



LEAGUE OF WOMEN VOTERS OF UTAH  
211 East Third South -- #200  
Salt Lake City, Utah 84111

MARCH 1980

Utah is the second most arid state and it is no accident that water--its ownership and use--is a subject of growing controversy among Utah's citizens and policy makers. President Carter's 1977 suggestion to eliminate part of the Central Utah Project prompted an emotional reaction from Utah's citizens and officials. At the same time, the federal government for financing, of it and are anxious to protect state water rights and prerogatives against perceived threats.

## CHALLENGES OF THE FUTURE FOR

## UTAH'S WATER POLICIES

Growing interest in Utah's energy producing potential from nuclear and coal fired generating plants, coal gasification, and oil shale, as well as pressures resulting from requirements to comply with federal environmental laws (e.g. the Water Pollution Control Act and the Safe Drinking Water Act) are causing some water experts and policy makers to question how adequately present water policies and institutions function. How can Utah's water resources best be managed? Who is going to plan for their future use, and according to what criteria?

From the time the Mormon pioneers first settled in the Salt Lake Valley and diverted water from City Creek Canyon for irrigation in 1847, water resource management has been a necessity. Population growth, increased demands for water and changing economic conditions and social values required changes in the goals and techniques of water management. Utah is the seventh fastest growing state in the nation, and given its recently recognized position as a storehouse of energy resources, there is growing pressure to re-evaluate its water policies in relation to new scientific research, changing social and economic values and circumstances. The traditional response to perceived water shortfalls has been to build more dams and create more water supply but the costs of building large water projects are mounting because the most accessible and easily developed sites have already been used.

The federal government, traditionally the financier of large water projects, has indicated that fewer water projects may be built and those which are built may receive a smaller share of state financing. Thus, Utah's water resource management, coupled with the pressures from citizens seeking water conservation, may strain the institutional arrangements for water management.

LEAGUE OF WOMEN VOTERS OF UTAH  
211 East Third South -- #200  
Salt Lake City, Utah 84111

March 1980

COPYRIGHT 1980  
Price 1.00

The Legislature funds water resource expenditures and enacts the laws governing water matters. In the past the Legislature has supported development of new water resources rather than modified water laws and use priorities. However, because the physical limits of ground and surface waters may soon be reached, this approach may no longer suffice. Both former Governor Calvin Rampton and current Governor Scott Matheson have

Utah is the second most arid state and it is no accident that water--its ownership and use--is a subject of growing controversy among Utah's citizens and policy makers. President Carter's 1977 suggestion to eliminate part of the Central Utah Project prompted an emotional reaction from Utah's citizens and officials. At the same time that they depend on the federal government for financing, many citizens share a general suspicion of it and are anxious to protect state water rights and prerogatives against perceived threats.

Growing interest in Utah's energy producing potential from nuclear and coal fired generating plants, coal gasification, and oil shale, as well as pressures resulting from requirements to comply with federal environmental laws (e.g. the Water Pollution Control Act and the Safe Drinking Water Act) are causing some water experts and policy makers to question how adequately present water policies and institutions function. How can Utah's water resources best be managed? Who is going to plan for their future use, and according to what criteria?

From the time the Mormon pioneers first settled in the Salt Lake Valley and diverted water from City Creek Canyon for irrigation in 1847, water resource management has been a necessity. Population growth, increased demands for water and changing economic conditions and social values required changes in the goals and techniques of water management. Utah is the seventh fastest growing state in the nation, and given its recently recognized position as a storehouse of energy resources, there is growing pressure to re-evaluate its water policies in relation to new scientific research, changing social and economic values and circumstances. The traditional response to perceived water shortfalls has been to build more dams and create more water supply but the costs of building large water projects are mounting because the most accessible and easily developed sites have already been used.

The federal government, traditionally the financier of large water projects, has indicated that fewer water projects may be built and those which are built may require a larger share of state financing. Thus, Utah may be required to finance either a larger share or all of its water projects. This coupled with the pressures from citizens seeking tax limitation, may strain the institutional arrangements for water management.

