



# **Introduction to Utah Water Law**

Jeffry R. Gittins

SMITH HARTVIGSEN, PLLC





Discussing Water Rights:  
A Utah Tradition



# Water rights vs. Water shares

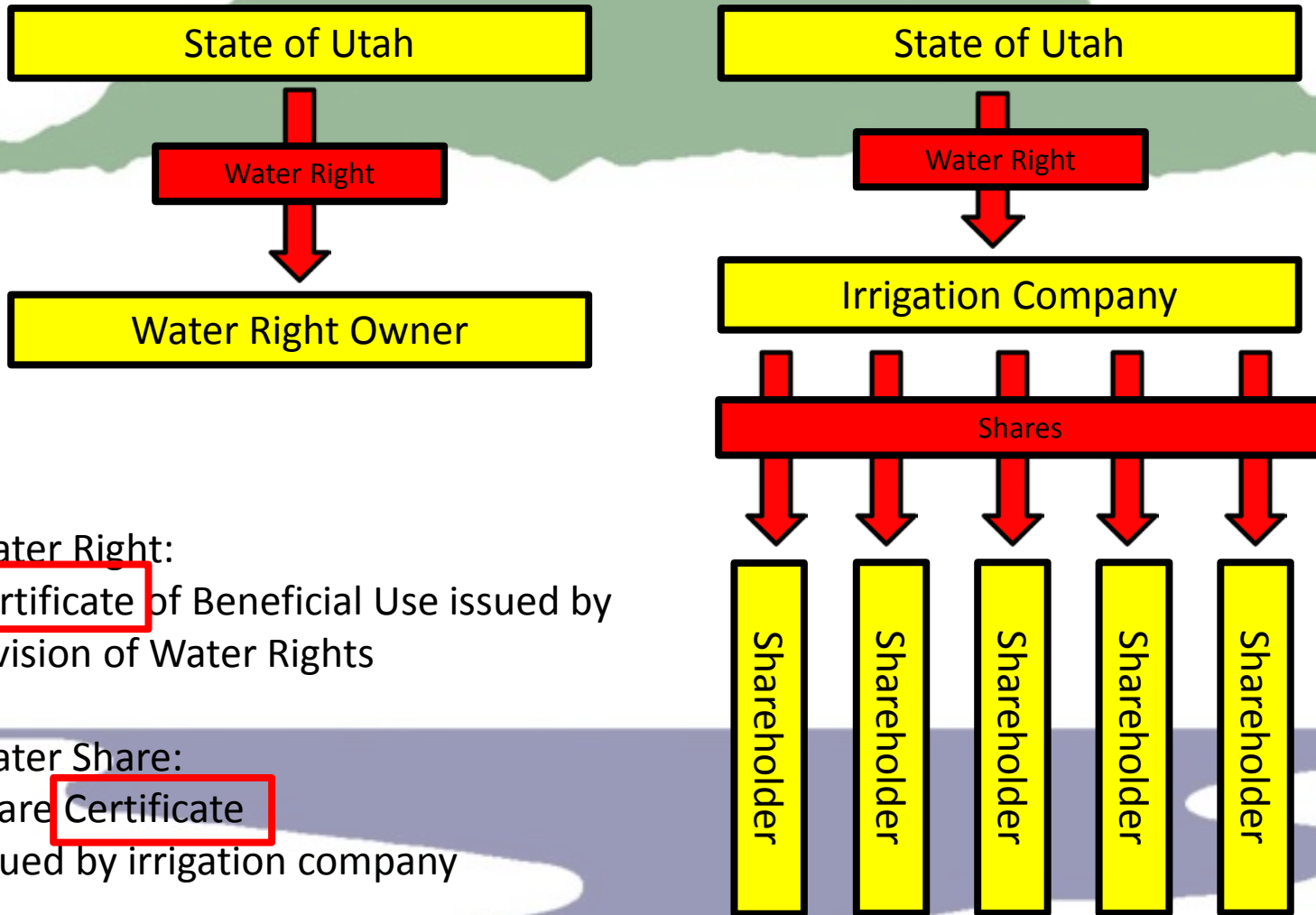
Water right: right granted by the State to use a specific amount of water from a specific source for a beneficial use at a specific place.

Water share: share of stock in a mutual water company that entitles the holder to a portion of the company's water right(s).

