

Index of Recent Litigation Affecting Water Rights Administration,
2002 – 2006 - by Kevin Arthofer

The reports of the Biennial Report Series include a litigation section stating: Water Right administration is either supported or resisted depending on the interests of the identities involved in water and irrigation litigation cases. In many decisions by the State Engineer, a review of the action by the district courts is determined necessary by some water users throughout the state. In the course of such litigation court decisions are made which affect water administration and are index herein.

This chapter presents the decisions of the Utah Supreme Court, the Utah Court of Appeals and the District Courts of Utah from 2002 - 2006. The majority of the decisions are decisions of the Supreme Court and these summaries have been taken from the Utah Supreme Court Index of Opinions Website and are not the language of the author.^{xv} For each decision, the Works Cited at the end of this report provides the reference material and an Internet link; this index is not an official document of record. The decisions have been organized in chronological order:

Spears, et al,

v.

Warr¹⁵⁹

2002 UT 24; 44 P.3d 742

Supreme Court of Utah

March 8, 2002

Melvin Spear and several others (Buyers) purchased lots from Edward Warr and his family (Sellers). At the time of purchase, the Buyers believed the water rights to the lots were included in the purchase price. Subsequently, the Sellers asked for an additional sum to convey the water rights. The Buyers sued, seeking conveyance of the water rights. The district court found for the Buyers and ordered the Sellers to convey the water rights. The Sellers appealed.

The Utah Supreme Court affirmed the district court's ruling, holding that evidence of the Seller's intent to convey the water rights after the execution of the warranty deeds, as well as the Buyers' act of paying for the water rights invoked the equitable remedy of specific performance. Therefore, the Sellers were obligated to transfer title to the water rights over to the Buyers as promised.

^{xv} Note: The decision summaries included in this index have been taken from previously published and unpublished Division literature written and compiled by Riley Snow. For all opinions, except reference numbers 163 and 170, Snow's work is not directly referenced in the Works Cited—Rather, the court opinion source itself is referenced.

State of Utah, Dept. of Natural Resources
v.
Huntington-Cleveland Irrigation Co.¹⁶⁰

2002 UT 75; 52 P.3d 1257

Supreme Court of Utah
July 30, 2002

The Utah Department of Natural Resources (DNR), a shareholder in the Huntington-Cleveland Irrigation Company (HCIC) brought suit claiming its shares were improperly classified as non-irrigation shares. Such a classification subjected the shares to additional assessments and limited the DNR's voting rights. The district court dismissed the action for failure to bring it within the statute of limitation for implied contracts.

The Utah Supreme Court reversed, holding that each time an assessment by the water company is made, or voting is disallowed, the statute runs anew. Therefore, the DNR could challenge the four years prior to assessment (under the statute of limitation for implied contracts) or the three years prior to assessment (under the statute of limitation for statutory claims).

Utah Department of Transportation
v.
G. Kay, Inc.¹⁶¹

2003 UT 40; 78 P.3d 612

Supreme Court of Utah
September 26, 2003

The United State Army Corps of Engineers expressed concerns about granting a permit to allow the Utah Department of Transportation (UDOT) to construct an interstate highway bypass because it threatened nearby wetlands. In response, the Utah Legislature amended Utah Code Ann. §§ 72-5-102 and 103 to include the mitigation of impacts from transportation projects as a valid state transportation purpose. Under this new authority, UDOT began condemnation proceedings to acquire property and water rights from nearby landowners to establish a wildlife preserve in an effort to offset the impacts of the highway project. The affected landowners brought suit claiming UDOT's condemnation actions exceeded its authority under the statute.

The Utah Supreme Court held that UDOT's actions were a valid exercise of its authority under Utah Code Ann. §§ 72-5-102 and 103. The Court found the plain language of the statute allowed UDOT to acquire any real property or interest in real property necessary for state transportation purposes. Such purposes included environmental mitigation projects, and real property interests including water rights. Furthermore, the Court held that this grant of authority to UDOT was proper, and that UDOT acted in good faith in commencing the condemnation proceedings. Therefore, the Court upheld UDOT's actions.

Green River Canal Co.

v.

