



JORDAN VALLEY WATER
CONSERVANCY DISTRICT

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General Counsel

Water Rights 101: Understanding Water Law and Policy

ULCT 2024 Annual
Convention – Sep. 4th



Water Law

Prior
Appropriation
Doctrine

Elements of a
Water Right

Water Right vs
Water Share





Prior Appropriation

Water as Ferae Naturae



The Walters Art Museum



Prior Appropriation

Ownership of Water
(Above and Below Ground)

Utah Code §73-1-1

(1) All waters in this state, whether above or under the ground, are hereby declared to be the property of the **public**, subject to all existing rights to the use thereof.

(3) The Legislature shall govern the use of public water for beneficial purposes, as limited by constitutional protections for private property.





Prior Appropriation

Beneficial Use

Utah Code §73-1-5

Utah Code §73-1-3

The use of water for beneficial purposes, as provided in this title, is hereby declared to be a public use.

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





Prior Appropriation

Right to the Use of Water

Basis

Measure

Limit

Water Right: A right to divert water for a beneficial purpose.

Why was diversion required?

When can't you divert water?

Speculation

Monopoly

How much are you allowed to divert?

Can you do something else with the water?





Prior Appropriation

Instream Flows as a Beneficial Use

Utah Code § 73-3-30

Water Storage

Power Production

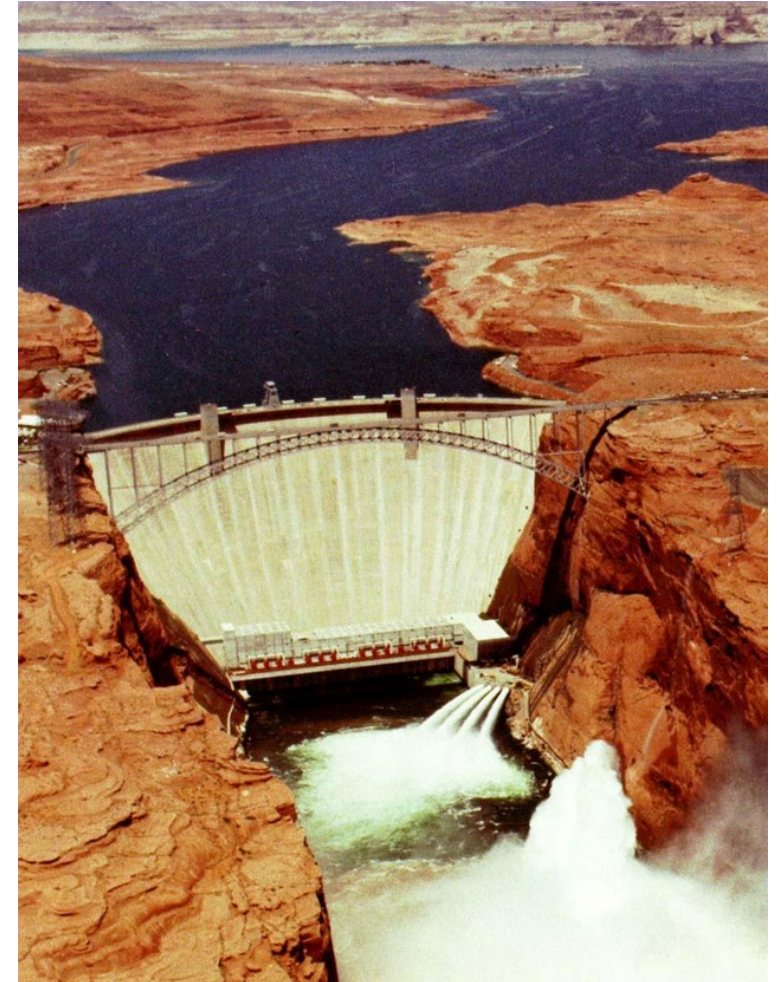
(FFSL, DWR, State Parks)

Within a specified section of a stream, or use on sovereign lands for

Propagation of wildlife, state parks, reasonable preservation or enhancement of natural aquatic environment

Recent Changes for Instream Flows

- HB 33 Instream Flow Amendments (2022)
- HB 12 Instream Flow Amendments (2019)
- SB 214 Public Water Supplier Amendments (2017)
- HB 117 Instream Flow to Protect Trout Habitat (2008)





Prior Appropriation

Priority

Article XVII, Section 1

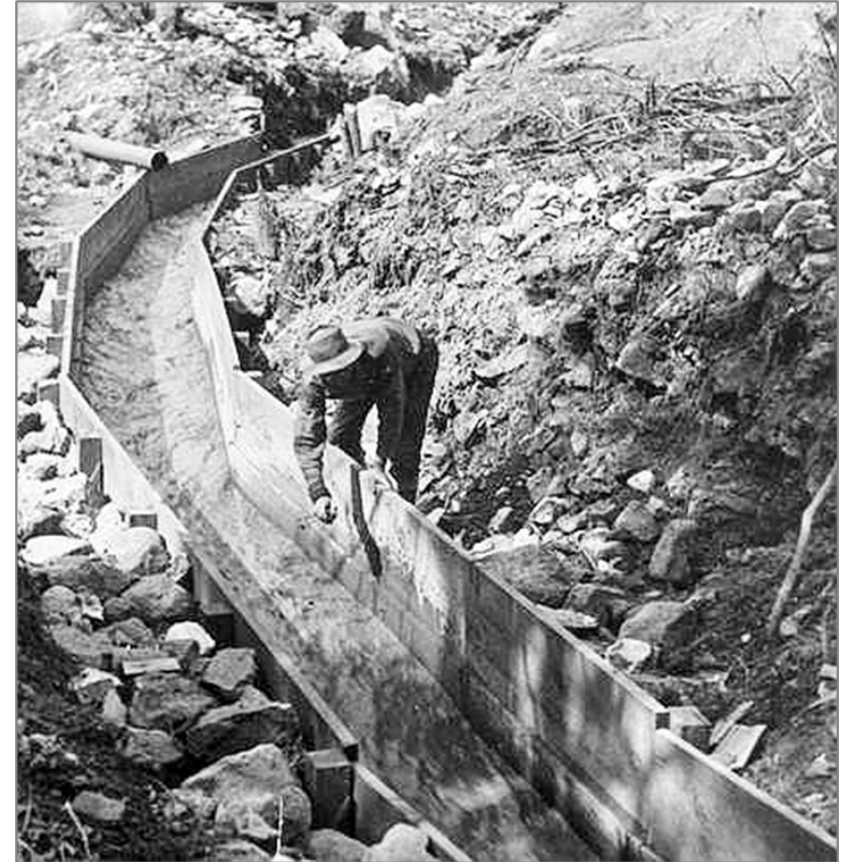
Utah Code § 73-3-21.1

All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed.

Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.

Recent Changes for Priority

- HB 150: Emergency Water Shortages Amendments (2023)
- HB 168 Preferences of Water Rights Amendments (2022)





Prior Appropriation

Priority

Distribution of Water Based on Available Flow

Bear River	Rights Satisfied	Stream Flow
2022	89%	1255 <u>cfs</u>
2021	34%	484 <u>cfs</u>
2020	66%	933 <u>cfs</u>
2019	87%	1235 <u>cfs</u>

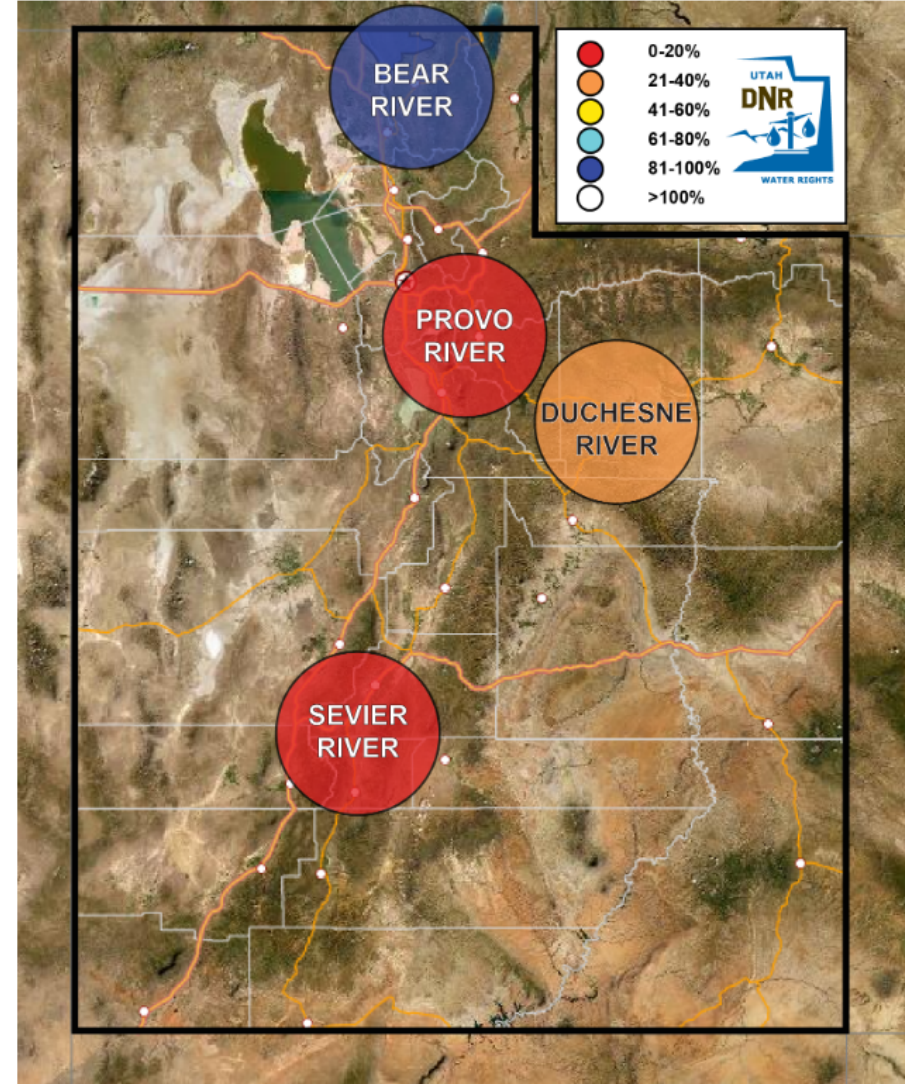
Provo River	Rights Satisfied	Stream Flow
2022	20%	92 <u>cfs</u>
2021	10%	46 <u>cfs</u>
2020	17%	77 <u>cfs</u>
2019	24%	108 <u>cfs</u>

Duchesne River	Rights Satisfied	Stream Flow
2022	29%	285 <u>cfs</u>
2021	25%	243 <u>cfs</u>
2020	19%	183 <u>cfs</u>
2019	35%	341 <u>cfs</u>

Sevier River	Rights Satisfied	Stream Flow
2022	13%	54 <u>cfs</u>
2021	16%	64 <u>cfs</u>
2020	20%	80 <u>cfs</u>
2019	33%	135 <u>cfs</u>

[Past Reports](#)

[Return to drought.utah.gov](http://drought.utah.gov)





Policy Break

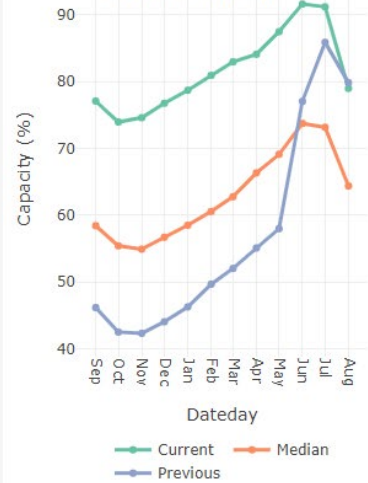
How conservation can help with water shortage

Reservoir Conditions

Reservoir Selection:

All Excluding Lake Powell & Flaming Gorge

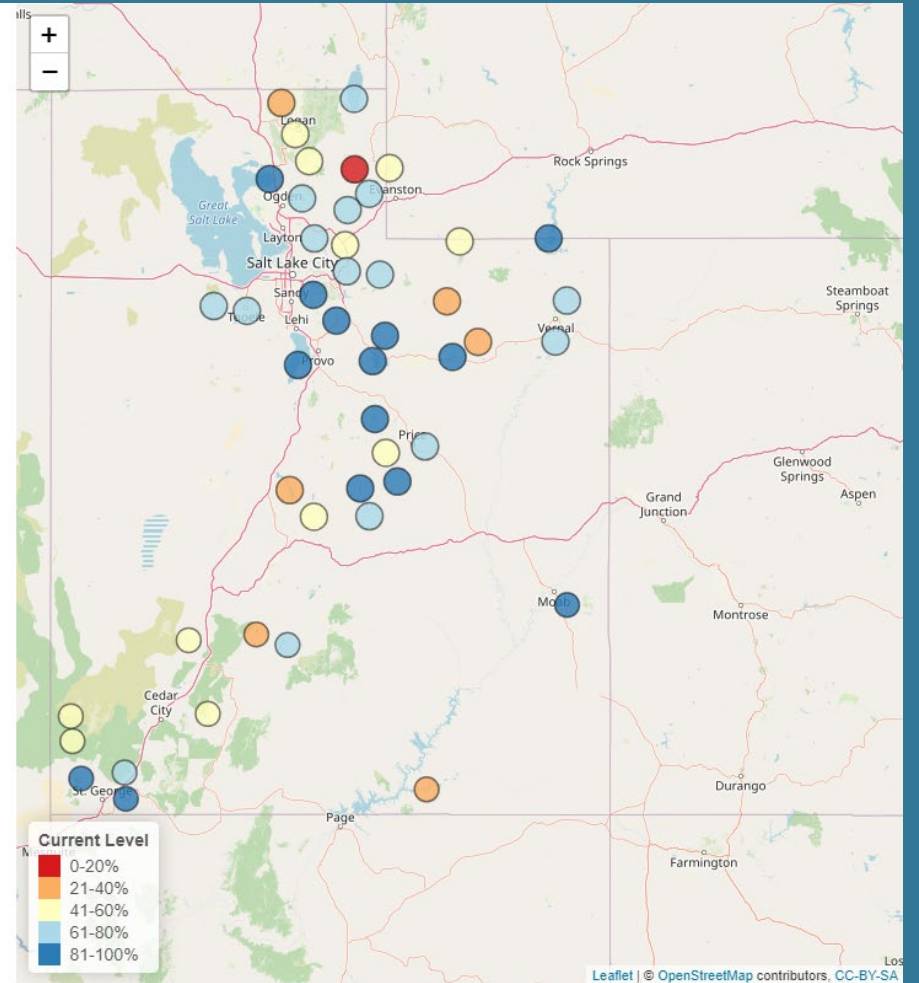
Excluding Lake Powell & Flaming Gorge (Aug-29-2024)



This month's "Current" data represent varied dates based on available data for each reservoir. Click the [More Info](#) tab to learn more.

Download Plot

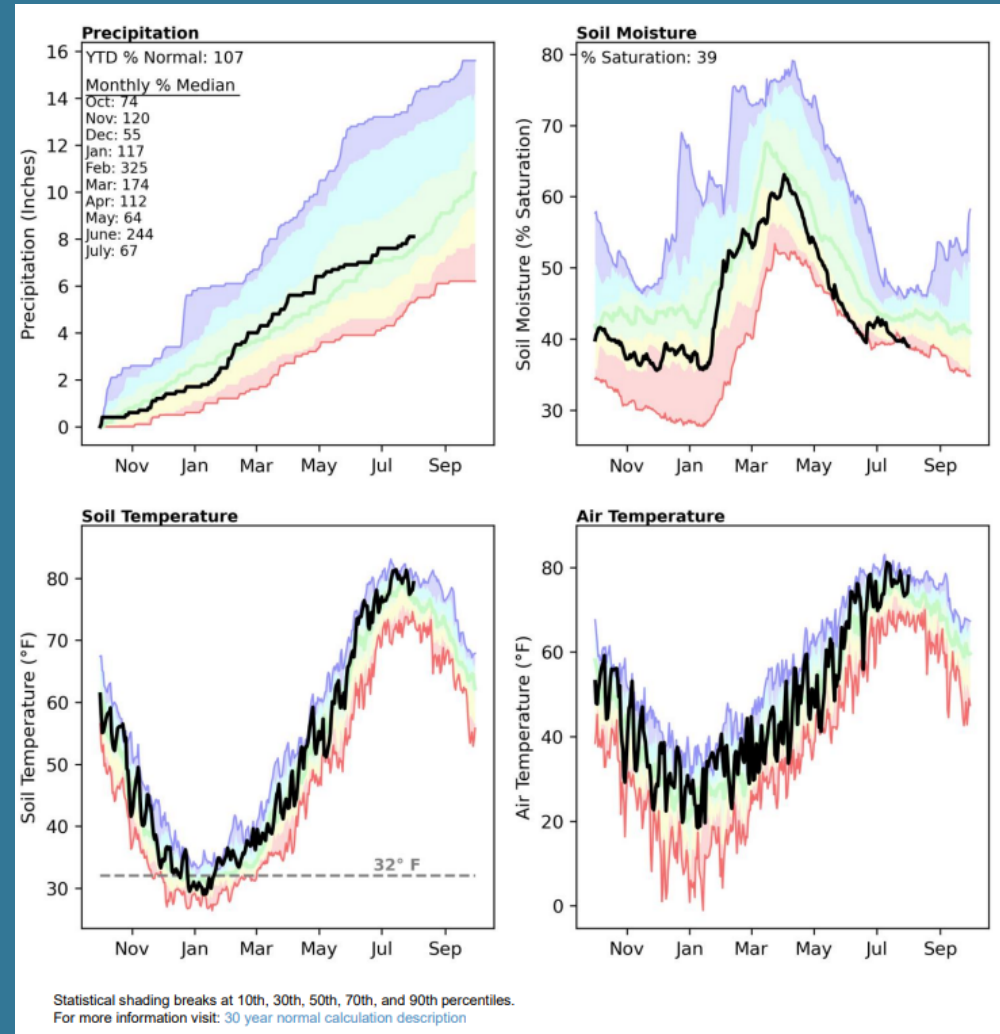
Download Map





Policy Break

How conservation can help with water shortage





Policy Break

Water Shortage Contingency Plan

A water shortage plan enables a water supplier to:

Assess the risks and reduce the vulnerability of a community to water shortage impacts.

Establish priorities that will provide water for public health and safety and minimize impacts on economic activity and environmental resources.

Long-term drought resilience strategies should also consider projected climate conditions and incorporate planning to estimate demand and identify supply solutions well into the future.



Prior Appropriation

Forfeiture and Protection from Forfeiture

Utah Code § 73-1-4

7 years of continuous non-use, unless a non-use application is filed or an exemption applies:

Adjudicated by a court

Within 15 years of last period of continuous non-use

Partial Forfeiture is Recognized

Diversion without beneficial use (waste) is not an exemption

Recent Changes for Forfeiture

- SB 18 Water Modifications (2024)
- SB 277 Water Conservation and Augmentation (2022)
- HB 96 Water Forfeiture Amendments (2020)
- SB 75 Adjudication Amendments (2016)
- HB 25 Application Revisions – Quantity Impairment (2014)





Prior Appropriation

Forfeiture and Protection from Forfeiture

Utah Code § 73-1-4

Public Water Supplier Protection

(2)(e)(vii)(A) (I) owned by a public water supplier [as of May 5, 2008, or acquired after May 5, 2008 and for which a change application has been approved];

(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 beneficial use; and

(B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);



Prior Appropriation

Forfeiture and Protection from Forfeiture

Utah Code § 73-1-4

(2)(f)(i) The reasonable future water requirement of the public is the amount of water needed in the **next 40 years** by:

(A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or

(B) other water use demand.