	<u>Water Right</u>	<u>Water Share</u>
How conveyed	Deed	Endorsement of certificate
Appurtenant (generally)	Yes	No



# Water rights vs. Water shares



Water Right:


Certificate of Beneficial Use issued by Division of Water Rights

Water Share:

Share Certificate issued by irrigation company




# Measuring Water

- Flow
  - Volume
- 




# Flow

- Rate of water discharged from a source, given in volume with respect to time
  - Cubic feet per second (“cfs”)
  - 1 cfs = 448.83 gallons per minute
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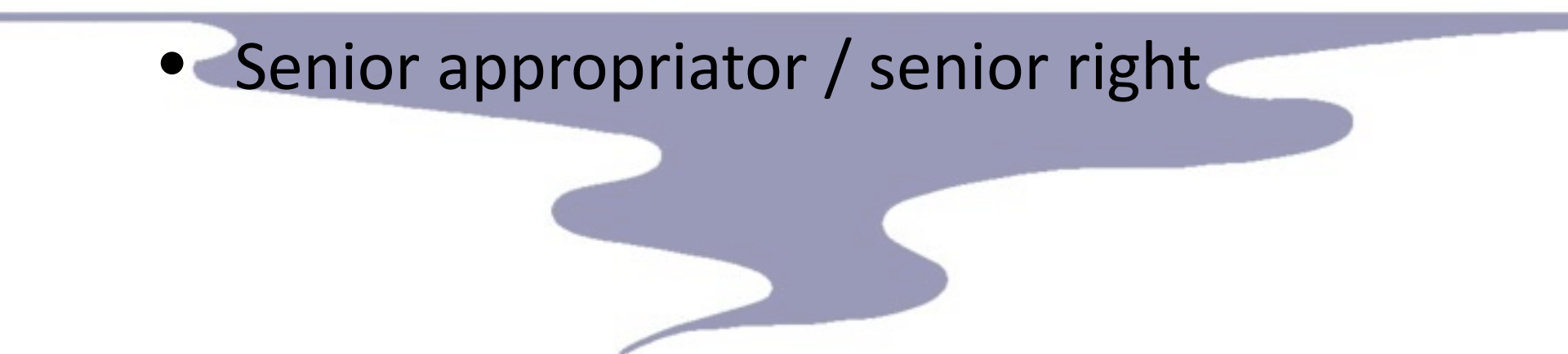


# Volume

- Measured in acre-feet
  - Acre-foot: amount of water necessary to cover one acre of land with one foot of water
  - 1 acre-foot = 325,851 gallons
  - 1 cfs = 723.97 acre-feet per year = 235,906,348.5 gallons per year
- 




# Prior Appropriation Doctrine

- Underlying principle of western water law
  - “First in time, first in right”
  - The first person to take a quantity of water and put it to beneficial use has a higher priority than a subsequent user.
  - Senior appropriator / senior right
- 






# Beneficial Use

- Utah Code section 73-1-3: “Beneficial use shall be the basis, the measure, and the limit of all rights to the use of water in this state.”
  - Beneficial uses are generally considered to be those uses that promote economic activities
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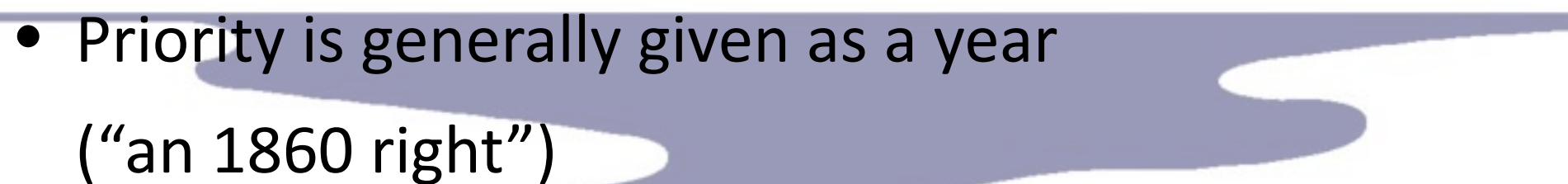


# Common Beneficial Uses

- Domestic
  - Irrigation
  - Stockwatering
  - Municipal
  - Industrial
  - Power generation
  - Instream flow
- 




