Conjunctive Surface and Groundwater Management in Utah

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Statutory Law

• Public Ownership - “All waters in this state, whether above or under the ground, are hereby declared to be the property of the public. . . .”
  Utah Code Ann. § 73-1-1(1).

• Administration - New water rights and water right changes are regulated through a permit system administered by the State Engineer – process is basically the same for surface and groundwater.
  Utah Code Ann. §§ 73-3-1(1), -3(2).
Statutory Law (cont.)

• Priority - “Between appropriators, the one first in time is first in rights.”
  Utah Code Ann. § 73-3-1(5)(a).

• Enforcement – The State Engineer is authorized to initiate an enforcement action if an appropriator is diverting, impounding, or using water without a water right or in violation of an existing water right.
Groundwater Recharge & Recovery Act

• Enacted in 1991 in response to the Jordan Valley Water Conservancy District’s storage and recovery proposal.

• No entity may artificially recharge a groundwater aquifer or recover water from an artificially recharged aquifer without first obtaining a recharge permit. Utah Code Ann. § 73-3b-103.

• Intended to facilitate conjunctive management projects.
The Beryl-Enterprise Area

- Withdrawals ≈80,000 AF/Y
- Recharge ≈33,000 AF/Y
- Water table has dropped by up to 110 feet
- 2-4 feet of ground subsidence
- Multiple surface cracks – up to 1/4 mile long and up to 5 feet across

Source: Utah Geological Survey
The Beryl-Enterprise Area (cont.)

Voluntary Agreements

- Water users may pool water rights and share the burden of reductions proportionately.
- “[A]doption of a voluntary arrangement . . . by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.”

Water Code / Groundwater Recharge & Recovery Act Amendments

• Authorizes local districts to acquire and hold groundwater rights within critical groundwater management areas and retire those rights to reduce groundwater mining.

• Empowers local districts to levy assessments to facilitate groundwater management planning and water right acquisition.
Water Code / Groundwater Recharge & Recovery Act Amendments (cont.)

• Authorizes local districts to acquire and hold surface water rights for aquifer recharge projects.

• Declares that within a critical groundwater management area artificial recharge by a local district is a beneficial use.
Parting Thoughts

- Response is bottom-up – Code revisions were generated by the Executive Water Rights Taskforce

- General reluctance to litigate
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