



# Utah General Adjudications

*Rural Water Association of Utah*

*April 25<sup>th</sup>, 2013*

**Utah Division of Water Rights**

**Blake W. Bingham, P.E.**

**Adjudication Program Manager**

**[www.waterrights.utah.gov](http://www.waterrights.utah.gov)**

# **Historical Context – The Pioneer Era**

**July 23, 1847:** Advance party of the **Mormon pioneers** entered the Salt Lake Valley and began breaking-up the ground to prepare the land for crops. **Water from City Creek Canyon** was diverted to moisten the soil for plowing and later used for irrigation.

**September 30, 1848:** **Brigham Young** declares, "There shall be **no private ownership** of the streams that come out of the canyons... **These belong to the people:** all the people."

**1847 – 1850:** The pioneer settlement went from being part of **Mexico** to the **State of Deseret** to the **Territory of Utah**; however, government remained Church-centric.

- Diversions of water from streams were generally on a **community basis** to meet the immediate needs of the settlers.
- The **doctrine of priority** evolved from Church leaders' recognition of groups who first put the water to beneficial use as well as later beneficiaries (primary and secondary rights).
- **Conflicts were settled through ecclesiastical channels;** Bishop's Courts for local wards provided a judicial process with Stake High Councils serving as appellate courts.



# ***Historical Context - Territorial Era***

**1852:** The first Territorial Legislative Assembly passed an act authorizing the **County Court** control of "all timber, water privileges, or any water course or creek." **Salt Lake County** was the only one to assume these duties... other counties streams were diverted without public restriction.

**1877:** The **Desert Land Act** was passed to promote homesteading of arid and semiarid public land. The Act also **severed the title** of the water from the public land and **delegated authority** to appropriate the water to the respective **state or territory**.

**1880:** Due to **failure to enforce** the 1852 act, the legislature passed an act that replaced the County Court's authority with the **County Selectmen** as the ex-officio water commissioners. Allowed recognition, determination, and recording... but not appropriation. Once again, this was only enforced in a few counties and the certificates were generally considered worthless.

- **Confusion** over existing water rights continued in spite of the efforts of the Utah Territorial Legislature.
- The **Church continued to administer and decree water rights** in some areas (e.g. 1879 High Council Decision to divide the waters of the Spanish Fork River among various canal companies).



# **Historical Context - Statehood and Beyond**

**1896:** Utah gains Statehood. Due to **fears of possible confiscation** of existing water rights by the State under a comprehensive water code, the adopted constitution only had **one sentence** regarding water law:

*"All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed."*

**- Constitution of the State of Utah, Article XVII**

**1897:** **Office of the State Engineer** created and tasked with conducting **hydrographic surveys** and measuring stream sources. **Appropriations** were made by posting notice at the source, the nearest post office, and the county recorder... largely ignored.



**Willard Young**  
State Engineer

**1902:** United States Reclamation Service (i.e. The Bureau of Reclamation) established to "reclaim" arid lands in the Western United States.

- To secure Federal funding for **Reclamation projects**, states were encouraged to adopt **statutes** which provided certainty regarding existing water rights and future appropriations.

**1903:** State legislature enacted the first **Utah Water Law** which provided for (among others):

- The definition and public **recording of all existing water rights** and the **adjudicating of rights** by the Court. Legislature failed to provide funding to the local Courts.

*"While this law was ideal in purpose and virtue... the law failed miserably as a means of adjudicating existing water rights. As a matter of fact no rights were ever adjudicated by virtue of it."*

**- State Engineer Biennial Report 1919-20**

**1919:** The legislature provided the "machinery" to adjudicate water rights on a given stream by directing the **State Engineer** to develop a "**proposed determination**" of water rights for the Court to consider.



# **The Historical Case for Adjudication**

- Prior to the enactment of the comprehensive Utah Water Law in 1903, rights to the use of water typically fell into a combination of five categories:
  1. Rights decreed by **ecclesiastical leaders**.
  2. Claims **filed for record** at the county.
  3. Rights **decreed by a court** (typically involving limited parties) and recorded at the Courthouse.
  4. Contractual **agreements** between various entities.
  5. Claims **never manifested in any record**, but evidenced by pre-statutory use.
- The lack of a definitive water law created a number of issues:
  1. There was typically **no public record** of existing water rights.
  2. Since there was no record, **over appropriation** of streams was common.
  3. Often, rights **weren't defined** until they came into **controversy** and had to be settled by ecclesiastical or court decree.
- In his biennial report for 1901-02, the State Engineer made the following observation:

*"The definition of existing rights appears to be of first importance. This is not only necessary to pacify present contention, but to prevent future conflicts and encourage further progress. There can be no safe basis for future work before existing rights are known and made of public record."*

**- A.F. Doremous, Utah State Engineer**



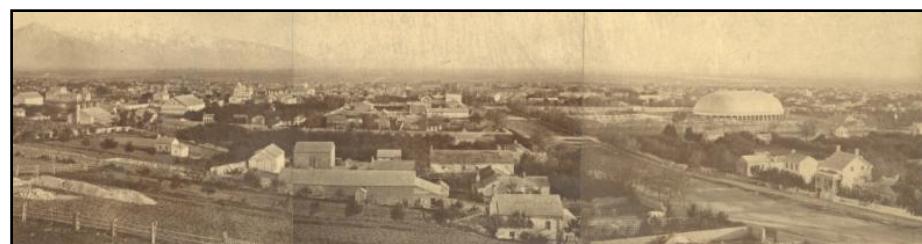
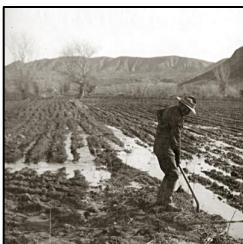
# **Water Rights/Adjudication in Western States**

## **The Colorado System (1881/1969):**

- Courts **adjudicate rights without** any administrative water rights **appropriation system** (Water Courts established in 1969).
- Resulted in **over-appropriation** of surface waters in early system.
- Water rights are **not considered "perfected"** until decreed by the Court.
- **Pre-statutory claims** (i.e. Diligence Claims) don't exist due comprehensive and on-going adjudication approach.
- An "**Abandonment List**" is published by the State Engineer every 10 years.
- **Other states:** Unique to Colorado.

