

## Summary of Water Share Definitions from Utah Division of Water Rights

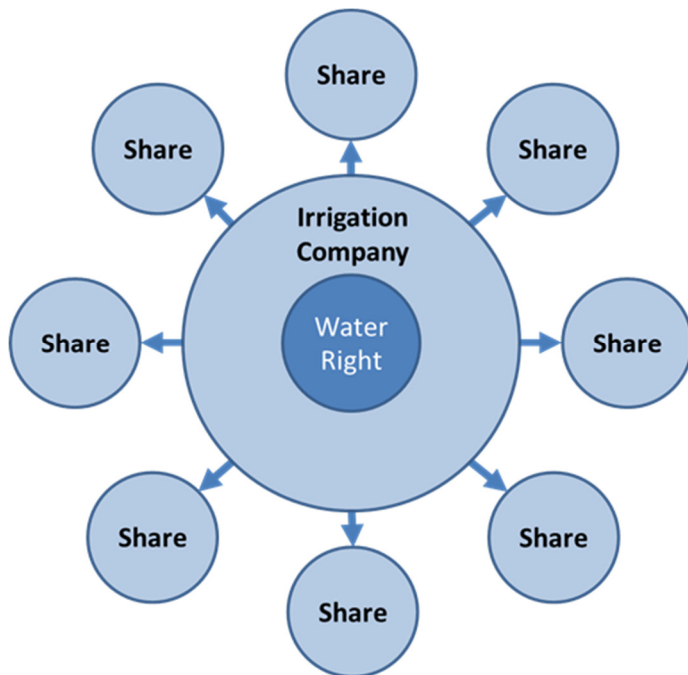
**SHARE**- stock in a mutual irrigation company. Many irrigation companies exist in Utah which own water rights used by their share holders. The amount of water the company allows each share holder to divert is usually determined by the company stock shares owned or rented. Shares in an irrigation company are not water rights. The company collectively owns the water right(s), the benefits from which are distributed to the share holders. This is evidence of the holder's right to a portion of the water delivered by the company.

**STOCK CERTIFICATE** - a certificate issued by an irrigation company representing ownership in the assets of the company including water rights. An **ASSESSMENT** is required, based on shares owned, to pay the operating expenses of the company.

**APPURTENANT**- when the land served is sold, the water right/share is automatically included in the sale, unless specifically exempted in the deed.

<https://waterrights.utah.gov/wrinfo/glossary.asp> Accessed 6/8/2022

**Water Share ownership is private. Evidence is obtained from the Seller or the Irrigation Company**



## Water Share Ownership & Evidence

- Stock certificate
- Bill/statement
- Notation on a recorded deed/conveyance
- An e-mail from the water company

## Water Share Questions

- How are the shares transferred?
- Water quality?
- What can you do with the shares? (Culinary, Irrigation, Livestock, et.)
- Quantity? How much water is being transferred?
- How is the water accessed? Is access on the sale parcel?
- When and where can the water be used?
- Are the shares appurtenant to the property?
- What are the transfer fees and ongoing costs?
- Additional responsibilities of shareholders?

## Tools for Water Shares

- Water Stock Company Search  
[https://www.waterrights.utah.gov/canalinfo/canal\\_owners.asp](https://www.waterrights.utah.gov/canalinfo/canal_owners.asp)
- Canal Company Search  
<https://www.waterrights.utah.gov/forms/waterCompanies.asp>
- Glossary of Water Terms  
<https://waterrights.utah.gov/wrinfo/glossary.asp>
- REPC Section 1.4 & 7.(i).
  - Seller Disclosures (Form 10), Section Six
  - Buyer Due Diligence (Form 12), Section 13
- CCIM P&S Agreement- Paragraph 2, Section (e)
  - Seller's property condition disclosure, Section 5

## Sample Water Share Transfer Language for REPC & P&S Agreement

1. The following water shares (**water share description, stock no, amount of shares**) from (**Share Company Name**) are (**included or excluded**) from the sale.