Thayn¹⁶²

2003 UT 50; 84 P.3d 1134

Supreme Court of Utah

November 7, 2003

Green River Canal Company (GRCC) brought suit against fellow irrigation canal user Lee Thayn (Thayn) claiming Thayn breached a 1952 agreement (the Agreement) governing the shared use of certain water diversion facilities in Green River, Utah. GRCC claimed that a small hydroelectric facility built by Thayn utilized water in excess of the terms of the Agreement. The trial court found Thayn in violation of the terms of the Agreement, holding that the Agreement was determinative as to the amounts of water each party could divert and to the uses to which the water could be put.

The Utah Supreme Court disagreed. It held that the terms of the Agreement did not impose limits on the amount of water that could be diverted, but merely described the parties' water rights, established priority of use, and resolved issues of facility maintenance. The Court rejected GRCC's interpretation of the terms of the Agreement because it would allow GRCC to prevent Thayn from applying excess water to the established beneficial use of hydroelectric power generation. It held that as long as GRCC received its full water right, it had no right under the Agreement to unilaterally control the amount or use of Thayn's water, because that interpretation would violate the principal of beneficial use.

United States Fuel Co.

v.

Huntington-Cleveland Irrigation Company¹⁶³

2003 UT 49; 79 P.3d 945

Supreme Court of Utah

November 7, 2003

United States Fuel Company (USF) brought an action to quiet title to water rights in a certain creek. Huntington-Cleveland Irrigation Company (HCIC) counter-claimed,

asking the court to recognize its right as senior. The trial court quieted title to the rights in favor of USF based on its own findings, disregarding the proposed determination of the State Engineer

On appeal, HCIC argued that the trial court did not have the authority to exercise jurisdiction over the matter. The Utah Supreme Court agreed, holding that only after filing a timely objection to a proposed determination is a party free to challenge the definition a water right in a proposed determination. The Court interpreted Utah Code Ann. § 73-4-12 (2003), as requiring a court to enter a judgment consistent with the proposed determination of the State Engineer if the proposed determination goes uncontested.

The proper course of action for USF was to seek to petition the trial court to accept its late objection. It could not, however, attack the proposed determination by filing an action outside the general adjudication. Utah courts do not have authority to quiet title in a manner inconsistent with the uncontested proposed determination of the State Engineer.

Prisbrey
v.
Bloomington Water Company¹⁶⁴

2003 UT 56; 82 P.3d 1119

Supreme Court of Utah
December 5, 2003

Bloomington Water Company (BWC) filed a petition with the State Engineer for a permanent change of point of the diversion and place of use of its water rights. As required under Utah Code Ann. § 73-3-6 (2003), the State Engineer published notice of the change application in a local newspaper of general jurisdiction. Despite the notice, Ladell Prisbrey (Prisbrey), an adjacent landowner, did not file an objection to the change application and was therefore not a party to the administrative proceedings.

Subsequently, the State Engineer approved the change application. Prisbrey petitioned the district court for judicial review of the decision. The district court granted summary judgment in favor of BWC holding that Prisbrey lacked standing because he had failed to exhaust his administrative remedies by not filing a protest.

The Utah Supreme Court agreed with the district court holding that the State Engineer's published notice strictly complied with section 73-3-6 and was therefore adequate. Although Prisbrey argued that the legal description of the point of diversion was "virtually undecipherable," the Court held that "as a member of the 'water-right holding community,' [Prisbrey] must be presumed to understand the legal description nomenclature employed by the State Engineer." Since such legal descriptions are commonly used to describe a particular location, the Court held that the description provided adequate notice as required by section 73-3-6. In addition, the Court held that by failing to file a protest as required under Utah Code Ann. § 73-3-7 (2003), Prisbrey

failed to exhaust his administrative remedies and thus lacked standing to petition for judicial review.

Washington County Water Conservancy District

v.

Morgan¹⁶⁵

2003 UT 58; 82 P.3d 1125

Supreme Court of Utah

December 23, 2003

Washington County Water Conservancy District (WCWCD) brought suit against the Corporation of the Presiding Bishopric of the LDS Church (CPB), the State Engineer (SE) and other water users over the approval of a change application affecting the place and nature of use, and the points of diversion of certain water rights. WCWCD also sought a judicial declaration that the water users had forfeited the water rights. The district court found for the CPB and WCWCD appealed.

