

Order prepared by:

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Benjamin J. Jensen, No. 14216
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Attorneys for the Utah State Engineer

**IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH**

IN THE MATTER OF THE GENERAL
DETERMINATION OF RIGHTS TO THE
USE OF WATER, BOTH SURFACE AND
UNDERGROUND, WITHIN THE
DRAINAGE AREA OF THE VIRGIN
RIVER IN WASHINGTON, IRON, AND
KANE COUNTIES IN UTAH

General File

**[PROPOSED] ORDER APPOINTING
R.L. KNUTH AS SPECIAL MASTER IN
THE VIRGIN RIVER ADJUDICATION**

AND

ORDER OF REFERENCE

Civil No. 800507596

Judge G. Michael Westfall

This matter came before the Court on the Motion of Kent L. Jones, P.E., Utah State Engineer, through counsel, to appoint R.L. Knuth as Special Master in the Virgin River Adjudication, pursuant to U.R.C.P. 53.

Having reviewed the documents in support of the motion and considered the arguments, the Court orders and directs that R.L. Knuth be appointed to serve as Special Master in the

Exhibit 1

Virgin River Adjudication as more particularly detailed in this Order of Reference. The powers and duties of the Master shall be governed by U.R.C.P. 53 except where expressly modified by this Order of Reference, or as otherwise ordered by the Court.

I. Special Master's Duties

The Special Master's duties are limited to hearing objections to a List of Unclaimed Rights and objections to a Proposed Determination. The Master may not hear objections related to federal reserved water rights. Generally, the Master will preside over the adversarial proceedings between an objector, the State Engineer, and any affected parties. The Master will be expected to meet performance measures as set by this Order or the Court. In addition to the powers authorized under U.R.C.P. Rule 53(c), the Master is given the following duties and powers:

1. Actively managing objections filed in the Virgin River Adjudication, including: scheduling, notifying the parties, holding status and settlement conferences, and holding hearings.
2. Consistent with Utah Code of Judicial Conduct Rule 2.6, the Special Master may encourage the parties to settle matters in dispute. However, the Special Master shall not act in any manner that coerces a party into settlement, nor shall the Special Master, as the finder of fact, participate in compromise negotiations that would be inadmissible under Utah Rule of Evidence 408.
3. Designating objection proceedings within the general adjudication divisions or subdivisions and identifying the parties to each objection proceeding. For example, the State Engineer and the objector will always be parties to each objection proceeding, but

the Special Master shall also identify and give notice to other parties who may be affected by the adjudication of an objection as required by Utah Code § 73-4-13 and *Plain City Irrigation Co. v. Hooper Irrigation Co.*, 51 P.2d 1069 (Utah 1935).

4. Identifying the parties affected by a proposed settlement, and, following notice to the affected parties, hearing opposition to a proposed settlement.
5. Taking evidence, overseeing discovery, ruling on procedural motions, and ruling on substantive motions with a report and recommendation to the Court.
6. Preparing the Special Master's final report and recommendation for each objection proceeding containing findings of fact and conclusions of law. In preparing each report, the Special Master may solicit proposed findings of fact and conclusions of law from the parties to the objection proceeding.

II. Proceedings Before the Special Master

Proceedings before the Special Master shall be conducted pursuant to the Utah Rules of Civil Procedure and the Utah Rules of Evidence. Documents filed with the Court are deemed filed with the Special Master. The Master will arrange for the recording of all proceedings, and the parties may obtain transcripts as needed for objecting to or defending the Special Master's report and recommendation. Parties may request leave to appear telephonically at status or scheduling conferences, and the Special Master shall freely grant such leave for those proceedings. The Master may grant leave to appear telephonically at such other hearings or proceedings as may be appropriate, in the discretion of the Special Master. Because of the large number of parties in the general adjudication, the Special Master is not required to hold a meeting with all parties within 21 days of the appointment as provided in U.R.C.P. 53(d)(1).

III. Special Master's Ethical Obligations and Ex Parte Communications

The Special Master shall be bound by the Utah Code of Judicial Conduct to the same extent as a Judge Pro Tempore, except the Special Master shall be bound at all times by Rules 1.2 and 2.4, and while serving as a Special Master, by Rule 3.13 of the Utah Code of Judicial Conduct. The Special Master shall not have *ex parte* communications with any party of the Court except to communicate with the parties or the Court on non-substantive or administrative matters.

IV. Special Master's Report to the District Court

After an objection proceeding is heard by the Special Master, the Master shall submit to the Court a report and recommendation with his decisions, findings, and conclusions pursuant to U.R.C.P. 53 and serve the report on all parties to the objection proceeding. Any party who has directly participated in the objection proceeding may file a written objection to the Special Master's report within 30 days of the filing of the Report. If objections to the Special Master's report are filed, parties to the objection proceeding may file written responses within 30 days. A party who has not directly participated in the objection proceeding may file an objection or respond to an objection to the Master's report only if the party can demonstrate by clear and convincing evidence that failure to participate was: (1) due to circumstances beyond the party's control, or (2) because the party could not have determined through the exercise of reasonable due diligence that the outcome of the case would affect the party's interests. The Court may enlarge the 30-day time period for filing objections to the Special Master's report and recommendation, or responses thereto, in a given objection proceeding only upon a showing of extraordinary circumstances.

For any report and recommendation that receives an objection, the Court will accept the Special Master's findings of fact unless clearly erroneous as provided by U.R.C.P. 53(e)(2), and will review the Special Master's conclusions of law de novo.

V. Six Month Status Conference

Six months following the entry of this Order of Reference, the Court shall hold a status conference with the parties and the Special Master to assess the progress and status of the Special Master's work.

VI. Duration of the Special Master's Appointment and Compensation

The Special Master's appointment is contingent on continued legislative funding. Compensation for the Special Master may not be charged upon the parties, other than the State Engineer. The Special Master will be compensated at a rate of \$300 per hour; \$190 per hour for an associate attorney; and \$100 per hour for a paralegal. The Special Master may employ counsel of his choosing, subject to Court approval, to advise and assist him in carrying out his duties and under his supervision. Each month, the Special Master and his counsel shall submit their respective invoices to the Court and the State Engineer shall pay the amounts approved by the Court each month, statewide expenditures not to exceed of \$438,000 per state fiscal year.

END OF ORDER

The Order of the Court is stated below:

Dated: August 02, 2019
03:27:32 PM

/s/ G MICHAEL WESTFALL
District Court Judge



Order prepared by:

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**IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH**

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE VIRGIN RIVER IN WASHINGTON, IRON, AND KANE COUNTIES IN UTAH	AMENDED ORDER APPROVING SERVICE BY PUBLICATION OF MOTION TO APPOINT R.L. KNUTH AS MASTER IN THE VIRGIN RIVER ADJUDICATION
<i>General File</i>	Civil No. 800507596 Judge G. Michael Westfall

This matter came before the Court on the Motion of Kent L. Jones, P.E., Utah State Engineer, through counsel, for an order approving service by publication of motion to appoint R.L. Knuth as Special Master in the Virgin River Adjudication.

Exhibit 2

Having reviewed the documents in support of the motion and considered the arguments, the Court orders and directs that:

1. The motion to appoint R.L. Knuth as Special Master in the Virgin River Adjudication be served by publication on the parties.
2. The State Engineer shall file a copy of the Motion to Appoint with the Court prior to publication.
3. The form of publication attached to the State Engineer's motion is approved.
4. Anyone wishing to oppose the appointment of R.L. Knuth as Special Master shall have 30 days from the last date of publication to file their opposition.
5. The State Engineer or anyone wishing to reply to any opposition shall have 30 days from the last day for filing opposition.
6. A hearing on the motion to appoint R.L. Knuth as Special Master is set for Monday, November 18th, 2019 at 2:00 P.M. at the Fifth District Court, located at 206 West Tabernacle, St. George, Utah.