(ii) For purposes of Subsection (2)(f)(i), a community water system's **reasonably anticipated 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.



Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. Nature of Use
4. Place of Use
5. Quantity Diverted
6. Period of Use

All elements of a water right work together to define the measure and the limit of the right.

Where is the water being diverted from?

Above or below ground

Physical location of diversion





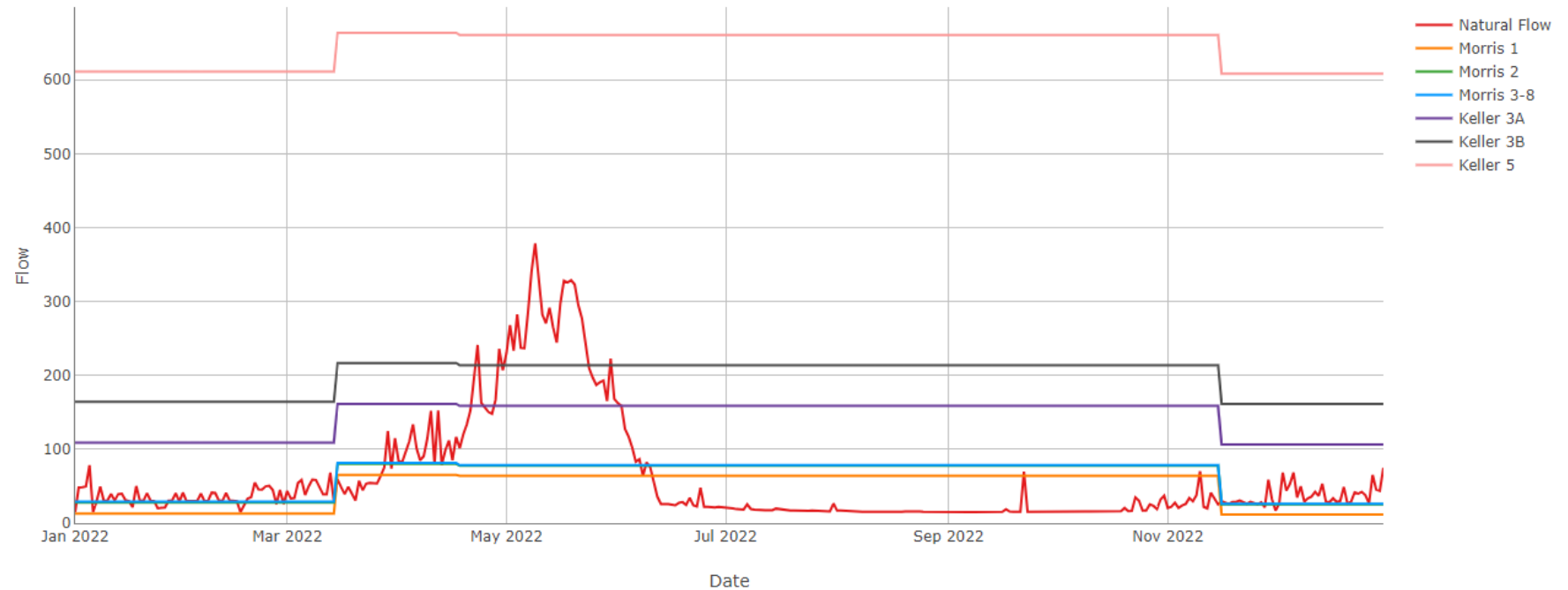
Elements of a Water Right

1. Source / Point of Diversion
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3. Nature of Use
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When did water start being diverted?

Physically (Before 1903)

Filing of Application (1903 / 1933)





Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. **Nature of Use**
4. Place of Use
5. Quantity Diverted
6. Period of Use

Irrigation

Stock watering

Domestic

Municipal

Commercial, Industrial, Mining

Power Generation (non-consumptive)





Policy Break

Public Construction

Utah Code § 11-39-108

Are you a municipality or school in the Great Salt Lake basin and are you planning on building a new:

Building

Structure

Infrastructure

Improvement

Park

Playground or

Other facility?



Policy Break

Public Construction

Utah Code § 11-39-108

Are you a municipality or school in the Great Salt Lake basin and are you planning on making changes to an existing facility:

Affecting more than 25% of the landscaped area?

Are you a municipality or school in the Great Salt Lake basin and are you planning on building a road?



Policy Break

Public Construction

Utah Code § 11-39-108

You may **not** use above ground spray irrigation to water landscaping in these areas unless it is for an active recreation area.

An active recreation area is an area regularly used for:

playing,

exercise,

recreation, or

regular outdoor activities, such as:

(i) a sports field;

(ii) a social gathering area;

(iii) an amphitheater;

(iv) a park;

(v) the playing area, including roughs, driving ranges, and chipping and putting greens, of a golf course; or

(vi) a cemetery.



Policy Break

Public Construction

Utah Code § 11-39-108

Carefully think about the purpose and nature of active recreation areas.

They should not be sized larger than reasonably required for the anticipated use the area is intended to accommodate.

Even active recreation areas may not use above ground spray irrigation if the area being watered is:

- On a slope of 25% or more

- A park strip

- An area with a width of less than eight feet

- In an area that is a planting bed.



Policy Break

Public Construction

Utah Code § 11-39-108

A road is not an active recreation area.

You may **not** use above ground spray irrigation to water landscaping

between the two curbs of a road or, if there is no curb,

between the shoulders contiguous to the road, including in a median or roundabout,

except for a temporary period of time if needed to allow drought tolerant perennial plants to establish a healthy root system.



Policy Break

Public Construction

Utah Code § 11-39-108

Planting beds (everywhere that isn't an active recreation area or that is excluded from an active recreation area) should use drip irrigation.