The Utah Supreme Court affirmed the district court's decision. It found that WCWCD lacked standing to assert forfeiture of CPB's water rights because as the trial court determined, WCWCD would not stand to benefit directly from the forfeiture. The Court held that although Utah Code Ann. § 73-7-1 (1989) allows any party to file a protest with the SE, this act alone does not make that party "aggrieved" for the purposes of Utah Code Ann. § 73-3-14 (1989). Section 73-3-14 only allows "aggrieved" parties standing to assert forfeiture. To be considered "aggrieved," a party must be able to show some distinct or palpable injury as a result of the SE's decision. The Court held that WCWCD failed to show it would benefit from a forfeiture determination.

Finally, the Court held that the provisions of the Water Conservancy Act do not grant water conservation districts "an express . . . power to enforce the beneficial use of water through the use of the water forfeiture statute, nor do they include an express grant of power to appeal the State Engineer's decisions on change applications." Water conservation districts must meet general standing requirements the same as any other party.

Green River Canal Company

v.

Olds¹⁶⁶

2004 UT 106

Supreme Court of Utah

December 21, 2004

In this case, the Utah Supreme Court had to determine whether Utah Code Ann. § 73-4-11 required the State Engineer to serve proposed determination solely by regular

mail, or if personal service was also allowed. Furthermore, the Court had to determine if Utah Code Ann. § 73–4–10 gave the trial court overseeing a general adjudication the authority to retroactively extend the time period in which objections could be filed.

According to the facts of the case, the Green River Canal Company (“GRCC”) received personal service by State Engineer of a proposed determination in December of 1972. It filed an objection to the proposed determination in June of 1973. The State Engineer is required, under section 73–4–11, to provide a copy of any proposed determination “by regular mail to each claimant” and that “any claimant dissatisfied therewith may within ninety days from such date of mailing file with the clerk of the district court a written objection thereto duly verified on oath.” GRCC claimed that the State Engineer should not have dismissed its objection as untimely because it never received proper notice. The State Engineer argued that the personal service it provided to GRCC satisfied the notice requirement of section 73–4–11; therefore, the ninety-day deadline for filing objections should apply.

The Court did not find GRCC’s arguments, or the trial court’s reasoning, persuasive. It agreed with the State Engineer’s interpretation of the statute and could find “no principled reason to conclude that personal service is insufficient to effectuate the purpose of section 73-4-11. In fact, the Court noted that “personal service of proposed determinations is preferable in many ways to providing service via regular mail” because it allowed the claimant a full ninety days to file an objection. However, the court also held that section 73–4–10 gave authority to district courts to grant retroactive extensions to the ninety-day objection period if due cause for delay can be shown. It remanded the case to the trial court to determine if GRCC could show sufficient due cause to justify its untimely-filed objection.

There are significant implications in this decision, particularly with regard to the proof process. The judgment of the court dicta is what made this case important.

Searle
v.
Milburn Irrigation Co.¹⁶⁷

2005 UT 58; 44 P.3d 742

Supreme Court of Utah
September 2, 2005

In this case, the Supreme Court took the opportunity to clarify the burdens of proof required of water right change applicants and protestants. The circumstances of the case involved a change application filed by the Searles to move the point of diversion of their water right from a remote valley location to a well near their mountain home. They sought to use the water for domestic and stock-watering purposes. Milburn Irrigation Company (MIC) protested the change claiming the source of the groundwater the Searle’s wished to use was a contributing source to the San Pitch River. MIC held priority rights in the San Pitch River that were rarely satisfied before the river ran dry in

the late summer of each year. Therefore, MIC claimed that approval of the Searle's change application would interfere with MIC's senior water rights.

The State Engineer rejected the application finding that it would likely result in impairment of existing water rights. The Searle's petitioned the local district court for judicial review. In conducting its *de novo* review, the district court ruled that the applicants were first required to show "reason to believe" that approval would not result in impairment of vested water rights. After that showing, the district court shifted the burden to the protestant to show by a "preponderance of the evidence" that approval would result in impairment of vested rights.

On appeal, the Supreme Court held this approach was inconsistent with Utah case law. Applicants were required only to show "reason to believe" that the proposed use would not impair vested rights in order to obtain approval. The low standard is appropriate, the court reasoned, because at the time of proof the applicant must demonstrate no impairment will result from the changed use of water. The burden of persuasion remained on the applicant throughout the application process; it did not shift to the protestant after an initial showing. Finally, the Court held that a protestant could present evidence undermining the applicant's reason-to-believe showing, and it could rely exclusively on circumstantial evidence. Whether such evidence was sufficient to compel the denial of an application would depend on the unique facts of each case. The Court remanded the issue to the district court for reconsideration in accordance with its holdings.

