

The Water Coalition met on Thursday June 25 at the office of the Metropolitan Water District of Salt Lake & Sandy, 3430 East Danish Road, Sandy, Utah. Fred Finlinson chaired the meeting. He reviewed 12 priorities of the Executive Water Task Force:

1. Water title/conveyance issues
2. Domestic preference for public water suppliers (response to Kerry Gibson's repeal of the domestic preference in water law)
3. State Engineer's consideration of prior "non use" in change applications
4. Property tax exemptions for water-related property (pipes, pumps, treatment facilities) of private water companies
5. Rainwater capture
6. Taxing authority for appointed boards
7. Shareholder change applications
8. Accountability of the State Engineer with respect to pending adjudications
9. How small water change applications relate to zoning prohibitions (blue lines)
10. Elimination of the State Engineer bond
11. Colorado River over-appropriation
12. Public access along river and stream corridors

The coalition discussed each of these items briefly, and then engaged in an in depth discussion of several topics.

**"Non Use" Considerations in Change Applications.** After HB51 passed in 2008, the prior State Engineer, Jerry Olds, took the position that the new law prohibited him from looking into whether or not the water right in a change application was in fact a "good" right, representing real wet water or a "bad" right that had been subject to "non-use". This practice was criticized by the Water Community, because it had the potential to convert "bad" paper water rights into good rights through the change application process.

The new State Engineer, Kent Jones, has taken a more moderate position than his predecessor and is asking for legislative clarification. To that end, a Water Coalition drafting committee of Mark Stratford, John Mabey, Warren Peterson and Steve Clyde are working on language that would assure that only the amount of water that consistently has been put to "beneficial use" can be changed into a new use, or a new place or time of use. Specifically, the law would be drafted to explain that holding water for the "reasonable future demands of the public" (HB51 language) would be considered beneficial use for change application purposes.

This practice will help municipalities that have already converted water from agricultural use to municipal use, but are not in fact consuming it at present. However, it will not help municipalities convert agricultural water that is not being put to beneficial use—even though the agricultural water is being held by the municipality for the reasonable future demands of the public. Under this practice, the State Engineer would look to the extent of the use of the water as agricultural water and would not enlarge the right from the agricultural use simply it is being held by a municipality.

The drafting committee will bring specific “non use” language to the next Water Coalition meeting. This will be a hot one this summer.

**Domestic Preference.** The group spent a fair amount of time discussing the domestic preference concept and seemed to conclude that the 2010 legislative proposal should include two components:

1. A broad preference for municipal use among equal priority right holders in times of scarcity;
2. A temporary, narrow, domestic preference limited to water for human consumption, sanitation, health and safety that would “jump” priority in times of scarcity if just compensation is paid for the temporary use.

The broad preference for municipal use is of limited application because it only pertains to equal priority rights. Typically, equal priority rights are the earliest rights that are subject to an adjudicated decree. The later priority rights typically have unique priority dates and generally do not overlap one another.

The temporary, narrow domestic preference is the more controversial of the two, but likely the most important. To gain its use, a public water supplier would have to require control (cut off) all outside watering, industrial and discretionary use prior to justifying a leap in priority of other water rights. This preference would be used only in an emergency situation of temporary duration, with just compensation required.

The group is struggling with a definition of scarcity. The group discussed standards for an emergency declaration of scarcity and would like to keep the definition of scarcity as objective and transparent as possible.

**Taxing Authority of Appointed Boards.** The legislature has insisted on some level of electoral oversight for each taxing authority. The large conservancy districts believe that it is essential to the dynamics of their organization to keep their current board composition—both elected and appointed members. Not long ago, the law allowed voters a special route to refer tax increases in these situations. That opportunity was removed from the law five or six years ago. The group believes that restoring this limited referendum route may resolve the issue for the legislature.

The next meeting of the Water Coalition is July 21.