

Barbara G. Hjelle, *Pro Se*  
375 Juniper Road  
Dammeron Valley, Utah 84783  
Phone: (435) 574-3911  
Fax: (435) 574-3911  
Email: [bghjelle@q.com](mailto:bghjelle@q.com)

**- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH –**

In the Matter of the Application of Dammeron Valley Water Works, LLC for Approval of General Rate Increase and Expansion of Service Area	DOCKET NO. 15-2025-01  MEMORANDUM OF POINTS AND AUTHORITIES
--	---

**Facts**

1. Deeded water rights in Dammeron Valley are recognized like any other water right by the Utah State Engineer. Hjelle exhibits 1, 2.
2. Irrigation water demand is seasonally based upon evapotranspiration rates of plants and the need in May through September far exceeds the need in other months. Hjelle exhibit 3.
3. The Dammeron Valley Water Works system has sufficient capacity to deliver at least 50,000 gallons per month per acre-foot of water right. Hjelle exhibit 4, DPU Exhibit 1.OSR.
4. A water right holder cannot utilize the full annual water entitlement to protect the water right with a 40,000 gallons per month limitation. Hjelle exhibit 5.

**Utah Water Law Governs the Delivery of Deeded Water Rights and Appropriate Charges**

Purchasers of water rights are entitled to rely upon applicable Utah law in determining the scope of rights purchased.<sup>1</sup> Utah Code Ann. §§ 73-1-1 *et seq.* (2014) should be the basis for deliveries and charges to irrigation users of the Dammeron Valley Water Works system in this tariff matter.

---

<sup>1</sup> The current tariff states that “[a]ll Company certificated irrigation water rights will be held, conveyed and maintained by the Company on behalf of the owner.” Thus, “Company certificated irrigation water rights” should be treated the same as deeded water rights.

“Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.” Utah Code Ann. § 73-1-3. “[W]hen 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.” Utah Code Ann. § 73-1-4(2)(a). Owners of Utah state water rights must use their water or they may lose the right. Residential lot owners who acquired water rights in Dammeron Valley have presumably acquired those rights for the specific purpose of irrigating acreage. All water right holders have an obligation to conserve the water, by using it wisely and efficiently, but they must nevertheless use it to maintain the right.

“When two or more persons are associated in the use of any ... means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled. “ Utah Code Ann. § 73-1-9. This section governs the analysis of charges to be made for delivery of water rights. With the deed to the right came a proportionate share in the components of the system necessary to deliver the rights and an obligation to pay as set forth in the statute. Utah Code Ann. §§ 73-1-1 *et seq.* It is reasonable to assume that the amended recommendation of the Division of Public Utilities in this matter is a proper allocation of costs under Utah Code Ann. § 73-1-9.

**Water Right Holders Should Receive Irrigation Deliveries after Using the Amount of Water Established as Source Demand for Residential Use by the Division of Drinking Water**

Irrigation right holders are also residential users of water. Accordingly, they should first pay for typical residential use, as set forth by the Division of Drinking Water in U.A.C. 309-510-1 (2015), approximately 800 gallons per day per equivalent residential connection. Once that use has been made, irrigators are entitled to use their water rights in accordance with the law set forth above.

Application of a conservation tariff to water right holders, whether directly or indirectly via mandatory interposed conservation tiers, is inconsistent with the inherent concept of the right, and the responsibility, to fully beneficially use water as set forth in applicable law. A conservation tariff inherently creates an undue burden which dissuades, if not prevents, water right holders from fully beneficially using their right and puts them at risk of forfeiture. In this regard, application of a conservation tariff to interfere with the delivery of irrigation water rights has the potential risk of effectively being a constitutionally impermissible “taking” of a valuable property right without just compensation

**Limiting Water Rights Deliveries to 40,000 Gallons per Month per Acre Foot Is Not Reasonable**

The limitation to 40,000 gallons per month per acre foot of water right creates an undue burden on the beneficial use and protection of the right and is not necessary or reasonable given the facts of this matter. The artificial cap dissuades, if not prevents, water right holders from fully beneficially using their right according to seasonal requirements.<sup>2</sup>

It is not possible to use one acre foot at 40,000 gallons per month during an 8 month period. In the cooler months, the full monthly allowance is not needed and cannot be used (and is thus effectively forfeited). In the hotter months more water is needed but cannot be used without higher prices because of the monthly cap and the conservation rate structure.

To avoid forfeiture, water rights should be deliverable to the extent system capacity allows. Mr. Pace has testified that “we have adequate pumping and storage capacity to meet our requirements at build out,” which would be a total of 1110 customers “plus a few commercial connections and a few

---

<sup>2</sup> In addition, the 40,000 gallon monthly cap unnecessarily prevents users from fully using their total annual right due to the “rounding” error. (8 months x 40,000gallon/month = 320,000gallon/year; 1 acre foot = 325,851 gallons; the difference is 5851 gallons/year unusable at the irrigation rate).

agricultural customers,” i.e., 730 customers in addition to the existing 380 connected customers. Hjelle Exhibit 4.

The testimony of Mark Long also supports increasing the allocation to the irrigation tier. “[DPU] believes that Dammeron Water presently has the water rights and available water to use even more water than it uses now or will use in the foreseeable future.” DPU Exhibit 1.OSR, at 9, line 117.

“[S]ubjecting irrigation customers to the standard culinary tiers after their irrigation allotment is used should keep in check abusive use after the irrigation allocation is used.” DPU Exhibit 1.OSR, at 12, line 160. “Since all fixed costs are covered in the base rate, this rate structure only affects the amount of extra funds being contributed to the Capital Reserve Account.” DPU Exhibit 1.OSR, at 12, line 167.

Given that existing water rights holders have a vested right to delivery of their water rights, available system capacity should be dedicated to delivery of those rights, taking into consideration DPU’s proposed rate structure, which requires irrigators to pay a fair share per gallon used.

New development should pay for expansions of the system capacity necessary to serve its needs. DVWW should be charging a proper amount for capital costs pursuant to the Utah Impact Fees Act, in particular § 11-36a-203 (2014), to ensure necessary capacity for these uses and to protect capacity of existing users.

**RESPECTFULLY SUBMITTED this 10th day of August, 2015**

/s/  
Barbara G. Hjelle

CERTIFICATE OF SERVICE

I hereby certify that a full, true and correct copy of the above and foregoing MEMORANDUM OF POINTS AND AUTHORITIES was served by hand delivery to the parties present at the General Rate Increase Hearing on August 11, 2015.

---

Barbara G. Hjelle