Strawberry Water Users Association

v.

Bureau of Reclamation¹⁶⁸

2005 UT 64

Supreme Court of Utah

September 27, 2005

In this case, the Utah Supreme Court ruled on appropriate jurisdiction for a water rights dispute. Both Strawberry Water Users Association ("SWUA") and the United States claimed the rights to certain return flows resulting from a federal water project. The United States claimed that any right SWUA had to the water derived from contracts between the two parties because the title to the water rights was held in the name of the United States. Furthermore, it claimed that since the water was imported from a different basin by the United States, it maintained complete control over its application and use. Finally, the United States claimed the proper forum to resolve the dispute was in federal court.

In contrast, SWUA claimed its right to the water was a product of the doctrines of Utah water law. It argued that the right to use water arose from SWUA's application and beneficial use of the water. Therefore, once control of the water was granted by the United States to SWUA, SWUA had exclusive rights to use the water, including the

capture and reuse of return flows. SUWA claimed that since such rights were founded on Utah water law doctrines, the proper forum to resolve the dispute was Utah state court.

In addressing the issue, the Court found both parties to be partially correct. It determined that any contract claims existing between the two parties were to be addressed in federal court. However, it also held that Utah courts were the proper forum to determine title to water rights since the water itself belonged to the State of Utah. Although the United States held title to the rights in question, it was in name only. Since SWUA users actually applied the water to a beneficial use, the right to use the water belonged to them and they were the appropriate parties to file change applications. If not for the actions of SWUA water users, the United States' water rights would be meaningless.

Finally, the court found the fact the water at issue was imported from another basin was not enough to afford it "special treatment unlike all other water belonging to the public." The Court held that since the case "involves major policy issues 'relating to the control, appropriation, use or distribution of water' [it] is therefore governed by state water law under the express language of Section 8 of the Reclamation Act." The proper venue for determining which party had rights to the return flows is the Utah state courts. The Court remanded the case to the Utah district court and assumed that court and the federal courts would "grapple with these issues."

There were significant dicta issues in this case, including the idea the Court did not agree with the division's interpretation of water right title.

Summit Water Distribution Company
v.
Mountain Regional Water Special Service District¹⁶⁹

2005 UT App 66

Utah Court of Appeals
February 17, 2005

In this case, Summit Water Distribution Company (SWDC) argued that Summit County, Utah, Ordinance No. 436 (the Ordinance) was beyond the scope of authority granted Summit County under County Land Use Development and Management Act (CLUDMA) because it regulated the use of water and not the use of land. Specifically, the Ordinance required water providers to submit annual reports of water availability, and conditioned the issuance of building permits on the present ability of a water provider to convey the water necessary for the development. SWDC claimed water regulation was preempted by the state; therefore, the Ordinance was invalid.

SWDC sought to overturn Ordinance No. 436 because a complaint it had filed against Mountain Regional Water Special Service District (Mountain Regional) was deemed untimely under its terms. Since the Ordinance was passed under the authority of CLUDMA, parties were required to submit complaints within 30 days of a land use decision. In this case, SWDC filed its complaint well after the 30-day deadline.

The Utah Court of Appeals determined that Summit County had authority under CLUDMA to pass ordinances that affected the application and use of water because CLUDMA “contemplates county land use ordinances that may affect and be affected by water availability within the county.” Further, the court found nothing in state law that “expresses either an explicit or implicit intent to preempt local attempts, like Summit County's, to regulate water. Neither [did it] find Ordinance No. 436 to be in conflict with State water law.” Therefore, the court held Ordinance No. 436 was a valid exercise of county authority and that SWDC’s complaint was properly barred.

Olds
v.
Shepherd¹⁷⁰

2005 UT App 450

Utah Court of Appeals
October 20, 2005

In this case, the Utah Court of Appeals ruled that in general water adjudications claimants must strictly comply with water claim requirements in Utah Code Ann. § 73-4-5. The Shepherds, who believed they were entitled to a water right, responded to a published “second summons” and notified the State Engineer of a potential water claim by filing a vaguely informative document with the court. When visited by a State Engineer representative and an agency attorney, the Shepherds were provided with a Water Users’ Claim form to submit the information required in Section 73-4-5. They did not supply the information.