END OF ORDER



CURRICULUM VITAE

of

RICK L. KNUTH

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Salt Lake City, Utah 841152-6318
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EMPLOYMENT EXPERIENCE

Attorney/Principal (2018 to present)
R.L. KNUTH, PLLC, Salt Lake City, Utah

Attorney/Shareholder (1998 to 2018)
JONES, WALDO, HOLBROOK & McDONOUGH, Salt Lake City, Utah
-- Board of Directors, 2002 to 2009
-- Vice President, 2003 to 2009
-- Group Leader, Real Estate Development Practice Group
-- Director of Professional Recruiting, 2002 to 2008

Attorney/Shareholder (1992 to 1998)
PARSONS, DAVIES, KINGHORN & PETERS, Salt Lake City, Utah
(f/k/a PARSONS, DAVIES, OWEN & KNUTH, n/k/a COHNE KINGHORN)
Founding shareholder, vice president and director

Attorney/Shareholder (1980-1992)
WATKISS & SAPERSTEIN, Salt Lake City, Utah
(f/k/a Watkiss & Campbell)

EDUCATION

University of Utah College of Law
Salt Lake City, Utah
Juris Doctor (J.D.), 1980
 William H. Leary Scholar, 1978-79
 Barnard J. Stewart Memorial Scholar, 1979-80
 President, Student Bar Association, 1979-80
 Book Review Editor, Journal of Contemporary Law, 1979-80

California State University -- San Diego
San Diego, California 1975-77 (Dean's List)

Weber State College
Ogden, Utah
Bachelor of Arts, 1974 (*cum laude*)

SPECIAL MASTER

Special Master, Third Judicial District Court of Salt Lake County, Utah, in:
In The Matter Of: The General Determination of all the Rights to the use of
Water, Both Surface And Underground, Within the Drainage Area of the Utah
Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete and
Juab Counties in Utah, Civil No. 360057298.

- June, 2016 to present
- Responsible for conducting trials, overseeing discovery, ruling on procedural and substantive motions and making reports and recommendations to the District Court on all claims objections.

FELLOWSHIPS, HONORS, MEMBERSHIPS AND PROFESSIONAL AFFILIATIONS

Fellow, American College of Mortgage Attorneys (2004 to present)

- Regent, 2017 to present
- State Chair for Utah (2011 to present)

Listed in *The Best Lawyers in America*, in: Banking Law; Bankruptcy and Creditor-Debtor Rights; and Real Estate Law (2011 to present).

[Currently listed under: Banking and Finance Law; Banking and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation -- Banking and Finance; Litigation – Bankruptcy; Litigation -- Real Estate; and, Real Estate Law].

- Best Lawyers’ 2016 Salt Lake City “Litigation - Real Estate Lawyer of the Year”
- Best Lawyers’ 2013 Salt Lake City “Litigation - Banking and Finance Law Lawyer of the Year”
- Best Lawyers’ 2012 Salt Lake City “Banking and Finance Law Lawyer of the Year”

Preeminent rating, "AV", Martindale Hubbell, since 1995 (highest rating for professional ability and ethics)

Preeminent Judicial rating, "AV", Martindale Hubbell, 2019

Listed in *Mountain States Superlawyers*, in Banking Law (covering Utah, Nevada, Idaho, Montana and Wyoming, 2010-2012; 2014 to present)

Utah Business Magazine, “*Utah Legal Elite*,” 2004 to present

Admitted to practice

- Utah Supreme Court and United States District Court, District of Utah (1980)
- United States Claims Court and United States Court of Appeals for the Tenth Circuit (1982)

Member

- Utah State Bar
- Salt Lake County Bar Association

COMMUNITY AND CHARITABLE ACTIVITIES

Member, Salt Lake City Housing Trust Fund Advisory Board (2007 to 2017)
Chair, 2015-2017

Member, Board of Trustees, S.J. Quinney College of Law, University of Utah,
2005 - 2010

Chair, Water Law Committee, Energy, Natural Resources and Environmental
Law Section of the Utah State Bar Association, 2000 to 2002.

Member, Utah State Board of Mandatory Continuing Legal Education, 1995 to
2001;

- Chairman, 1999 to 2001;
- Executive Committee member, 1997 to 2001.

Member, Board of Trustees,
Journal of Contemporary Law Alumni Association, 1984 to 1990

Arbitrator, Financial Industry Regulatory Authority (“FINRA”, formerly NASD),
1997-present (Arbitration Panel Chairman)

PROFESSIONAL PUBLICATIONS and PRESENTATIONS

(In chronological order)

*Bases for Legal Establishment of a Public Right of Recreation in
Utah's "Non-Navigable" Waters*, 5 J. Contemp. L. 95 (1978)
[Cited by the Court: *J.J.N.P. Co. v. State of Utah*, 665 P.2d 1133, 1136
(Utah 1982)]

Book Review of *Religion and Politics: The Intentions of the
Authors of the First Amendment* by Michael J. Malbin, 5 J. Contemp. L.
361 (1978)

Implied Dedication by Public User: An Old Dogma Learns New Tricks,
7 Utah Bar Journal 43 (Summer-Fall 1979)

Book Review of *The Environmental Protection Hustle* by Bernard J. Frieden,
1 J. Energy L. & Policy 83 (1980)

The Notice Requirement in U.C.C. Warranty Cases; A Primer,
13 Utah Bar Journal 39 (Fall-Winter 1985)
[Reprinted in abridged form: Intermountain Commercial Record, Vol. 30,

No. 13, p. 1, (March 27, 1987)]

Lenders Facing Increased Liability For Hazardous Waste Clean-Up Under Federal 'Superfund' Law, *The Enterprise*, Vol. 19, No. 39 (April 2, 1990)

Protecting Your Water Rights From Forfeiture, *Utah Farm Bureau News*, Vol. 36, No. 11, p.5 (November 1990)

Avoiding Breaches of Peace in "Self-Help" Repossessions,
5 *Utah Bar Journal* 12 (August-Sept. 1992)

Repossession and Foreclosure of Personal Property in Utah, (National Business Institute, Eau Claire, WI, 1995)

A Modest Proposal Concerning "Esquire", 9 *Utah Bar Journal* 10 (March 1996)

What To Do About "NIMBY's", *Utah Homebuilder* Vol.6, No.7, (July 1997), p.23.

Conveyancing and Collateralizing Utah Water Rights, 12 *Utah Bar Journal* No. 10, (December 1999), pg. 12.

2000 Update of Utah Water Law, 2000 Year in Review, *Natural Resources, Energy and Environmental Law Journal*, pg. ____ (American Bar Association).

2001 Update of Utah Water Law, 2001 Year in Review, *Natural Resources, Energy and Environmental Law Journal*, pg. ____ (American Bar Association).

Short Sales and Deeds in Lieu of Foreclosure, *The Utah Banker*, Issue 2, 2008, page 8. <http://www.uba.org/displaycommon.cfm?an=1&subarticlenbr=543>

The New Utah Uniform Assignment of Rents Act, *The Utah Banker*, May/June, 2009, page 8.
<http://www.uba.org/displaycommon.cfm?an=1&subarticlenbr=508>

Customizing the Bank Guarantee, *The Utah Banker*, July/August, 2011, page 8.
<http://www.uba.org/displaycommon.cfm?an=1&subarticlenbr=605>

Why Bankers Should Use Pre-Negotiation Agreements, *The Utah Banker*, Winter, 2013, page 6.
http://www.uba.org/associations/2179/files/UBA_WINTER13%20proof.pdf

Fraudulent Checks – the “Same Wrongdoer” Defense, The Utah Banker, Fall, 2013, page 16
<http://www.uba.org/displaycommon.cfm?an=1&subarticlenbr=678>

PAPERS PRESENTED (In chronological order)

“Security Interests in Utah Water Rights,” sponsored by Utah State Bar, (Water Law Section), and Utah Water Users’ Association, Salt Lake City, Utah, May 27, 1993.

“Conveyancing & Collateralization of Utah Water Rights,” Utah State Bar Annual Meeting, Sun Valley, Idaho, July 1, 1999.

“Title Issues and Utah Water Rights,” Salt Lake County Land Title Association, Salt Lake City, Utah, November 9, 2000.

“Title Issues and Utah Water Rights,” Annual Convention, Utah Land Title Association, Mesquite, Nevada, January 11, 2001.