In Utah the Legislature funds water resource expenditures and enacts the laws governing water matters. In the past the Legislature has supported development of new water resources rather than modified water laws and use priorities. However, because the physical limits of ground and surface waters may soon be reached, this approach may no longer suffice. Both former Governor Calvin Rampton and current Governor Scott Matheson have

expressed interest in re-evaluating Utah's water policies and laws. The Legislative response to these suggestions has not been enthusiastic. In 1974, the Legislative Council established a Blue Ribbon Task Force composed of legislators, water users and citizens to recommend changes in state water laws. This group met extensively from the end of August to December but because the issues were so complex and politically sensitive, they failed to agree on any recommendations. The 1975 Legislature did not retain the Task Force.

In a recent article in The University of Utah Law Review, political scientists at the University of Arizona, draw some interesting conclusions about the likelihood of legislators changing water policy. As a result of a survey conducted among citizens and state senators in the Four Corner States, they conclude that because (1) water issues are so complex and confusing and (2) both citizens and state senators have such limited awareness and information about distribution problems, legislators are likely to delegate responsibility for determining water policy to others. The authors state that from the legislators point of view, "there is little to be gained by concentrating upon water policy since it is much less risky to ratify decisions made elsewhere--at the federal level, by state engineers, special commissions or by negotiated settlements among interest groups." 1

There is disagreement whether Utah now has a water policy. One viewpoint is that Utah's water policy is contained in its water laws. Another viewpoint is that Utah's laws are merely a catalog of issues already decided and that a policy should be a set of principles to be used as guidelines in deciding future issues. From this point of view even though water laws and institutions are complex, a useful water policy would be stated clearly enough to be understood by citizens and policymakers.

State water law and policy are linked to the laws, finances and policies of the federal government. One Utah water expert has pointed out that if Utah policy is well articulated and easily understood, Utah's position vis-a-vis the federal government may be stronger. A recent book on Western water issues notes that "for the near term the opportunity to fashion a new management system will rest with the states. If they fail, the task will shift to the federal government." 2

If the Legislature is to make policy itself or to delegate it to another body, citizens need to be informed about the options and tradeoffs and allowed to participate in the dialogue. In a speech at Governor Matheson's water symposia in the spring of 1979, Dr. Robert Huefner noted that: "The real choice may be whether we reach compromises through careful discussion and planning or end up with inconsistent compromise and inefficient projects that will result if decisions are left to happenstance of shifting political fortunes."

With the realization that the laws and institutions which deal with water are both complex and controversial, the League of Women Voters of Utah has undertaken a two year study to promote public information. The first part of the study will describe Utah water law, particularly as it relates to water allocation (private and public), organizations that manage water and state agencies that deal with water resource planning. The second part of the study will investigate further issues relating to water law, particularly water pollution law and water resource management, such as water quality/quantity reconciliation, ground water use, efficiency and conservation. It is the hope of the state League that local Leagues will investigate local water management issues at the conclusion of the study.

The League of Women Voters of Utah has not studied water on a state level since 1969. From its previous studies, the League has positions supporting (1) coordinated river basin planning and (2) pollution abatement measures.

#### A BRIEF HISTORY OF WATER DEVELOPMENT AND PLANNING IN UTAH

Since most Mormon communities grew alongside a source of water, early water development was small scale, simple, and cooperative. The Mormon Church played an important role in directing the development of this effort. The Territorial Judicial Act of 1852 gave civil authority for developing the water to the Probate Judge and the precinct water master appointed by him. The LDS High Council issued decrees which became binding legal documents. No individual "right" to water uses were recognized or defined; water was a common resource to be used beneficially. The expenses of delivering water were born by the users or in some cases, the Mormon Church.

With the passage of the Territorial Irrigation District Law in 1865, the County Courts were given the power to organize part or all of the county into irrigation districts and to tax or assess all users on a uniform and equitable basis. At mass meetings new irrigation districts were created. A two-thirds vote of the taxpayers was required to approve the irrigation tax and officers for the newly formed district.

The first Utah Water Rights Act (1880) affirmed the claim of the individual to private ownership as a right acquired through previous use and recognized that the right had legal status. As the population grew, the ability of communities to finance larger projects was limited by the increasing costs. State financing of water projects was discussed at the Constitutional Convention in 1896, and there was state financing of water developments in the early years of statehood. After Congress passed the Reclamation Act in 1902 and federal financing of water projects became possible, the state role in financing water development dwindled

until the creation of the Water and Power Board and the Water Revolving Fund in 1947. The Water and Power Board was given the responsibility of work with the federal government and coordinate water development in the state.