On a motion to dismiss the vague document, the trial court misunderstood the procedural aspects of a general adjudication and refused to dismiss the matter. On appeal, the Court of Appeals recognized the importance of the information required by Section 73-4-5 and noted “when statutory requirements are unambiguous, parties are required to strictly comply with their terms.” Shepherd at paragraph 9. Judge Orme, in a concurring opinion, also mentioned the necessity of “routinely” providing a trial court record for each case before them on appeal.

Fourth Judicial District Court in Case 040700105 found Utah Code 73-1-6 was constitutional. The case is important in that it emphasizes that the legislature has declared in law that using water for a beneficial purpose is a "public use".

Strawberry Water Users Assn
v.
Bureau of Reclamation¹⁷¹

2006 UT App 19

Supreme Court of Utah
March 24, 2006

This appeal probes whether jurisdiction should lie in the federal district court or in the courts of the State of Utah. The dispute centers around competitive applications filed by the Strawberry Water Users and the United States with respect to water imported from the upper reaches of the Duchesne River, a Colorado River tributary, into the Great Basin. The water is collected in the Strawberry Reservoir as part of the Strawberry Valley Project and delivered through a transbasin diversion tunnel for use primarily in the southern end of Utah County. The parties before the court are the Strawberry Water Users, the United States, and the Utah State Engineer.

The Strawberry Water Users argue that the water rights in question are the product of following the application and beneficial use requirements of Utah law and that Utah courts have exclusive jurisdiction to adjudicate claims relating thereto. “[T]he United States disagrees and contends that Strawberry’s rights to use water derive solely from its contracts with the United States.” It asserts, “The proper forum for resolution of Strawberry’s contract-based claim is federal district court.” The State Engineer has submitted memoranda in partial support of the position of the United States.

Jurisdiction rests in the federal district court to “adjudicate, confirm, validate or decree . . . contractual rights.” Jurisdiction rests in state district court as to issues dealing with the “control, appropriation, use or distribution of water,” and “adjudication of the right to use of water of a river system.” The United States has consented to joinder in both courts. In Utah, “ownership” of water rights is equated with “right of use,” and title can be held in a protective capacity for those who have that right. The water rights dispute of these parties is appropriate for resolution under Utah’s general adjudication statute of which Section 24 is an integral part. It has been properly invoked by the Strawberry Water Users. This is not just a “private dispute,” but potentially impacts many downstream appropriators and involves important water law issues of first impression. The dispute centers in the Utah Lake–Jordan River drainage.

Summit Water

v.

Summit County¹⁷²

2005 UT 73

Supreme Court of Utah

November 4, 2005

The appellants brought suit against Summit County, a county-created water service district, and related parties, alleging antitrust violations under section 76-10-914 of the Utah Antitrust Act and Article XII, Section 20 of the Utah Constitution. The district court dismissed these claims on the basis that the appellees were exempt from the Antitrust Act under Utah Code section 76-10-915(1)(f) and that the constitutional antitrust provision is not self-executing. The appellants challenge the district court’s analysis of both issues on appeal. Because we hold that the appellees’ alleged anticompetitive activities do not qualify as acts of a “municipality” that are “authorized or directed by state law” under section 76-10-915(1)(f), and that the appellees are

therefore not entitled to the statutory exemption, we do not reach the issue concerning the interpretation of Article XII, Section 20.

We reverse the district court's dismissal of the Summit Water appellants' claims under section 76-10-914 of the Utah Antitrust Act. We hold that, even assuming the defendants qualify as "municipalities" for purposes of section 76-10-915(1)(f), the activities at issue here were not "authorized or directed by state law," and defendants are therefore not exempt from the requirements of the Utah Antitrust Act. We further reverse the district court's order requiring the Summit Water appellants to specifically plead that the activities they allege are not authorized or directed by state law because we hold that the exemptions in section 76-10-915 constitute affirmative defenses, which must be pleaded by a defendant. Finally, because we decide in favor of the Summit Water appellants on their statutory claim, we do not consider whether Article XII, Section 20 of the Utah Constitution is self-executing.