## **The Wyoming System (1890) :**

- Individual water rights are **appropriated via permit** through the State Engineer and then **adjudicated** by the **Board of Control** (similar to Utah's certification process).
- All **pre-statutory claims** which existed prior to statehood were **adjudicated** by the **Board of Control**.
- **Abandonment** (forfeiture) can be **adjudicated** by the **Board of Control** after 5 years of non-use.
- **Other states:** Nebraska and Alaska (Texas & Nevada adopted the Wyoming System but Court deemed it unconstitutional so they subsequently adopted the Oregon System).



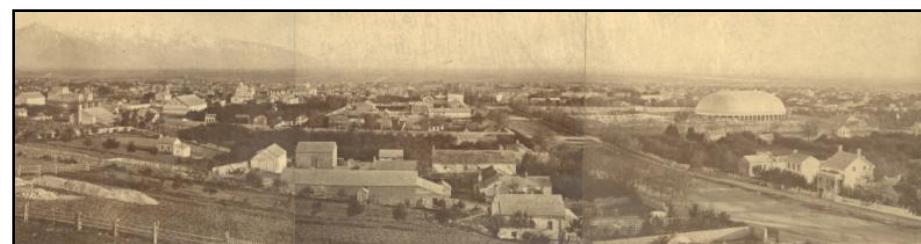
# **Water Rights/Adjudication in Western States**

## **The Bien Code (1905):**

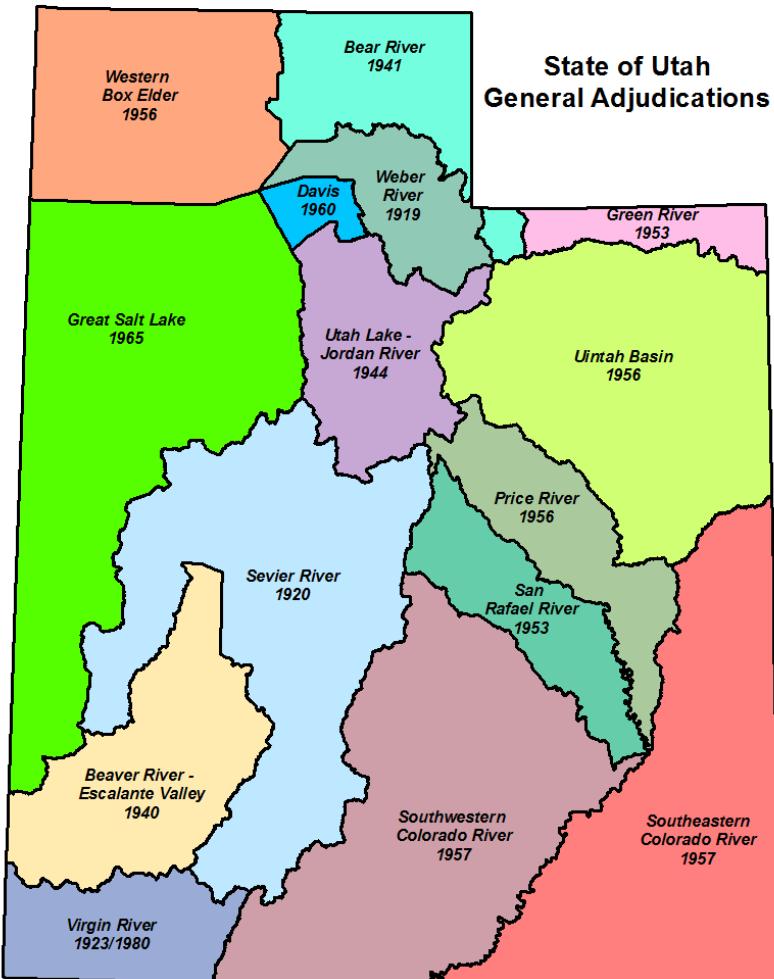
- Based largely on **Utah statute** at the time of its inception.
- Incorporates administrative **permitting system** for appropriations but **retains** water rights **adjudication jurisdiction in the Court**.
- Administrative agency (e.g. State Engineer's Office) prepares a **hydrographic survey**.
- Hydrographic survey is delivered to the state's **Attorney General** who **files suit** with the respective District Court and prosecutes it.
- The **Court** is required to **interpret** the hydrographic survey and issue a **decree** based on **evaluation of the data** and water users' **claims**.
- **Other states:** North Dakota, New Mexico, South Dakota, Oklahoma, and Montana.

## **Oregon System (1909):**

- Very **similar** to **Bien System** with regard to appropriations.
- Water rights are **adjudicated** in the **Court**.
- Administrative agency (e.g. State Engineer's Office) prepares a **hydrographic survey**.
- State Engineer develops a **proposed determination** of water rights (in conjunction with the hydrographic survey) and files it with the Court.
- The **Court** reviews the **proposed determination**, addresses **objections**, and issues a **decree**.
- **Other states:** Arizona, California, Washington, Nevada, Texas, Utah, and Idaho



# **What is a General Stream Adjudication?**



## **What it IS...**

- Action in District Court
- Binds water users and the State Engineer (Division of Water Rights)
- Governed by Utah State Code: Title 73, Chapter 4.
- The first General Stream Adjudications took place in the 1920s – Sevier, Weber and the Virgin River basins.