Under the Reclamation Act, the Bureau of Reclamation (now the Water and Power Resources Service) investigated, designed and supervised the construction of water resource projects. It was recognized that the costs of large projects were beyond the means of potential settlers so the payments were spread out over a long period of time. Until the repayments were made, the control of the project remained with the federal government. In many large projects, a portion of the costs were repaid by governmental units such as cities and counties through the use of the ad valorem tax.

Because of changing national priorities, the federal government has attempted to shift a larger share of water development costs to non-federal entities. In 1977, President Carter suggested that states should assume up to ten per cent of the front end costs of new water projects not yet authorized. This possibility, plus other portions of the yet-to-be-finalized national water policy including more stringent evaluation procedures (cost/benefit), auditing of the financial conditions of major water projects and a call for "full funding" of all new water project starts suggests that the state of Utah will have to increase funding substantially.

When it established the Water Revolving Fund in 1947, the Utah Legislature took steps to appropriate some funds (\$1 million) to finance at no interest water projects too large for the small farmer to finance but smaller than the Bureau of Reclamation would generally consider. The main use of this fund was irrigation projects and municipal water systems. By 1977 the legislature had appropriated an aggregated \$17 million to the fund. Two more revolving funds have been created since 1947. The Cities Water Loan Fund was created in 1975 and the Water Resources Conservation and Development Fund was created in 1978.

#### UTAH WATER LAW

The Western states, because of their history of settlement involving mining, ranching, and irrigated farming, follow a different legal principle establishing the ownership and use of water than the Eastern states. The Eastern states, like England, follow what is called riparian law--that is the person owning land along stream is entitled to the flow of the stream "undiminished in quantity and quality." Utah follows what is known as the prior appropriation doctrine. This "first in time, first in right" policy arose as a solution to conflicts and potential conflicts among users who might be at some distance from the stream serving as their water source. The basis of this doctrine is

that those who made the first use of the water have a prior right with respect to future appropriators. Mining and agricultural interests (and in Utah, the LDS Church), succeeded in codifying the prior appropriation doctrine into the laws of western states. This doctrine entitles a prior (or senior) appropriator to receive his full supply of water before a later (or junior) appropriator may receive any of his allotted supply.

A closely related concept is beneficial use, defined in Utah law as domestic or culinary, irrigation, stock watering, power or mining development, or manufacturing. (Instream uses, as for fish and wildlife, are not included.) In time of scarcity the law states that the use of water for domestic and agricultural purposes has preference over its use for other purposes but the law has never been used to take water from senior appropriators to satisfy the needs of junior domestic or agricultural appropriators.

The law was originally applied only to surface waters but the the Legislature, after a court case, has included ground water in definition of water subject to the appropriation doctrine. Since all the waters in the state legally belong to the public (i.e. the state) a person or organization wanting to appropriate water must apply to the State Engineer, who has the authority to control the diversion and distribution of the public waters of the state, subject to judicial review. The applicant, whether he be an individual rancher, a municipal water company, a power consortium, or other, must state the quantity and source of water to be appropriated, the beneficial use for which it is intended, the means and place of diversion, and the financial means to complete the project; the application costs him a maximum of \$100. The State Engineer grants the application after determining the following:

- 1) the water applied for is unappropriated
- 2) the proposed use will not impair existing rights
- 3) the project is physically and economically feasible
- 4) the applicant is financially able to complete it.

Public notice must be given, and if protests are filed, the State Engineer must consider them before granting or rejecting the application.

In practice, the State Engineer spends a good deal of time in protest hearings or in court defending his decisions, because it is not always clear whether or not these various conditions are in fact met. Theoretically, he must also determine that the proposed use will not "unreasonably" affect public recreation or natural stream environment or prove detrimental to the "public welfare." However, since Utah law does not define these criteria, it is difficult for the State Engineer to apply them. Legislation has been introduced several times defining more exactly public interest. An example of this can be found in a bill which failed in the 1975 Legislature. It would have provided that the State Engineer could give "fair consideration to the public interest

aspects and impacts of the economic, social, recreational, and environmental values resulting from the use, benefits to the applicant, the state, region and locality resulting directly or indirectly from the economic, alternative future uses of the water and alternative sources of the water to supply the applicants needs." Many lawmakers have successfully argued that public interest criteria are already in the law and do not have to be explicitly delineated.