“Water Rights Administration – Water Rights Conveyances,” Joint Presentation of the Water Law Committee of the Utah State Bar, the Utah Water Users Association and Barnett Intermountain Water Consulting, St. George, Utah, March 5, 2001.

“Drafting Clear and Effective Transactional Documents,” Lorman Education Services, Salt Lake City, Utah, April 26, 2001.

Panel Presentations

Moderator, *“Change Applications on Shares of Water Stock,”* Joint Presentation of the Water Law Committee of the Utah State Bar, the Utah Water Users Association and Barnett Intermountain Water Consulting, St. George, Utah, March 11, 2002.

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Special Master

Janelle E. Bauer (USB #8801)
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IN THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<p><i>In the Matter of</i> the General Determination of All the Rights to the Use of Water, Both Surface and Underground, Within the Drainage Area of the Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete and Juab Counties in Utah</p> <p><i>General Case File</i></p>	<p>SPECIAL MASTER'S SIXTH STATUS REPORT TO THE COURT</p> <p>Civil No. 360057298</p> <p>Hon. Laura S. Scott</p> <p>(Rick L. Knuth, Special Master)</p>
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RICK L. KNUTH, the duly-appointed and acting Special Master in this general determination of water rights, submits his Sixth Status Report to the Court:

1. The Special Master submits this Sixth Status Report to the Court (this "Status Report") in conjunction with the Status Conference scheduled before the Court on June 14, 2019.

2. A numeric and graphic summary of the Special Master's work, by subdivision, is attached to this Status Report as **Exhibit A**.

3. The Special Master issued his Fifth Status Report to the Court on December 3, 2018. Between that date and June 3, 2019, the following has transpired in this case:

A. The Special Master's Actions Since His Last Status Report

4. Since the Fifth Status Report, the Special Master has issued 20 Reports and Recommendations to the District Judge for the dismissal or disposition by settlement of Objection Proceedings, which includes 13 Reports and Recommendations for removal of objections from Lists of Unclaimed Rights. *See Exhibit A.*¹

5. The Special Master has met with Judge Scott, on at least a monthly basis, to discuss procedural and administrative issues in the case.

6. From December 1, 2018 to June 3, 2019, the Special Master and his team logged approximately 91.1 hours on the case.

7. From December 1, 2018 to June 3, 2019, the Special Master and his counsel have requested and received the Court's approval for \$58,012.33 for fees and costs related to the case.

B. Material Developments in the Case

8. From the Special Master's appointment to June 3, 2019, he has filed 173 Reports and Recommendations, and 172 Objection Proceedings have been finally

¹ Exhibit A provides data representing the Special Master's work from the date of his appointment (June 28, 2016) through June 3, 2019—in other words, they are cumulative. The figures provided for the Special Master's progress since his Fifth Status Report were calculated by comparing the cumulative figures from Exhibit A to those provided in the Fifth Status Report.

resolved—either through orders of dismissal, orders incorporating stipulations, voluntary withdrawals of Objections, or voluntary withdrawals of all Notices of Intent to Proceed in an Objection Proceeding. *See Exhibit A.*

9. All Objections have now been finally resolved in the following subdivisions:

- Spanish Fork Subdivision, Book 1 (51-1);
- Spanish Fork Subdivision, Book 2 (51-2);
- Palmyra-Lakeshore Subdivision (51-3);
- Birdseye Subdivision (51-5);
- Cedar Valley Subdivision (54-1);
- Round Valley Subdivision (55-1);
- Pleasant Grove Subdivision (55-8);
- Nibley Park Subdivision (57-5);
- Foothill Village Subdivision (57-13);
- Salt Lake County Northwest (59-1);
- Salt Lake County Central Subdivision (59-2);
- Salt Lake County West Subdivision (59-3);
- Salt Lake County Southwest Subdivision (59-4);
- Salt Lake County Supplement (59-5);
- West Mill Creek Subdivision [LUR] (57-6);
- Rose Park Subdivision [LUR] (57-8);
- Liberty Park Subdivision [LUR] (57-11);

- Oakland Place Subdivision [LUR] (57-12);
- Foothill Village Subdivision [LUR] (57-13);
- Parleys Creek Subdivision [LUR] (57-14);
- Holladay Subdivision [LUR] (57-16);
- West Big Cottonwood Creek Subdivision [LUR] (57-17);
- Big Cottonwood Creek Subdivision [LUR] (57-18);
- West Murray Subdivision [LUR] (57-19);
- East Murray Subdivision [LUR] (57-20); and
- Fort Union Subdivision [LUR] (57-22).

10. All of the Objections that pre-date the Special Master’s appointment have been disposed of, with the exception of those in the following subdivisions: Hobble Creek (51-4), Goshen Valley (53-1), and Emigration Creek (57-1). The Special Master anticipates that all of the Objections in the Goshen Valley Subdivision will be finally resolved by the end of 2020. The objections remaining in the Hobble Creek Subdivision are proceeding to resolution in a deliberate and satisfactory manner.

11. As previously reported, the State Engineer has followed through on his expressed intention to focus his efforts on issuing Proposed Determinations in the urbanized areas of Salt Lake County east of the Jordan River. Since the Fifth Status Report, all subdivisions in the Salt Lake County East Division have now been opened, and the State Engineer has published proposed determinations in the following subdivisions:

- Rose Park Subdivision (57-8);

- City Creek Subdivision (57-9);²
- Dry Creek Subdivision (57-10);
- Oakland Place Subdivision (57-12); and
- Foothill Village Subdivision (57-13).

RESPECTFULLY SUBMITTED this 6th day of June, 2019.

/s/ R. L. Knuth

R. L. Knuth,
Special Master

² The Proposed Determinations for the Rose Park and City Creek Subdivisions were actually published prior to the filing of the Fifth Status Report. The Rose Park Proposed Determination was published on October 4, 2018; the City Creek Proposed Determination on November 29, 2018.

CERTIFICATE OF SERVICE

I certify that on the 6th day of June, 2019, I caused a true and correct copy of the foregoing SPECIAL MASTER'S SIXTH STATUS REPORT TO COURT to be served on the same date, via electronic filing notification, on all parties requesting such notification in the above-captioned case.

