolph Shaner, Jr.: 363-9966

05-29-08 TELEPHONE CONFERENCE scheduled on July 11, 2008 at 08:30 AM in Fourth Floor - N45 with Judge HILDER.

06-12-08 Filed: Defendant's Motion to Amend Her Answer & Memorandum in Support of Her Motion to Amend
Filed by: ADY, RONALD

06-20-08 Filed order: Order From May 29, 2008 Scheduling Conference
Judge ROBERT K HILDER
Signed June 20, 2008

07-09-08 Filed: Notice Of Substitution Of Counsel

07-11-08 Minute Entry - Minutes for Debt Collection
Judge: ROBERT K HILDER

PRESENT

Plaintiff's Attorney(s): DAVID W SCOFIELD

Defendant's Attorney(s): RONALD W ADY

Other Parties: DEREK A COULTER

Video

T/C with counsel. Plaintiff stipulates to defendant's proposed amended pleadings. Mr. Ady will file by July 18, 2008; plaintiff will respond within time allowed by rule. Any party may request the next hearing.

07-14-08 Filed: Answer & Counterclaim

AUBRIE VERMILLION

08-07-08 Filed: Reply To Counterclaim

11-14-08 Filed: Dr. Baird's Motion For Hearing To Conclude His Pending Motion For Attorney's Fees And Costs

Filed by: COULTER, DEREK A

11-18-08 Notice - NOTICE for Case 070908175 ID 11726733

MOTION FOR ATTY FEES is scheduled.

Date: 12/08/2008

Time: 03:30 p.m.

Location: Fourth Floor - N45

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

Before Judge: ROBERT K HILDER

11-18-08 MOTION FOR ATTY FEES scheduled on December 08, 2008 at 03:30 PM in Fourth Floor - N45 with Judge HILDER.

12-01-08 MOTION FOR ATTY FEES rescheduled on January 13, 2009 at 03:30 PM Reason: Counsel's request..

12-02-08 MOTION FOR ATTY FEES scheduled on January 14, 2009 at 08:30 AM in Fourth Floor - N45 with Judge HILDER.

12-08-08 Filed: Notice Of Hearing

12-24-08 Filed: Transcript, original, one volume, containing each and all of motion hearings held: December 7, 2007; May 29, 2008; and July 11, 2008; 103 total pages, plus word index; Jeri Kearbey, Certified Court Transcriber.

12-24-08 Filed: Copy of title sheet for transcript, one volume, containing each and all of motion hearing proceedings heard: December 7, 2007; May 29, 2008; and July 11, 2008; Jeri Kearbey, Certified Court Transcriber

01-13-09 Fee Account created Total Due: 40.00

01-13-09 COPY FEE Payment Received: 40.00

01-14-09 Minute Entry - Minutes for MOTION FOR ATTORNEY FEES

Judge: ROBERT K HILDER

Printed: 08/23/10 15:58:04

Page 9

CASE NUMBER 070908175 Debt Collection

Clerk: markp

PRESENT

Plaintiff's Attorney(s): THOMAS W PETERS

Defendant's Attorney(s): RONALD W ADY
Other Parties: DEREK A COULTER
Video
Tape Count: 8:44

HEARING

COUNT: 8:44

Counsel argue motion for attorneys fees. Court will conduct a scheduling conference and takes the issue before the court under advisement.

TELEPHONE CONFERENCE is scheduled.

Date: 01/20/2009

Time: 08:30 a.m.

Location: Fourth Floor - N45

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

Before Judge: ROBERT K HILDER

01-14-09 TELEPHONE CONFERENCE scheduled on January 20, 2009 at 08:30 AM
in Fourth Floor - N45 with Judge HILDER.

01-20-09 SCHEDULING CONF scheduled on March 24, 2009 at 08:30 AM in
Fourth Floor - N45 with Judge HILDER.

