

SCSA3 FAQs Regarding Water Regulations

These frequently asked questions are intended to answer questions that constituents have raised about water service in Summit County Service Area #3 (“SCSA3”), particularly in Upper Silver Creek. These FAQs are based, in part, on the resident workshop SCSA3 held on August 20, 2024, with LeGrand Bitter, the Executive Director of the Utah Association of Special Districts, Ryan Broadbent, the Regional State Engineer for the Utah Division of Water Rights’ Weber River/ Western Region, and Nathan Bracken, SCSA3’s attorney. A recording of the workshop is available [here](#). Ryan’s presentation is available [here](#) and Nathan’s presentation is available [here](#).

1. What is SCSA3?

Summit County SCSA3 #3 is a form of special district known as a “service area.” All special districts, including service areas, are independent, government entities created to carry out specific purposes.

Summit County created SCSA3 to, among other things, “own, operate and maintain water rights and culinary and irrigation water retail services” (emphasis added). See [Section 2-27-1](#) of the Summit County Code.

Although SCSA3 was created by Summit County, SCSA3 is political subdivision of the State of Utah that is “separate and distinct from any other political subdivision of the state.” See [Utah Code § 17B-1-103](#). As such, SCSA3 is governed by its elected Board of Trustees and regulated by the State rather than Summit County.

As a government entity, SCSA3 is not a not a private water company nor is it an HOA.

2. What laws govern SCSA3?

All special districts are governed under [Title 17B](#) of the Utah Code. [Title 17B, Chapter 2a, Part 9](#) of the Utah Code includes additional requirements that apply to service areas like SCSA3.

3. How many water rights does SCSA3 own?

SCSA3 owns multiple water rights that collectively allow for the diversion of 401 acre-feet. There are three rights that supply the private wells located in Upper Silver Creek – water rights [35-9116 \(E2451\)](#), [35-13240 \(a43507\)](#), and [35-13229 \(a43506\)](#). These rights, however, do not overlap, meaning that a private well that diverts water under one water right cannot divert water from another right. As a result, if a private well owner serviced by one water right does not use their full allocation, the unused water is not available for another user serviced by another right. In addition, these rights are limited to their total diversion and depletion amounts which can be exceeded within the same right. For instance, water right [35-13229 \(a43506\)](#) only allows for the diversion of 28.5 acre-feet, which could be easily exceeded if the 1.0 acre-foot annual allocation is not enforced.

Importantly, most of the water rights that supply water to the private wells in Upper Silver Creek are based on shares in the Davis and Weber Counties Canal Company and Wanship Irrigation Company #2. The amount of water that can be diverted under these shares can be reduced based on several factors, including available water supplies. For instance, several years ago the Davis and Weber Counties Canal Company shares were permanently reduced from 8.0 acre-feet per share to 6.0 acre-feet per share, resulting in a 22 acre-foot loss to SCSA3 that prohibited several lots from drilling wells until SCSA3 could file additional change applications to supply those lots, a

process that took about a year. It also took SCSA3 years to acquire sufficient replacement water rights for the lost 22.0 acre-feet.

With the exception of [35-9116 \(E2451\)](#), the water rights that supply SCSA3's water system are separate from the rights that supply the private wells. The water system rights include [35-9704 \(a28335\)](#), [35-13599 \(a45076\)](#), [35-9116 \(E2451\)](#), [35-13640 \(a46006\)](#), [35-13776](#), [35-10703 \(a23339\)](#), [35-11945 \(a31380\)](#), [35-12747 \(E5310\)](#), [35-11556 \(E4397\)](#), and [35-13534 \(E5903\)](#).

For more on SCSA3's water rights, please see Nathan Bracken's presentation, available [here](#).

4. Why does SCSA3 impose an annual water allocation that limits the amount of water its residents can use each year?

There are roughly 500 "wet" lots within Silver Creek Estates. Of these 500 lots, 181 lots are in Upper Silver Creek (Plats A, B, and C) and the remaining 319 are in Lower Silver Creek (Plats D, E, F, G, H, and I). Although some of the 319 lots in Lower Silver Creek are serviced by Mountain Regional (e.g., Greenfield Ranches), most are supplied by SCSA3, which means that while SCSA3 has sufficient water rights to service its residents, it can only divert 504.