A clear definition of public welfare is crucial for deciding how the state's remaining unallocated water is to be apportioned: on the basis of priority in which applications were filed or the basis of over-all public welfare. Last year the State Engineer won some legislative authority to "leap frog" over the backlog of earlier applications in order to consider newer ones, but as mentioned above, the legislature was unable to agree on the manner in which this should be done.

Former Governor Calvin Rampton is among those who have urged that the prior appropriation doctrine be modified to make public needs the basis of decision on unappropriated waters. In his speech last year to Governor Matheson's water symposia, former Governor Rampton urged that the law be modified in this manner with the Legislature adopting guidelines defining the public need. He also suggested that the State Engineer be replaced by a three man quasi-judicial body to decide on the application of these public need guidelines in specific cases. He also urged that when a water right is granted under the public interest doctrine, it should be considered as a use of the water and not the ownership of the water. The water rights could be assigned to the new owners only if the usage were to continue for the same purpose as that set forth in the grant.

Since more than 80 per cent of all available water in the state has already been appropriated, there is growing interest in transfer of water from one use and/or location to another, e.g. conversion from agriculture to energy, or from rural to urban uses. Formally, when an appropriator ceases to use water for a period of five years, his right to its uses ceases, and it reverts to the public (state) for reallocation. However, Utah water law and courts have also stipulated that a water right may be sold in the same way as real estate, subject to a finding by the State Engineer that the proposed change will not impair other existing rights. A recent example of this is the private sale of irrigation water to the Intermountain Power Project near Delta. Because the energy industry can afford to pay much more for water rights than farmers and other smaller users, such sales dramatically inflate the price of water. (In this multi-million dollar transaction, water was sold for \$1750 per acre foot; this compares to its agricultural market value of about \$150 to \$200 per acre foot. Farmers were only permitted to sell 20 percent of their water rights by the water users association.)



Largely because of steep increases in the cost of water, industrial, agricultural and other users are seeking to conserve it. As a result, demand is not growing as rapidly as was predicted by some forecasts as recently as the early 1970's. At the same time, however, water rights transfers, or conversions, are increasing, generally from agriculture to industry. This trend is expected to continue, and it is likely to reveal increasing conflicts between proponents of preservation who seek to retain a rural agricultural economy, and the new industrial users, who assert the national need to develop energy resources and the regional need for economic growth. Two additional facts add a different perspective on the conversion problem. Over 75 per cent of Utah's farmers are employed off the farm. Also, Utah farmers have indicated that they prefer the option of selling their water rights to state guarantees of preservation of farm land.

Other Western states have various provisions governing transfer and appropriation actions. Four states--South Dakota, North Dakota, Idaho and Montana--have requirements which deal with large appropriations. In the case of the first three states, large appropriations must be reviewed by the Legislature. In Montana, the appropriator must prove by clear and convincing evidence (a higher burden of proof than imposed on those making smaller appropriations) that the rights of other appropriators will not be injured by the new appropriation. North Dakota, South Dakota, and Arizona have provisions which impede the transfer or irrigation rights to energy use. To prevent use of water going outside the state in a coal slurry line to Texas, Wyoming recently passed a law which prevents the transfer of water for purposes of sending minerals outside the state without legislative approval.

Despite the elaborate laws dealing with the appropriation of water, the laws dealing with water distribution are much less stringent. Water belongs to the state until it is diverted from a stream for private use. After it is diverted, it is under the management of the users along the river system (a river system consists of the diversion units along the river). River systems set their own budgets financed by fees paid the users and hire a river commissioner whose job it is to distribute the water. Sometimes the river commissioner is poorly trained and paid. The individual water consumer may or may not be receiving his allotted water. A water user has the right to use the civil courts as a remedy for shortfalls; in practice the economic and social problems a court suit causes him may effectively eliminate this remedy. As water becomes more valuable the state can expect to receive more complaints about the distribution of water. A municipality or an industrial user will demand their full allotment by either civil or political means. Other states pay for the administration of water distribution out of general tax revenues and the Legislature may be asked in the future to assume these costs.

