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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

General File

**STATE ENGINEER'S MOTION TO
APPOINT R.L. KNUTH AS SPECIAL
MASTER IN THE VIRGIN RIVER
GENERAL ADJUDICATION**

Civil No. 800507596

Judge G. Michael Westfall

Kent L. Jones, P.E., Utah State Engineer, through counsel, moves the Court to appoint R.L. Knuth as Special Master in the Virgin River General Adjudication, pursuant to U.R.C.P. 53. A proposed order appointing a Special Master and order of reference is attached to this motion for the Court's consideration as **Exhibit 1**. This motion along with the proposed order is served

on the parties by publication pursuant to the Court's order dated August 2, 2019 ("August Order"). The August Order further specifies the date opposing memoranda and reply memoranda are due, and a hearing on this motion is scheduled for November 18, 2019 at 2:00 p.m. The August Order is attached as **Exhibit 2**.

I. BACKGROUND

The formal adjudication of the Virgin River system commenced on December 24, 1923 when the St. George and Washington Canal Company filed suit against the Hurricane Canal Company. The Court later broadened the scope of the suit to a general determination of rights. The State Engineer subsequently submitted a proposed determination of water rights to the court on September 10, 1924, which was modified based on negotiated stipulations on December 12, 1925. The final version of the proposed determination was included in the initial decree on August 21, 1926 rendered by Judge J.H. Burton. Five years later a Supplemental and Final Decree was issued by Judge Leroy Cox on April 21, 1931. Over the following years, pressure mounted to re-adjudicate the Virgin River Basin. On August 22, 1979 the State Engineer received a petition from several water users within the Virgin River Basin requesting that the Court order an update to the existing decree. The State Engineer incorporated the water users' request in his own petition, which he filed with the Court on June 2, 1980. The Court granted the petition, and on July 21, 1980, entered an Order that a general adjudication of all of the rights to the use of water, both surface and underground, within the drainage area of the Virgin River in Utah be undertaken pursuant to the provisions of Chapter 4, Title 73 of the Utah Code.

A general adjudication of water rights is a statutory civil action intended to investigate, define, and ultimately confirm with a court decree all water rights within a drainage basin or its

component divisions and sub-divisions. *See generally Jensen v. Morgan*, 844 P.2d 287, 289-90 (Utah 1992) (describing the purpose of and process for a general adjudication of water rights). Once a general adjudication is initiated, the State Engineer serves summons and gives notice to all water users of record by mail and publication. *See Utah Code* § 73-4-3, -4. Water users then must submit their water user claims, describing their respective claims for use of water. *Utah Code* § 73-4-5. Once the time for submitting claims has closed, the State Engineer evaluates the claims and prepares a hydrographic survey map of the river system. *Utah Code* § 73-4-11. He also prepares a list of unclaimed rights of record and a proposed determination, which he ultimately publishes and files with the District Court, recommending to the Court how each water right should be determined and adjudicated. *Utah Code* §§ 73-4-9.5, -11. Claimants have the opportunity to protest the list of unclaimed rights of record or the proposed determination by filing an objection with Court. *Id.* The District Court then hears evidence and renders judgment on the objection as an independent litigation within the larger adjudication. *Utah Code* §§ 73-4-13, -15. If no objection is filed, the Court is required to enter judgment on the water rights as recommended by the State Engineer. *Utah Code* § 73-4-9.5, -12.

Because the Virgin River basin is large and contains thousands of water rights, the State Engineer divided the area into smaller divisions, allowing him to focus his efforts on smaller sub-drainages. *See Utah Code* § 73-4-1(3) (authorizing the State Engineer to divide a general adjudication into divisions and subdivisions). In the Virgin River Basin, the State Engineer has issued Proposed Determinations in 81-1, the Santa Clara-Beaver Dam Wash Division (along with an addendum, numbered 81-1A), and 81-2, the East Fork Virgin River Division. The State Engineer has initiated the adjudication process and is presently conducting investigations into

water users claims in 81-3, the Ash Creek Division. The District Court has entered interlocutory decrees confirming the Proposed Determinations in 81-6, Zion National Park, and 81-7, the Shivwits Band Subdivision of the Santa Clara Division. The State Engineer has not yet initiated adjudication of Divisions 81-4 and 81-5. The Proposed Determinations for Divisions 81-1 and 81-2 have nearly 40 outstanding objections that remain undecided by the Court.

In 2015, the Utah Legislature appropriated money to fund a Special Master to assist the courts in the general adjudications that are pending around the state. A special master can assist the district courts by hearing evidence and motions on the objections and overseeing settlement discussions. The State Engineer first sought to appoint a Special Master in the Utah Lake and Jordan River Adjudication, located in the Third Judicial District (Case No. 360057298).

Judge Laura Scott of the Third Judicial District appointed R.L. Knuth as Special Master in 2016 for the Utah Lake and Jordan River Adjudication. Mr. Knuth's curriculum vitae is attached as **Exhibit 3**. Between his appointment in June 2016 and June 2019, Special Master Knuth has helped the Third District Court to resolve 172 Objection Proceedings. *See Exhibit 4*. Prior to his appointment, the Third District Court was resolving less than 7 objection proceedings per year. Special Master Knuth has instituted procedures to ensure that all necessary parties receive adequate due process while also forcing parties to make progress in litigation and helping parties to reach settlements. He has garnered the deep respect of counsel and litigants alike. In addition to his outstanding progress in the Utah Lake and Jordan River Adjudication, Special Master Knuth has decades of experience in water rights.

