

R655. Natural Resources, Water Rights.

R655-3. Reports of Water Rights Conveyance.

R655-3-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-1-10 and 73-2-1(4)(a) which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

APPURTENANCE - A right or improvement to a property that passes with the property upon the transfer of the property. As applied to water rights, it is as described in Utah Code Section 73-1-11.

APPROPRIATION - an application seeking to appropriate water pursuant to Utah Code Section 73-3-2.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the specific use(s) authorized under a water right expressed in terms of the purpose(s) to which the water may be applied and the quantity of that purpose. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated (e.g. 11.22 acres).

CHAIN OF TITLE - A series of deeds or other properly filed and recorded documents which demonstrate the transfer of a water right, a portion of a water right, or land with appurtenant water rights. Deeds establishing a chain of title begin with the owner listed on records of the Division of Water Rights as grantor of the first deed through a chronological succession of transfer documents where the right is ultimately conveyed to the grantee listed as new owner on the Report of Water Right Conveyance.

CHANGE APPLICATION - an application authorized to be made under Utah Code Section 73-3-3 to change the point of diversion, place of use, nature of use, period of use or storage of a water right.

CONFLICTED HOLDER - a person or entity claiming ownership of all or a portion of a water right that conflicts with the ownership claim of another person or entity claiming ownership of the same right or portion in question. Conflicted holders may also include title holders whose title is not directly disputed, but is the part-owner of a right where a title question exists, and to resolve the question, the State Engineer deems the holder should be involved.

DIVERSION LIMIT - the total volume of water in acre-feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to supply the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

EXCHANGE APPLICATION - as authorized under Utah Code Section 73-3-20, an application to allow water from one source to be exchanged for water from another source. Exchanges are conditional rights that do not modify the underlying rights (right on which the exchange is based). The water may be exchanged to the extent it is available and not used under the underlying right. For the purpose of updating title, an approved Exchange Application is appurtenant to land and transfers as other water right interests.

PLACE OF USE - the specific acreage where water under a water right may be placed to beneficial use as described on the records of the State Engineer or a decree.

PROFESSIONAL - for the purposes of this rule, a person authorized to submit a Report of Conveyance as specified in Utah Code Section 73-1-10. A professional must be licensed in Utah as an attorney, a professional engineer, a title insurance producer, or a professional land surveyor.

REPORT OF CONVEYANCE (ROC) - a report of water right conveyance to the state engineer as required by Section 73-1-10.

SHARE STATEMENT - A water right file created on state engineer records for purposes of administration in instances where the owner of shares of stock in a water company is authorized under statute to file an application (nonuse or change application) based on stock ownership. Water rights based on share statements are a conditional right. A water right change application based on shares of stock is appurtenant to the land where it is used and transfers as other interests in water rights. Shares of Stock do not transfer under rules of other rights to use water but transfer as securities as set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

SOLE SUPPLY - means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right is assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

SUPPLEMENTAL GROUP - Also referred to as a Water Use Group, means one or more water rights listed together and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use. The unique number referred to is shown on the Division's computer data base as Supplemental Group No.

WATER RIGHT NUMBER - a unique file number assigned by the Division beginning with a two digit prefix associated with a specific geographic area designated by the Division, followed by a dash followed by another number to establish a specific number for

the administrative functions of the Division. (e.g. 43-3231)

WATER RIGHTS ADDENDUM - an addendum to a deed clarifying the water rights conveyed by the deed pursuant to Section 73-1-10(1)(d)(i) and 73-1-11(6). Addendums are recorded with the deed it accompanies at the County Recorder's Office and are forwarded by the County Recorder to the State Engineer pursuant to Utah Code Section 57-3-109.

R655-3-3. When a Water Rights Addendum Acts as a Report of Conveyance.

3.1 When a recorded Deed and water right or land addendum is transmitted to the State Engineer by a County Recorder, as required by Utah Code Section 57-3-109, the state engineer under Utah Code Section 73-1-10(1)(d)(ii) will process the Water Rights Addendum as though it were a submitted Report of Water Right Conveyance.