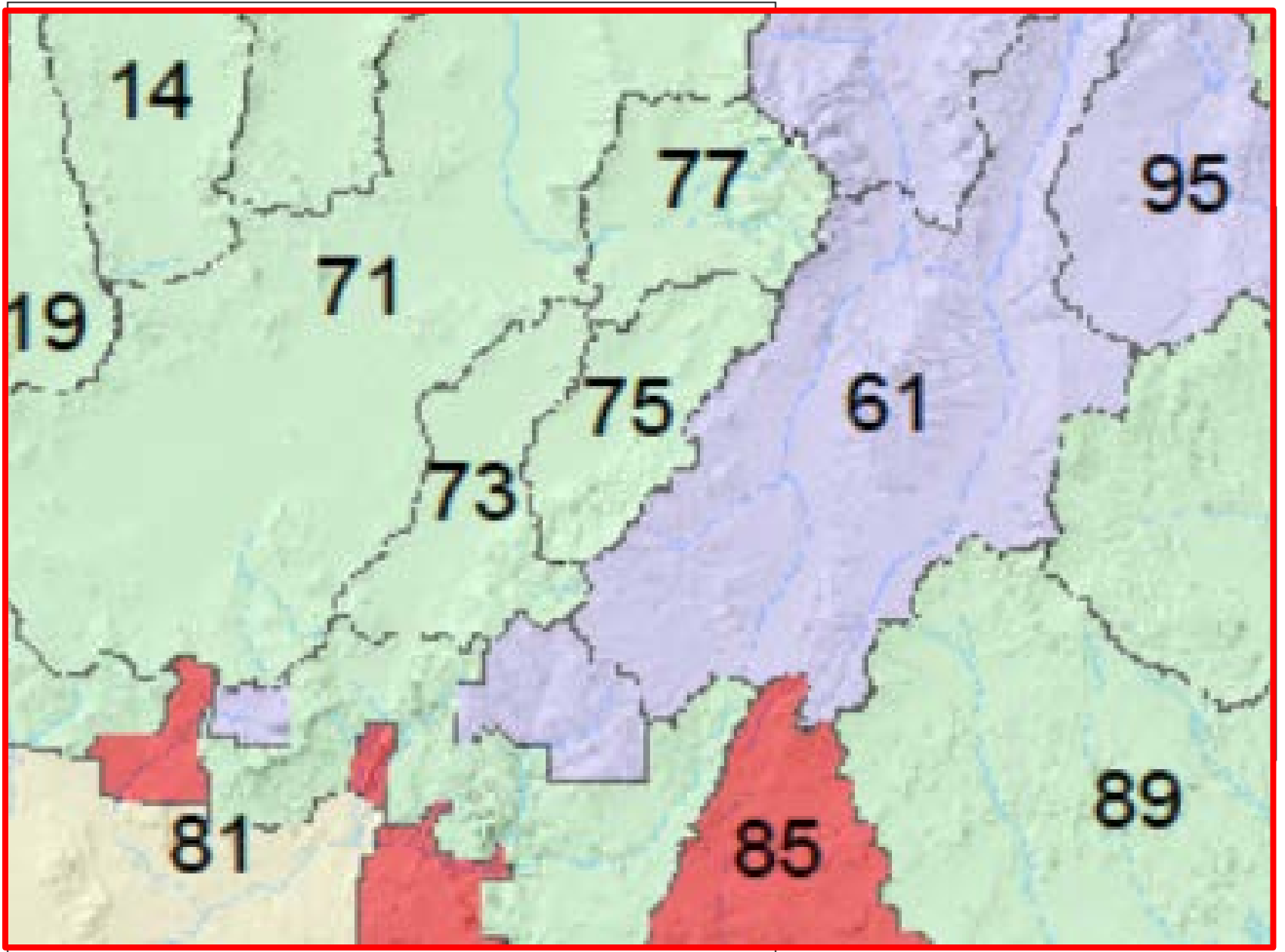
# Priority

- Concept that the person first using water has a better right to it than those commencing use later
  - Protects beneficial users in order of seniority
  - Senior appropriator receives full allocation of water before junior appropriator receives any
  - Priority is generally given as a year (“an 1860 right”)
- 




# Duty of Water

- Quantity of water, determined by the State Engineer, required to satisfy the water requirements for a given use and area
  - Concept: only so much water can be beneficially used for an authorized purpose
  - Based on irrigation requirements of alfalfa
- 






