



Orem Subdivision

Area 55, Book 3

Proposed Determination

Public Meeting

May 13th, 2014

Utah Division of Water Rights

Blake W. Bingham, P.E.

Adjudication Program Manager

www.waterrights.utah.gov

Agenda

- Adjudication Overview
- Proposed Determination Process
- Significant Issues and Anticipated Timeline
- Questions



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.



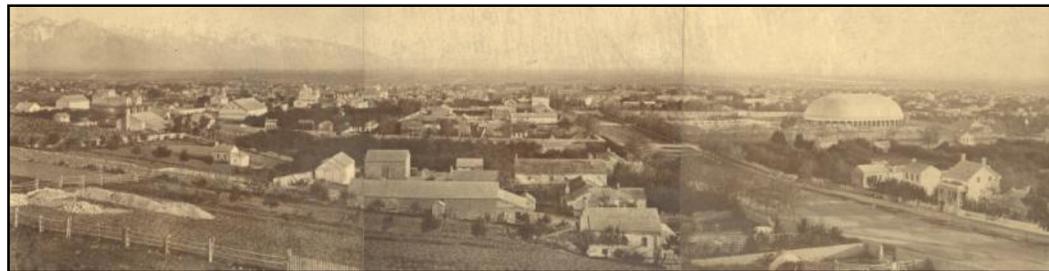
Historical Context - Territorial Era

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.

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.



Willard Young
State Engineer



The Historical Case for Adjudication

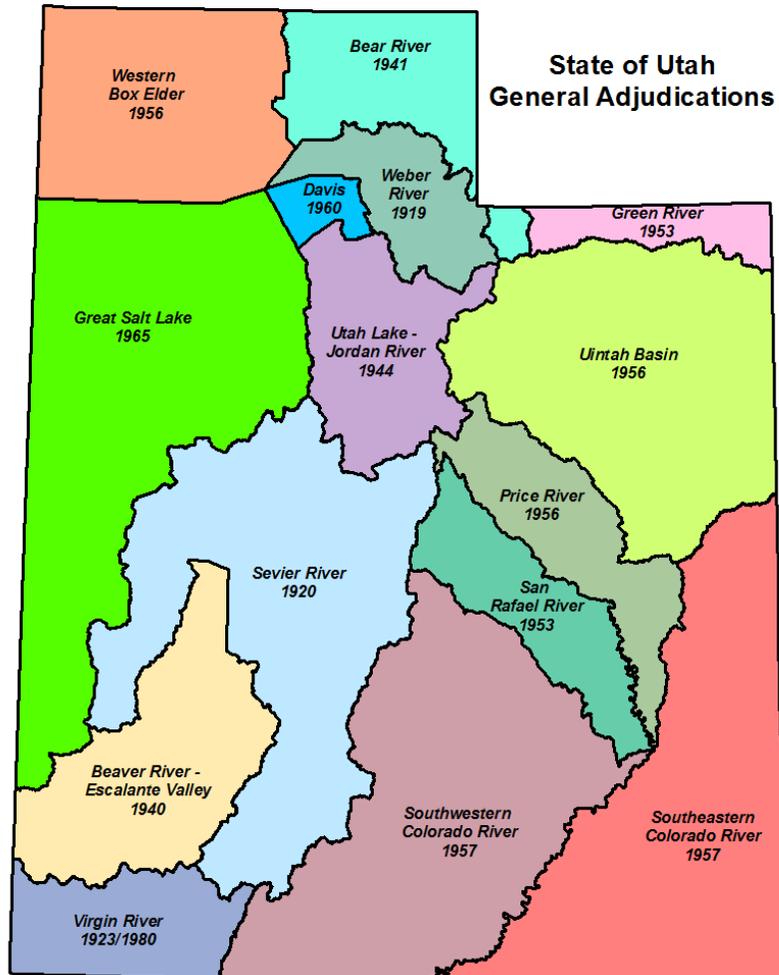
- Prior to the enactment of the comprehensive Utah Water Law in 1903, rights to the use of water typically fell into a combination of five categories:
 1. Rights decreed by **ecclesiastical leaders**.
 2. Claims **filed for record** at the county.
 3. Rights **decreed by a court** (typically involving 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



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?