At the same time, Silver Creek Estates in the Snyderville Basin, where water rights are extremely limited, hard to acquire, and difficult to change. When water rights become available, because water rights are so limited, they often demand some of the highest prices in Utah.

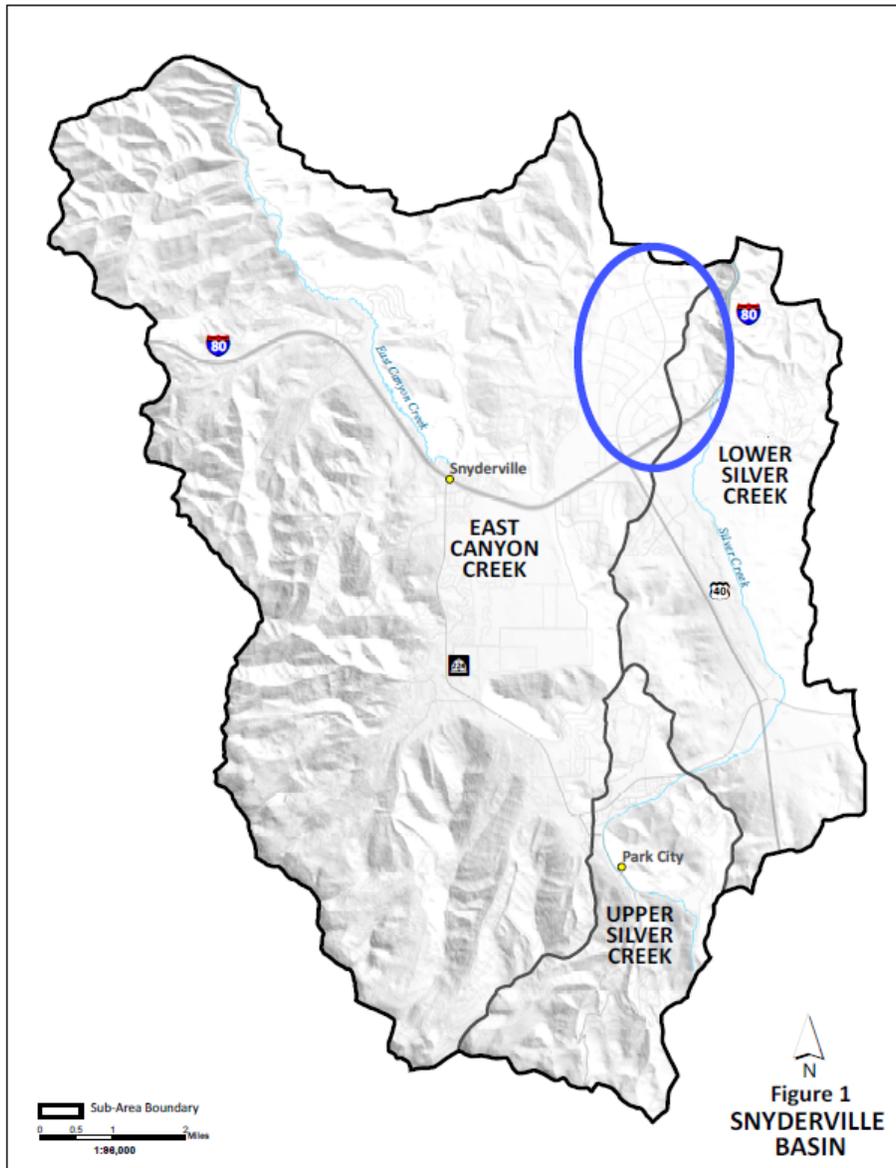
To ensure that SCSA3 can supply water to those lots within Silver Creek Estates that are entitled to water service, the Board decided decades ago to impose annual limitations on how much water each lot can divert. These allotments allow private wells in Upper Silver Creek having the ability to divert up to 1.0 acre-feet per year and lots in Lower Silver Creek that are connected to the water system having the ability to receive up to 0.75 acre-feet per year. In other words, the purpose of the annual allocations is to ensure that SCSA3 lives within the limits of its water rights and has sufficient water for its residents' reasonable needs, including the last lots to develop.