# What is a Water Right?

- Utah Code section 73-1-1: “All waters in this state, whether above or under the ground are hereby declared to be the property of the public.”
  - A water right is a right granted by the State to use a specified amount of water from a specified source for a beneficial use in a specified location
- 



# Components of a Water Right

- Priority
  - Flow / volume
  - Source
  - Point of diversion
  - Type of use
  - Period of use
  - Place of use
- 

STATE OF UTAH – DIVISION OF WATER RIGHTS – DATA PRINT OUT for 25-3247(A27274)

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 02/02/2010 Page 1

WATER RIGHT: 25-3247 APPLICATION/CLAIM NO.: A27274 CERT. NO.:

=====

OWNERSHIP\*\*\*\*\*

=====

NAME: Jeffrey R. and Lynda A. Gittins  
 ADDR: 152 West 200 South  
 Smithfield UT 84335

PRIORITY: 08/31/1961

SOURCE: Underground Water Well

POINT OF DIVERSION -- UNDERGROUND:

(1) N 2100 ft W 135 ft from SE cor, Sec 32, T 13N, R 1E, S18W

DIAMETER OF WELL: ins. DEPTH: to ft. YEAR DRILLED: WELL LOG? No WELL ID#:

Comment:

=====

USES OF WATER RIGHT\*\*\*\*\* ELU -- Equivalent Livestock Unit (cow, horse, etc.) \*\*\*\*\* EDU -- Equivalent Domestic Unit or 1 Family

=====

SUPPLEMENTAL GROUP NO. 19647. Water Rights Appurtenant to the following use(s):

25-3055(CERT), 3218(MUC), 3247(MUC), 3309(CERT), 4142(MUC), 6109(DIL), 6145(DEC), 6146(DEC), 6147(DEC), 6148(DEC)

.....

IRRIGATION: Sole Supply: UNEVALUATED acres Group Total: 17.4 Div Limit: 0.0 acft. PERIOD OF USE: 04/01 TO 10/31

BLOCK OF USE:	NORTH WEST QUARTER				NORTH EAST QUARTER				SOUTH WEST QUARTER				SOUTH EAST QUARTER				Section
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	
Sec 32 T 13N R 1E S18W																	17.4000
GROUP ACRES TOTAL: 17.4000																	

SUPPLEMENTAL GROUP NO. 19675.  
 25-3247(MUC)

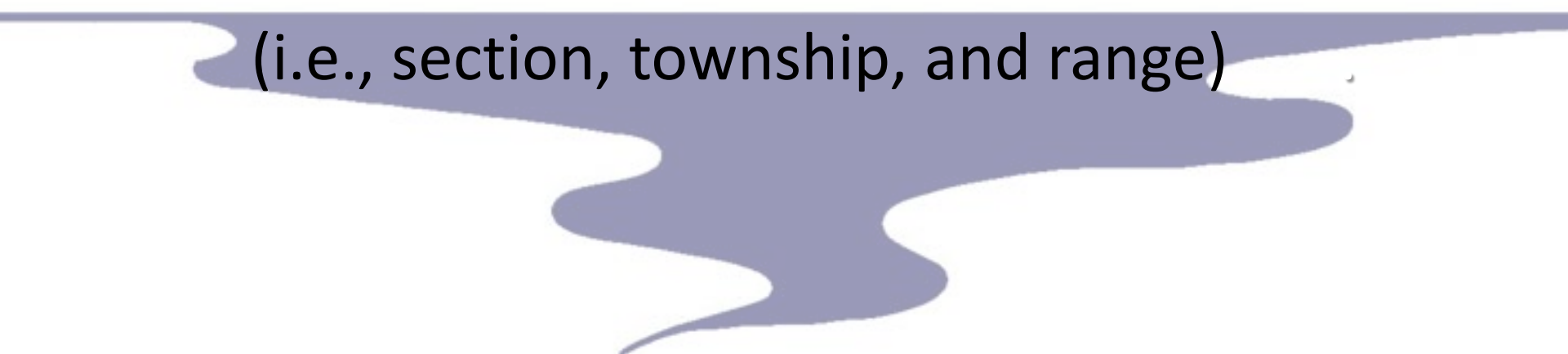
.....