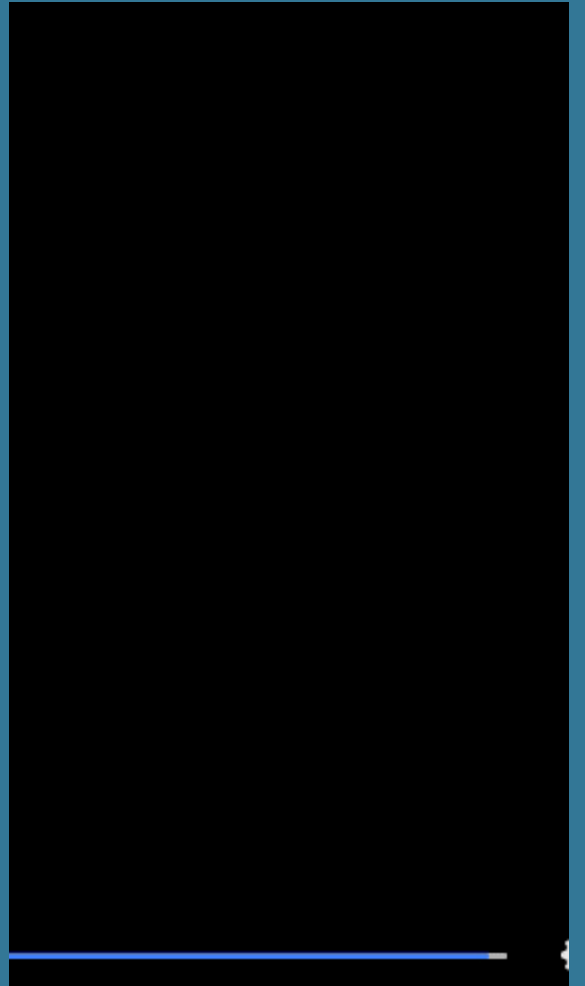


Policy Break

Public Construction

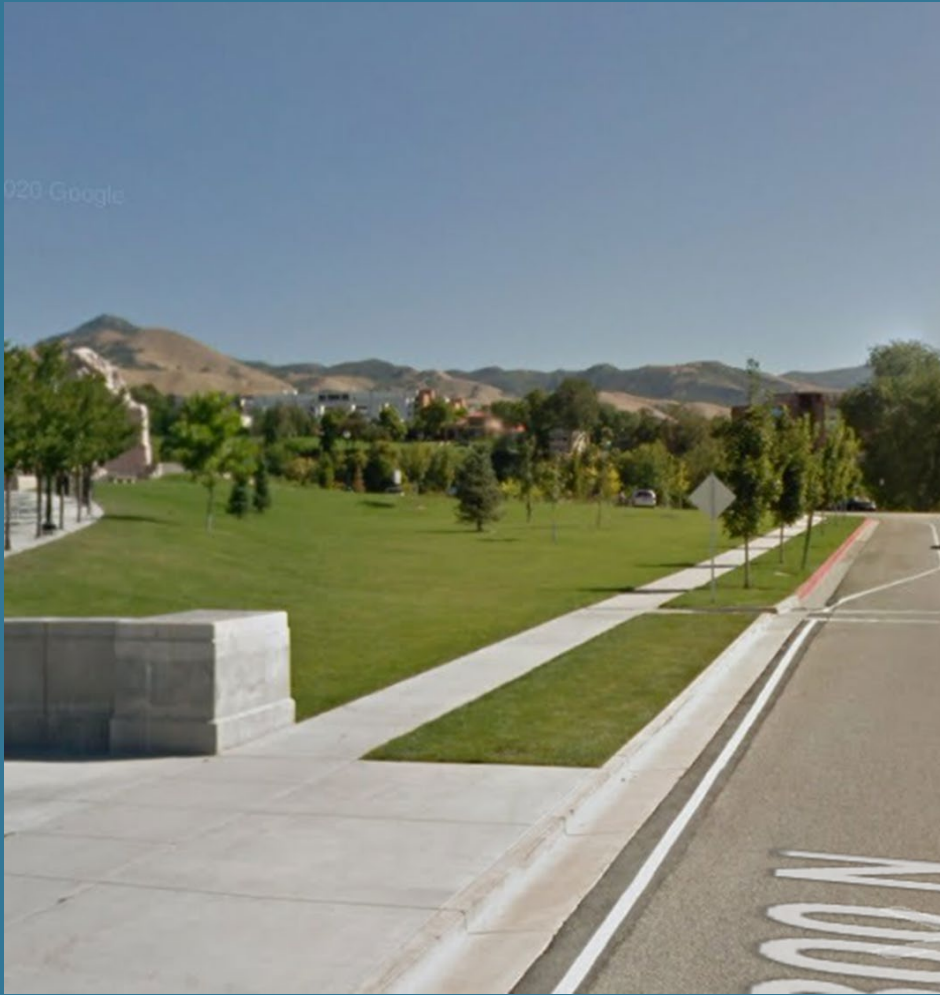
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Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. Nature of Use
4. **Place of Use**
5. Quantity Diverted
6. Period of Use

Where is the water being used?

40-acre tract

Within municipal service area

May not expand or enlarge area of use



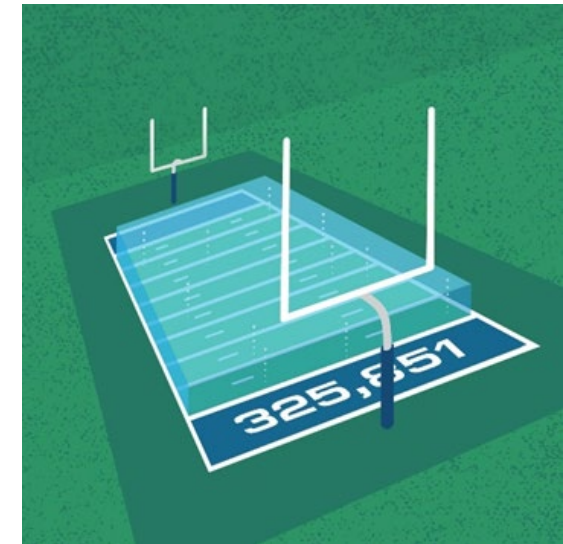


Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. Nature of Use
4. Place of Use
5. **Quantity Diverted**
6. Period of Use

Flow is measured in cfs.
1cfs = 448 gallons per minute

Volume is measured in acre-feet.
1 acre foot = 325,851 gallons





Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. Nature of Use
4. Place of Use
5. **Quantity Diverted**
6. Period of Use