IF INCLUDED:

2. Water shares will be transferred at closing by: \_\_\_\_\_ (**insert process for share transfer**)

3. Buyer to pay water share transfer fee

***“All waters in Utah are public property. A “water right” is a right to divert (remove from its natural source) and beneficially use water. The defining elements of a typical water right will include: A defined nature and extent of beneficial use; A priority date; A defined quantity of water allowed for diversion by flow rate (cfs) and/or by volume (acre-feet); A specified point of diversion and source of water; A specified place of beneficial use.”***

<https://waterrights.utah.gov/wrinfo/default.asp> Accessed 6/8/2022

**REPC:** *“The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller’s current culinary water service and irrigation water service”*

**REPC for Land:** *“1.2 Water Rights/Water Shares. The following water rights and/or water shares are included in the Purchase Price. [ ] \_\_ Shares of Stock in the (Name of Water Company) [ ] Other (specify) \_*

**CCIM P&S Agreement:** *“all water rights and/or shares, if any, that are the source for culinary or secondary water used in connection with the Property.”*

### Accessing Water

**POINT OF DIVERSION:** point specified in a water right from which water is diverted from a source. Examples include wells, river/streams, and springs.

**Approved Water Uses in Utah - A single water right can have multiple declared uses**

- M:** Municipal
- I:** Irrigation
- D:** Domestic
- P:** Power
- O:** Other
- X:** Mining
- S:** Stockwatering

<https://www.waterrights.utah.gov/wrinfo/glossary.asp>

### Sample Water Right Transfer Language for REPC & P&S Agreement

1. The following water rights are **included** or **excluded** from the sale (Water Right Number).  
**IF INCLUDED:**
2. Seller to transfer water with Water Rights Addendum to Land Deeds
3. Buyer to file Report of Conveyance with Division of Water Resources
4. The well and well equipment are **included** or **excluded** from the sale and will be conveyed by bill of sale: (description of equipment type/location/use of equipment)

### Transferring Water Rights

#### Report of Water Right Conveyance

[https://waterrights.utah.gov/forms/roc\\_full.asp](https://waterrights.utah.gov/forms/roc_full.asp)

If the seller of the property doesn’t match the owner of the water right, a report of conveyance can be submitted to the Division of Water Rights.

Form may be completed by

- Property owner
- Professional Engineer
- Land Surveyor
- Attorney
- Title Insurance Agent

Documents the conveyance history of appurtenant water rights

- Begin with conveyance deed that matches the water right owner and follow the document/conveyance chain to the current landowner
- If water right number is not mentioned on the deed, an attached map is required for each conveyance
- Completed and signed Report of Conveyance with \$40.00 check is sent to the Division of Water Resources
- The conveyance decision takes time.

### Transferring Water Rights

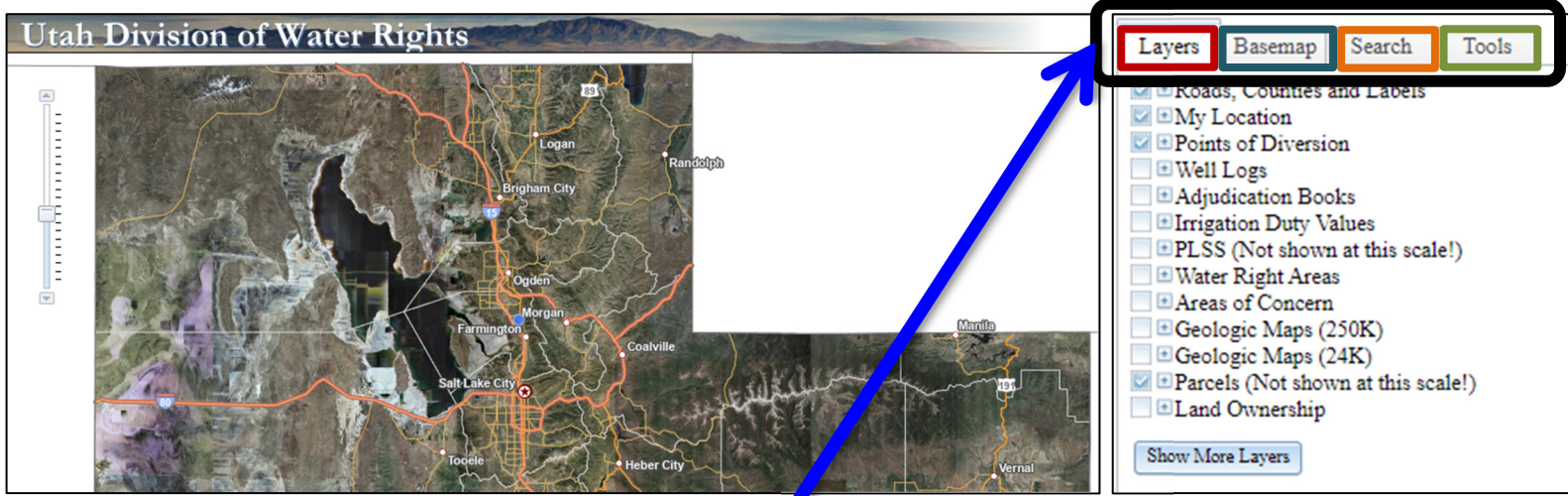
#### Land Deed Addendum

<https://waterrights.utah.gov/wrinfo/forms/LandDeedAddendum.pdf>

If the seller and owner of the water right are the same, then a land deed addendum can be attached to the conveyance deed