/s/ R. L. Knuth _____

EXHIBIT A

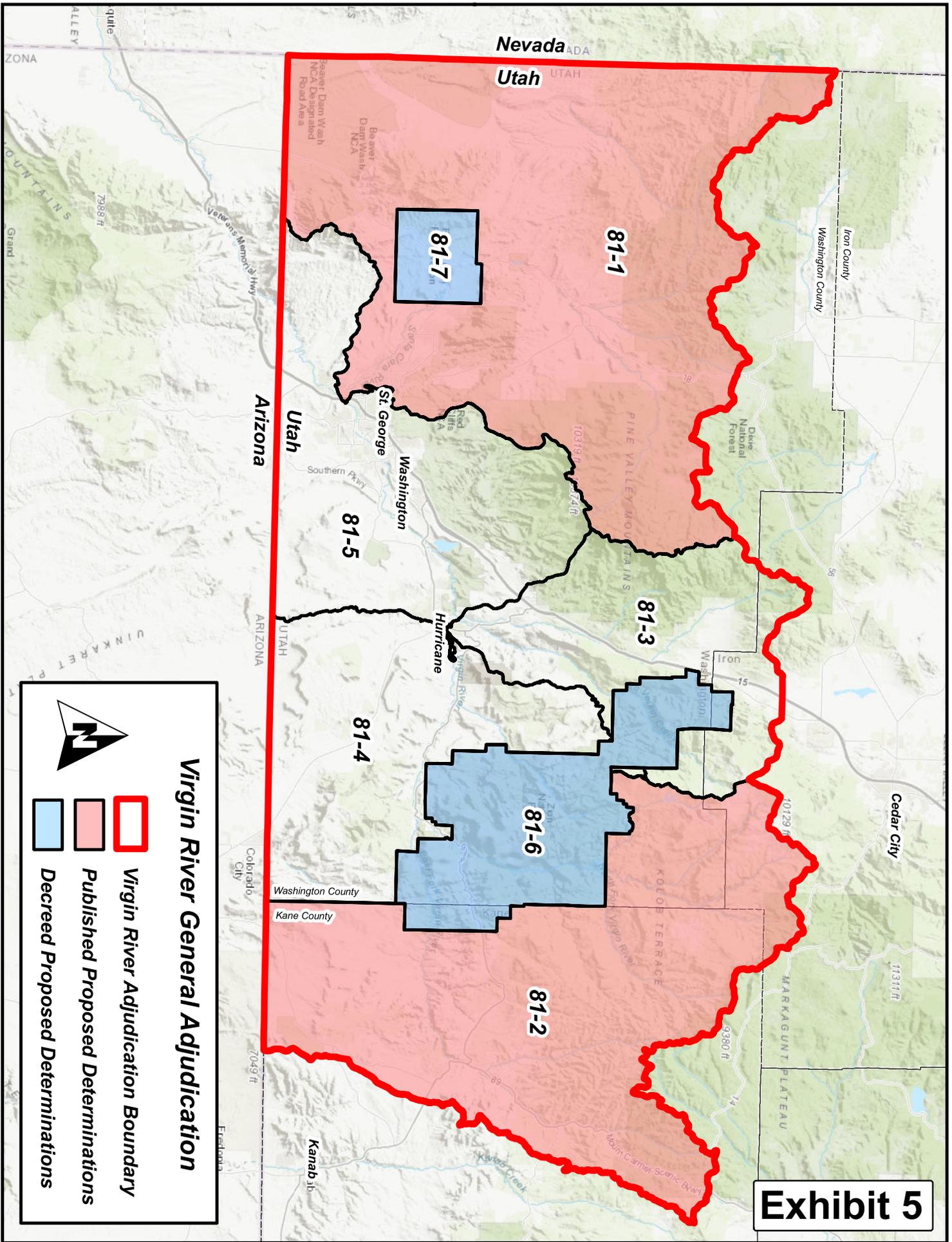
**General Adjudication of Water Rights for the Utah Lake and Jordan River Drainage
Status Report for December 1, 2018 to June 3, 2019**

Subdivision	Objections	R&Rs	Final Dispositions
Spanish Fork Subdivision (51-1), Civil No. 365729801	13	13	13
Spanish Fork Subdivision (51-2), Civil No. 365729802	17	17	17
Palmyra-Lakeshore Subdivision (51-3), Civil No. 365729803	1	1	1
Hobble Creek Subdivision (51-4), Civil No. 365729804	36	16	16
Birsdye Subdivision (51-5), Civil No. 365729818	3	3	3
Goshen Valley Subdivision (53-1), Civil No. 365729806	3	2	1
Cedar Valley Subdivision (54-1), Civil No. 365729807	18	17	18
Round Valley Subdivision (55-1), Civil No. 365729808	4	4	4
Pleasant Grove Subdivision (55-8), Civil No. 365729811	6	6	7
Emigration Creek Subdivision (57-1), Civil No. 365729812	1	0	0
Nibley Park Subdivision (57-5), Civil No. 365729820	4	4	4
Rose Park Subdivision (57-8), Civil No. 365729825	2	1	1
City Creek Subdivision (57-9), Civil No. 365729826	2	1	1
Dry Creek Subdivision (57-10), Civil No. 365729827	1	0	0
Oakland Place Subdivision (57-12), Civil No. 365729829	2	0	0
Foothill Village Subdivision (57-13), Civil No. 365729830	1	1	1
SLC Northwest Subdivision (59-1), Civil No. 365729813	6	5	6
SLC Central Subdivision (59-2), Civil No. 365729814	13	13	13
SLC West Subdivision (59-3), Civil No. 365729815	9	9	9
SLC Southwest Subdivision (59-4), Civil No. 365729816	9	9	9
SLC Supplement Subdivision (59-5), Civil No. 365729817	17	17	17
West Mill Creek Subdivision [LUR] (57-6), Civil No. 365729821	3	3	3
Rose Park Subdivision [LUR] (57-8), Civil No. 365729825	1	1	1
Liberty Park Subdivision [LUR] (57-11), Civ. No. 365729828	1	1	1
Oakland Place Subdivision [LUR] (57-12), Civ. No. 365729829	2	2	2
Foothill Village Subdivision [LUR] (57-13), Civil No. 365729830	1	1	1
Parleys Creek Subdivision [LUR] (57-14), 365729831	3	3	3
Holladay Subdivision [LUR] (57-16), 365729833	2	2	2
West Big Cottonwood Creek Subdivision [LUR] (57-17), 365729834	8	8	8
Big Cottonwood Creek Subdivision [LUR] (57-18), Civil No. 365729835	1	1	1
West Murray Subdivision [LUR] (57-19), Civil No. 365729836	1	1	1
East Murray Subdivision [LUR] (57-20), 365729837	3	3	3

**General Adjudication of Water Rights for the Utah Lake and Jordan River Drainage
Status Report for December 1, 2018 to June 3, 2019**

Sandy/Midvale Subdivision [LUR] (57-21), Civil No. 365729838	1	1	0
Fort Union Subdivision [LUR] (57-22), Civil No. 365729839	3	3	3
Willow Creek Subdivision [LUR] (57-25), Civil No. 365729842	5	4	2
Totals	203	173	172

Key	
LUR	Objections to List of Unclaimed Rights
R&Rs	Reports and Recommendations
Final dispositions	Final resolutions, including orders of dismissal, orders entering a stipulation, voluntary withdrawals of Objection, or voluntary withdrawals of all Notices of Intent in an Objection Proceeding



Virgin River General Adjudication

-  Virgin River Adjudication Boundary
-  Published Proposed Determinations
-  Decreed Proposed Determinations



Exhibit 5

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the General
Determination of All the Rights to the Use
of Water, Both Surface and Underground,
Within the Drainage Area of the Utah Lake
and Jordan River in Utah, Salt Lake,
Davis, Summit, Wasatch, Sanpete and
Juab Counties in Utah

General Case File

**SPECIAL MASTER’S THIRD
AMENDED AND RESTATED
STANDING ORDER NO. 1**
(ON MANAGEMENT OF OBJECTIONS
FILED ON OR BEFORE JUNE 28, 2016)

Civil No. 360057298

Rick L. Knuth, Special Master

The Special Master, acting *sua sponte*, issued Standing Order No. 1 (On Management of Certain Objection Proceedings Before the Special Master) on August 9, 2016 (amended and restated on November 3, 2016 and on September 26, 2017), which the instant order amends and restates:

A. General Provisions and Scope of Order

1. This Third Amended and Restated Standing Order No. 1 (this “Order”) restates that certain Order Governing Filing of Documents, dated and entered on December 19, 1994, addressing the filing of documents in the general case file and requiring the designation of specific adjudicative subdivisions in pleadings filed with the Clerk.

2. For purposes of this Order, an “Objection Proceeding” shall include an objection to any State Engineer’s Proposed Determination, within the meaning of Utah Code *Ann.* Sections 73-4-11 and 73-4-9.5 (each, an “Objection”).

3. The provisions of this Order have no application to Objections to Lists of Unclaimed Rights, which are the subject of the Special Master’s Standing Order No. 2.

4. *The provisions of this Order apply only to Objections filed on or before June 28, 2016.*

B. Commencing the Objection Proceeding—the Order to Show Cause

5. For Objections subject to this Order, an Objection Proceeding shall be commenced by the Special Master’s issuance of a “Notice and Order to Show Cause,” either *sua sponte*, or upon motion of an interested party upon good cause shown, requiring any person who has filed an Objection to a Proposed Determination (each, an “Objector”) to appear and show cause why the Objection should not be dismissed.

6. A motion for the issuance of a Notice and Order to Show Cause shall include copies of all responsive pleadings directed to the Objection, along with a proposed service matrix, setting forth:

a. The name and current address (if available) of the original Objector who interposed the Objection;

b. The Statement of Claim/Water User’s Claim number to which the Objection relates;

c. A copy of the page(s) from the Proposed Determination containing the State Engineer’s recommendation respecting the subject Statement of Claim/Water User’s Claim;

d. The name and current address of any attorney who has appeared for any party respecting the Objection; and,

e. The name and address of the present record title owner(s) of the water right to which the Objection relates, as that information is currently reflected in the database of the Utah State Division of Water Rights.