01-20-09 Minute Entry - Minutes for TELEPHONE CONFERENCE

Judge: ROBERT K HILDER

Clerk: markp

TELEPHONE CONFERENCE

PRESENT

Plaintiff's Attorney(s): DAVID W SCOFIELD

Defendant's Attorney(s): RONALD W ADY

Other Parties: DEREK A COULTER

Video

Tape Count: 8:30

HEARING

COUNT: 8:30

Counsel set in-court scheduling conference for March 24, 2009 at
8:30 a.m. Mr. Schofield to send notice.

SCHEDULING CONF is scheduled.

Date: 03/24/2009

Time: 08:30 a.m.

Before Judge: ROBERT K HILDER
 01-30-09 Filed: Notice Of Change Of Address
 03-12-09 Filed: Defendant's Objection To Proposed Order From January 20,
 2009 Hearing
 03-23-09 Filed: Defendant's Motion To Extend The Time For Fact Discovery
 Filed by: ADY, RONALD
 03-24-09 Minute Entry - Minutes for Debt Collection
 Judge: ROBERT K HILDER
 Clerk: rhilder
 PRESENT
 Plaintiff's Attorney(s): DAVID W SCOFIELD
 Defendant's Attorney(s): RONALD W ADY
 Video

Status/scheduling conf. Mr. Coulter, counsel for Dr. Baird, not present. Jury trial set July 7 & 8, 2009. Mr. Scofield to prepare order. Court will issue Order on Dr. Baird deposition ASAP after reviewing Mr. Ady's objection. Court ordered that Mr. Ady shall attempt to reach agreement with Mr. Coulter on Dr. Baird deposition, but if agreement not possible, counsel may set deposition, and Dr. Baird shall attend or be subject to contempt proceedings. Mr. Scofield to prepare Order.

03-30-09 Filed order: Ruling And Order
 Judge ROBERT K HILDER
 Signed March 25, 2009
 03-30-09 Filed: Correspondence From Mr. Coulter
 03-31-09 JURY TRIAL scheduled on July 07, 2009 at 09:00 AM in Fourth
 Floor - N45 with Judge HILDER.
 03-31-09 JURY TRIAL scheduled on July 08, 2009 at 09:00 AM in Fourth
 Floor - N45 with Judge HILDER.
 04-17-09 Fee Account created Total Due: 10.00
 04-17-09 AUDIO TAPE COPY Payment Received: 10.00
 04-23-09 TELEPHONE CONFERENCE scheduled on April 24, 2009 at 08:30 AM in
 Fourth Floor - N45 with Judge HILDER.
 04-23-09 Notice - NOTICE for Case 070908175 ID 12082594
 TELEPHONE CONFERENCE is scheduled.
 Date: 04/24/2009
 Time: 08:30 a.m.
 Location: Fourth Floor - N45
 THIRD DISTRICT COURT
 450 SOUTH STATE
 SLC, UT 84114-1860
 Before Judge: ROBERT K HILDER

Printed: 08/23/10 15:58:05 Page 11

CASE NUMBER 070908175 Debt Collection

Court to initiate the phone call.
 Ronald Ady: 530-3122
 David Scofield: 322-2002
 Derek Coulter: 501-0321

04-24-09 Minute Entry - Minutes for Debt Collection

Judge: ROBERT K HILDER

Clerk: rhilder

TELEPHONE CONFERENCE

PRESENT

Plaintiff's Attorney(s): DAVID W SCOFIELD

Defendant's Attorney(s): RONALD W ADY

Other Parties: DEREK A COULTER

Video

T/C with counsel regarding details of Dr. Baird deposition scheduled this date. Guidelines stated by court. Counsel invited to call during deposition if any problems arose. No order required.