Searle
v.
Milburn¹⁷³

2006 UT 16

Supreme Court of Utah
March 10, 2006

Appellants Lawrence and Ann Searle own property on the Wasatch Plateau, in Sanpete County, Utah. The Searles purchased the property in 1999, intending to construct a cabin on the site. However, in order for the Searles to obtain a building permit, they were required to establish the presence of an on-site source of water sufficient to meet the needs of the cabin.

In an effort to satisfy this requirement, the Searles purchased water right number 65-2977, which carries a priority date of 1956. As owners of that water right, every year the Searles are entitled to one half-acre foot of water, to be used for irrigation purposes, from April 1 to October 31. The point of diversion for the Searles' water right is the Chester well, located a significant distance from the Searles' cabin property. Therefore, the Searles sought to change the point of diversion, place of use, and nature of use of the water right to the Jacobsen well, located near their cabin property, and to use the water for stock-watering and domestic purposes year round, rather than for seasonal irrigation. The Searles properly completed and filed a change application with the State Engineer. The change application was advertised as required by the Utah Code, and Appellee Milburn Irrigation Company ("Milburn") timely protested the Searles' application.

Milburn is a Utah corporation consisting of approximately twenty-six shareholders and is operated with the purpose of distributing water to its shareholders via gravity pressurized sprinkler irrigation systems. Milburn owns water right number 65-2256, which carries a priority date of 1876. Milburn's water right entitles the company to divert 8.875 cubic feet of water per second from the South San Pitch River, annually during the period of April 1 to October 15, to irrigate 639.9 acres. Typically, Milburn is

not able to satisfy the entire amount of its water right during that period, as water flow slows as the summer wears on. By August, Milburn is usually only able to divert just one cubic foot per second.

Milburn's protest against the Searles' change application was motivated by Milburn's concern that the Jacobsen well, which is located in the drainage area that contributes to Milburn's sources of water, is connected in some degree with Milburn's water source and that the Searles' use of that well could further exacerbate water shortfalls that Milburn has been experiencing for many years.

The State Engineer convened a hearing to address the concerns raised by Milburn's protest and rejected the Searles' change application, concluding that "the area proposed for diversion could serve as a contributing source for [Milburn's] water supply." Searles' then appealed to the court. The court concluded that the district court invoked the wrong standard of proof and improperly allocated the burden of proof in undertaking its review of the State Engineer's denial of the Searles' change application. A change applicant is required only to show reason to believe that the proposed use can be undertaken without impairing vested rights in order for the application to warrant approval. The burden of persuasion remains on the applicant throughout the application process, although the protestant has the opportunity to provide evidence undermining the applicant's reason to believe showing. In producing such evidence, a protestant may rely exclusively on circumstantial evidence. Whether such evidence is sufficient to compel the denial of an application will depend on the unique facts of each case. Accordingly, we remand this case to the district court for reconsideration.

Wayment

v.

Howard¹⁷⁴

2006 UT 56

Supreme Court of Utah

September 29 2006

Appellee Wayment owns real property bordered on the south by Appellee England. England's property is bordered on the south by Appellant Howard's property. A slough, traditionally known as the "Marriot Slough," traverses the Appellees' and the Appellant's property. Appellees are successors in title to water right number 35-8073, priority date 1916.

The trial court found that Appellees have accessed this water by damming the northern end of the slough, allowing the slough to fill, and then pumping water out of the slough to irrigate. The dam remains in place throughout the irrigation period so that any water arriving on the Appellees' property remains there until (1) it is used by the Appellees, (2) it is drained at the end of the irrigation period, or (3) if the water level in the slough is too high, it runs down a tin beneath 5900 West and reenters the slough on the Appellant's property.

Appellant does not own a water right, but rather owns shares in the Knight Irrigation Company, and irrigates using the water from a diversion point south of the separation tin. Appellant constructed a dike across the slough in 1998, without State Engineer approval. Later, Appellant consulted the Army Corps of Engineers, which granted a permit for the dike and instructed Appellant to place two pipes into the dike. Appellant complied by installing one pipe 36 inches in diameter and one 15 inches in diameter.

In 2000, Appellees paid to have the slough on their property dredged so that water would flow more freely. Though temporarily stopped, dredging was completed after the Army Corp of Engineers approved the process. Appellant did not allow any dredging on his property. Appellees brought suit in 2001, claiming interference with their water right.