7. The Notice and Order to Show Cause will be served by certified mail, return receipt requested, and will be accompanied by:

a. An explanatory cover letter from the Special Master;

b. A copy of the subject Objection and of all responsive pleadings directed to the Objection;

c. A copy of the page(s) from the Proposed Determination containing the State Engineer's recommendation respecting the subject Statement of Claim/Water User's Claim;

d. A form of Notice of Intent to Proceed with Objection Proceeding ("Notice of Intent to Proceed"), substantively identical to the form available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/>; and,

e. A copy of this Order.

C. Responding to the Order to Show Cause—the Notice of Intent

8. In order for an Objection Proceeding to proceed, an Objector must file a Notice of Intent to Proceed, indicating an intention to pursue the Objection.

9. An Objection will be subject to a report and recommendation by the Special Master to the District Judge that the subject Objection be dismissed, with prejudice, where: (1) the Objector fails to file with the Clerk within thirty-five (35) days

of the filing of the Notice and Order to Show Cause a completed form Notice of Intent to Proceed, indicating an intention to pursue the Objection; (2) the Objector returns the Notice of Intent to Proceed, at any time, indicating an intention not to pursue the Objection; or, (3) the Objector fails to file any response to the Notice and Order to Show Cause.

D. Responding to the Objection—the State Engineer’s Answer and Disclosure of Potentially Affected Parties

10. Whenever a Notice of Intent to Proceed has been timely filed with the Court indicating an intention to pursue the Objection, the State Engineer shall file an answer or other responsive pleading pursuant to Rule 12, Utah Rules of Civil Procedure (“U.R.Civ.Pro.”), within seventy (70) days of the filing of the Notice and Order to Show Cause, except where the State Engineer has already done so.

11. The State Engineer’s answer shall contain a Disclosure of Potentially Affected Parties, disclosing the name and address of any person known to the State Engineer “whose water rights would be affected or drawn into question”¹ by the resolution of the Objection or the outcome of the Objection Proceeding (each, a “Potentially Affected Party”), as well as the rationale and methodology the State Engineer used to ascertain the identity of such Potentially Affected Parties.

12. In instances where the State Engineer has already answered an Objection, the State Engineer shall file a Disclosure of Potentially Affected Parties, disclosing the information outlined *supra* ¶ 9, as a separate pleading, within seventy (70) days of the filing of the Notice and Order to Show Cause.

¹ *Plain City Irr. Co. v. Hooper Irr. Co.*, 51 P.2d 1069, 1071 (Utah 1935).

13. The Objector shall file a Disclosure of Potentially Affected Parties, disclosing the information outlined *supra* ¶ 9, within fourteen (14) days of the date of service of the State Engineer’s Disclosure of Potentially Affected Parties. Failure of an Objector to file a Disclosure of Potentially Affected Parties within the time prescribed will be considered a statement that the Objector has not identified any Potentially Affected Parties beyond those disclosed by the State Engineer.

14. All parties to an Objection Proceeding, including Potentially Affected Parties, have a continuing obligation to supplement their Disclosure of Potentially Affected Parties as they identify new potentially affected parties.

15. The Disclosure of Potentially Affected Parties by any party will be for notice and procedural purposes only, will be made without waiver of defenses, and the disclosure or non-disclosure of any party will not be admissible as evidence as to that party’s substantive rights.

E. Incorporating Potentially Affected Parties—Notice of Objection Proceeding, the Potentially Affected Party’s Notice of Participation and Answer, and Service Lists

16. After the time to file the Objector’s Disclosure of Potentially Affected Parties has elapsed, the Special Master will serve upon all identified Potentially Affected Parties a “Notice of Objection Proceeding and Opportunity to be Heard” (“Notice of Objection Proceeding”) by certified mail. The Notice of Objection Proceeding will include a form entitled: Notice of Affected Party Participation in Water Right Objection Proceeding (“Potentially Affected Party Notice”). The Potentially Affected Party Notice must be substantively similar to the form available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/>.

17. Potentially Affected Parties shall have forty-nine (49) days from the date of mailing of the Notice of Objection Proceeding to indicate that they wish to appear and participate in the Objection Proceeding by filing a Potentially Affected Party Notice with the Clerk of the Third District Court in the correct Subdivision sub-case as required by the Court’s Order Assigning Subdivision Sub-Case Numbers for Objection Proceedings and Governing Filing of Documents in Subdivision Sub-Cases.

18. Within thirty-five (35) days of filing a Potentially Affected Party Notice, a Potentially Affected Party shall file a pleading that is responsive to the Objection, setting forth the party’s claims and defenses.

19. Once the time has elapsed for Potentially Affected Parties to file their respective Potentially Affected Party Notices, the Special Master will post (and revise from time to time) official “Service Lists” of parties for each Objection Proceeding—*viz.*, the State Engineer, the Objector(s), and all Potentially Affected Parties who have timely filed a Potentially Affected Party Notice. The Service Lists will be available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/servicelists.html>. A Potentially Affected Party who fails to file a timely Potentially Affected Party Notice, or who otherwise fails to manifest a present intention to participate, will not be included in the Service List for the Objection Proceeding.

20. If a Potentially Affected Party fails to file a timely Potentially Affected Party Notice, or otherwise indicates that the Potentially Affected Party does not wish to participate, that Potentially Affected Party waives the right to participate in the Objection Proceeding before the Special Master; *however*, a Potentially Affected Party

who did not file a timely Potentially Affected Party Notice may seek leave from the Special Master to participate in the Objection proceeding by filing a motion to intervene, under Rule 24, U.R.Civ.Pro.

F. Setting the Schedule for the Objection Proceeding—Scheduling Conferences and Scheduling Orders

21. Following the filing of the Disclosures of Potentially Affected Parties, or the elapsing of the time permitted for the filing thereof, the Special Master will schedule and conduct a mandatory Scheduling Conference with the parties to the Objection Proceeding. The Scheduling Conference will be held no earlier than forty-nine (49) days after the Special Master serves Potentially Affected Parties with the Notice of Objection Proceeding. The Special Master will include notice of the Scheduling Conference with the Notice of Objection Proceeding.

22. Following the Scheduling Conference, the Special Master will issue a Scheduling Order containing deadlines for discovery, mediation and settlement negotiations, dispositive motions, and a final hearing date.

23. The Tier 2 discovery standards and limits of Rule 26(c)(5), U.R.Civ.Pro., will apply to each Objection Proceeding—with the following modifications:

- a. The Rule 26 discovery limits will be applied on a per-party basis instead of “per side”; and
- b. All parties represented by the same counsel will be treated as a single party.

24. Pursuant to Rule 26(c)(6), U.R.Civ.Pro, any party may move for extraordinary discovery.

G. Obtaining a Ruling—Decisions by the Special Master

25. When briefing on a motion to be considered by the Special Master is complete or the time for briefing has expired, either party may request a decision by the Special Master by notifying the Special Master that the matter is ripe for decision.

26. Parties requesting a ruling from the Special Master shall *not* file a request for submission with the District Court; *requests for ruling and/or orders in Rich Text format should be electronically filed only where an order is sought from the District Judge*. Instead a request for decision from the Special Master shall be sent to the Special Master via email at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding (or Subdivision sub-case, depending on the scope of the issue to be decided). The party's request for decision shall state whether a hearing has been requested and the dates on which the following documents were filed:

- a. The motion;
- b. The memorandum opposing the motion, if any;
- c. The reply memorandum, if any; and
- d. The response to objections in the reply memorandum, if any.

27. In conjunction with a request for decision, parties may also submit a proposed order for the Special Master's signature, but only under the conditions provided in Rule 7(j)(6), U.R.Civ.Pro. Like a request for decision, proposed orders shall be presented to the Special Master by emailing a proposed order, in MS-Word format, to the Special Master at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding or Subdivision sub-case.