1. Correctly identify Water Right Information on REPC & Addenda
2. Complete Land Deed Addendum with water right number and signature of seller and buyer & buyer’s address
3. Record conveyance deed with Land Deed Addendum attached as exhibit.
4. Buyer completes Report of Conveyance with Division of Water Resources and sends \$40 check

<https://maps.waterrights.utah.gov/EsriMap/map.asp>



## The GIS/ESRI map search system from the Utah Division of Water Rights

The map search system is a fast and easy way to find water right information. Each area within the **Layers**, **Basemap**, **Search**, & **Tools** section provide valuable tools.

### Layers

Click boxes with this section to activate the data layer

1. PLSS- Public Land Survey System lines with Sections/Township/Range areas
2. Parcels- Shows boundary overlay and parcel information like <https://parcels.utah.gov/>
3. Land Ownership- Shows land owned by federal, state, tribal & private leadership
4. Within the Show More Layers section
  - Canals
  - Quaternary Faults
  - Historical Imagery (UGS, USGS, USDA, et.)
5. Others

### Basemap

Basemap imagery is available from ESRI, Google (including historical imagery), NAIP, Topographical, Relief Maps & Hydrography

### Search

In addition to using the magnification tool, the search section allow inputs including :

1. Water Right Number
2. Address
3. County Parcel
4. PLSS Location
5. Latitude/Longitude
6. Others

### Tools

- Location Lookup
- Measure (Distance and Area)
- Annotations (Point, Line, Area, Text, Number, Arrow)
- Print (View Options, Map Size, Dim Background)

**Definitions:** A “*water right*” is a right to divert (remove from its natural source) and beneficially use water.

A “*well*” is an example of a point of diversion for a water right. Specifically, horizontal or vertical excavation or opening into the ground made by digging , boring, drilling, jetting or driving for utilizing or monitoring underground waters.

<https://www.waterrights.utah.gov/wrinfo/glossary.asp>

## Transfer of Well Equipment

Well equipment is sometimes considered personal property and should be transferred with a Bill of Sale. Instructions must be given to govern their transfer

- Address the transfer on well equipment of well & equipment in section 1.2 or REPC (Other included items)
- If transfer was not included with original offer, Prepare an Addendum to the REPC
- Make the Bill of Sale plain language

Well and well equipment currently used in association with water right number \_\_\_\_\_ located \_\_\_\_\_

If necessary, include additional descriptions of pump type/other equipment.

## Well Information - A well and well system may require inspection (Buyer Due Diligence- Form 12, Paragraph 13)

### Well Location (point of diversion)

<https://maps.waterrights.utah.gov/EsriMap/map.asp>

- Review Surveys & Plats

**Shared Well Agreements** - Existence and content of easement, or maintenance agreements

- Has the water been tested? (Nitrates, Chlorides, Coliform Levels, Lead, Bacteria, Arsenic, Radon, et.)
- Has the smell, color, flavor of water changed?
- What is the flow/capacity of the well?

### Well ID #

[Points of Diversion](#)
[View Map](#)

---

**Points of Diversion - Underground**

(1) [N 1115 feet W 3025 feet from SE corner, Sec 28 T 2S R 4W SLBM](#)

Diameter of Well: 6 inches	Depth: 330 to feet	Year Drilled: 1982	Well Log: Yes	Well Id#: <b>12683</b>
Elevation:	UTM: 389569.856, 4496519.826 (NAD83)			
Stream Alteration Required: No				

## Well Features & Well Log – Found in Water Right Details

Well Features							
#	WIN	Drilling Method	Total Bore Depth	Finished Well Depth	Finished Casing Diameter	Well Intake Depth	Geologic Log
1	12683	Cable Tool	330	330	6	301	No
Comments							
#	Datestamp		Text				
No comment records found for this location							
Water Level Records							
#	WIN	Date	Time	Depth	Status	Method	
No water level records found for this location							
Water Quality Records							
#	WIN	Date	Time	Parameter	Value		
No water quality records found for this location							
				View Well Log		Done	