3.2 Water Right Addendums submitted in conformance with this rule shall be processed by the state engineer and ownership updated on water right records of the Division if:

3.2.1 The grantor listed on the deed and addendum is the owner as listed on water right records of the Division;

3.2.2 The Water Rights Addendum document is properly completed as instructed on the form; and

3.2.3 The addendum is signed by all grantors and grantees on the deed.

3.3 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Rights Addendum as described in this rule, the state engineer shall provide written notice to the grantee at the address stated on the addendum of the reasons ownership was not updated.

3.4 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Right Addendum as described in this rule, a water right owner shall submit a report of water right conveyance as directed in Utah Code Section 73-1-10(3) and these rules.

R655-3-4. Content of the Report of Conveyance.

4.1 A Report of Conveyance consists of:

4.1.1 A form provided by the state engineer which must be completed by the submitter;

4.1.2 Sufficient documentation presented as copies of properly recorded or authenticated documents to demonstrate the Chain of Title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right; and

4.1.3 Maps conforming to Rule R655-3-5 when conveyance by Appurtenance to land is asserted in the report of conveyance.

4.1.4 Additional information in the form of affidavits, opinions, and explanations if deemed necessary by the state engineer to process the ROC.

4.1.5 A fee paid to the State Engineer to process the Report of Conveyance pursuant to Utah Code Section 73-2-14(1)(q).

4.2 The content of a Report of Conveyance form is as follows:

4.2.1 A single specified water right number to which the report pertains. The ownership record of the Division for this water right number is the only record which will be updated when the ROC is deemed acceptably complete.

4.2.2 A summary of the documents relied upon to establish a Chain of Title including:

4.2.2.1 The type of conveyance document;

4.2.2.2 Recording information on a deed including the date it was signed and recorded, and the Recorder's entry number;

4.2.2.3 The grantor name(s) as it appears on the conveyance document;

4.2.2.4 The grantee names exactly as they appear on the conveyance document;

4.2.2.5 Any reservations or special conditions of conveyance.

4.2.2.6 If a portion of the owner's interest in a water right is conveyed, the "Portion" Report of Conveyance form must be used which additionally requires:

4.2.2.6.1 The quantity of each beneficial use conveyed.

4.2.2.6.2 If applicable, the quantity of use on a change application that was conveyed.

4.2.2.6.3 The diversion limit if applicable.

4.2.3 The number of any change application to which the report also pertains.

4.2.4 The mailing address of all new owner(s) as identified in the Chain of Title as the mailing address is to be shown on records of the state engineer.

4.2.5 A signed certification of the owner if the ROC is submitted by an individual without a professional certification attesting that the information contained in the ROC is true and accurate.

4.2.6 A signed certification by a Professional unless submittal by a Professional is exempted in these rules. The certification shall state: "The professional was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Recorder records has been made and that the attached documents evidence the ownership interest of the grantee." The certification must include the professional's name,

profession, license number, mailing address and phone number.

4.3 Copies of deeds submitted as supporting documentation must be properly recorded in the county where water is diverted and, if different, the county where the water is used. The recording information must appear on deeds submitted.

4.4 A water right deed conveys only the water right or portion thereof expressly identified in the deed.

4.5 A document relied upon by a County Recorder's office to maintain a tract index for land with an appurtenant water right will be accepted as a conveyance document consistent with Utah Code Section 73-1-11(1)(b). Documents submitted must include: a chain of title from the person identified on the State Engineer's records as owning the water right to the person shown on the County Recorder's records as owning the property to which the water right is appurtenant; a copy of the tract index from the County Recorder; and/or an affidavit endorsed by the Report of Conveyance professional affirming that the water right has not been severed from the land but remains appurtenant to the property.

4.6 If an interest in a water right has been segregated from another water right, a deed recorded subsequent to the segregation must show the currently assigned water right number for the segregated water right.

4.7 The document required to support the change of the name of a corporation is a certificate of name change, or other similar document, stamped by the Utah Department of Commerce, or by the appropriate agency in the State in which the corporation is incorporated, accompanying the Report of Conveyance.