# **Why Do We Conduct General Adjudications?**

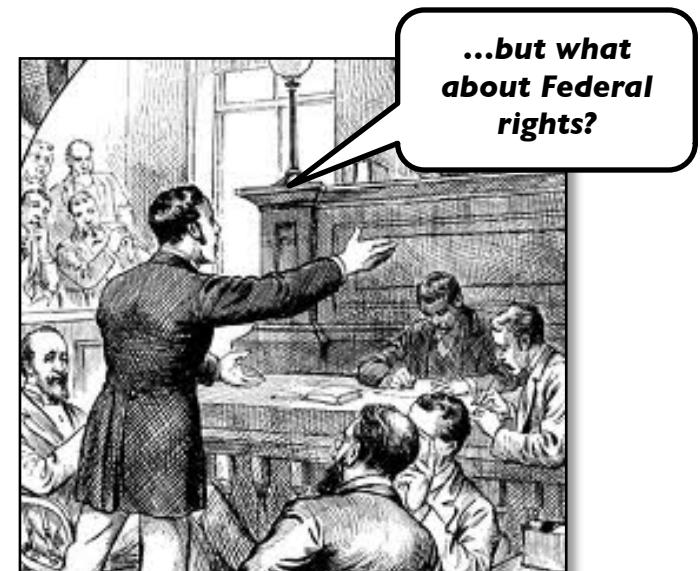
1. Bring all claims on to the permanent record:

- Pre-Statutory Claims
  - *Diligence Claims*
  - *Underground Water Claims*
  - *Pending Adjudication Claims*
- Federal Reserve Rights
  - *Winter's Doctrine (1908)*
  - *McCarran Amendment (1952)*

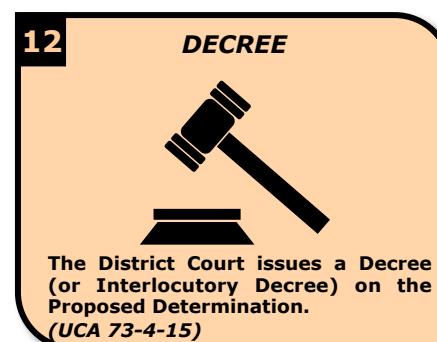
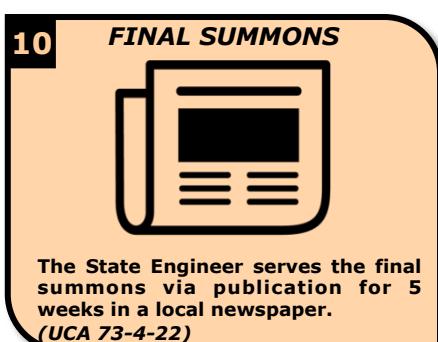
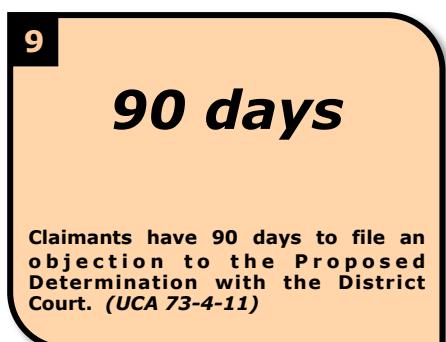
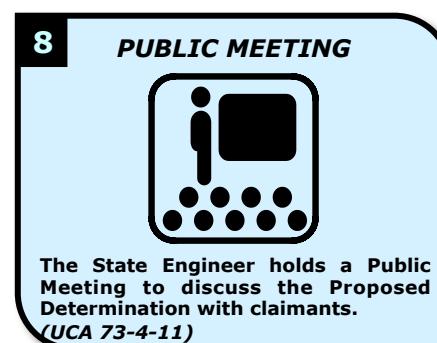
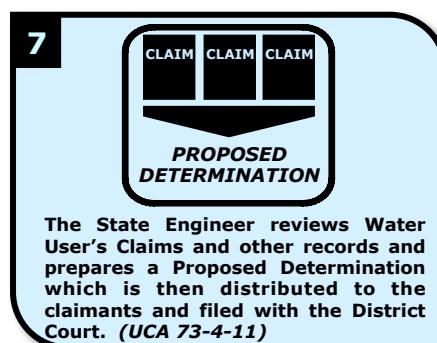
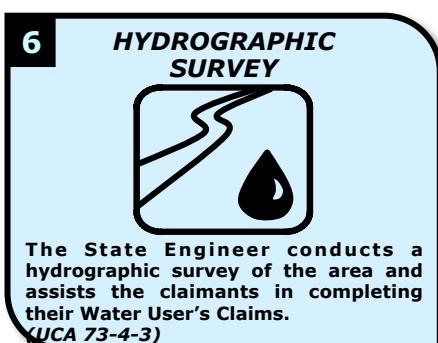
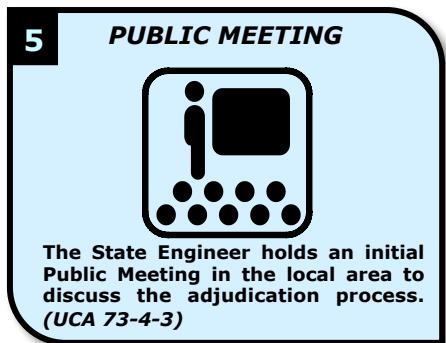
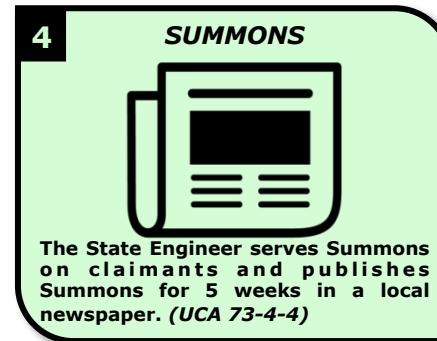
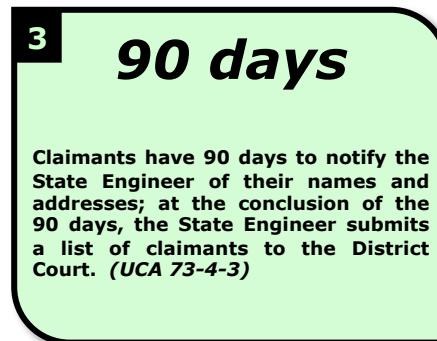
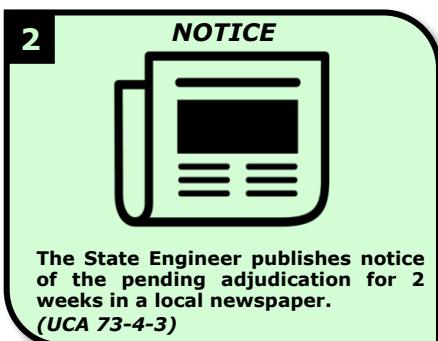
2. To prevent a “multiplicity of suits” and bring clarity to the water rights picture.