## STATE WATER MANAGEMENT AGENCIES

At the state level the main water supply management agencies are the State Engineer and the Division of Water Resources within the Department of Natural Resources. The function of the State Engineer is to allocate water and referee water disputes. The function of the Division of Water Resources is to plan water resource development. Originally the two agencies were part of the same agency but since the Division itself must apply for water rights for waters to be developed, it was felt that they should be separate to avoid conflicts of interest. Matters concerning water pollution are under the jurisdiction of the Division of Health in the Department of Social Services. For the purposes of this study we are only concerned with the agencies in the Department of Natural Resources.

The State Engineer, Dee Hansen, is appointed by the Governor and has the responsibility of general administrative supervision of the state's waters. He acts on all applications for appropriation of unallocated waters and on all applications for changes in the points of diversion, place of use or purpose of use and period of use by approving, denying or staying them until further information can be gathered. When there is a civil suit the district court will "adjudicate" or determine all water rights on a drainage basin. In these cases the State Engineer will make a hydrological survey, assemble information and make the initial determination of water rights. Judgement is entered on his recommendations if no protest is filed. Even when there is no specific complaint about water rights in a given drainage area, the State Engineer, after petitioning the District Court, can investigate and adjudicate an area when funds are available. Since it is estimated that only about one sixth of the water rights in the state are on file in the State Engineers office, it would be desirable to adjudicate all drainage systems throughout the state. The process is time consuming and budget limitations have prevented the office from doing this.

The State Engineer has also been given responsibilities to grant applications for slurry lines and general authority to control geothermal resources.

The Division of Water Resources is charged with developing Utah's water resources. As such, they are responsible for the planning of water resource development in the state and interstate stream negotiation. The Board of Water Resources oversees the agency and is responsible for setting policy, advising the staff on planning objectives and administering the three revolving funds. The Board is composed of eight members who represent different geographical areas of the state. They are appointed by the Governor for four year terms. Presently the Board is composed of two attorneys, a banker, a farm implement dealer, a businessman, an engineer and two ranchers. There is no limitation on the number of terms a member can serve.

The state water plan is contained in the Division's publications, The State of Utah Water, which are published periodically. As their 1975 edition points out, because of the status of water rights in Utah as a form of private property and the general situation of over-appropriation of streams throughout the State, the traditional idea of a state water plan which would describe where and for what purpose the water of the state should be used and the measures--physical, legal and institutional--to achieve those objectives is largely unattainable. Thus it is apparent that the traditional approach to water planning which emphasizes changing legal and institutional conditions has been rejected by the Board. Since significant changes in laws and institutions are unlikely in the near future, the Board must work in the context of what is possible now.

The general thrust of Utah water development has been to develop rural water supplies and then bring population and industry to it; this can be contrasted to California's plans to bring water to the people. In 1967, the Board prepared a "Report on Goals, Objectives and Planning Principles." Although the report was circulated, it was never given formal Legislative approval. The Planning objectives are to:

- 1) Maintain a legal and institutional framework which encourages the highest economic use of water;
- 2) Encourage intensive use of land and water resources to provide increased employment;
- 3) Aid stabilizing existing rural communities;
- 4) Preserve and/or enhance recreational wildlife areas.

The last edition of The State of Utah water in 1978 identifies energy siting and water quality reconciliation as current important problems.

The Board has administered the Water Revolving Fund since 1947. A second revolving fund, The Cities Water Loan Fund, was authorized in 1975 to help cities in energy impacted areas to develop culinary systems and to help small communities to improve their systems to meet increasingly stringent health standards. This fund, like the Revolving Fund, is interest free.

A third fund, The Water Resources Conservation and Development Fund, was created in 1978 after the drought and Carter's policy announcements. This fund differs from the others in that it authorized larger projects (costing up to \$20 million), allowed the state itself to authorize projects, and charged interest on the capital loaned. The interest charged is set by the Board of Water Resources. The \$25 million authorized in the legislation was for ten specific projects. The 1980 Legislature authorized an additional \$25 million for the fund. Governor Matheson indicated in a recent speech that he wants to see the fund advanced to \$100 million.

