

Water & The Law

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Fall 2018 Issue

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Greetings!

Welcome to the Fall 2018 Issue of *Water & The Law*. We hope you will find this newsletter to be helpful and informative. As always, we welcome your feedback. If you have questions or comments, please reply to this e-mail or call us at 801-413-1600.

Smith Hartvigsen, PLLC

Contact Us

If you have any questions or if you would like to see something discussed in the future, please let us know by sending an e-mail to info@water.law

or contact one of us directly through the following links:

[Craig Smith](#)
[David Hartvigsen](#)
[Jeff Gittins](#)
[Nathan Bracken](#)
[Devin Bybee](#)

To view previous newsletters, visit our website www.Water.law

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Upcoming Conferences

REMINDER OF UPCOMING CONFERENCE

Directors and Officers Coverage for Water Systems

Friday, November 2nd, 2018
11:30 a.m. to 1:00 p.m.
Lunch provided

Join representatives from Moreton & Company, Smith Hartvigsen, and Glatfelter Public Practice to learn the importance of Directors & Officers coverage. We'll cover the ins and outs of various types of coverage and discuss real-world case studies that will demonstrate the benefits of Directors & Officers insurance.

Moreton & Company SLC Office
101 South 200 East, Suite 300, Salt Lake City, Utah 84111
Lunch and check-in begin at 11:30 AM
Seminar begins at 12:00 PM

For more information click [here](#)

EnerVest v. Utah State Engineer

By Jeffrey R. Gittins

The Utah Supreme Court recently issued its opinion in the case of EnerVest, Ltd. v. Utah State Engineer. The case focused on the issue of who has standing to appeal a district court's decision on an objection to a proposed determination.

Minnie Maud Creek is a stream in Duchesne County that is tributary to the Green River. The General Adjudication for Minnie Maud Creek was initiated in 1956, and the State Engineer issued a Proposed Determination in 1964. The Minnie Maud Reservoir and Irrigation Company ("MMRIC") was awarded twelve water rights in the Proposed Determination. Four objections were filed, which challenged eight of MMRIC's water rights.

In 2012, EnerVest filed a petition to expedite a hearing on the

Utah Association of Special Districts Annual Conference

Nov. 7-9, 2018

Layton, UT

For more information click [here](#)

Water Blog

To view more information about water law in Utah, visit our water blog at

utahwaterrights.blogspot.com



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objections, which were still pending. The district court granted the hearing, but limited the scope to the question of whether MMRIC was correctly listed as the owner of the water rights. Several parties participated in the hearing, including EnerVest and Michael Carlson, who had not filed objections to the Proposed Determination, and the Hammerschmid Trust, who had filed an objection. EnerVest and the Hammerschmid Trust argued that MMRIC did not own the water rights, and Carlson argued that MMRIC did own the water rights. The district court agreed with Carlson, and ruled that MMRIC was correctly listed as the owner of the water rights in the Proposed Determination.

EnerVest and the Hammerschmid Trust appealed the decision to the Utah Supreme Court. During the pendency of the appeal, the Hammerschmid Trust voluntarily dismissed their appeal, leaving EnerVest as the sole appealing party. Carlson then challenged EnerVest's standing to continue the appeal.

The Utah Supreme Court first had to determine if the appeal was proper under Rule 54(b) of the Utah Rules of Appellate Procedure, which allows appeals for individual claims within a larger case. The Supreme Court concluded that the appeal was not proper for several reasons, including the unique nature of General Determinations that "prevents complete finality of any water rights until the entire general adjudication has been completed."

The Supreme Court then had to determine if the appeal was proper under Rule 5(a) of the Utah Rules of Appellate Procedure, which allows interlocutory appeals (i.e., appeals before a case is final). As part of this determination, the Supreme Court examined whether EnerVest had standing to pursue the appeal. The key fact in this analysis was that neither EnerVest nor its predecessor-in-interest had filed an objection to the Proposed Determination, and a party who does not timely object to a Proposed Determination acquiesces to the Proposed Determination as published. Because EnerVest had already acquiesced to the Proposed Determination, it lacked standing to appeal the district court's decision upholding the Proposed Determination. Furthermore, EnerVest could not pursue the Hammerschmid Trust's interests in the appeal. As the Supreme Court noted, "a non-objecting party's interests can piggyback on another party's objection, but only as far as the objecting party is willing to travel. Once the objecting party chooses to end its objection's journey, the non-objecting party cannot take over."

Based on these determinations, the Supreme Court dismissed the appeal for lack of appellate jurisdiction.

To read the full opinion, [click here](#).

We welcome feedback and questions. Please contact us at info@Water.law
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