3. Remove/reduce rights which have been wholly or partially forfeited through non-use...?

4. To obtain decrees on all water rights—including certificated rights...?



# Adjudication Process



# ***The Proposed Determination Process***



## **The Proposed Determination**

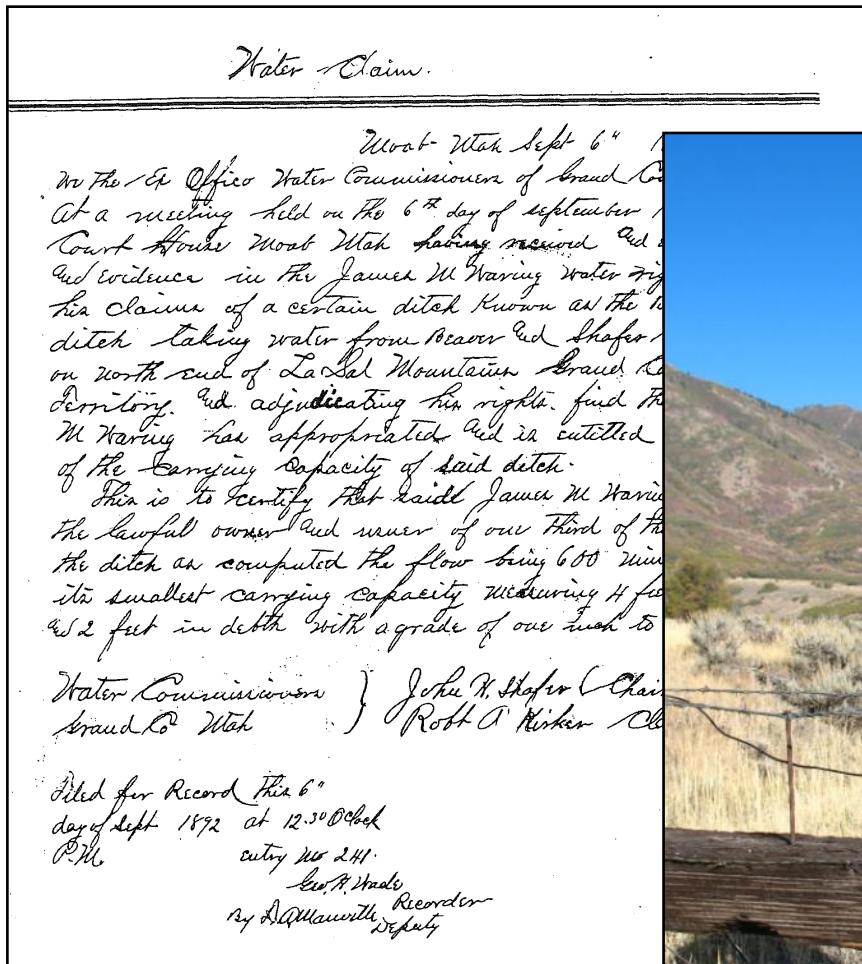
- Official recommendation of the State Engineer to the District Court

## **The Process**

- Public Meeting: Hold a public meeting to inform water users.
- Research: Identify, research, and field-review water rights within the proposed determination area.
- Hydrographic Survey: Conduct a hydrographic survey to identify existing points of diversion, places and extent of use.
- Claim Preparation: Help water users prepare and submit Water User Claims.
- Publish Proposed Determination: Compile Water User Claims, publish, and distribute Proposed Determination.
- File with Court: The Proposed Determination is filed with the District Court.
- Resolve Objections: Resolve objections filed by water users to the proposed determination if possible.
- Court Decree: The District Court hears any remaining disputes and issues a decree on the water rights within the proposed determination area.