Diversion amount can sometimes be different in different places

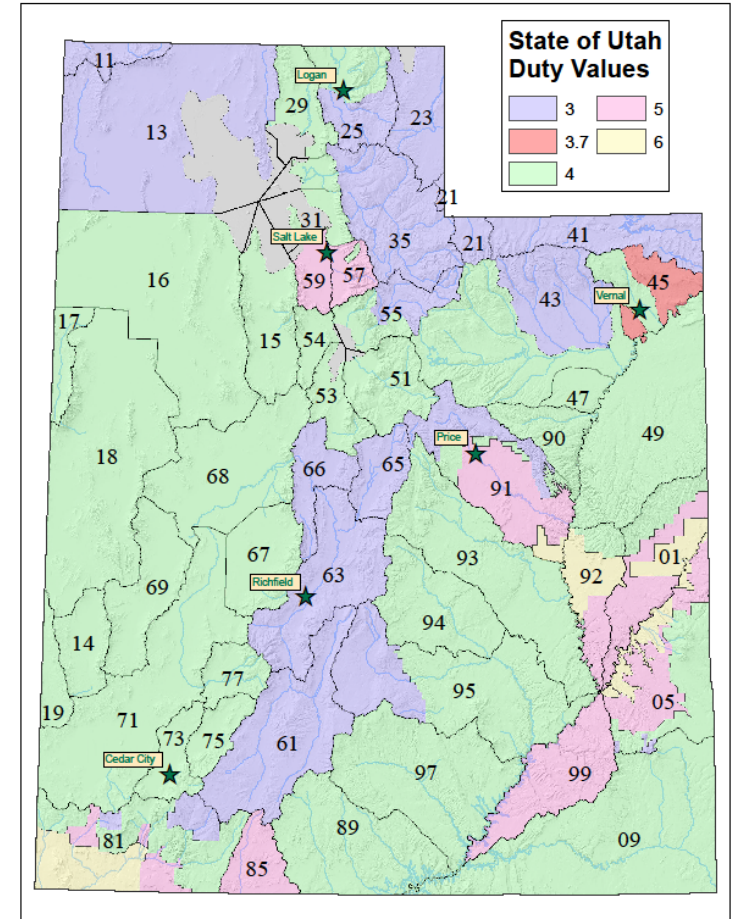
Irrigation Duty

Diversion amount can sometimes be the same

Indoor Domestic Use:

0.45 acre-foot per residence

0.25 acre-foot if part time (cabin)





Policy Break

System Specific Sizing Standards

Your municipal system should not assume that each residential connection requires 0.45 acre feet of water for indoor use.

This has implications for:

- Water exactions for development / annexation

- Water impact fees for new development

- 40 year plan for use of water



Policy Break

System Specific Sizing Standards

When will we know what our building limit is according to our available water?

What kind of growth do you allow for?

What kind of growth do you want?

Are you willing to adopt limits on how water is used?

What does your water conservation plan say?



Elements of a Water Right

1. Source / Point of Diversion
2. Priority Date
3. Nature of Use
4. Place of Use
5. Quantity Diverted
6. **Period of Use**

When is water being used?

Growing season

Year round





Elements of a Water Right

7. Storage

Storage is not always included in a water right.

Almost always a lower priority right.

Must allow earlier priority water (natural flow) to pass.

Can be held over multiple years once stored in priority.





Policy Break

General Plan

Water Use and
Preservation Element

What policies and procedures should small cities and towns enact that are sensible, affordable and realistic?

Adopt basic, or not so basic, landscaping requirements for new construction

Evaluate water rates to encourage conservation

Provide consistent messaging and education (e.g. with water billing, newsletter or permits)



Policy Break

General Plan

Water Use and
Preservation Element

What policies and procedures should small cities and towns enact that are sensible, affordable and realistic?

Audit your water system to identify leaks

Ensure that you have and fund a plan for repair and replacement of water infrastructure

In public buildings, install water efficient fixtures that meet or exceed water sense standards



(Basic Standards Example) Land Use	Amount of Lawn / Only Areas with Overhead Spray		Exceptions
Parking Strips	None		None
Areas less than 8 feet wide	None		None
Commercial, Industrial and Institutional (including multi-family)	Max of 20% of total landscaped area		Active recreation areas
Residential Development	Salt Lake Utah Weber Davis	Max of 35% of front and side yard landscaped area	Percentage limits do not apply to small lots with less than 250 sq. ft. of landscaped area Areas that are only watered by flood irrigation
	Washington	Max of 15% of lot size	
	All other counties	Max of 50% of front and side yard landscaped area	



(Intermediate Example) Land Use	Requirements	Exceptions
Parking Lots	No lawn or overhead spray allowed (i.e. even if islands are wider than 8 ft)	None
All landscaped areas other than areas with lawn (including parking strip, areas less than 8 ft wide and parking lots)	Minimum 50% plant coverage at maturity (not counting coverage provided by tree canopy) and mulch	None
	Landscape plans required for non single family residential	
	Trees encouraged or required – but not in lawn areas	
	Use of drip irrigation system and mulch	





(Robust Standards Example) Land Use	Requirements (Ivins City / Washington County as basis of example)
Single family	<p>Maximum # of sq. ft. of lawn / area with overhead spray (e.g. 2,000 sq ft)</p> <p>Limits on decorative water features (e.g. size, amount of water, limit on spray)</p> <p>Restriction on lawn for decorative purpose (requirement that it be part of active recreation area)</p>
Multi family	<p>Max sq. ft of lawn / area with overhead spray based on # of units</p> <p>No lawn outside of active recreation area</p> <p>Submission and approval of landscaping plan</p> <p>Limits on decorative water features / deduction from amount of allowed grass</p> <p>Limits on swimming pool size / deduction from amount of allowed grass</p> <p>Separate water meters for each unit and for outdoor water use</p>
Commercial, Industrial and Institutional	<p>Same requirements as multi-family on plans, water features and separate meters</p> <p>No lawn / overhead spray allowed outside of active recreation areas</p> <p>No lawn immediately adjacent to road or parking lot</p> <p>Limits on use of misting systems</p> <p>Car wash water recycling and gallons per wash limits</p> <p>Limits on evaporative cooling</p>



Policy Break

Water Rates

Utah Code § 73-10-32.5

Retail water provider required to:

- Use increasing block rates (tiers)