STOCKWATER: Sole Supply: UNEVALUATED ELUe Group Total: 25.0000 Div Limit: PERIOD OF USE: 01/01 TO 12/31





# Point of Diversion

- Point specified in a water right from which water is diverted from source (e.g., a point on a river where the water is diverted into a ditch, or the location of a well where water is diverted from the underground aquifer)
  - Described based on public land survey (i.e., section, township, and range)
- 

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OWNERSHIP\*\*\*\*\*

NAME: Jeffrey R. and Lynda A. Gittins  
 ADDR: 152 West 200 South  
 Smithfield UT 84335  
 INTEREST: 100% REMARKS: joint tenants

DATES, ETC.\*\*\*\*\*

LAND OWNED BY APPLICANT? COUNTY TAX ID#:  
 FILED: 08/02/1965|PRIORITY: 08/31/1961|PUB BEGAN: 05/14/1966|PUB ENDED: |NEWSPAPER:  
 ProtestEnd: |PROTESTED: [No] |HEARNG ELD: |SE ACTION: | |ActionDate:02/25/1960|PROOF DUE: 07/31/1963  
 EXTENSION: |ELEC/PROOF:[Election]|ELEC/PROOF:05/09/1962|CERT/WUC: 07/20/1964|LAP, ETC: |LAPS LETTER:  
 ROSE LETTR: |RENOVATE: |RECON REQ: |TYPE: |

PD BOOK: [ 25-3 ] |MAP: [36d ] |PUB DATE:

Type of Right: Application to Appropriate Source of Info: Proposed Determination Status: Water User's Claim

LOCATION OF WATER RIGHT\*\*\*\*\*

FLOW: 0.67 cfs SOURCE: Underground Water Well

POINT OF DIVERSION -- UNDERGROUND:

(1) N 2180 ft W 135 ft from SE cor, Sec 32, T 13N, R 1E, SLBM

USES OF WATER RIGHT\*\*\*\*\* ELU -- Equivalent Livestock Unit (cow, horse, etc.) \*\*\*\*\* EDU -- Equivalent Domestic Unit or 1 Family

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IRRIGATION: Sole Supply: UNEVALUATED acres Group Total: 17.4 Div Limit: 0.0 acft. PERIOD OF USE: 04/01 TO 10/31


BLOCK OF USE:	NORTH WEST QUARTER				NORTH EAST QUARTER				SOUTH WEST QUARTER				SOUTH EAST QUARTER				Section
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	
Sec 32 T 13N R 1E SLBM																	17.4000
GROUP ACREAGE TOTAL:																17.4000	

SUPPLEMENTAL GROUP NO. 19675.  
 25-3247(WUC)

STOCKWATER: Sole Supply: UNEVALUATED ELU Group Total: 25.0000 Div Limit: PERIOD OF USE: 01/01 TO 12/31



# Type of Use

- What the water is used for (i.e., the beneficial use)
  - Irrigation:  
Number of Acres Irrigated
  - Stockwatering:  
Equivalent Livestock Units (“ELUs”)
  - Domestic:  
Equivalent Domestic Units (“EDUs”)
- 

STATE OF UTAH -- DIVISION OF WATER RIGHTS -- DATA PRINT OUT for 25-5757

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 02/02/2010 Page 1

WATER RIGHT: 25-5757 APPLICATION/CLAIM NO.: CERT. NO.:

OWNERSHIP\*\*\*\*\*

NAME: Jeffrey Ray and Lynda A. Gittins  
 ADDR: 152 West 200 South  
 Smithfield, UT 84335  
 INTEREST: 100% REMARKS: joint tenants

DATES, ETC.\*\*\*\*\*

LAND OWNED BY APPLICANT? COUNTY TAX ID#:  
 FILED: [PRIORITY: 05/01/1860] [PUB BEGAN: ] [PUB ENDED: ] [NEWSPAPER:  
 ProtestEnd: [PROTESTED: [No ] ] [HEARING HLD: ] [SE ACTION: [ ] ] [ActionDate: ] [PROOF DUE:  
 EXTENSION: [ELEC/PROOF:[ ] ] [ELEC/PROOF: ] [CERT/WDC: ] [LAP, ETC: ] [LAPS LETTER:  
 RUSH LETTR: [RENOVATE: ] [RECON REQ: ] [TYPE: [ ] ]  
 PD BOOK: [ 25-3 ] [MAP: [36d ] ] [PUB DATE:  
 Type of Right: Decree Source of Info: Proposed Determination Status:

LOCATION OF WATER RIGHT\*\*\*\*\*

FLOW: 3.0 cfs SOURCE: Noble & Merrill Spring Streams  
 COUNTY: Cache COMMON DESCRIPTION:

POINTS OF DIVERSION -- SURFACE:  
 (1) S 1100 ft E 360 ft from N4 cor, Sec 32, T 13N, R 1E, SLSM  
 Diverting Works: Source:  
 (2) S 1670 ft E 440 ft from N4 cor, Sec 32, T 13N, R 1E, SLSM

IRRIGATION: 51.2 acres

.....