## Well Information

- |                    |                                  |
|--------------------|----------------------------------|
| 1. Well Depth      | 5. Soil (Lithologic Description) |
| 2. Intake Depth    | 6. Construction                  |
| 3. Casing material | 7. Screens/Perforations          |
| 4. Intake Depth    | 8. Filler/Pack & Seal Materials  |





## Flow Chart for Water Right Sale & Transfer

**Is the Water Right in the Seller's name?**

**YES**

**No**

1. Complete Report of Conveyance
2. Send \$40 check with Report of Conveyance
3. Await Decision & State System Update

**Prepare for seller disclosure and water right transfers**

1. Verify use of the right (domestic or irrigation?)
2. Correctly identify Water Right Information on REPC, Addenda, & Seller Disclosures
3. Get information about the water right & well ready for buyer review
4. Complete Land Deed Addendum with water right information, signatures from Seller & Buyer, and Buyer Address
5. Record conveyance deed with Land Deed Addendum as an exhibit

## Seller & Buyer task list for water rights

### Seller

1. Correctly identify the water shares or water rights for culinary and irrigation purposes
2. Update ownership of water right (if necessary)
3. Gather & share evidence of share or right
4. Disclose fees all transfer fees to buyer / lender / title
5. Prepare transfer documents
6. Give clear instructions to title!

### Buyer

1. Verify water share or right ownership
2. Understand the permitted usage for the applicable shares or rights
3. Disclose transfer fees and costs to lender / title
4. Review and approve transfer documents
5. Be prepared for more work after closing (Report of Conveyance)
6. Give clear instructions to title!

## Unanswered water questions from REPC and P&S Agreement

- Are there transfer fees or ongoing costs for accessing culinary (domestic) or irrigation water?
- How is the water accessed?
- Is the point of diversion (well or irrigation water) on located on the sale property?, If not, where is it?
- Are there formal easements, agreements, or rights of way relating to the water?
- Who will pay the fees at closing?
- How specifically will the shares or rights get transferred?

## Contract, Disclosure & Due Diligence Language Real Estate Purchase Agreement (REPC):

**1.4 Water Service.** The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/water shares, if applicable, are specifically excluded from this sale: \_\_\_\_\_

**Seller Disclosures 7. (i).** evidence of any water rights and/or water shares referenced in Section 1.4;

### Seller Disclosures (Form 10 Summary for Culinary & Irrigation/Secondary Water)

#### Who provides the water?

1. Government Entity
  - Name of Provider (City, Town, Water District)
2. Water Company - Mutual Irrigation Company
  - Name/Contact info of company
  - Copy of share certificate
  - Assessments amount
3. Private Water Right (Well, Spring, etc.)
  - Is the water right shared?
    - Copies of agreements (if any)
  - Water right number
  - Part of Water Conservancy or other Water District?
  - Problems (Quality, pressure, faulty pump, well issue)

Are you aware of problems?

### Buyer Due Diligence (Form 12)

**13. WATER:** Buyer is advised to consult with the water service provider for the Property and with other appropriate professionals regarding the source, quality, and availability of water for the Property; and regarding all applicable fees and costs (including, without limitation, connection fees, stand-by fees and service fees), use and regulatory restrictions, and ownership of water rights and water system. Depending upon the location of the Property, the water service provider, and climate conditions, water service to the Property may be interrupted. A well and well system may require inspection. Buyer is further advised that, depending upon the location of the Property, State and local laws may impose specific requirements regarding the source, the capacity, and the quality of water that will service new plat or building permit applications. Such water-related laws may directly impact Buyer's ability to develop the Property and/or obtain a building permit for any improvements to the Property. Buyer is advised to consult directly with applicable State and local authorities, and with legal counsel, regarding the content and potential affect of such water-related laws.



## Contract, Disclosure & Due Diligence Language

### Real Estate Purchase Agreement for Land (Land REPC):

**1.2 Water Rights/Water Shares.** The following water rights and/or water shares are included in the Purchase Price.

☐ \_\_\_\_\_ Shares of Stock in the (Name of Water Company)

☐ Other (specify) \_\_\_\_\_

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

(e) evidence of any water rights and/or water shares referenced in Section 1.2 above;

### Seller Disclosure for Land

#### 3. CULINARY WATER

A. To your knowledge, culinary water service for the Property will be provided by (check applicable box):

**Public Water** (Name of water service provider): \_\_\_\_\_

**Private Water Company** (Name of water service provider): \_\_\_\_\_

**Private Well**

**NOTE: IF WATER SERVICE WILL BE PROVIDED BY PUBLIC WATER, SKIP TO SECTION 4**

#### B. PRIVATE WATER COMPANY

(1) To your knowledge, what is the approximate location of the nearest private water company water service line?