07-02-09 Filed: Plaintiff's Proposed Jury Instructions

07-05-09 Filed: Plaintiff's Motion In Limine

Filed by: SCOFIELD, DAVID W

07-05-09 Filed: Memorandum Supporting Plaintiff's Motion In Limine

07-05-09 Filed: Plaintiff's Proposed Jury Instructions

07-07-09 Filed: Jury List

07-07-09 Filed order: Ruling - Dr. Baird As Expert

Judge ROBERT K HILDER

Signed July 06, 2009

07-07-09 Filed: Plaintiff's Proposed Verdict Form

07-07-09 Filed: Motion To Quash Subpoena To Mark Olson

Filed by: SCOFIELD, DAVID W

07-07-09 Filed: Memorandum Supporting Motion To Quash Subpoena To Mark Olson

07-07-09 Minute Entry - Minutes for Jury Trial

Judge: ROBERT K HILDER

Clerk: markp

PRESENT

Defendant(s): AUBRIE VERMILLION

Plaintiff's Attorney(s): DAVID W SCOFIELD

Defendant's Attorney(s): RONALD W ADY

Video

Tape Number: N-45 Tape Count: 8:53

TRIAL

Printed: 08/23/10 15:58:05

Page 12

CASE NUMBER 070908175 Debt Collection

TAPE: N-45 COUNT: 8:53

Court addresses scope of trial with counsel. Mr. Ady makes a motion to continue, court denies motion. Court grants motion to quash subpoena to Mark Olson.

COUNT: 12:23

Jurors present. Jurors sworn on voir dire examination. Impaneled

jury sworn in.

COUNT: 2:32

Jury not present. Settlement read into the record, Mr. Scofield to prepare order.

07-08-09 JURY TRIAL Cancelled.
 07-16-09 Fee Account created Total Due: 30.00
 07-16-09 Fee Account created Total Due: 0.25
 07-16-09 AUDIO TAPE COPY Payment Received: 30.00
 07-16-09 COPY FEE Payment Received: 0.25
 10-02-09 Filed: Memorandum Of Points And Authorities Supporting Dr. Neil B.Baird's Motion For Attorney's Fees And Costs Against Ronald W. Ady, Esq.
 10-19-09 Filed: Defendants' Motion To Extend The Time For Their Response To Dr. Baird's Motion For Attorney Fees And Costs
 Filed by: ADY, RONALD
 10-19-09 Filed: Request to Submit
 10-21-09 Filed order: Order Extending The Time To Respond To Dr. Baird's Motion For Attorney Fees And Costs
 Judge ROBERT K HILDER
 Signed October 21, 2009
 11-02-09 Filed: Defendants' Motion To Further Extend The Time For Their Response To Dr. Baird's Motion For Attorney Fees And Costs
 Filed by: ADY, RONALD
 11-04-09 Filed: Partial Trascript of Trial Settlement Agreement, July 7, 2009; Jeri Kearby, CCT
 11-04-09 Filed: Ex Parte Motion to File Overlength Memorandum
 Filed by: ADY, RONALD W
 11-04-09 Filed: Defendant's Memorandum in Opposition to Dr. Baird's Motion For Attorney Fees (Pursuant to Rule 7(e) Defendant Requests a Hearing)
 11-04-09 Filed: Declaration of Ronald Ady
 11-04-09 Filed order: Order Extending Time
 Judge ROBERT K HILDER
 Signed October 04, 2009
 11-05-09 Filed: Declaration of Dustin Vermillion
 11-05-09 Filed: Declaration of Aubrie Vermillion
 11-16-09 Filed: Defendant's Memorandum In Support Of Her Motion For Monetary Sanctions Against Attorney Derek Coulter
 11-16-09 Filed: Reply Memorandum In Support Of Dr. Baird's Motion For Attorney's Fees And Costs Against Ronald W. Ady, Esq.
 11-16-09 Filed: Affidavit Of Attorney's Fees And Costs
 11-16-09 Filed: Notice to Submit On Dr. Baird's Motions For Attorney's Fees

Printed: 08/23/10 15:58:05

Page 13

CASE NUMBER 070908175 Debt Collection

11-17-09 Filed: Defendant's Motion For Monetary Sanctions Against Attorney Derek Coulter
 Filed by: ADY, RONALD
 11-17-09 Filed: Amended Defendant's Memorandum In Support Of Her Motion For Monetary Sanctions Against Attorney Derek Coulter
 11-17-09 Fee Account created Total Due: 0.25
 11-17-09 COPY FEE Payment Received: 0.25

11-20-09 Notice - NOTICE for Case 070908175 ID 12571122
 DR. BAIRD MOTION FOR ATTY FEE is scheduled.
 Date: 12/15/2009
 Time: 09:00 a.m.
 Location: Fourth Floor - N45
 THIRD DISTRICT COURT
 450 SOUTH STATE
 SLC, UT 84114-1860
 Before Judge: ROBERT K HILDER

11-20-09 DR. BAIRD MOTION FOR ATTY FEE scheduled on December 15, 2009 at
 09:00 AM in Fourth Floor - N45 with Judge HILDER.