To assist this Court in resolving the outstanding objections and future objections that may be filed with the Court, the State Engineer requests that the Court appoint R.L. Knuth as Special Master pursuant to U.R.C.P. 53 and Utah Code § 73-4-14.

II. ARGUMENT

A. Appointment of a Special Master in the Virgin River Adjudication is authorized by U.R.C.P. 53 and Utah Code § 73-4-14.

The State Engineer requests that the Court appoint a Special Master pursuant to U.R.C.P. 53 and Utah Code § 73-4-14. “The court may appoint a master in an action” and refer “[a]ny or all of the issues in an action” to a Special Master. U.R.C.P. 53(a). Here, the State Engineer requests that the Court appoint a Special Master to hear objections to the Lists of Unclaimed Rights and Proposed Determinations filed in the Virgin River Adjudication.

Typically in non-jury actions, a special master may only be appointed “upon a showing that some exceptional condition requires it.” U.R.C.P. 53(b). However, because the Legislature recognized the exceptional nature of a general adjudication, Utah statute authorizes the court to appoint a master without making any additional findings of an exceptional condition. Utah Code § 73-4-14(3) (“The court may appoint referees, masters, engineers, soil specialists, or other persons.”). Accordingly, appointment of a Special Master in the Virgin River Adjudication is within this Court’s discretion.

B. The Virgin River Adjudication is particularly well-suited for a Special Master because of the large number of parties, the substantial number of outstanding objections, and the anticipated objections to forthcoming Proposed Determinations.

Over 3000 parties in the Virgin River Adjudication hold water rights of record. A map of the Virgin River Adjudication area is attached as **Exhibit 5**. This general area includes the entire southwestern portion of the state, including Washington County and portions of Iron and Kane

Counties. The Proposed Determinations for Divisions 81-1 and 81-2 have nearly 40 outstanding objections that remain undecided by the Court, and additional proposed determinations are forthcoming for Divisions 81-3, 81-4, and 81-5. The Court cannot enter a judgment confirming the rights in a given proposed determination until all of the objections are dismissed or otherwise resolved. Utah Code §§ 73-4-12, -15. Consequently, these pending objections are delaying confirmation of the uncontested water rights for hundreds of claimants. The State Engineer has made substantial progress in negotiating settlements to resolve some of these objections and litigating others. However, through proactive case management, the Special Master will greatly assist the parties, the Court, and the State Engineer in resolving the objections.

C. Appointment of a Special Master will benefit the Court and the parties because he will actively manage the cases, hear disputed factual issues, make recommendations to the Court, and assist the Court with hearing the claims of pro se litigants.

As Special Master, Mr. Knuth can more actively manage and encourage the resolution of objections. In the Utah Lake and Jordan River Adjudication, Mr. Knuth serves notice on all necessary parties, requires them to appear for regular status conferences, encourages the participating parties to engage in settlement proceedings, and sets scheduling orders to progress litigation on the objections. He has entered several Standing Orders outlining orderly procedures to ensure due process and progress on the litigation. *See Exhibits 6, 7, and 8.* Where settlement cannot be reached, Special Master Knuth decides dispositive motions and can set trials to find facts and clarify legal questions for ultimate resolution of the objections.

Of the thousands of parties in a general adjudication, many individual water users elect not to hire an attorney, and if they file an objection, represent themselves *pro se*. Parties unfamiliar with the judicial process and the Rules of Civil Procedure can place an added burden

on the Court and the State Engineer. The Special Master's notices and procedures preserve the Court's resources while still allowing for progress in litigation of cases with *pro se* parties.

D. Appointment of a Special Master will not adversely affect any parties because his reports and recommendations are subject to review and confirmation by the Court, and the Legislature has appropriated funding for a Master.

No party will be prejudiced by the appointment of a Special Master. U.R.C.P. Rule 53 requires that a Master prepare a report, serve it on the parties, and file it with the Court. After receiving a copy of the Special Master's report, the parties have an opportunity to challenge the Special Master's report. U.R.C.P. 53(e). The Court also retains the authority to "adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions." U.R.C.P. 53(e)(2). With these procedures in place, the Court maintains adequate supervision over the objections such that parties are not adversely affected by the Special Master's appointment.

In recognition of the utility of a special master in a general adjudication proceeding, the Utah Legislature has approved an ongoing appropriation to appoint special masters in general adjudication proceedings around the state. Accordingly, the parties are not unduly burdened by the cost of appointing a special master. To ensure that the parties are not harmed if the Legislature eventually commits these funds to another resource in the future, the State Engineer requests that appointment of a special master remain contingent on legislative funding.

III. CONCLUSION

For the reasons state above, the State Engineer respectfully requests that the Court grant the motion to appoint R.L. Knuth as Special Master in the Virgin River Adjudication. A form of the proposed order is submitted for the Court's and the parties' consideration and reference.

Dated this 6th day of August, 2019.

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