If SCSA3 were to allow residents to use as much water as they like and to pay more for that service, it is possible that the collective use could outpace SCSA3's water rights. Although other larger public water suppliers in Utah do not impose annual limitations, those suppliers are usually located in areas where water rights or supplies are easier to acquire when needed. This is not the case in the Snyderville Basin, where water rights are extremely limited and there is no guarantee that water rights would be available for SCSA3 to acquire, at any price, if it were to exceed its current rights.

5. Why are water rights limited in SCSA3 and why are they so expensive?

SCSA3 is in the Snyderville Groundwater Basin where groundwater supplies are extremely limited. In 1973, the Utah Division of Water Rights, or State Engineer, halted new appropriations of groundwater. Beginning in the late 1970s, the State Engineer began imposing a series of moratoria on the transfer of water rights into the Snyderville Groundwater Basin. As a result, the only water supplies that can be used in SCSA3 are the rights that were approved for use within the Snyderville Basin before the moratoria were imposed. The limited nature of these rights and the rapidly increasing demand for them that has resulted from increasing development in the Park City area have resulted in limited availability and some of the highest water right prices in Utah.

The current Snyderville Groundwater Management Plan was enacted in 2019, after the majority of SCSA3's water rights were approved (see [here](#)). It divides the Snyderville Basin into three drainages – East Canyon Creek (where most of Silver Creek Estates is located), Lower Silver Creek (where some of Silver Creek is located), and Upper Silver Creek. The plan prohibits the transfer of water rights from Lower Silver Creek and Upper Silver Creek into East Canyon Creek, unless applicants can show that the hydrologic system is not adversely affected.



Most of SCSA3 is located in the East Canyon Creek drainage along with all of its water rights, but some of SCSA, including several private wells that divert SCSA3 water rights are located in the Lower Silver Creek drainage. For more on the Snyderville Groundwater Management plan, please see Ryan Broadbent's presentation, available [here](#).

6. Why Did SCSA3 impose a \$0.25 per gallon overage fee on residents who use more than their allocation?

The annual allocations have no meaning if they are not enforced. Because SCSA3's water rights are limited and additional water rights are difficult and expensive to acquire, allowing residents to use unlimited amounts of water and to simply pay more for their use could result in a violation of SCSA3's water rights over time. More importantly, each time a resident uses more than their allocation, they lessen the amount of water available to other residents and could impair the ability of those residents to use their allocation.

In addition, the size and scope of new projects in Silver Creek Estates are increasing and are maxing out their allocations or requiring the dedication of additional water rights. Much of this increase in use is due to a proliferation of accessory dwelling units (ADUs) in Silver Creek Estates. According to SCSA3's records, there are now 72 ADUs in Silver Creek Estates, which are capable of increasing water use and demands. Adding an ADU typically does not exceed an allocation based on SCSA3's current usage, but it does significantly increase the potential that a lot with an ADU will max out their allocation.

Lastly, SCSA3's received complaints from private well owners who divert SCAS3 water rights, particularly private well owners who divert SCSA3's water rights, about alleged overuse by other residents along with concerns that such overuse was impacting their wells.

**In June 2024, the Board suspended the fee for 90 days in June 2024 to address resident questions and concerns.*

7. What is the basis of the \$0.25 overage fee?

Utah law requires special districts to ensure the fees the charge reflect the reasonable estimated cost of delivering the service for which the fee was paid. See [UCA 17B-1-121](#) and [UCA 17B-1-103\(2\)\(j\)](#). The Board imposed the \$0.25 overage fee to help cover the costs the SCA3 incurs when it enforces the annual allocations. The fee is not a "sale" of water to residents who exceed their annual allocations.