Court affirmed that appellant has failed to demonstrate error in the trial court's factual findings and application of the law. Additionally, Appellant's counterclaims were properly dismissed on their merits. Further, the evidence presented in support of Appellees' method of appropriation was sufficient to support the findings and conclusions reached by the trial court. Finally, the denial of Appellant's motion for partial summary judgment is unreviewable because the claims were fully litigated at trial.

Dansie
v.
Herriman City¹⁷⁵

2006 UT 23

Supreme Court of Utah
April 18, 2006

The City of Herriman was added to the roster of Utah cities in 1999. Soon thereafter, Herriman decided that it would provide water to its residents through a municipal water system. At the time, Herriman owned no water, no wells, or any delivery infrastructure, but the Herriman Pipeline and Development Co. ("Company") did. The City set about to acquire the Company's assets. It succeeded, much to the distress of a number of the Company's shareholders, who sued the City and certain directors of the Company. Defendants filed a succession of summary judgment motions that resulted in the dismissal of Plaintiffs' claims. This appeal followed.

We affirm the district court on each of the four issues before us for review. First, we conclude that the district court correctly ruled that Plaintiffs' ownership of shares in the Company entitled them to use Company water but gave them no ownership interest in Company assets. Next, we affirm the district court's dismissal of several of Plaintiffs' individual claims because they were derivative claims that must be properly advanced in the name of the Company. Third, we sustain the district court's dismissal of the derivative claims that Plaintiffs did assert on behalf of the Company because Plaintiffs failed to make the requisite demand on the Company to remedy the alleged objectionable conduct. Finally, we turn back Plaintiffs' claim for relief under the Utah Control Shares

Acquisition Act, Utah Code Ann. §§ 61-6-1 through 61-6-12 (2000), because such a claim was not preserved below.

We affirm the district court on its conclusions that Plaintiffs had no vested property rights that Plaintiffs' original claims properly belonged to the corporation, that Plaintiffs failed to make proper demand on the corporation prior to bringing a derivative lawsuit, and that demand was not excused through the futility exception. Furthermore, we need not rule on Plaintiffs' claim based on the Control Shares Act because such a claim was not raised below.

Sierra Club
v.
Sevier Power Co.¹⁷⁶

2006 UT 74

Supreme Court of Utah
November 21, 2006

The Executive Secretary of the Utah Division of Air Quality granted a permit to the Sevier Power Company authorizing the construction and operation of a 270-megawatt coal-fired power plant in Sevier County, Utah. Shortly thereafter, the Sierra Club filed a petition before the Utah Air Quality Board (the Board) objecting to the permit and seeking to intervene in all related proceedings. The Board denied the Sierra Club's petition, declaring that the Sierra Club did not have standing. We hold that the Sierra Club does have standing to challenge the permit. In so concluding, we take the opportunity to reiterate and clarify Utah's standing law.

We hold that the Board erred by denying standing to the Sierra Club. In accordance with the Administrative Procedures Act, we also hold that the Board's decision substantially prejudiced the Sierra Club in denying it the opportunity to challenge the Executive Secretary's order or to defend its interests. We therefore reverse and remand to the Board with instructions to allow the Sierra Club to intervene in the proceedings.

¹⁵⁹ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/spears.htm>

¹⁶⁰ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/usfuel110703.htm> and <http://www.utcourts.gov/opinions/supopin/natural-1.htm>

¹⁶¹ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/utahdept09262003.htm>

¹⁶² Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/greenr110703.htm>

¹⁶³ Snow, Riley, 2003. Unpublished Division Literature.

¹⁶⁴ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/prisbrey120503.htm>

¹⁶⁵ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/washin122303.htm>

¹⁶⁶ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/price122104.htm>

¹⁶⁷ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Searle090205.pdf>

¹⁶⁸ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Strawberry092705.pdf>

¹⁶⁹ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/appopin/summit021705.htm>

¹⁷⁰ Snow, Riley, 2005. Unpublished Division Literature.

-
- ¹⁷¹ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Strawberry032406.pdf>
- ¹⁷² Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/SummitWater110405.pdf>
- ¹⁷³ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Searle031006.pdf>
- ¹⁷⁴ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Wayment2092906.pdf>
- ¹⁷⁵ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/Dansie2041806.pdf>
- ¹⁷⁶ Court Opinion, Available Online: <http://www.utcourts.gov/opinions/supopin/SierraClub2112106.pdf>