STOCKWATER: 50.0000 Stock Units


	* NW	NE	SW	SE	* NW	NE	SW	SE	* NW	NE	SW	SE	* NW	NE	SW	SE	* Totals
Sec 32 T 13N R 1E SLSM	*	10.5000		33.0000	1.3000		6.4000		*				*				51.2000
GROUP AVERAGE TOTAL:																	51.2000

PLACE OF USE for STOCKWATERING\*\*\*\*\*

	NORTH-WEST <sup>4</sup>	NORTH-EAST <sup>4</sup>	SOUTH-WEST <sup>4</sup>	SOUTH-EAST <sup>4</sup>
	NW NE SW SE	NW NE SW SE	NW NE SW SE	NW NE SW SE
Sec 32 T 13N R 1E SLSM	* : X: : X*	* X: : X: *	* : : : *	* : : : *



# Period of Use

- When the water can be used
  - Varies with the type of use
  - May also vary based on location
  - Stockwatering, municipal, domestic, and industrial are generally year-round
  - Irrigation is generally April 1<sup>st</sup> – October 31<sup>st</sup>
- 





An aerial photograph of agricultural fields, showing a grid of rectangular plots. The fields are mostly green, indicating active crops. The text is overlaid on the central part of the image.

# Place of Use

- Specific location documented in the water right where the water is to be used
- Generally given in quarter-quarter sections (40 acres)

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 Comment:

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###PLACE OF USE:	*-----NORTH WEST QUARTER-----*				*-----NORTH EAST QUARTER-----*				*-----SOUTH WEST QUARTER-----*				*-----SOUTH EAST QUARTER-----*				Section
	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	
Sec 32 T 13N R 1E S1EM *				*				*				*	1.5000	15.9000		*	17.4000

SUPPLEMENTAL GROUP NO. 19675.  
 25-3247(WUC)





# The State Engineer

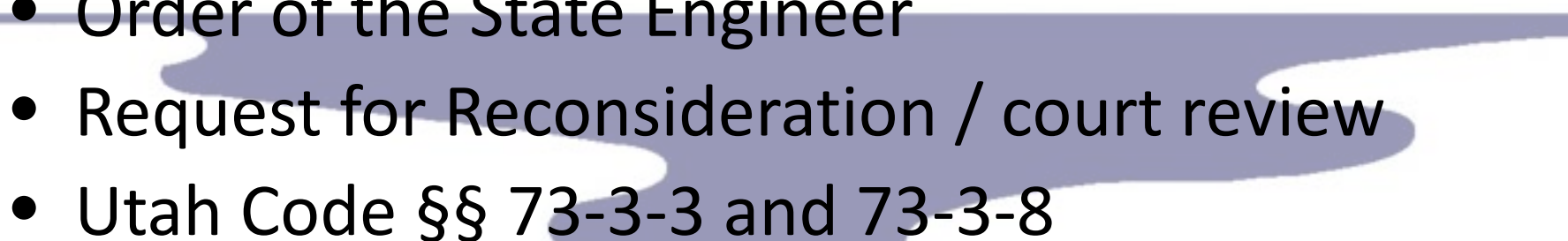
- Head of the Utah Division of Water Rights
  - Administers water appropriation applications
  - Distribution
  - Dam Safety
  - Well Drillers
  - Stream Alterations
  - Geothermal Power
  - Enforcement
- 

# Application to Appropriate

- Many areas of the state are closed to appropriation, especially large applications
- Advertising and 20-day protest period (small applications may be exempted)
- Order of the State Engineer
- Request for Reconsideration / court review
- Utah Code §§ 73-3-2 and 73-3-8