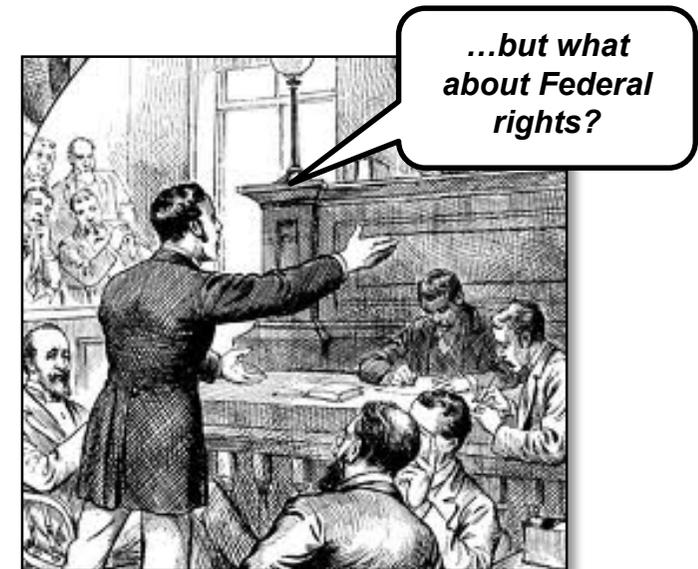
1. Bring all claims on to the permanent record:

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

2. To bring **clarity and certainty** 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

1



The State Engineer is petitioned by water users or court-ordered to initiate a General Adjudication. (UCA 73-4-1)

2 NOTICE



The State Engineer publishes notice of the pending adjudication for 2 weeks in a local newspaper. (UCA 73-4-3)

3 PUBLIC MEETING



The State Engineer holds an initial Public Meeting in the local area to inform water users about the adjudication process. (UCA 73-4-3)

4 SUMMONS



The State Engineer serves Summons on claimants and publishes Summons for 5 weeks in a local newspaper. (UCA 73-4-4)

5 HYDROGRAPHIC SURVEY



The State Engineer conducts a hydrographic survey of the area and assists the claimants in completing their Water User's Claims. (UCA 73-4-3)

6 90 days

Claimants have 90 days following notice of the completion of the hydrographic survey in which to file a Water User's Claim with the District Court or State Engineer. (UCA 73-4-3)

7



The State Engineer reviews Water User's Claims and other records and prepares a Proposed Determination which is then distributed to the claimants and filed with the District Court. (UCA 73-4-11)

8 PUBLIC MEETING



The State Engineer holds a Public Meeting to discuss the Proposed Determination with claimants. (UCA 73-4-11)

9 90 days

Claimants have 90 days to file an objection to the Proposed Determination with the District Court. (UCA 73-4-11)

10 FINAL SUMMONS



The State Engineer serves the final summons via publication for 5 weeks in a local newspaper. (UCA 73-4-22)

11 OBJECTION RESOLUTION



The State Engineer resolves objections to the Proposed Determination with respective water users. (UCA 73-4-14)

12 DECREE



The District Court issues a Decree (or Interlocutory Decree) on the Proposed Determination. (UCA 73-4-15)

The Proposed Determination Process



The Proposed Determination

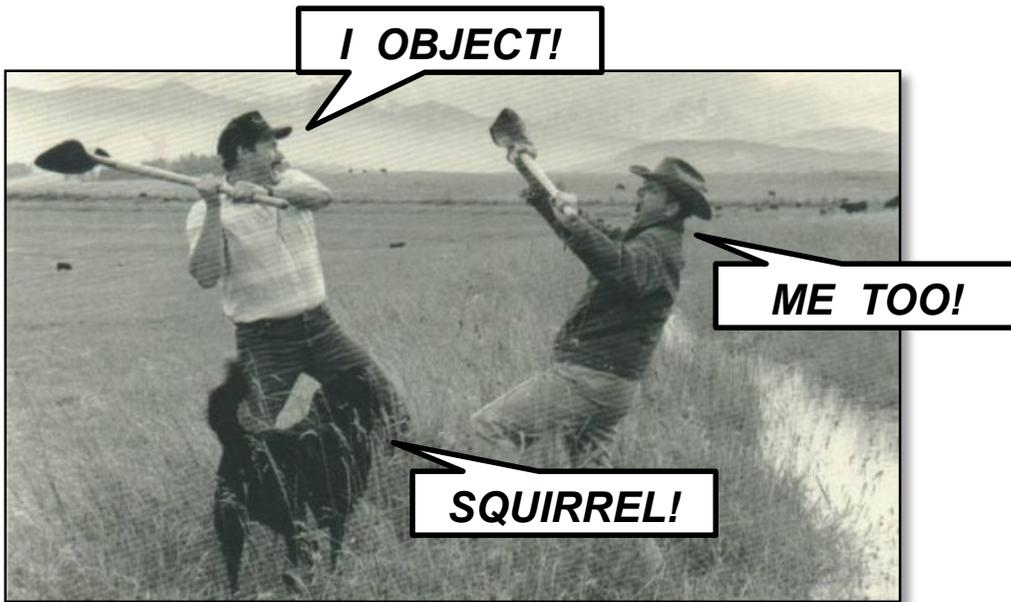
- Official recommendation of the State Engineer to the District Court