11-23-09 Filed: TRANSCRIPT for Hearing of 07-07-2009

12-04-09 Filed: Notice of Citation of Supplemental Authority

12-08-09 Filed: Memorandum in Opposition to Defendant's Motion For
 Monetary Sanctions Against Attorney Derek Coulter

12-08-09 Filed: Motion For Enlargement of Time to File an Opposition to
 Defendant's Motion For Monetary Sanctions Against Attorney Derek
 Coulter
 Filed by: COULTER, DEREK A

12-10-09 Filed: TRANSCRIPT for Hearing of 01-14-2009

12-10-09 Filed: TRANSCRIPT for Hearing of 03-24-2009

12-10-09 Filed: TRANSCRIPT for Hearing of 04-24-2009

12-11-09 Filed: Defendant's Ex Parte Motion To Extend The Time For
 Defendant's Reply Memorandum By Continuing The December 15,
 2009 Hearing
 Filed by: ADY, RONALD

12-14-09 DR. BAIRD MOTION FOR ATTY FEE Cancelled.
 Reason: Court Ordered

12-14-09 Filed: TRANSCRIPT for Hearing of 07-07-2009

12-16-09 Filed: Transcript, Motion Hearing, January 14, 2009; Jeri
 Kearby, CCT

12-16-09 Filed: Transcript, Hearing, March 24, 2009; Jeri Kearbey, CCT

12-16-09 Filed: Transcript, Telephonic Hearing, April 24, 2009; Jeri
 Kearbey, CCT

12-16-09 Notice - NOTICE for Case 070908175 ID 12626076
 PENDING MOTIONS is scheduled.
 Date: 01/08/2010
 Time: 09:00 a.m.
 Location: Fourth Floor - N45
 THIRD DISTRICT COURT
 450 SOUTH STATE
 SLC, UT 84114-1860

Printed: 08/23/10 15:58:06

Page 14

CASE NUMBER 070908175 Debt Collection

Before Judge: ROBERT K HILDER

12-16-09 PENDING MOTIONS scheduled on January 08, 2010 at 09:00 AM in
 Fourth Floor - N45 with Judge HILDER.

12-16-09 Filed: Partial Transcript of Trial July 7, 2009 (hard copy),
 Jeri Kearbey, CCT.

12-18-09 Filed: Defendant's Reply Memorandum In Support Of Her Motion
 For Sanctions Against Attorney Derek Coulter

12-21-09 Filed: Ex-Parte Motion To File Over-Length Reply Memorandum

Filed by: ADY, RONALD
 12-31-09 Filed: Defendant's Memorandum In Support Of Her Motion To Enforce Settlement Agreement
 12-31-09 Filed: Defendant's Motion To Enforce Settlement Agreement
 Filed by: ADY, RONALD
 12-31-09 Filed: Defendant's Motion To Classify Her Motion and Memorandum To Enforce Settlement As Private Or Protected
 Filed by: ADY, RONALD
 01-08-10 Minute Entry - Minutes for PENDING MOTIONS
 Judge: ROBERT K HILDER
 Clerk: markp
 PRESENT
 Defendant's Attorney(s): RONALD W ADY
 Other Parties: DEREK A COULTER
 Audio
 Tape Number: N-45 Tape Count: 9:11

HEARING

TAPE: N-45 COUNT: 9:11

Court determines that the motion to enforce settlement needs to be addressed before any other motions. Court will schedule time for all pending motions to be argued, allowing for the appropriate responses to be filed first. End time 9:23.