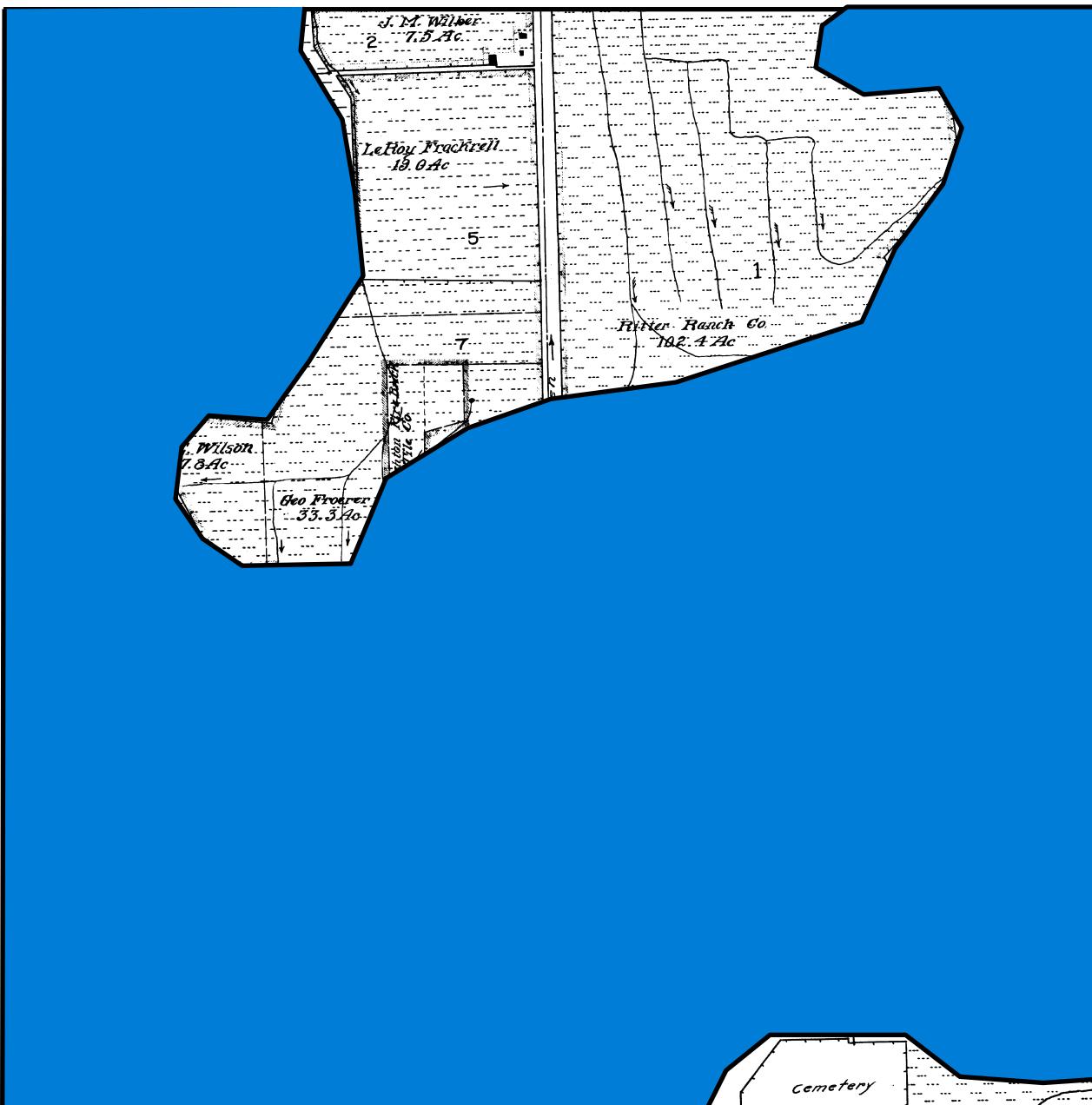
# Research and Field Review



- Research old court decrees and other documents.
- Field review claims within the area to determine extent of claim.
- Meet with water users to discuss claim and observe beneficial use.



# ***Hydrographic Survey Maps***

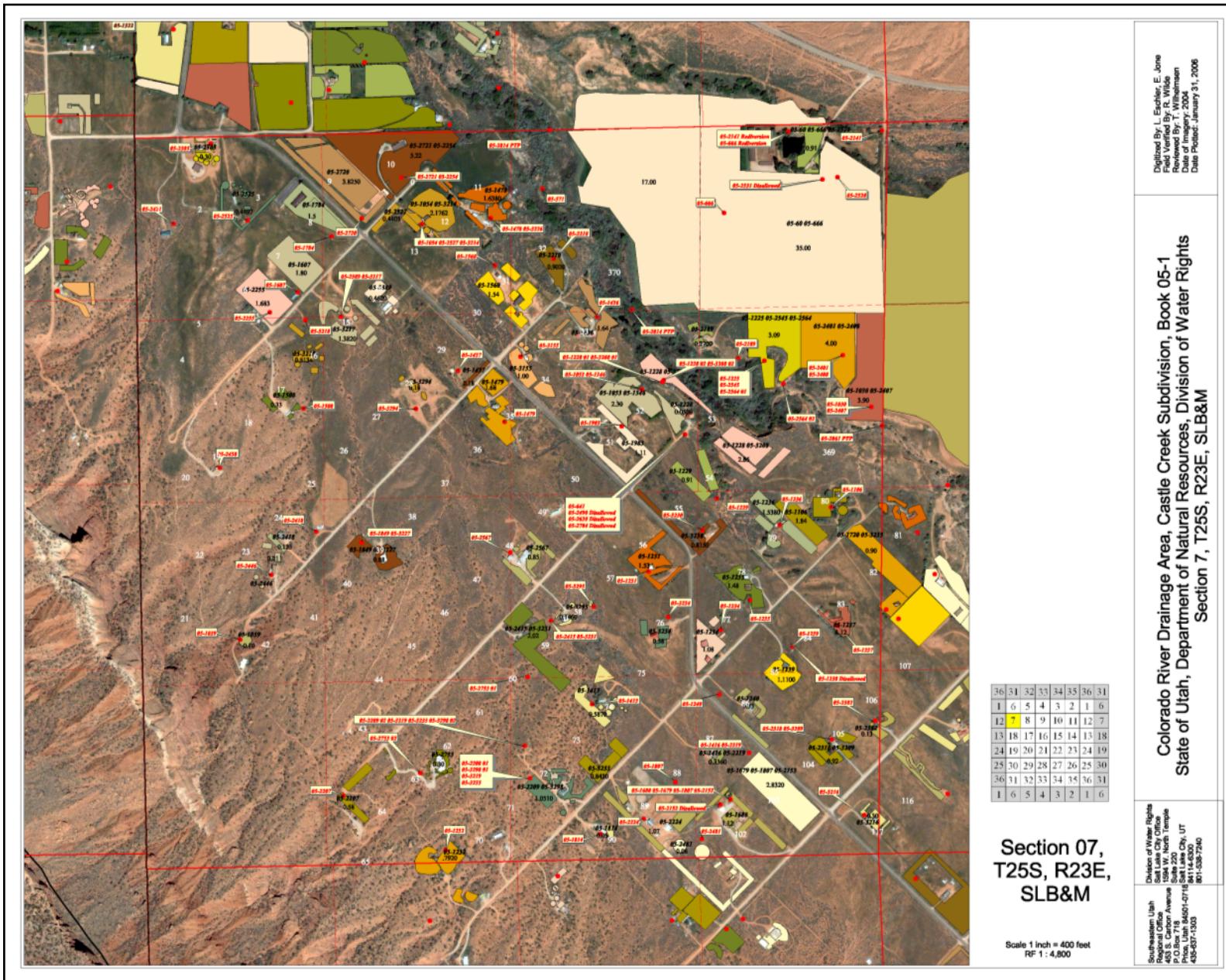


- Snap-shot in time
- Hard copy originals on file at Salt Lake City Office and Regional Office.
- Can be viewed online at the Division of Water Rights webpage:

[http://  
www.waterrights.utah.gov/  
adjinfo/hydromap.asp](http://www.waterrights.utah.gov/adjinfo/hydromap.asp)