28. After a party has submitted a request for decision and/or a proposed order to the Special Master, that party shall file a “Notice of Submission of Request to Submit for Ruling from Special Master” (“Notice of Submission”), which shall be substantively similar to the form available on the Utah Courts website at: <https://www.utcourts.gov/waterrights/>. The party shall also certify that the Notice of Submission has been duly served on all parties/counsel whose names appear on the Service List for the Objection Proceeding or Subdivision sub-case.

H. Responding to the Special Master’s Ruling—Objections to Reports and Recommendations

29. Pursuant to the Court’s Amended Order Appointing a Master and Order of Reference (Etc.), dated and entered September 12, 2017 (“Order of Reference”), after an Objection Proceeding is heard by the Special Master, the Special Master will submit to the Court a Report and Recommendation with the Special Master’s decisions, findings, and conclusions. Any party who has directly participated in the Objection Proceeding may file a written objection to the Special Master’s Report and Recommendation within 30 days of service of the Report and Recommendation.

30. A Potentially Affected Party who has failed to file a timely Potentially Affected Party Notice and who has not participated in the Objection Proceeding may file an objection (or respond to an objection) to a Report and Recommendation issued by the Special Master only if the party can demonstrate by clear and convincing evidence that (1) failure to participate was due to circumstances beyond the party’s control, or (2) the party could not have ascertained through the exercise of reasonable diligence that the outcome of the case would affect the party’s interests. *See* Order of Reference.

I. Obtaining a Ruling—Decisions by the District Court

31. To aid in the uniformity of final orders on Objections, in instances where there has been no objection to a Report and Recommendation, the Special Master will submit a form of order or judgment to the District Judge. Parties may notify the Special Master by email when the time for objection to a Report and Recommendation has passed, and the Special Master will notify the District Judge that the matter is ready for a final ruling.

32. In instances where an objection to a Report and Recommendation has been asserted, or when a decision is sought regarding a matter outside the scope of the Special Master's reference—*e.g.*, a request for an extension to file a statement of water user's claim (*see* Order of Reference)—the party shall request a decision and/or submit a proposed order as prescribed by Rules 7(g) and (j), U.R.Civ.Pro.

J. Filing Documents—Reciprocity and the Three-Number Set

33. Documents filed with the Clerk of the Court are deemed filed with the Special Master.

34. To facilitate browser-searching of the Court's on-line docket, each pleading filed in connection with any Objection Proceeding subject to this Order shall include, in the title input into the Court's Xchange or GreenFiling systems, an Objection Proceeding number consisting of a three-number set, the first number of which shall correspond to the two-digit number of the Proposed Determination Subdivision, the second number being the number of the book of the subject Proposed Determination, and the third number being the ordinal number assigned to the Objection in the State Engineer's online listing of the objections for that Subdivision, under

<http://nrwt1.nr.state.ut.us/adjstatus/default.asp> The three numbers in the three-number set shall be separated by hyphens—*viz.*, “XX-X-XX”—such that the Court’s on-line docket can be effectively searched for the three-number set employing search functions in commonly-used web browsers. The Objection Proceeding numbers will be assigned by order.

K. Appearing before the Special Master—Procedural Rules and Location of Hearings

35. Objection Proceedings before the Special Master will be conducted in conformity with the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

36. All hearings before the Special Master will be held at the Matheson Courthouse, 450 South State Street, Salt Lake City, Utah 84114-1860, unless otherwise ordered, and will in all instances be recorded.

37. Parties may request leave to appear telephonically at status conferences and scheduling conferences, and the Special Master shall freely grant leave for those proceedings. The Special Master may grant leave to appear telephonically at other hearings or proceedings as may be appropriate, in the judgment of the Special Master.

38. Any agency of the United States of America may appear telephonically in any Status Conference or Scheduling Conference, unless otherwise ordered. Counsel for the United States should email the District Judge’s judicial assistant in advance of the hearing for a conference call-in number.

SO ORDERED this 17th day of April, 2018.

By: /s/ Rick L. Knuth
Rick L. Knuth
Special Master

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the General
Determination of All the Rights to the Use
of Water, Both Surface and Underground,
Within the Drainage Area of the Utah
Lake and Jordan River in Utah, Salt Lake,
Davis, Summit, Wasatch, Sanpete and
Juab Counties in Utah

General Case File

**SPECIAL MASTER’S FIRST
AMENDED AND RESTATED
STANDING ORDER NO. 2**
(ON MANAGEMENT OF OBJECTIONS
TO LISTS OF UNCLAIMED RIGHTS OF
RECORD BEFORE THE SPECIAL
MASTER)

Civil No. 360057298

(Judge Laura S. Scott)

Rick L. Knuth, Special Master

The Special Master, acting *sua sponte*, issued Standing Order No. 2 (On Management of Objections to Lists of Unclaimed Rights of Record Before the Special Master) on May 3, 2017, which the instant order (this “Order”) amends and restates:

A. General Provisions and Scope of Order

1. For purposes of this Order, an “Objection” means an objection to a “List of Unclaimed Rights of Record” filed by the State Engineer pursuant to Utah Code *Ann.* § 73-4-9.5. The provisions of this Order shall apply only to Objections as so defined.

2. A List of Unclaimed Rights of Record (“LUR”) within the meaning of Utah Code *Ann.* § 73-4-9.5 is a tabulation of water rights of which the State Engineer has a

record, but for which no water user claim/statement of claim has been filed. Accordingly, an LUR does not, by definition, include a water right not of record with the Division of Water Rights. Therefore, parties who have failed to file timely non-record claims should not file an objection to the LUR if they desire the State Engineer to evaluate their claims. Rather, they should file a motion pursuant to Utah Code *Ann.* § 73-4-10, requesting the District Court enter an order retroactively extending the time to file a water user's claim/statement of claim, within the meaning of Utah Code *Ann.* § 73-4-1, *et seq.*

3. The Court's review of an objection to the List of Unclaimed Rights is limited to determining whether a claimant's failure to file a timely statement of claim is excused by circumstances beyond the claimant's control, mistake, or other reason justifying relief. *See Utah Code Ann.* § 73-4-9.5(3).

4. The provisions of this Order have no application to objections to any State Engineer's Proposed Determination, within the meaning of Utah Code *Ann.* Sections 73-4-11 and 73-4-9.5.

B. Litigating the Objection—the Objection to the LUR and the State Engineer's Answer

5. Under Utah Code *Ann.* § 73-4-9.5(2), a claimant desiring to object to an LUR must file a written objection within ninety (90) days of service.

6. Each Objection to an LUR shall be filed with the Clerk of the Court in the particular subdivision sub-case that corresponds to the subdivision covered by the LUR.

7. The State Engineer shall file an answer to an Objection within twenty-eight (28) days of the date which is the later of (a) the date the objector files the Objection with the Clerk of the Court, (b) the date the objector files a water user's claim/statement of

claim with the Clerk of the Court, and (c) the date the objector files a water user's claim/statement of claim with the State Engineer.

C. Discovery—Scheduling Conferences and Discovery Standards

8. A scheduling conference may be requested by filing a motion for scheduling conference within fourteen (14) days of the date the State Engineer's answer to the Objection is filed.

9. The Tier 2 discovery standards and limits of Rule 26(c)(5), Utah Rules of Civil Procedure, will apply to each Objection, unless otherwise ordered. Pursuant to Rule 26(a)(3)(A)(iv), Utah Rules of Civil Procedure, parties to a general adjudication are not required to make initial disclosures.

D. Disposing of the Objection—Motions and Hearings before the Special Master

10. Motions may be filed pursuant to Rules 12 or 56 of the Utah Rules of Civil Procedure to dispose of the Objection. Such a motion may be filed at any time after the State Engineer has filed an answer to the Objection or the deadline to do so has passed.

11. Objections will be decided on the pleadings unless either the objector or the State Engineer requests a hearing on the movant's motion or reply memorandum or the non-movant's response to the motion. The request for hearing must be separately identified in the caption of the document.