# Change Application

- Change the point of diversion, place of use, type of use, and/or period of use
  - Permanent vs. temporary
  - Advertising and 20-day protest period (small applications may be exempted)
  - Order of the State Engineer
  - Request for Reconsideration / court review
  - Utah Code §§ 73-3-3 and 73-3-8
- 

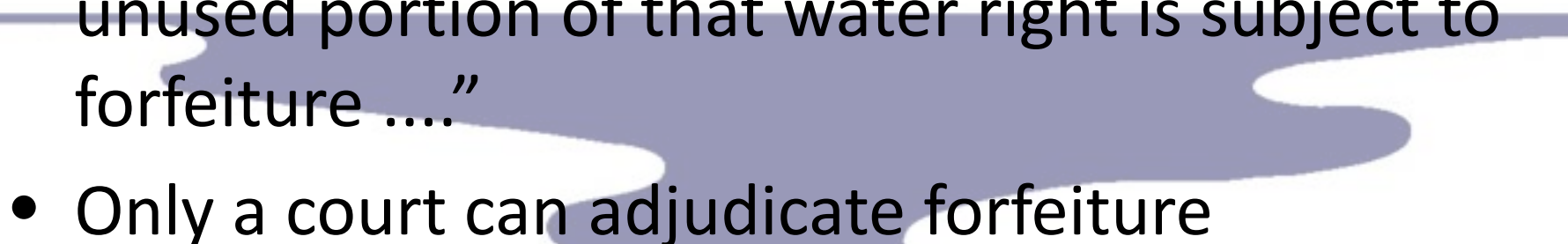


# General Adjudication

- Court action to determine all water rights in a given area
  - Hydrographic survey maps
  - Water User's Claims
  - Proposed Determination
  - Objections
  - Decree
- 

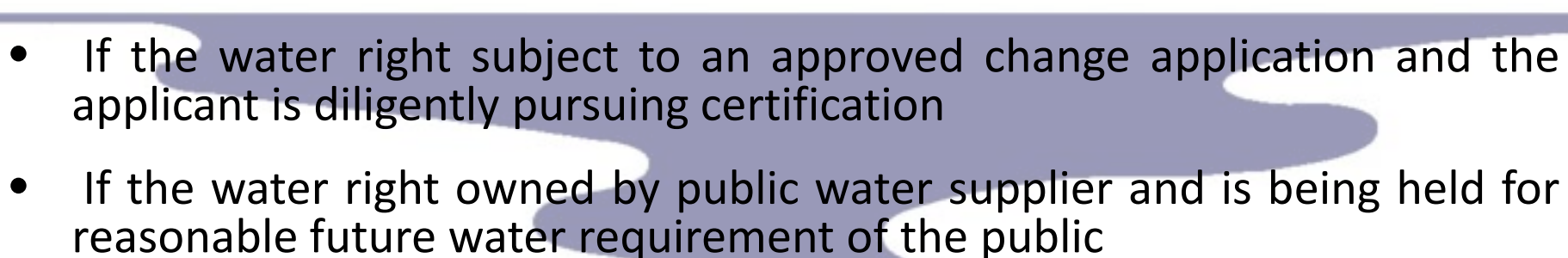


# Abandonment and Forfeiture

- “Use it or lose it”
  - Utah Code 73-1-4: “When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture ....”
  - Only a court can adjudicate forfeiture
- 



# Abandonment and Forfeiture

- Several exceptions, including:
  - If the water right is being used under a lease or other agreement
  - If the water right's place of use is contracted under an approved state agreement or federal conservation following program
  - If the surface water or groundwater source fails to yield sufficient water to satisfy the water right
  - If the water is unavailable because of the water right's priority date
  - If the water right subject to an approved change application and the applicant is diligently pursuing certification
  - If the water right owned by public water supplier and is being held for reasonable future water requirement of the public
- 

# Nonuse Application

- Utah Code section 73-1-4
- “When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture . . . unless the appropriator or the appropriator's successor in interest files a nonuse application with the state engineer.”
- A nonuse application is an application made to the Utah State Engineer under which a water right owner may cease using the water right for up to seven years without the water right becoming subject to forfeiture.



# Questions?

Jeffry R. Gittins

801-413-1600

[jgittins@smithlawonline.com](mailto:jgittins@smithlawonline.com)

Blog: [www.utahwaterrights.blogspot.com](http://www.utahwaterrights.blogspot.com)