Prior to the overage fee, SCSA3 relied exclusively on its water enterprise fund to pay for its enforcement costs. However, the water enterprise fund consists of the rates that water users in the water system pay and does not include any funds from the private well owners who divert SCSA3 water rights. Very few water users on the water system exceed their allocations, which means that almost all the enforcement costs SCSA3 incurs are a result of overuse by private well owners in Upper Silver Creek who do not pay into the water enterprise fund. In other words, the purpose of the overage fee is to require those residents who are creating the need for enforcement actions to pay for those actions, rather than other residents who are not exceeding their allocation.

To calculate the overage fee, SCSA3 looked at its most recent enforcement costs, which pertained to its efforts to require private well owners who divert and use SCSA3 water rights to comply with state law ([UCA 73-5-4](#)), the conditions of its water rights, and its water service regulation, available [here](#). That effort required SCSA3 to incur about \$100,000 in administrative costs and legal fees.

Although SCSA3 adopted the overage fee in response to overuse by private wells, the overage fee applies to water users in all of Silver Creek Estates who exceed their allocation, including those users in Lower Silver Creek who are connected to the water system. The fee schedule is available [here](#) and a recording of the fee hearing discussing the basis of the fee is available [here](#).

8. What authority does SCSA3 have to impose overage fees?

[UCA 17B-1-103\(2\)\(j\)](#) authorizes special districts to “impose fees or other charges for commodities, services, or facilities provided by the district, including the costs of maintaining and operating the district.” [UCA 17B-1-103\(2\)\(q\)](#) also authorizes a special district to “perform any act or exercise any power reasonably necessary for the efficient operation of the special district in carrying out its purposes.”

9. What process did SCSA3 follow when it enacted the \$0.25 per gallon overage fee?

[UCA 17B-1-643](#) is the statute that governs the process a special district must follow to impose or increase a fee. It requires 30 days’ advance notice before a public hearing, the holding of the public hearing after 6:00 pm, and a demonstration of the need to impose or increase a fee.

SCSA3 followed this process. It held the public hearing on April 9, 2024, at 6:00 pm and posted notice of the public hearing on March 8 at 9:33 am (see [here](#)), over thirty days before the hearing. During the hearing, SCSA3 demonstrated the need for the overage fee; namely, to help recoup the high enforcement costs SCSA3 incurs when water users do not comply with SCSA3’s water service regulation, as evidenced by the \$100,000 SCSA3 incurred enforcing its metering requirements for private well owners who divert SCSA3 water rights. A recording of the fee hearing explaining the need for the overage fee, is available [here](#).

Prior to holding the public hearing, SCSA3 solicited input from the Board and the public at its March regular meeting on March 19, 2024 (see [here](#)), on the development of the fee schedule and the overage fee. As a result, the public had two opportunities to provide input on the fee schedule and the overage fee.

None of the residents who attended the public meeting and fee hearing opposed the overage fee.

10. Does the law require SCSA3’s fee schedule to include a 30-day appeal process by which constituents can challenge the fee schedule?

No. As LeGrand Bitter with the Utah Association of Special Districts explained at the August 20, 2024 workshop, [UCA 17B-1-643](#) is the statute that governs the process a special district must follow to impose or increase a fee. That process does not require the fee schedule or the adopting resolution that approves a fee schedule to include an appeal process.

Instead, [UCA 17B-1-121\(c\)](#) requires special districts to “establish an impartial fee appeal process to determine whether a fee reflects only the reasonable estimated cost of delivering the service for which the fee was paid.” This statute does not require special districts to include such an appeal process within their fee schedules or in the adopting resolutions used to approve a fee schedule. As a result, most water districts do not include appeal provisions within their fee schedules, choosing instead to enact appeal procedures through their governing regulations.

SCSA3’s appeal process for all water-related actions, is found within Section 19 of SCSA3’s [Water Service Regulation \(#2024-01\)](#), which allows any party to any decision rendered by the General Manager or the Water Operator, including the imposition of any fee, to file an appeal with the Board within 30 days of the decision. The Board may hear the appeal itself or task a hearing officer to

hear the appeal. This provision has existed within SCSA3's water service regulation for years. See *also* Sections 6.0, 13.4, 16.11.2, and 18.3 of the water service regulation regarding the imposing of fees.