02-05-10 Filed: Niel B. Baird, D.D.S.'s Memorandum In Opposition To Defendant's Motion To Enforce Settlement Agreement
 02-17-10 Filed: Defendants Motion To Extend The Time For Her Reply Memorandum In Support Of Her Motion To Enforcement Settlement Agreement
 Filed by: ADY, RONALD
 02-17-10 Filed order: Order Extending the Time for Defendant's Reply Memorandum in Support of Her Motion to Enforce Settlement
 Judge ROBERT K HILDER
 Signed February 17, 2010
 03-01-10 Filed: Defendants Reply Memorandum In Support Of Her Motion To Enforce Settlement Agreement
 03-23-10 Filed: Defendant's Objection To Plaintiff N.A.R.'s Proposed Form Of Order
 03-25-10 Filed: NOTICE OF E-FILER STATUS AND CONSENT TO ELECTRONIC

Printed: 08/23/10 15:58:06

Page 15

CASE NUMBER 070908175 Debt Collection

SERVICE

03-25-10 Filed: Amended Defendant's Objection to Plaintiff N.A.R.'s Proposed Form of Order
 03-26-10 Filed: OTHER: PLAINTIFF'S REPLY RE: AMENDED OBJECTION TO PROPOSED FORM OF ORDER OF DIMI
 03-26-10 Filed: REQUEST TO SUBMIT FOR DECISION
 03-26-10 Filed: RETURN OF ELECTRONIC NOTIFICATION
 03-29-10 Filed: RETURN OF ELECTRONIC NOTIFICATION
 03-30-10 Filed: Request to Submit For Decision

04-05-10 Notice - NOTICE for Case 070908175 ID 12882378

ORAL ARGUMENT is scheduled.

Date: 04/28/2010

Time: 02:00 p.m.

Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84114-1860

Before Judge: ROBERT K HILDER

Court will address N.A.R.'s proposed order and defendant's motion to enforce settlement agreement.

04-05-10 ORAL ARGUMENT scheduled on April 28, 2010 at 02:00 PM in Fourth Floor - N45 with Judge HILDER.

04-16-10 ORAL ARGUMENT rescheduled on May 05, 2010 at 10:00 AM
Reason: Counsel's request..

05-05-10 Minute Entry - Minutes for PENDING MOTIONS

Judge: ROBERT K HILDER

Clerk: markp

PRESENT

Plaintiff's Attorney(s): DAVID W SCOFIELD

Defendant's Attorney(s): RONALD W ADY

Other Parties: DEREK A COULTER

Audio

Tape Number: N-45 Tape Count: 10:06

HEARING

TAPE: N-45 COUNT: 10:06

Court first addresses defendants motion to enforce settlement agreement. Counsel present arguments. Court grants defendants motion to enforce settlement agreement. Mr. Scofield and Ady will work on preparing orders. End time 10:31.

05-10-10 Fee Account created Total Due: 10.00

05-10-10 AUDIO TAPE COPY Payment Received: 10.00

06-22-10 Filed: Defendant Aubrie Vermillion's Objection to Dr. Baird's Proposed Form of Order on the May 5, 2010 Hearing

07-06-10 Filed order: Order On Defendant's Motion To Enforce Settlement

Printed: 08/23/10 15:58:06

Page 16

CASE NUMBER 070908175 Debt Collection

Agreement

Judge ROBERT K HILDER

Signed July 06, 2010

07-06-10 Filed: Response To Defendant's Objection To Baird's Proposed Order On The May 5, 2010 Hearing

08-03-10 Fee Account created Total Due: 225.00

08-03-10 Filed: Notice of Appeal

08-03-10 APPEAL Payment Received: 225.00

Note: Code Description: APPEAL

08-03-10 Bond Account created Total Due: 300.00

| | | |
|--|-------------------|--------|
| 08-03-10 Bond Posted | Payment Received: | 300.00 |
| 08-06-10 Fee Account created | Total Due: | 50.25 |
| 08-06-10 COPY FEE | Payment Received: | 50.25 |
| 08-16-10 Filed: TRANSCRIPT for Hearing of 05-05-2010 | | |