The Process

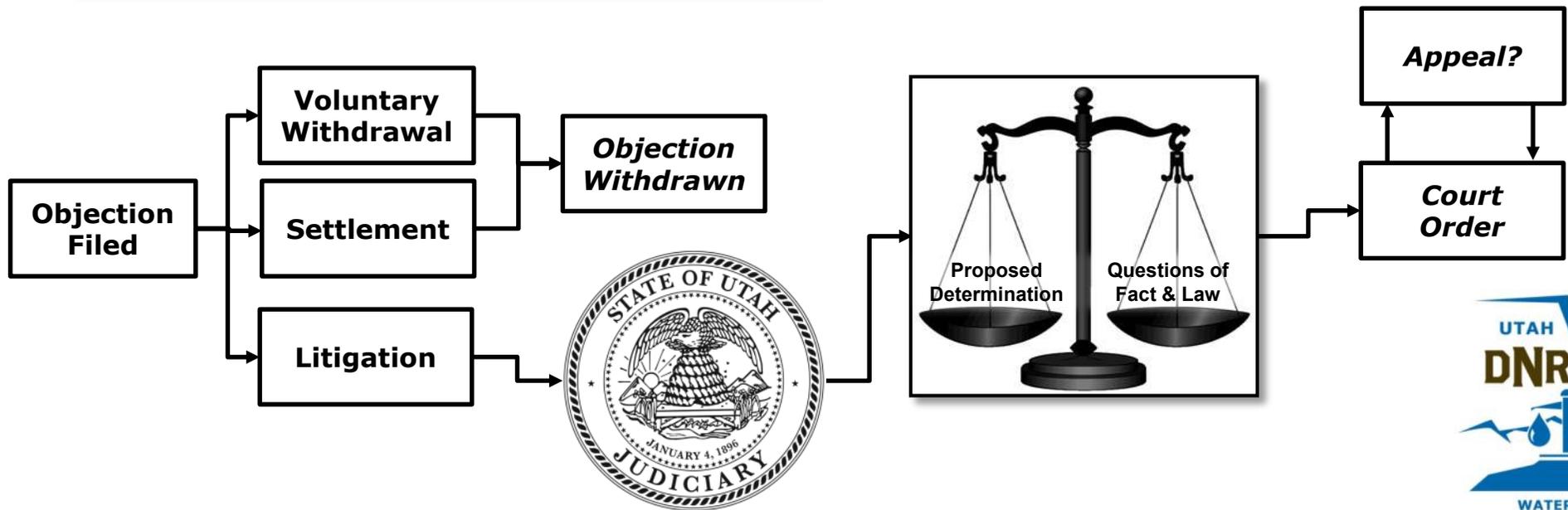
- Public Meeting: Hold a public meeting to inform water users.
- Research: Identify, research, and field-review water rights within the proposed determination area.
- Hydrographic Survey: Conduct a hydrographic survey to identify existing points of diversion, places and extent of use.
- Claim Preparation: 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.