# Hydrographic Survey Maps



# Water User's Claims

<p>Date sent out _____</p> <p>Claimant's Name _____ (Do not fill in)</p> <p><b>IN THE JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF STATE OF UTAH</b></p> <p><b>IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR TOOELE COUNTY, STATE OF UTAH</b></p> <p><b>STATEMENT OF WATER USER'S CLAIM</b></p> <p><b>COURT COPY</b></p> <p>*****</p> <p><b>HOW TO USE THIS FORM:</b></p> <p>Review the information on this form carefully. This Statement of Water User's Claim form is important to you in asserting your water rights in the pending judicial adjudication described above. Under Utah law, unless you file a written Statement of Water User's Claim in a timely manner, your water rights may not be recognized and you cannot assert them further. The State Engineer has made a hydrographic survey of this area, which includes your water right and uses. Your receipt of this form constitutes notice to you that the survey is completed. Your signed and verified Statement of Water User's Claim must be filed within 90 days after service of this notice to you. If you agree with the information and accept it as your Statement of Water User's Claim, sign the form and return it to the Division of Water Rights. The Division of Water Rights is authorized to receive your Statement of Water User's Claim for the clerk of the court and will file it with the District Court.</p> <p>*****</p> <p><b>1. WATER RIGHT AND OWNERSHIP INFORMATION:</b></p> <p>A. NAME: Lincoln Culinary Water Corporation ADDRESS: 1631 East Pine Canyon Road Lincoln, UT 84074</p> <p><b>STATE ENGINEER'S RECOMMENDATION</b></p> <p>NAME: State of Utah Board of Water Resources ADDRESS: PO Box 146201 1594 West North Temple, Suite 310 Salt Lake City UT 84114-6201</p> <p>INTEREST: 100%</p> <p>B. TYPE OF RIGHT: Application To Appropriation No. A12523, CERTIFIED 5261 on which the following Change Application(s) have been filed:  Change Application No. a3206, CERTIFIED 5261</p> <p>C. PRIORITY DATE: MARCH 28, 1944</p> <p><b>2. SOURCE INFORMATION:</b></p> <p>A. QUANTITY OF WATER: 0.122 cfs OR 36.85 acre-feet</p> <p>B. DIRECT SOURCE: Unnamed Spring(s)</p> <p>Water User's Claim</p>	<p><b>IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF <del>WATER</del> ALL WATER, BOTH SURFACE AND UNDERGROUND, IN THE ESCALANTE VALLEY DRAINAGE AREA SOUTH OF THE TOWN OF QPAI, INCLUDING BUT NOT LIMITED TO PINTO CREEK, SHEAL CREEK AND TRIBUTARIES THEREOF, AND THE BERYL AND MILFORD UNDERGROUND WATER AREAS.</b></p> <p><b>STATEMENT OF WATER USER'S CLAIM</b></p> <p><b>COURT COPY</b></p> <p>*****</p> <p><b>HOW TO USE THIS FORM:</b></p> <p>Review the information on this form carefully. This Statement of Water User's Claim form is important to you in asserting your water rights in the pending judicial adjudication described above. Under Utah law, unless you file a written Statement of Water User's Claim in a timely manner, your water rights may not be recognized and you cannot assert them further. The State Engineer has made a hydrographic survey of this area, which includes your water right and uses. Your receipt of this form constitutes notice to you that the survey is completed. Your signed and verified Statement of Water User's Claim must be filed within 90 days after service of this notice to you. If you agree with the information and accept it as your Statement of Water User's Claim, sign the form and return it to the Division of Water Rights. The Division of Water Rights is authorized to receive your Statement of Water User's Claim for the clerk of the court and will file it with the District Court.</p> <p>*****</p> <p><b>1. Name of Claimant: Alma Fidake</b> (If a company, state whether or not incorporated) <b>2. Postoffice address: Lehi, Utah</b> (If a company, give name and address of President and 3. Name of particular spring, stream or tributary, or underground water tunnel or drain from which water is diverted: Well in _____ County. 4. Location of well: C. 32. 15. R. 8. D. 1. (Strike out once not needed. If right has been decreed by court, attach verified copy of decree to this form.) 5. Nature of Right: Right to surface water initiated by beneficial use Right to underground water initiated before 1865 Right claimed by court, cite title of case (Application filed with State Engineer's Office) (Strike out once not needed.) 6. Nature of Use: Irrigation Municipal Domestic Municipal Stockwatering Power (If for use other than here listed, set forth in blue ink.) 7. Direct Flow Appropriation: (a) Flow of water claimed in second feet (If underground water in gallons per min. _____) (b) Annual period of use: five months from March (c) Point or points of diversion from stream or tributary. (Must be described with survey corner.) cor. sec. N. 3688, feet and 26 (68.75) 8. Appropriation for Storage Purposes: (If claimant stores water in reservoirs, same information should be given for each reservoir. A fly sheet may graph 6 for this purpose, if necessary.) (a) Name of reservoir, if known by name. (b) Maximum capacity of reservoir in acre-feet. (c) Year construction commenced: completed _____ (d) Location of reservoir. (State legal subdivisions inundated in whole or part)  (d) Is reservoir located on or off stream from which water is claimed for storage? (e) Period of storage: (Give beginning and ending dates) (f) Period of use: (Give beginning and ending dates) (g) Area inundated by reservoir at full stage in acres (h) Maximum depth of water in reservoir (i) If a yearly record of amount of water stored in past is available, give same (j) Is reservoir drained each year?</p>
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- Completed and filed by the water user at the Court (per statute).
- Adjudication staff typically help in completing the claim.
- State Engineer files the claim with the Court on behalf of the water user as a courtesy.
- Claims typically only taken on perfected (certified) or decreed rights and diligence claims.