☐ Located in \_\_\_\_\_ (Name of Street/Road) ☐ Stubbed to Lot Line

☐ Other (specify) \_\_\_\_\_

(2) Are the water share certificates in your possession? If yes, please attach a copy. **Yes No**

(3) To your knowledge, are water share assessments paid in full? **Yes No**

#### C. PRIVATE WELL

(1) Is a well presently located on the Property? **Yes No**

(2) To your knowledge, is your water right for the well represented by a contract with a special improvement or water conservancy district? If "Yes", what is the number of the district contract? \_\_\_\_\_ **Yes No**

(3) If your water right for the well is not based on a contract with a special improvement or water conservancy district, to your knowledge, what is the State Engineer "Index Number" for your water right? \_\_\_\_\_ - \_\_\_\_\_

#### 4. IRRIGATION WATER

A. Are there any irrigation water rights with the Property? **Yes No**

B. If irrigation water is delivered to you by an irrigation water company, what is the name of the company? \_\_\_\_\_

C. Do you have in your possession water share certificates representing your right to receive and use irrigation water? **Yes No**

If "Yes", please attach a copy of any such share certificates.

D. If the irrigation water rights are other than shares in an irrigation water company, to your knowledge, what is the State Engineer "Index Number" or numbers for your irrigation water rights? \_\_\_\_\_ - \_\_\_\_\_

E. Is there an irrigation water source and distribution facility in place for the Property such as canals, ditches or pressurized sprinkler system? If "Yes", what is the name of the water source: \_\_\_\_\_ **Yes No**

### Buyer Due Diligence (Form 12)

**13. WATER:** Buyer is advised to consult with the water service provider for the Property and with other appropriate professionals regarding the source, quality, and availability of water for the Property; and regarding all applicable fees and costs (including, without limitation, connection fees, stand-by fees and service fees), use and regulatory restrictions, and ownership of water rights and water system. Depending upon the location of the Property, the water service provider, and climate conditions, water service to the Property may be interrupted. A well and well system may require inspection. Buyer is further advised that, depending upon the location of the Property, State and local laws may impose specific requirements regarding the source, the capacity, and the quality of water that will service new plat or building permit applications. Such water-related laws may directly impact Buyer's ability to develop the Property and/or obtain a building permit for any improvements to the Property. Buyer is advised to consult directly with applicable State and local authorities, and with legal counsel, regarding the content and potential affect of such water-related laws.



## **Contract, Disclosure & Due Diligence Language**

### **CCIM Purchase and Sale Agreement**

#### **CCIM Purchase and Sale Agreement for Commercial Real Estate**

**2. PROPERTY.** (e) all water rights and/or shares, if any, that are the source for culinary or secondary water used in connection with the Property.

**8. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline, Seller shall provide to Buyer the following at Seller's sole cost and expense (the "**Seller Disclosures**"):

- (c) a Seller property condition disclosure for the Property signed and dated by Seller;
- (f) evidence of any water rights and/or water shares used in connection with the Property;

#### **Commercial Real Property – Seller's Property Condition Disclosures**

##### **5. WATER**

- a.** Do you know what the source of the culinary (and secondary, if not the same) water is to the Property? (Such as well, spring, private, municipal)
- b.** Do you know if the water quality and/or flow rate been tested? If so, when and what were the results?
- c.** Do you know of any past or present problems with any water service provided to the Property by the water service provider?
- d.** Do you know if a well is presently located on the Property? If so, do you know what is the water right number for the well?

### **CCIM Purchase and Sale Agreement**

#### **CCIM Purchase and Sale Agreement for Commercial Real Estate**

##### **Fundamental Terms of Offer to Purchase Unimproved Land**

**PROPERTY.** (e) all water rights and/or shares, if any, that are the source for culinary or secondary water used in connection with the Property.

**8. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline, Seller shall provide to Buyer the following to the extent they are within the possession or control of Seller and at Seller's sole cost and expense (the "**Seller Disclosures**"):

- (f) evidence of any water rights and/or water shares used in connection with the Property;

#### **Commercial Real Property – Seller's Property Condition Disclosures**

##### **5. WATER**

- a.** Do you know what the source of the culinary (and secondary, if not the same) water is to the Property? (Such as well, spring, private, municipal)
- b.** Do you know if the water quality and/or flow rate been tested? If so, when and what were the results?
- c.** Do you know of any past or present problems with any water service provided to the Property by the water service provider?
- d.** Do you know if a well is presently located on the Property? If so, do you know what is the water right number for the well?