- Increase price for water in higher tiers

- Provide notice of tiered rates at least annually

- Include usage in billing notice

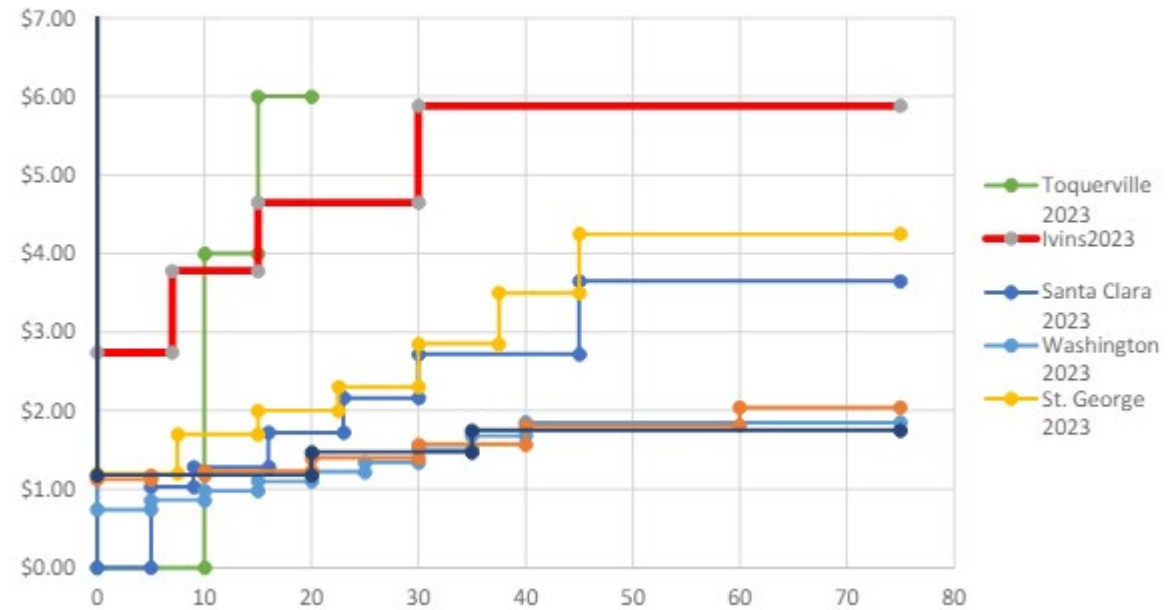


Policy Break

Water Rates

Utah Code § 73-10-32.5

Water Rate Comparisons



Seasons	Excess Surcharge Limit
Winter (December, January, February)	8,000 gallons/month
Spring (March, April)	15,000 gallons/month
Summer (May, June, July, August, September)	20,000 gallons/month
Fall (October, November)	15,000 gallons/month



Policy Break

Messaging

How do I gain resident's trust regarding growth and water use?

APRIL
Salt Lake County

That's A Wrap!

The 2023 landscape watering season is over. Both **secondary** and **culinary** irrigation systems, including **culinary** irrigation systems, is complete. Please **disconnect** **outdoor watering** devices and winterize your irrigation system.

Signs of a possible line break:

- Water running in gutters, especially after landscape season has ended
- Bubbling pavement
- Moving or puddling water in a place it seems "off"

WAIT



Water Right vs Water Share

Aliquot Interest

2nd Layer of
Conditions

Water **right** is owned by the canal company

Shareholder **entitled** to proportional delivery based on ownership

Shareholder is **limited** in actions where company approval required





Water Right vs Water Share

Aliquot Interest

2nd Layer of
Conditions

Shares can be **lost** for
nonpayment of assessments

Shares of stock do **not** equal a
particular volume of water

Shareholders generally entitled
to portion of water upon
dissolution of company



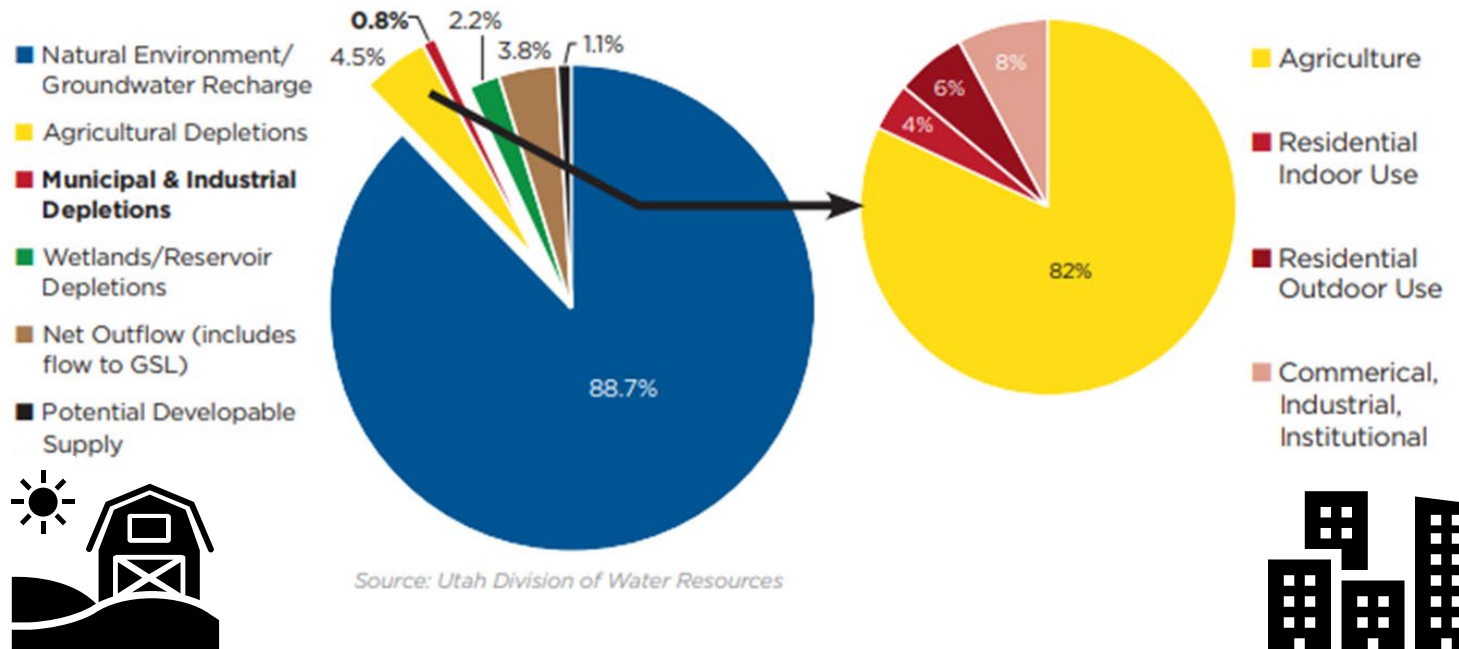


Policy Break

Why Conservation Matters

Growth

Where Does Utah's Precipitation Go?





Policy Break

Why Conservation Matters

Growth

(How do we really know we have enough water?)