--- This new power to set interest rates and authorize large water projects is a departure from previous policy. This departure from previous policy was questioned in a recent speech by Utah State University researchers:

It goes without saying that the justification for state intervention into the financing of water development projects should be made explicitly visible to the taxpayers. The investment of state money for water development runs parallel to a philosophy that water is a public resource and any use thereof is a public use. Past irrigation projects have distributed benefits fairly evenly among users and promoted a rural stability which gave the projects a public character. The use of project water for energy resources or for industrial processing concentrates the private benefits from the project to a degree that may compromise its public nature....the important question is whether the emerging water development projects still generate significant public benefits and distribute these benefits to a broad segment of Utah's populus.<sup>3</sup>

Dan Lawrence, Director of the Division of Water Resources, feels that these criticisms are not justified. The considerations of the allocations of benefits were part of the Legislative decision when the Water Resource Conservation Fund was authorized in 1978. He feels that the decision of the Legislature to add \$25 million to the Fund in 1980 reflects their general satisfaction with the Board and the Division of Water Resources. The Board does periodically discuss the philosophic issues behind their choices. The division is drafting guidelines for economic analysis of potential projects.

These new powers to set interest rates and authorize large water projects, plus the tendency of the Legislature to ratify the policy decisions, bring up some questions about the Board itself. Is geographical representation the best way to order a board so that all interests are adequately represented in decision making? Or should the board be ordered to represent certain categories of interest groups? Or can citizens remain confident that the Governor of Utah, whomever he is, will consider both problems in his appointments? Traditionally, the Board has been oriented toward rural constituencies; however, the newest appointment representing the Salt Lake/Tooele district is a Salt Lake attorney Richard A. Moffat who can be expected to bring an urban perspective to the deliberations of the Board. In a telephone interview, Mr. Moffat revealed that in his short tenure he has not had a single call from a citizen regarding Board matters.

## LOCAL WATER MANAGEMENT INSTITUTIONS

The general trend of institutional development for water management in Utah has been twofold. As needs grew larger, greater amounts of money had to be found. Consequently, it has been necessary to form larger institutions with larger financial bases. The direct control of these institutions has moved further from the users and taxpayers.

The main institutions for managing water are public or quasi-public. The main exceptions are the various irrigation companies (non-profit corporations) which manage irrigation canals. Today there are more than 1000 of these in Utah and they own most of the state's water rights. Irrigation companies are organized under the business corporation laws of the state. They are non-profit and assess members for the cost of delivering water. Water stocks or shares can be bought, sold, or transferred. In larger projects irrigation companies and others band together to form a water users association.

Irrigation companies are not designed to respond to new water needs, and as traditional agricultural areas become urban, water in irrigation canals may no longer be used. This fact lies behind recent proposals to develop a dual water system in the Salt Lake area, utilizing presently unused irrigation canal water for watering lawns and gardens. Supporters of this plan estimate that it would effectively double the supply of culinary grade water available, since about half of present annual consumption of culinary water is for outdoor use. Critics of this proposal argue that the dirty water could back up into the culinary system, and also that children might drink it by mistake. They also argue that pumping costs could offset economic gains.

The main public and quasi-public water management organizations in Utah are municipal water companies and various types of water districts. The earliest form of government to be involved in water was the municipal water department, created originally to meet the need for fire protection. It gradually took over full water distribution for all purposes. In smaller towns, election council members may serve as managers in larger cities, elected officials hire managers, responsible to them. Municipal water systems collect fees from users and have the power to tax.

Although various types of water-related special districts are used extensively in Utah, most citizens do not understand their operation very well. A special district is a governmental unit deriving its authority from state statutes and each type of district has different decision making responsibilities. A special district is used at the local and regional level to solve problems. Utah laws have authorized 171 different districts (e.g. mosquito abatement, fire, library, mass transit) to do things that could not be done by the towns and cities and

counties. Of these, approximately 50 use water as a "commodity" in exchange for taxes, direct user fees or both. The types of water districts most commonly created are county improvement districts for water, sewer and sewage treatment systems, county service districts, metropolitan water districts and water conservancy districts.