4.8 A copy of a marriage license evidences the change of name of an individual specified in the license.

4.9 A copy of a decree of a court of competent jurisdiction evidences the change of name of an individual as declared in the decree.

4.10 A copy of a death certificate evidences the dissolution of joint tenancy in favor of the surviving party (removal of a joint tenant as an owner on Division records).

4.11 A properly executed affidavit by an individual evidences aliases by which the individual may be named in other documents.

4.12 In the case of poor copies, improved copies may be requested.

4.13 Supporting documents must be arranged in ascending chronological order (oldest to youngest) by recording date.

R655-3-5. Maps and Mapping Standards for Reports of Conveyance.

5.1 Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the

water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

5.2 Maps shall meet the following standards:

5.2.1 Maps must be legible.

5.2.2 Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.

5.2.3 Maps are to state the water right number conveyed.

5.2.4 Maps are to include a north arrow.

5.2.5 Maps are to be drawn to scale with a graphical scale bar contained thereon.

5.2.6 Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.

5.2.7 At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.

5.2.8 Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.

5.2.9 Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.

5.2.10 Maps are to show any reservations from the property including property described by language such as "less and excepting" in the overall property description.

5.2.11 Each deed submitted must have a map accompanying it unless the property description in every deed is identical.

5.2.12 Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

5.3 The accuracy and completeness of maps are the responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

R655-3-6. Procedures for Processing a Report of Conveyance.

6.1 Upon receipt of a Report of Conveyance, the state engineer shall assess if the Report of Conveyance is acceptably completed in form and substance.

6.2 If a Report of Conveyance is acceptably complete, it will be processed and Division records updated to reflect ownership of the water right in accordance with the Report. Written notice will be sent to the new owner identified in the Report of Conveyance.

6.3 If a Report of Conveyance is not acceptably complete, the ROC will be returned to the submitting party with an explanation of why it is not considered acceptably complete.

6.4 If the fee for the ROC has been processed by the state engineer prior to the return of a ROC to the submitting party, the state engineer will place a copy of the ROC on the water right file but will not update ownership records until the ROC is acceptably complete.

The submitting party will be allowed 90 days to return a corrected or completed ROC for processing without further fee.

6.5 The accuracy and completeness of the Report is the sole responsibility of the submitter.

6.6 A Report of Conveyance which conflicts with another Report on the same water right will not be processed and will be returned to the submitter. Its receipt will be noted on records of the state engineer and the disputing parties notified. The state engineer will take no further administrative action on a water right which is the subject of a conflict until the conflict is resolved.

6.6.1 Conflicted Holders may resolve the title conflict by filing documents that resolve the title question with the State Engineer. To be evaluated, any documents submitted, including court orders, must first be filed with the applicable county recorder where the water right is diverted and used. Any resolution document, agreement or order between the Conflicted Holders must directly address the title conflict of record rather than appeal to state engineer discretion in resolving the matter.

6.6.2 Nothing in this Section 6.6 shall be construed to create a title conflict where a deed with precedence over subsequent deeds relied upon in a chain of title used to update state engineer records is submitted in a Report of Conveyance. However, the deed holder assumes ownership of the water right on state engineer records subject to all administrative actions which have occurred at the time the ROC is submitted and individual ROCs must be filed for each segregated portion of the water right affected by the conveyance documents.

R655-3-7. When a Water Right Owner Is Authorized to Prepare a Report of Conveyance Without a Professional.

7.1 A Report of Conveyance may be submitted by the owner of a water right without the certification of a professional only in the following situations:

7.1.1 When the deed or deeds convey 100% of a water right and state the water right number on the deed.

7.1.2 When the deed or deeds convey an owner's interest in a portion of a water right, all owners of that interest of the right shall sign the deed as grantors, the deed conveys the portion by

stating the water right number on the deed, and the sole supply has been established for the portion conveyed.

7.1.3 When the Report of Conveyance is submitted to change the name of an owner but does not report the conveyance of an interest in the water right to a new party.

7.1.4 When the Report of Conveyance is submitted to remove the name of a joint tenant due to death.

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