# ***Proposed Determination***

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR TOOELE COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION  
THE USE OF WATER, BOTH SURFACE AND UNDERGROUND,  
OF TOOELE COUNTY; ALL OF JUAB COUNTY,  
DRAINING TO UTAH LAKE AND TO THE SEVIER RIVER,  
ALL OF MILLARD, BEAVER AND IRON COUNTIES,  
IN THE SEVIER RIVER, BEAVER RIVER, AND VIRGIN RIVER,  
UTAH

TOOELE VALLEY DIVISION  
TOOELE CITY SUBDIVISION

AREA NO. 15  
BOOK 04

Proposed Determination Book for Tooele Valley Division, Tooele City Subdivision, Area: 15 Book Number: 4 Page: 10

1	15-5	NAME:	Marian E. Card Cassity Family Revocable Trust Elaine England Dale Leon and Vernon Keith Jensen Lucille E. Redford	INTEREST:	33.3% interest with Elaine England, and Lucille E. Redford 33.3% 33.3% interest with Marian E. Card, and Lucille E. Redford 33.3% undivided 33.3% interest with Elaine England, and Marian E. Card
		TYPE OF RIGHT:	D33	PRIORITY:	1902
		FLOW:	0.011 cfs OR 0.599 acft	SOURCE:	Unnamed Spring in Corner Canyon
POINT OF DIVERSION -- SURFACE: [1] N 3420 feet W 230 feet from the SE corner, Section 02 T 4S R 4W SLB&M					
BENEFICIAL USE: <i>[The following use data has appurtenant supplemental water rights.]</i>					
Water Use Group No. 8740. Water Rights Appurtenant to the following use(s): 15-5,6,20,264,973					
STOCKWATER: from Apr 01 to Nov 30 SOLE SUPPLY: 32.0000 ELUs of the Group Total of 530.0000.					
PLACE OF USE (Stockwatering): [which includes all or part of the following legal subdivisions:]					
BASE TOWN RANG SEC	NORTH-WEST* NW NE SW SE	NORTH-EAST* NW NE SW SE	SOUTH-WEST* NW NE SW SE	SOUTH-EAST* NW NE SW SE	
SL 4S 4W 02	****	****	X ***	***	

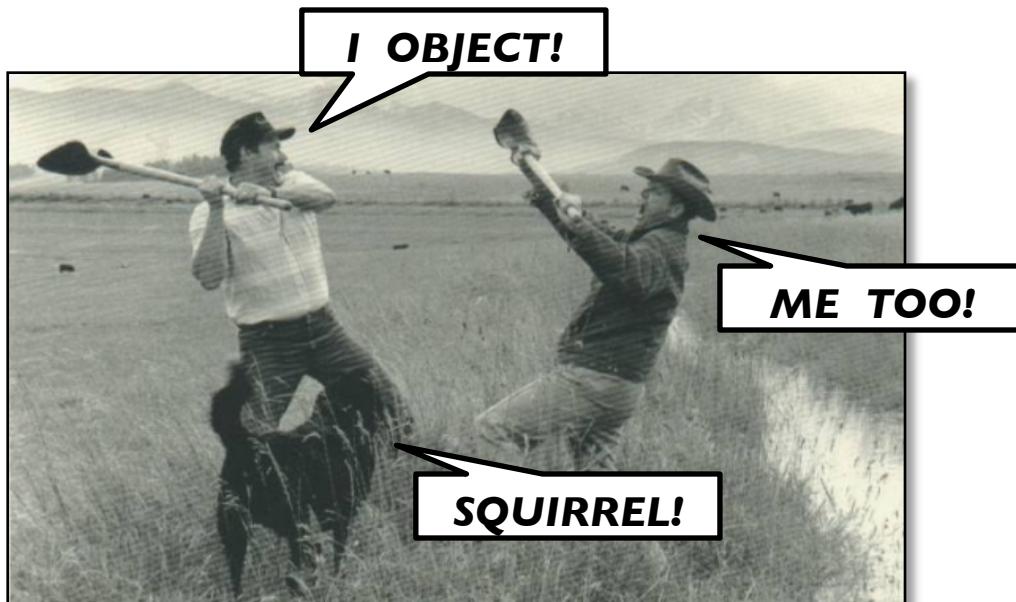
LIMITATION(s) -- Water Right 15-5 is limited to:  
an annual diversion for Stockwatering of 0.5990 acre-feet

Description Of Water Rights      Date of Publication: November 02, 2010

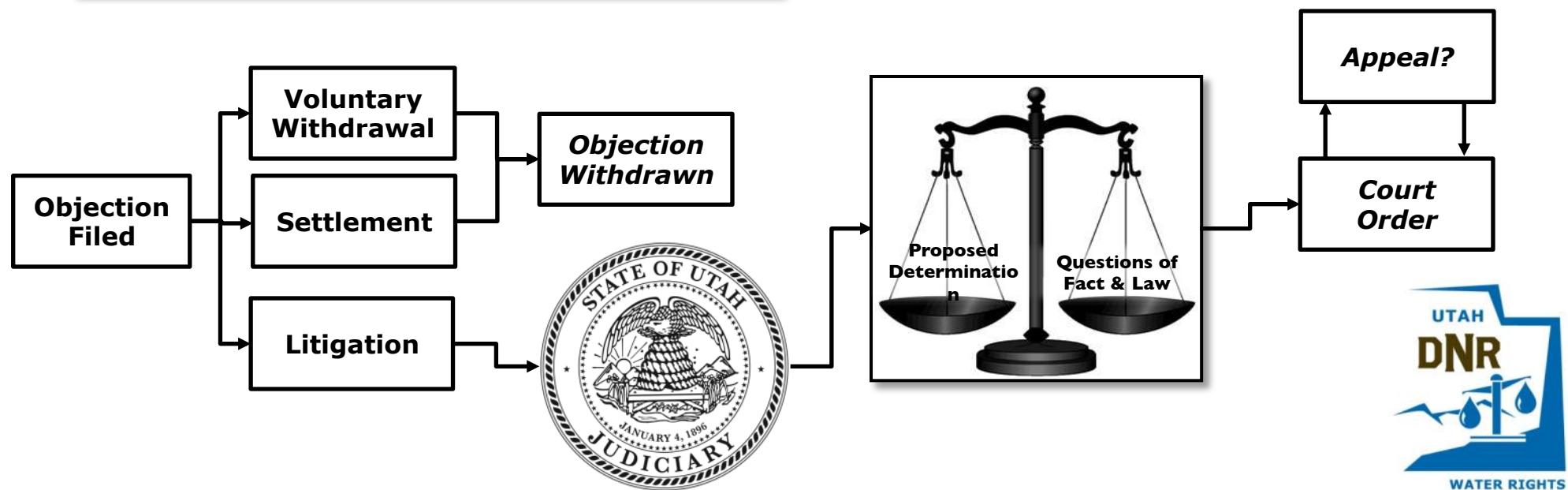
- Represents State Engineer's **official** determination of rights.
- Filed with the **District Court**.
- **Delivered to water users** within the adjudication boundary.