A county improvement district can be initiated by petition or by the County Commissioners. After public notice and hearing, the county commissioners can decide to create the district. If 25 per cent of the real property owners protest the formation of the district during the public notice period, the issue dies. The district is governed in one of three ways:

1. The county commissioners themselves can serve as the officers.
2. The county commissioners can appoint the officers, arranging the six year terms on a two year staggered basis.
3. The trustees can be elected with the election day set the first Monday of December.

The district can be operated with taxes and/or user fees. Capital financing is through the use of general obligation and revenue bonds. The rate of taxation is limited and there is a limit on the total debt permitted based on the assessed valuation within the district. A county service area is nearly the same institution but it applies only to unincorporated areas of a county.

The metropolitan water district and water districts were originally authorized by the state to serve as a financing agent to guarantee repayment of money borrowed from the federal government to build water projects. When the federal government began financing large water projects after the passage of the Federal Reclamation Act of 1902, the beneficiaries of the developed water were to pay back the costs of the project. When agricultural users could not afford to assume all of the costs in larger projects, other sources of money to guarantee repayment were sought. Municipalities could afford to pay higher prices for water and the Metropolitan District enabling legislation was passed in 1935 to allow cities to join a district to repay the costs of water development. This is the same year that the US Congress passed the Provo River Project and the six metropolitan water districts in Utah all have some share in the repayment of the Provo Water Project.

Metropolitan Water Districts have wide powers including the power to incur bonded debt, acquire, construct, operate and manage works and property. A district is authorized by an election and the Board of Directors is appointed by the governing body of the city. One of the Directors must be the person in charge of water works. There is no limit on the amount of tax a district can levy. A recent court case prohibited a municipality from transferring district money to the city's general fund.

A water conservancy district is not limited to municipal water needs but is given the power to develop water for all purposes. The Act was passed in 1941 and provided for the conservation and development of water and land of the state for the greatest beneficial use of the water within the state. The act is different than other water management laws in that the jurisdiction to create water districts and the appointment of directors is vested in the district courts. At that time the act was praised as "taking the politics out of water management."

A district can only be organized or protested by petition. The numbers were designated by the law to be:

#### FOR PETITION

20% of property owners in unincorporated areas of county. Each property owner must represent an assessed valuation of \$300 or over.

5% or 100 (whichever is least) of property owners in incorporated areas--each having an assessed valuation of \$300 or more.

#### AGAINST PETITION

20% of property owners in unincorporated areas of county. Total assessed valuation of all signers must equal 20% of total assessed valuation.

20% of property owners in incorporated areas. Total assessed valuation of signers must equal 20% of total assessed valuation.

The petitions are submitted to the district judge in the appropriate area of jurisdiction. The judge makes the determination whether the petitions meet the legal requirements. The judge then appoints a board of directors who serve for three year terms.

The makeup of the Board of Directors is done on a county basis but population is not a factor in determining the number of directors for each county. Thus Salt Lake County which has most of the population and tax base has five out of the nineteen members of the Central Utah Water Conservancy District Board. The law sets no guidelines for the judges to use in appointing members of the districts. The Fourth District Court in Provo appoints the members of the Central Utah Water Conservancy District, even though Salt Lake County residents who represent the largest population, are not within its jurisdiction. Terms are not limited so that many of the members have served for several years. Many of the directors may be directors of other water agencies who contract with the conservancy district, setting up a possible conflict of interest.

The district has the power to raise money by ad valorem taxes, borrow money, issue bonds and collect tolls for water sold. The Legislature has set limits on the tax depending on the geographical location of the districts. Great Basin Districts are limited to one mill, Upper Colorado Districts are limited to two mills and Lower Colorado Districts are permitted to five

mills. In addition, the district is allowed an extra one half mill in the event of "default or deficiencies." The district can assess special users such as municipalities or irrigation companies for expenses applying only to those agencies. The District determines a tax rate to be applied to those agencies to raise the necessary funds. And unlike a metropolitan water district, there is no statutory provision for dissolving a water conservancy district.

The power to tax has given water conservancy districts large sums of money to handle. The Central Utah Water Conservancy District collected over \$4 million in 1978 and the Weber Basin Water Conservancy District collected over \$2 million. The districts are required to file audited statements with the District Court but no other oversight by any other body is required of them.