12. Pursuant to the Court's Amended Order Appointing a Master and Order of Reference (Etc.), dated and entered September 12, 2017 ("Order of Reference"), after an Objection Proceeding is heard by the Special Master, the Special Master will submit to the Court a Report and Recommendation with the Special Master's decisions, findings, and

conclusions. Either the Objector or the State Engineer may file a written objection to the Special Master's Report and Recommendation within thirty (30) days of the filing of the Report and Recommendation.

13. Parties requesting a ruling from the Special Master shall not file a request for submission with the District Court; requests for ruling and/or orders in Rich Text format should be electronically filed only where an order is sought from the District Judge. Instead a request for decision from the Special Master shall be sent to the Special Master via email at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding (or Subdivision sub-case, depending on the scope of the issue to be decided). The party's request for decision shall state whether a hearing has been requested and the dates on which the following documents were filed:

- a. The motion;
- b. The memorandum opposing the motion, if any;
- c. The reply memorandum, if any; and
- d. The response to objections in the reply memorandum, if any.

14. In conjunction with a request for decision, parties may also submit a proposed order for the Special Master's signature, but only under the conditions provided in Rule 7(j)(6), U.R.Civ.Pro. Like a request for decision, proposed orders shall be presented to the Special Master by emailing a proposed order, in MS-Word format, to the Special Master at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding or Subdivision sub-case.

15. After a party has submitted a request for decision and/or a proposed order to the Special Master, that party shall file a “Notice of Submission of Request to Submit for Ruling from Special Master” (“Notice of Submission”), which shall be substantively similar to the form available on the Utah Courts website at: <https://www.utcourts.gov/waterrights/>. The party shall also certify that the Notice of Submission has been duly served on all parties/counsel whose names appear on the Service List for the Objection Proceeding or Subdivision sub-case.

E. Obtaining a Ruling—Decisions by the District Court

16. To aid in the uniformity of final orders on Objections, in instances where there has been no objection to a Report and Recommendation, the Special Master will submit a form of order or judgment to the District Judge. Parties may notify the Special Master by email when the time for objection to a Report and Recommendation has passed, and the Special Master will notify the District Judge that the matter is ready for a final ruling.

17. In instances where an objection to a Report and Recommendation has been asserted, or when a decision is sought regarding a matter outside the scope of the Special Master’s reference—*e.g.*, a request for an extension to file a statement of water user’s claim (*see* Order of Reference)—the party shall request a decision and/or submit a proposed order as prescribed by Rules 7(g) and (j), Utah Rules of Civil Procedure.

F. Filing Documents—Reciprocity and the Three-Number Set

18. Documents filed with the Clerk of the Court are deemed filed with the Special Master.

19. To facilitate browser-searching of the Court’s on-line docket, each pleading filed in connection with any Objection Proceeding subject to this Order shall include, in the title input into the Court’s Xchange or GreenFiling systems, an Objection Proceeding number consisting of a three-number set, the first number of which shall correspond to the two-digit number of the area of the subject subdivision, the second number being the number of the book of the subject subdivision, and the third number being the ordinal number assigned to the Objection in the State Engineer’s online listing of the objections for that Subdivision, under <https://www.waterrights.utah.gov/adjstatus/default.asp>. The three numbers in the three-number set shall be separated by hyphens—*viz.*, “XX-X-XX”—such that the Court’s on-line docket can be effectively searched for the three-number set employing search functions in commonly-used web browsers. The Objection Proceeding numbers will be assigned by order.

G. Appearing before the Special Master—Procedural Rules and Location of Hearings

20. Objection Proceedings before the Special Master will be conducted in conformity with the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

21. All hearings before the Special Master will be held at the Matheson Courthouse, 450 South State Street, Salt Lake City, Utah 84114-1860, unless otherwise ordered, and will in all instances be recorded.

22. Parties may request leave to appear telephonically at status conferences and scheduling conferences, and the Special Master shall freely grant leave for those proceedings. The Special Master may grant leave to appear telephonically at other hearings or proceedings as may be appropriate, in the judgment of the Special Master.

23. Any agency of the United States of America may appear telephonically in any Status Conference or Scheduling Conference, unless otherwise ordered. Counsel for the United States should email the District Judge's judicial assistant in advance of the hearing for a conference call-in number.

SO ORDERED this 10th day of May, 2018.

By: /s/ Rick L. Knuth
Rick L. Knuth
Special Master

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the General
Determination of All the Rights to the Use
of Water, Both Surface and Underground,
Within the Drainage Area of the Utah Lake
and Jordan River in Utah, Salt Lake,
Davis, Summit, Wasatch, Sanpete and
Juab Counties in Utah

General Case File

**SPECIAL MASTER’S FIRST
AMENDED AND RESTATED
STANDING ORDER NO. 3**
(ON MANAGEMENT OF OBJECTIONS
FILED AFTER JUNE 28, 2016)

Civil No. 360057298

Rick L. Knuth, Special Master

The Special Master, acting *sua sponte*, issued Standing Order No. 3 (On Management of Objections Filed After June 28, 2017) on September 26, 2017, which the instant order amends and restates:

A. General Provisions and Scope of Order

1. For purposes of this Order, an “Objection Proceeding” shall include an objection to any State Engineer’s Proposed Determination, within the meaning of Utah Code *Ann.* Sections 73-4-11 and 73-4-9.5 (each, an “Objection”).
2. The provisions of this Order have no application to Objections to Lists of Unclaimed Rights, which are the subject of the Special Master’s Standing Order No. 2.
3. *The provisions of this Order apply only to Objections to a Proposed Determination filed after June 28, 2016.*

B. Commencing the Objection Proceeding—the Objection

4. An Objection Proceeding shall commence upon the filing of an Objection. Objections shall be filed in the individually numbered Subdivision sub-case numbers assigned by order. Each Objection Proceeding shall be assigned a further three-digit number representing the Area number, book number, and individual Objection number—*e.g.*, 57-6-01—as provided *infra* ¶ 24.

5. Once an Objection is filed, the Special Master will send to the Objector(s), via first-class U.S. Mail, a copy of this Standing Order No. 3, a copy of the Court’s Amended Order Appointing a Master and Order of Reference (Etc.), dated and entered September 12, 2017 (“Order of Reference”), and an explanatory cover letter from the Special Master.

C. Responding to the Objection—the State Engineer’s Answer and Disclosure of Potentially Affected Parties

6. Within thirty-five (35) days of the filing of an Objection, the State Engineer shall file an answer or other responsive pleading pursuant to Rule 12, Utah Rules of Civil Procedure (“U.R.Civ.Pro.”).

7. The State Engineer’s answer shall contain a Disclosure of Potentially Affected Parties, disclosing the name and address of any person known to the State Engineer “whose [water] rights would be affected or drawn in question”¹ by the resolution of the Objection or the outcome of the Objection Proceeding (each, a “Potentially Affected Party”), as well as the rationale and methodology the State Engineer used to ascertain the identity of such Potentially Affected Party.

¹ *Plain City Irr. Co. v. Hooper Irr. Co.*, 51 P.2d 1069, 1071 (Utah 1935).

8. The Objector shall file a Disclosure of Potentially Affected Parties, disclosing the information outlined *supra* ¶ 6, within fourteen (14) days of the date of service of the State Engineer’s Answer and Disclosure of Potentially Affected Parties. Failure of an Objector to file a Disclosure within the time prescribed will be deemed a statement that the Objector has not identified any Potentially Affected Parties beyond those disclosed by the State Engineer.

9. All parties to an Objection Proceeding, including Potentially Affected Parties, have a continuing obligation to supplement their Disclosure of Potentially Affected Parties as they identify new Potentially Affected Parties.

10. A Disclosure of Potentially Affected Parties filed by any party will be for notice and procedural purposes only, will be made without waiver of defenses, and the disclosure or non-disclosure of any party will not be admissible as evidence of any party’s substantive rights.

D. Incorporating Potentially Affected Parties—Notice of Objection Proceeding, the Potentially Affected Party’s Notice of Participation and Answer, and Service Lists

11. After the time to file the Objector’s Disclosure of Potentially Affected Parties has elapsed, the Special Master will serve upon all identified Potentially Affected Parties a Notice of Objection Proceeding and Opportunity to be Heard (“Notice of Objection Proceeding”) by first-class U.S. Mail. The Notice of Objection Proceeding will include a form entitled: Notice of Affected Party Participation in Water Right Objection Proceeding (“Potentially Affected Party Notice”). The Potentially Affected Party Notice must be substantively similar to the form available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/>.