Notably, [UCA 17B-1-313](#) allows special districts to publish a “resolution or...other action” after its adoption for 30 days. If no appeals are filed during that time, “no one may contest the regularity, formality, or legality of the resolution or action for any cause.” However, this is not a mandatory requirement. Instead, the statute says that after the “board of trustees or a special district adopts a resolution or take other action on behalf of the district, the board **may** provide for the publication of a notice of the resolution or other action” (emphasis added). In the Utah Code, the term “may” means that an action is authorized or permissive,” unlike “shall,” which is “an action that is required or mandatory.” See [UCA 68-3-12](#).

11. Does the leak forgiveness policy does not apply to private well owners that divert SCSA3 water rights?

Yes. Section 18.5.4 of the [Water Service regulation \(#2024-01\)](#) states – “if SCSA3 charges a private well owner a water usage rate for exceeding their allocation, the private well owner may request a billing adjustment pursuant to Section 6.4.1,” which is the leak forgiveness section of the regulation.

12. Will someone be charged the overage fee indefinitely?

No. When SCSA3 adopted the overage fee, it amended its Water Service Regulation (#2024-01) to provide for a process by which residents who exceed their allocations can work with SCSA3 to enter into an agreement that will set forth the steps that residents can take to comply with their allocations by either reducing their usage or acquiring or dedicating additional water rights. SCSA3 has authority to waive the overage fee as part of a resident's willingness to execute these agreements.

To begin this process, SCSA3 will send a series of notices. The first notice will inform the resident that they have exceeded their allocation and must contact SCSA3 within 30 days to begin the process of developing an agreement to come into compliance with their allocation. If the resident does not respond within the 30-day period, they will receive a second notice that imposes an additional water violation fee and gives them an additional 30 days to respond. If the resident does not respond to the second notice, SCSA3 will discontinue water service to their lot if they are connected to the water system or it will revoke its authorization for a private well owner to divert and use SCSA3 water rights. In other words, SCSA3 will only charge the overage fee for 60 days because there will be no basis for SCSA3 to charge the fee once the resident's water service has been terminated.

This process is found in Section 18.4 for lots connected to the water system and Section 18.5 for the private wells that divert SCSA3 water rights. The water service regulation is available [here](#).

13. Is SCSA3 selling stolen water by charging an overage fee when it is not exceeding its water rights and the State owns the water?

No. The purpose of the overage fee is not to sell water but to cover the enforcement costs SCSA incurs when a resident exceeds their allocation

It is true that [UCA 73-1-1](#) states that “[a]ll waters of this state...are hereby declared to be the property of the public, subject to all existing rights to the use thereof” (emphasis added). Stated differently, the State of Utah owns the water molecules in Utah, but the right to use this water is a property right that can be owned and conveyed. This is why [UCA 73-1-10](#) states that a “water right...shall be transferred by deed in substantially the same manner as is real estate.”

14. SCSA3’s policies require a water committee, which should have some role in addressing issues like the \$0.25 overage fee.

SCSA3 adopted rules for advisory committees in 2012 (see here). These rules are clear that the water committee was only advisory and transitory in nature. The first paragraph of the rules is clear that “From time to time, the Board of Trustees...has deemed it advisable and appropriate to appoint advisory committees to assist the Board of Trustees in its work.” The rules also state that the “Board may determine to accept, modify, reject, or consider the actions or recommendations of any advisory committee as the Board of Trustees, in its exclusive discretion, determine.”

The specific rules for the water committee are similarly clear that its authority was only to make “recommendations...[that] will be presented to the Board of Trustees for consideration and potential implementation.” It may make sense for the Board to re-establish the water committee, but that’s a policy call for the Board rather than a legal issue.

15. Does SCSA3’s efforts to enforce its annual allocation limits conflict with the State Engineer’s authority?

No. As noted above, Summit County created SCSA3 to, among other things, “own, operate and maintain water rights and culinary and irrigation water retail services” (emphasis added). See [Section 2-27-1](#) of the Summit County Code.