Metropolitan districts can contract with conservancy districts for the delivery of water. Nothing in the laws gives precedence to either a metropolitan district or a conservancy district should a conflict arise. There are overlapping directors who can insure that some communication and cooperation are achieved. The increased costs of water plus its increasing scarcity may be responsible for further conflicts. The ability to deliver water to developing areas can mean that management agencies can make land use decisions without much prior input from citizens or locally elected officials. The potential for conflict with water pollution agencies will be discussed in the second part of the study.

At the close of this first study on water, it is appropriate to again ask the questions: Who is going to make the decisions about Utah's water policies? What criteria will be used to make those decisions? In arid Utah the ability to make land use decisions is related to the availability of water-- are citizens and policy makers willing to make efforts to plan for Utah's water future?



FOOTNOTES

1. Ingram, Helen, Laney, Nancy, and McCain John R., "Managing A Limited Resource: The Political Constraints on Water Policy in the Four-Corner States," Utah Law Review, Vol. 1979, No. 4, p. 745.

2. Kneese, Allen, and Brown, Lee, National Resource Development Issues in a Regional Setting. DRAFT.

3. Hoggan, Daniel, Speech at the American Water Resources Association, Las Vegas, Nevada, September 26, 1979.

BIBLIOGRAPHY

Central Utah Water Conservancy District, Annual Report, 1978.

Division of Water Resources, The State of Utah Water-1975. Salt Lake: January, 1976

\_\_\_\_\_, The State of Utah Water-1978, Salt Lake: August, 1979.

Gould, George, State Water Law in the West: Implications for Energy Development. Los Alamos: 1979.

Ingram, Helen, Laney, Nancy, and McCain, John R., "Managing A Limited Resource: The Political Constraints on Water Policy in the Four-Corner States," Utah Law Review, Vol. 1979, No. 4, p 719-745.

"Utah Water Laws, Politics and Institutions," Acquarius, Special Issue 2, June, 1978.

Utah Water Symposium, SAC/SAT 79 04, December, 1979.

INTERVIEWS

- Jay Bagley, Utah State University
- Harold Donaldsen, Adjudication Engineer, Division of Water Rights
- Frank Haws, Utah State University (telephone)
- Daniel Hoggan, Utah State University (telephone)
- L. Douglas James, Director, Utah Water Research Laboratory, Utah State University
- Steven Jensen, Salt Lake County Water Quality Department (telephone)
- Lee Kapaloski, Attorney
- Daniel F. Lawrence, Director, Division of Water Resources
- Lynn Ludlow, General Manager, Central Utah Water Conservancy District (telephone)
- Richard A. Moffat, Attorney (telephone)
- Barry C. Saunders, Chief of Planning, Division of Water Resources
- Thorpe Waddingham, Senator, Utah Legislature, (telephone)

The League of Women Voters wishes to thank the Division of Water Resources, the Division of Water Rights and The Water Research Laboratory of Utah State University for their help in preparing this study.

Research Committee:

- G. G. Brandt, Chair
- Marie Lynn Caldwell
- Emily Hall
- Sara Michl
- Eleanor Olsen
- Linda Wagenet

## QUESTIONS

1. In arid Utah the ability to deliver water is the ability to make land use decisions. Is this true?
2. What federal actions give the state of Utah reason to reassess its planning and funding for water projects?
3. Why has the doctrine of prior appropriation evolved in West?
4. What is "beneficial use" and how does it apply to Utah water law?
5. What, if any, changes in the appropriation law would you support? \*
6. Would you support any changes in the law defining the "public interest" in appropriation law? What things should be included? Are you willing to support increases in funding? \*\*
7. Assess the Goals the Board of Water Resources established in 1967? Do they reflect the needs of 1980? Do you think others should be added? \*\*
8. Compare the advantages and disadvantages of policy boards composed of geographic representation versus interest representation. Which type of board is preferable to make water policy? \*\*
9. With the defeat of the Land Use Bill in the referendum in 1974, many legislators and policy makers have been reluctant to approach policy decisions by a negotiated settlement between interest groups. What are the advantages and disadvantages of this approach? Should this approach be used in developing water policies? \*\*
10. Why is the Conservancy District legislation described as "taking the politics out of water management?" Is this desirable? What changes in the law would you support?

\* Consensus question

\*\* Consensus question to be repeated at the conclusion of Part II.