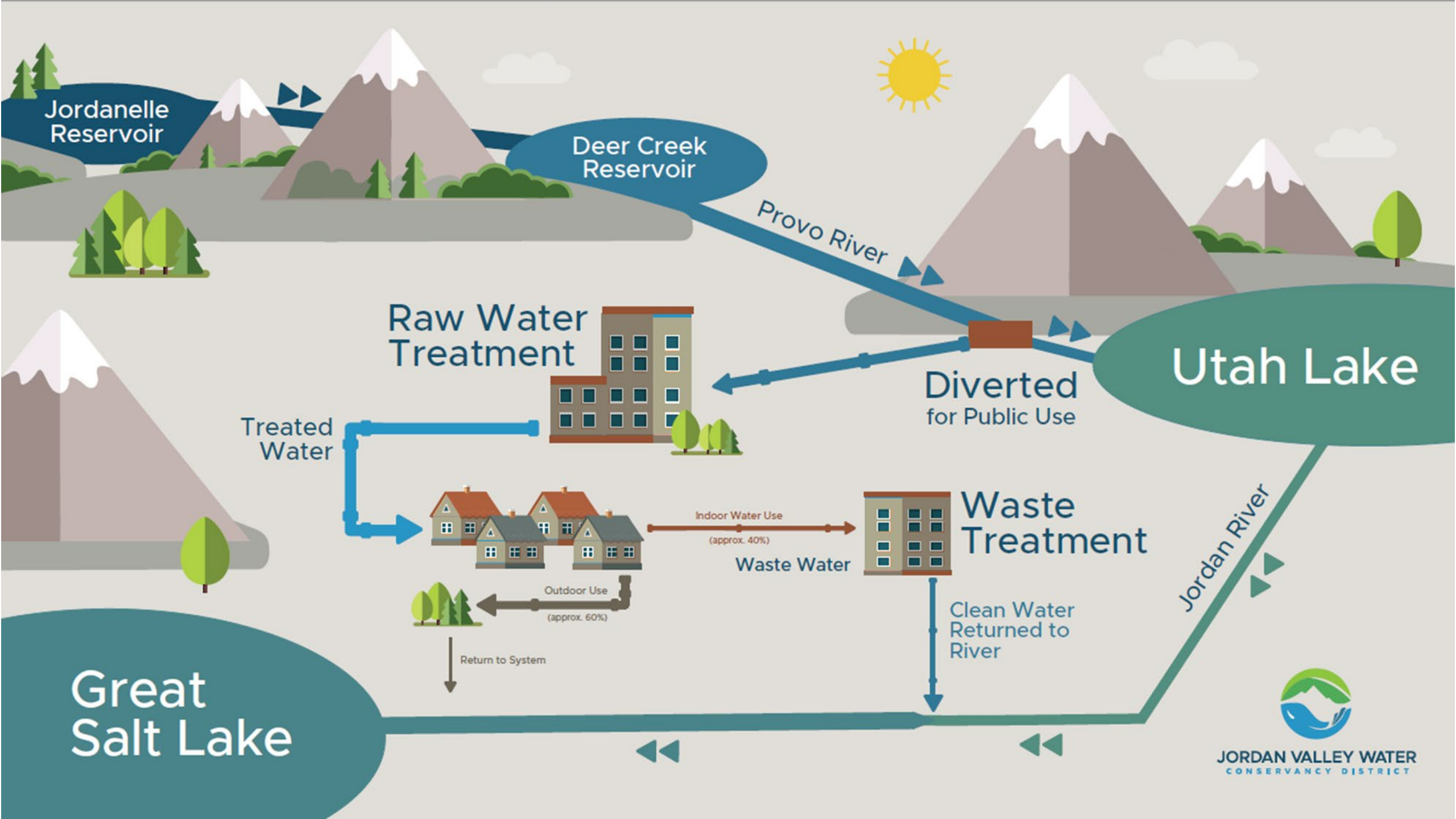
Outdoor Water Use

Results in less return flow to natural system than indoor use

Increases peaking factors (for drinking water systems)

Requires more infrastructure

Increases development costs



Jordanelle Reservoir

Deer Creek Reservoir

Provo River

Raw Water Treatment

Diverted for Public Use

Utah Lake

Treated Water

Indoor Water Use (approx. 40%)

Waste Water

Waste Treatment

Clean Water Returned to River

Outdoor Use (approx. 60%)

Return to System

Jordan River

Great Salt Lake



JORDAN VALLEY WATER
CONSERVANCY DISTRICT



Policy Break

Why Conservation Matters

Downstream Uses?

Well done!
Our combined efforts to save water last year really added up!
This year, Jordan Valley Water is able to send more than 1.6 billion gallons of water to Great Salt Lake!

JORDAN VALLEY WATER
CONSERVANCY DISTRICT

wait2water.

Waiting to regularly water your grass is one of the easiest ways to help Great Salt Lake.

How long can you wait?!
(hint: try until at least Mother's Day)

Apply for water wise incentives and rebates at UtahWaterSavers.com.



Policy Break

Why Conservation Matters

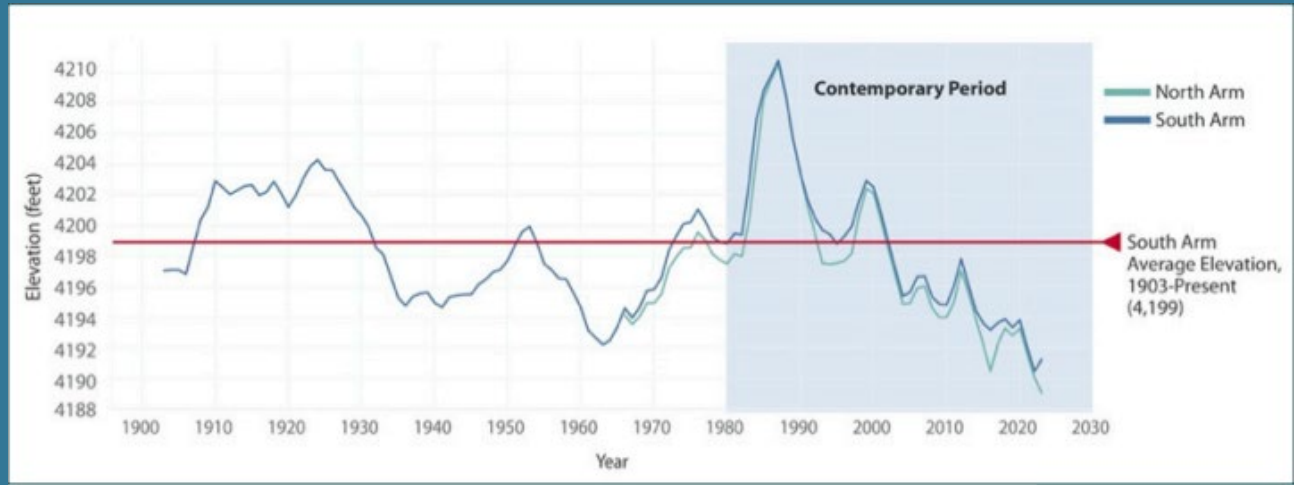
Downstream Uses



1986



2021





Law & Policy

Stewardship





JORDAN VALLEY WATER
CONSERVANCY DISTRICT

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