12. Potentially Affected Parties shall have forty-nine (49) days from the date of mailing of the Notice of Objection Proceeding to indicate that they wish to participate in the Objection Proceeding by filing the Potentially Affected Party Notice with the Clerk of the Third District Court in the correct Subdivision sub-case as required by the Court's Order Assigning Subdivision Sub-Case Numbers for Objection Proceedings and Governing Filing of Documents in Subdivision Sub-Cases.

13. Within thirty-five (35) days of filing a Potentially Affected Party Notice, a Potentially Affected Party shall file a pleading that is responsive to the Objection, setting forth the party's claims and defenses.

14. Once the time has elapsed for Potentially Affected Parties to file their respective Potentially Affected Party Notices, the Special Master will post (and revise from time to time) official "Service Lists" of parties for each Objection Proceeding—*viz.*, the State Engineer, the Objector(s), and all Potentially Affected Parties who have timely filed a Potentially Affected Party Notice. The Service Lists will be available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/servicelists.html>. A Potentially Affected Party who fails to file a timely Potentially Affected Party Notice, or who otherwise fails to manifest a present intention to participate, will not be included in the Service List for the Objection Proceeding.

15. If a Potentially Affected Party fails to file a timely Potentially Affected Party Notice, or otherwise indicates that the Potentially Affected Party does not wish to participate, that Potentially Affected Party waives the right to participate in the Objection Proceeding before the Special Master; *however*, a Potentially Affected Party

who did not file a timely Potentially Affected Party Notice may seek leave from the Special Master to participate in the Objection Proceeding by filing a motion to intervene, under Rule 24, U.R.Civ.Pro.

E. Setting the Schedule for the Objection Proceeding—Scheduling Conferences and Scheduling Orders

16. Following the filing of the Disclosures of Potentially Affected Parties, or the elapsing of the time permitted for filing the same, the Special Master will schedule and conduct a mandatory Scheduling Conference with the parties to the Objection Proceeding. The Scheduling Conference will be held no earlier than forty-nine (49) days after the Special Master serves Potentially Affected Parties with the Notice of Objection Proceeding. The Special Master will include notice of the Scheduling Conference with the Notice of Objection Proceeding.

17. Following the Scheduling Conference, the Special Master will issue a Scheduling Order containing deadlines for discovery, mediation and settlement negotiations, dispositive motions, and a final hearing date.

18. The Tier 2 discovery standards and limits of Rule 26(c)(5), U.R.Civ.Pro., will apply to each Objection Proceeding—with the following modifications:

- a. The Rule 26 discovery limits will be applied on a per-party basis instead of “per side”; and
- b. All parties represented by the same counsel will be treated as a single party.

19. Pursuant to Rule 26(c)(6), U.R.Civ.Pro, any party may move for extraordinary discovery.

F. Obtaining a Ruling—Decisions by the Special Master

20. When briefing on a motion to be considered by the Special Master is complete or the time for briefing has expired, either party may request a decision by the Special Master by notifying the Special Master that the matter is ripe for decision.

21. Parties requesting a ruling from the Special Master shall not file a request for submission with the District Court; *requests for ruling and/or orders in Rich Text format should be electronically filed only where an order is sought from the District Judge*. Instead a request for decision from the Special Master shall be sent to the Special Master via email at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding (or Subdivision sub-case, depending on the scope of the issue to be decided). The party's request for decision shall state whether a hearing has been requested and the dates on which the following documents were filed:

- a. The motion;
- b. The memorandum opposing the motion, if any;
- c. The reply memorandum, if any; and
- d. The response to objections in the reply memorandum, if any.

22. In conjunction with a request for decision, parties may also submit a proposed order for the Special Master's signature, but only under the conditions provided in Rule 7(j)(6), U.R.Civ.Pro. Like a request for decision, proposed orders shall be presented to the Special Master by emailing a proposed order, in MS-Word format, to the Special Master at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding or Subdivision sub-case.

23. After a party has submitted a request for decision and/or a proposed order to the Special Master, that party shall file a “Notice of Submission of Request to Submit for Ruling from Special Master” (“Notice of Submission”), which shall be substantively similar to the form available on the Utah Courts website at: <https://www.utcourts.gov/waterrights/>. The party shall also certify that the Notice of Submission has been duly served on all parties/counsel whose names appear on the Service List for the Objection Proceeding or Subdivision sub-case.

G. Responding to the Special Master’s Ruling—Objections to Reports and Recommendations

24. Pursuant to the Court’s Amended Order Appointing a Master and Order of Reference (Etc.), dated and entered September 12, 2017 (“Order of Reference”), after an Objection Proceeding is heard by the Special Master, the Special Master will submit to the Court a Report and Recommendation with the Special Master’s decisions, findings, and conclusions. Any party who has directly participated in the Objection Proceeding may file a written objection to the Special Master’s Report and Recommendation within 30 days of service of the Report and Recommendation.

25. A Potentially Affected Party who has failed to file a timely Potentially Affected Party Notice and who has not participated in the Objection Proceeding may file an objection (or respond to an objection) to a Report and Recommendation issued by the Special Master only if the party can demonstrate by clear and convincing evidence that (1) failure to participate was due to circumstances beyond the party’s control, or (2) the party could not have ascertained through the exercise of reasonable diligence that the outcome of the case would affect the party’s interests. *See Order of Reference.*

H. Obtaining a Ruling—Decisions by the District Court

26. To aid in the uniformity of final orders on Objections, in instances where there has been no objection to a Report and Recommendation, the Special Master will submit a form of order or judgment to the District Judge. Parties may notify the Special Master by email when the time for objection to a Report and Recommendation has passed, and the Special Master will notify the District Judge that the matter is ready for a final ruling.

27. In instances where an objection to a Report and Recommendation has been asserted, or when a decision is sought regarding a matter outside the scope of the Special Master's reference—*e.g.*, a request for an extension to file a statement of water user's claim (*see* Order of Reference)—the party shall request a decision and/or submit a proposed order as prescribed by Rules 7(g) and (j), U.R.Civ.Pro.

I. Filing Documents—Reciprocity and the Three-Number Set

28. Documents filed with the Clerk of the Court are deemed filed with the Special Master.

29. To facilitate browser-searching of the Court's on-line docket, each pleading filed in connection with any Objection Proceeding subject to this Order shall include, in the title input into the Court's Xchange or GreenFiling systems, an Objection Proceeding number consisting of a three-number set, the first number of which shall correspond to the two-digit number of the Proposed Determination Subdivision, the second number being the number of the book of the subject Proposed Determination, and the third number being the ordinal number assigned to the Objection in the State Engineer's online listing of the objections for that Subdivision, under

<http://nrwt1.nr.state.ut.us/adjstatus/default.asp> The three numbers in the three-number set shall be separated by hyphens—*viz.*, “XX-X-XX”—such that the Court’s on-line docket can be effectively searched for the three-number set employing search functions in commonly-used web browsers. The Objection Proceeding numbers will be assigned by order.

J. Appearing before the Special Master—Procedural Rules and Location of Hearings

30. Objection Proceedings before the Special Master will be conducted in conformity with the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

31. All hearings before the Special Master will be held at the Matheson Courthouse, 450 South State Street, Salt Lake City, Utah 84114-1860, unless otherwise ordered, and will in all instances be recorded.

32. Parties may request leave to appear telephonically at status conferences and scheduling conferences, and the Special Master shall freely grant leave for those proceedings. The Special Master may grant leave to appear telephonically at other hearings or proceedings as may be appropriate, in the judgment of the Special Master.

33. Any agency of the United States of America may appear telephonically in any Status Conference or Scheduling Conference, unless otherwise ordered. Counsel for the United States should email the District Judge’s judicial assistant in advance of the hearing for a conference call-in number.

SO ORDERED this 17th day of April, 2018.

By: /s/ Rick L. Knuth
Rick L. Knuth
Special Master