As Ryan Broadbent with the State Engineer’s office explained during the August 20, 2024, workshop, SCSA3 is required to comply with the terms of its water rights, or face enforcement and possible legal actions by the State Engineer. Ryan’s presentation is available here.

For instance, many of the State Engineer decisions regarding SCSA3 water rights include provisions similar to the following requirements from water right [35-13240 \(a43507\)](#), which supplies water to 61 private wells:

- *“Annual diversion under this permanent change application is limited to a diversion of 61.00 acre-feet and a depletion of 32.33 acre-feet annually. The applicant [i.e., SCSA3] must maintain records sufficient to demonstrate depletion due to uses associated with diversions under this change application do not exceed 32.33 acre-feet.”*
- *“The applicant [SCSA3] shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program**” [emphasis in original].*
- *“[T]his approval is granted subject to prior rights. The applicants [SCSA3] shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights....”*

- *“Failure on [SCSA3’s] part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.”*

At the same time, the State Engineer has authority to “commence an enforcement action...if the state engineer finds that a person...is diverting, impounding, or using water in violation of an existing water right.” See [UCA 73-2-25](#). Because SCSA3 owns the water rights diverted and used by most upper lots, if those rights were exceeded, the State Engineer could file such a lawsuit against SCSA3. The purpose of SCSA3’s water regulations is to prevent such an occurrence from happening.

16. Has SCSA3 sold its water rights to others or to Board members at discounted rates?

SCSA3 has never sold its water rights to any person or entity, including any Board members of staff.

17. Why does SCSA3 charge a lower rate for water sales from its water system.

The rates SCSA3 charges for the water sales from its water system are based on the costs SCSA3 incurs when it produces this water. This differs from the overage fee charged SCSA3 charges when a resident exceeds their allocation because the overage fee is based on SCSA3’s enforcement costs, which are different from the costs it incurs when it produces water from its system.

The water system is also subject to different water rights and there is more capacity in those rights than in the water rights that supply the private wells in Upper Silver Creek. Moreover, these sales are not common and most of them are to supply water to neighboring communities experiencing emergencies, to supply water to lots while they are under construction, and for other purposes associated with such construction (dust suppression).

18. What process did SCSA3 follow to hire the current the SCSA3 Operations Manager, a former Board member?

SCSA3 began contemplating the need for an operations manager in the fall of 2022. At that time, there was a current member of the Board who expressed an interest in applying for the position. Given his interest, this Board member was excluded from all Board discussions on the position and its development. Board member, Suzanne Carpenter, prepared the job description which was posted on the Utah Department of Workforce Services website pursuant to [UCA 35a-2-203\(5\)\(a\)](#) and Indeed. The Board member along with several other candidates applied. In November 2022, a subcommittee of Board members and SCSA3 staff, which did not include the Board member interviewed the top three candidates. The subcommittee asked all three candidates the same questions according to an objective score sheet. The Board member received the highest score and was offered a below market salary, contingent upon him resigning from the Board, which he did on December 9, 2022.

19. Has SCSA3 followed the proper process in filling mid-term vacancies?

SCSA3 has generally followed the correct process in filling mid-term vacancies, but in recent years there has been a lack of residents who have been willing to serve on the Board. [UCA 20A-1-512](#) states that if the Board doesn’t fill a mid-term vacancy within 90 days, the County Council shall fill

the vacancy. SCSA3 did not receive applicants within the 90-day period and the County did not act to fill these vacancies, which resulted in these vacancies remaining open for significant amounts of time. Part of this may be due to miscommunication between SCSA3 and the County. While SCSA3 staff did reach out to members of the County Council regarding these vacancies, SCSA3 subsequently learned that the County requires such requests to go to the County Administrator.

SCSA3 submitted a request to the County for it to fill the longstanding mid-term vacancies pursuant to the County's desired process. The County appointed new trustees two of these vacancies on August 21, 2024, and those new Board members will sworn in as soon as possible.