# *Objections*



- Objections must be filed with the court within 90-days.
- Must be verified on oath.
- Filed with the clerk of the respective District Court.
- Court may be petitioned to allow a late objection.



# Decrees



- In the “early” days, one Proposed Determination was published for one river drainage (e.g. Weber & Sevier Rivers).
- **Interlocutory** or **Partial** Decrees are often issued for sub-divisions of the river drainage.
- **Federal Water Rights:**
  - Winters v. United States, 1908: Federal Reserved Rights on Federal lands (e.g. Indian Reservations, National Parks, Forests, etc.)
  - McCarran Amendment, 1953: Forces Federal Government to be subject to State court.
- Decrees often include language **closing** the respective basin from additional **diligence claims**.

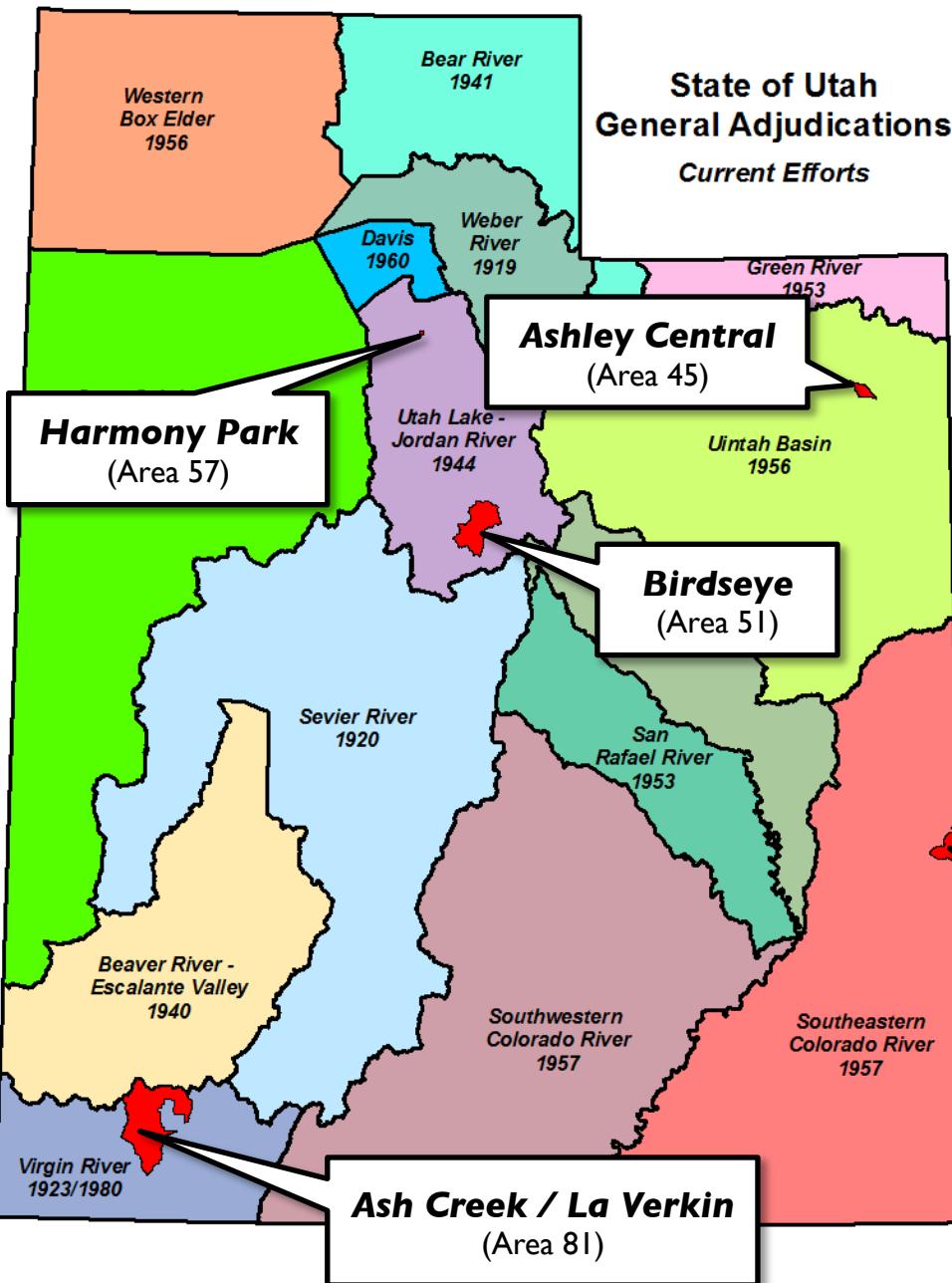


## ***Will I lose my water right?***

- Water users who are currently using their water right in conformance with the records on file with the Division of Water Rights have nothing to worry about.
- Individuals using water ***without a water right of record*** are required to submit a claim during the proposed determination process or ***risk being barred*** from future claims and use.
- If the water use authorized under the water right has fallen ***out of use for 7-years or more***, the water right—or a portion of it—may be recommended to be ***disallowed*** in the proposed determination.



# *Where are we today?*



- State-wide Program focusing on Adjudication
- Consists of 5 staff members
  - Program Manager
  - Adjudication Engineer
  - 3 Adjudication Technicians
- Regional Offices support Adjudication efforts as available.
- Continually working with the Attorney General's office to resolve objections to previous Proposed Determinations in order to obtain interlocutory decrees. There are over 500 un-resolved objections on record.



# ***Who can I contact to discuss the Adjudication Process?***

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*Adjudication Technician*

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*Adjudication Team Leader*

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## ***Utah Division of Water Rights***

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[www.waterrights.utah.gov](http://www.waterrights.utah.gov)    Email: [joshzimmerman@utah.gov](mailto:joshzimmerman@utah.gov)



# *Questions?*