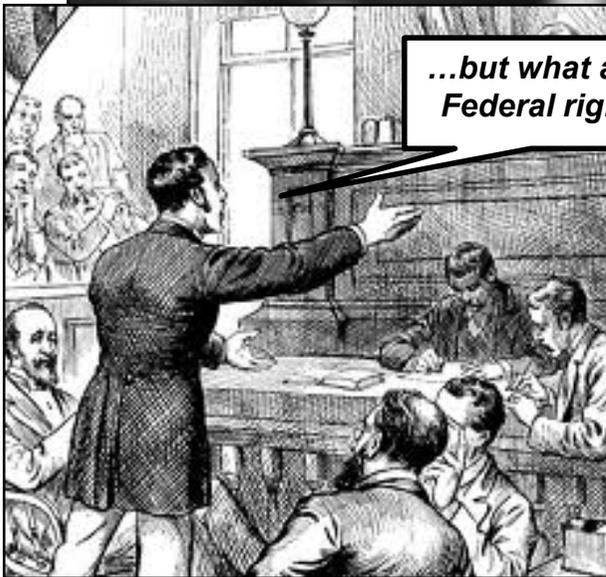
Objections



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

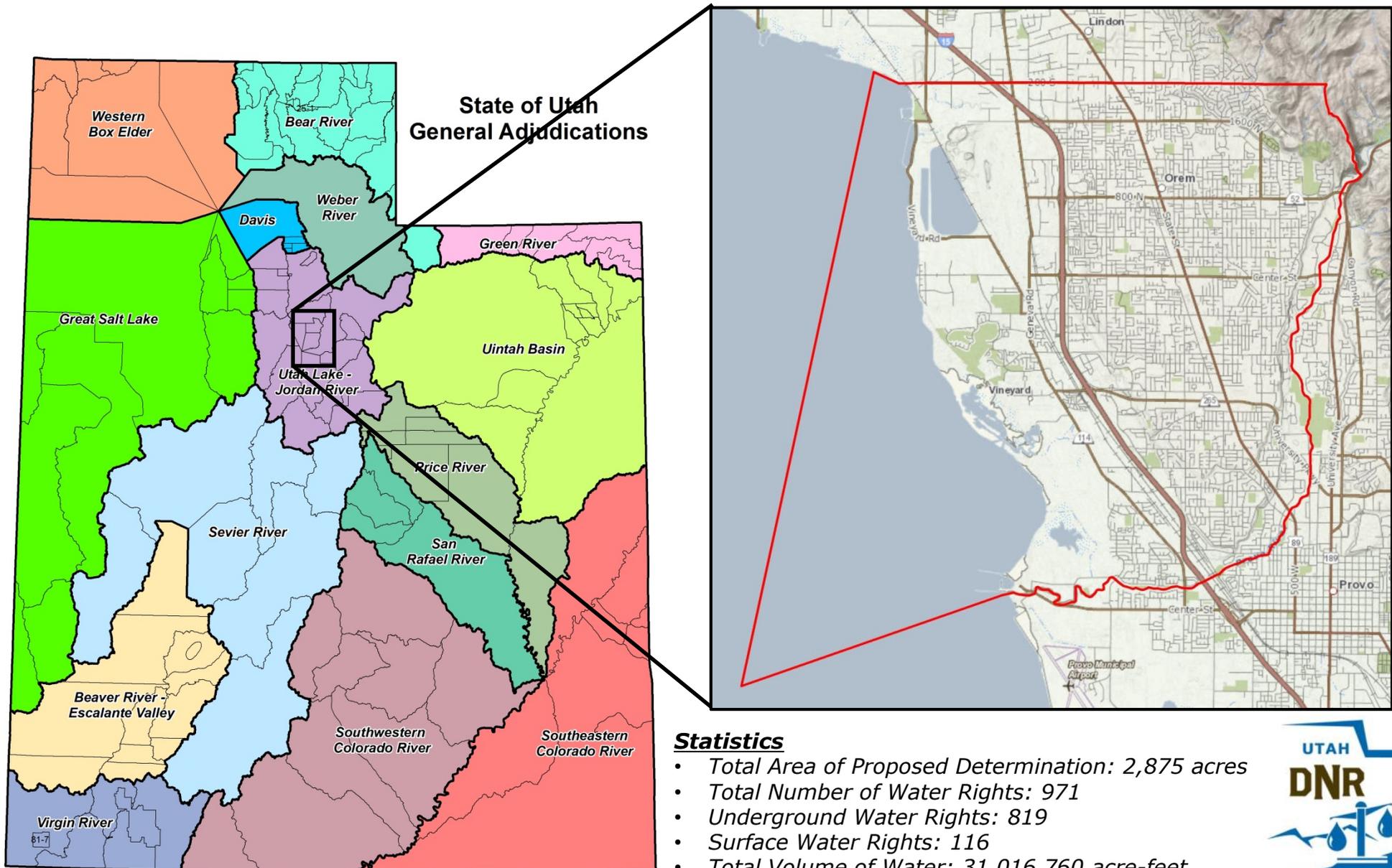


Decrees



- 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**.

Orem Proposed Determination Boundary



Statistics

- Total Area of Proposed Determination: 2,875 acres
- Total Number of Water Rights: 971
- Underground Water Rights: 819
- Surface Water Rights: 116
- Total Volume of Water: 31,016,760 acre-feet



Issues and Anticipated Timeline

Issues:

- Provo River Decree vs. General Adjudication
- Inclusion of Provo River Rights
- Election Order

Anticipated Timeline:

- Short-Term: Field Investigations have been initiated; claims will be evaluated on an ongoing basis.
- Long-Term: Under current staffing levels and work-load, publication of the Orem PD is expected within 3 to 5 years.



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.



Who can I contact to discuss the Adjudication Process?

Blake Bingham, P.E.

Adjudication Program Manager

Phone: 801-538-7345

E-mail: blakebingham@utah.gov

Lindsey Carrigan, E.I.T.

Adjudication Engineer

Phone: 385 226-7805

E-mail: lindseycarrigan@utah.gov

Mike Handy, P.G.

Adjudication Team Leader

Phone: 801-538-7463

E-mail: mikehandy@utah.gov

Randy Tarantino

Adjudication Technician

Phone: 801-664-8452

E-mail: randytarantino@utah.gov

Josh Zimmerman

Adjudication Team Leader

Phone: 801-946-7168

E-mail: joshzimmerman@utah.gov

Utah Division of Water Rights

1594 West North Temple

Suite 220, PO Box 146300

Salt Lake City, UT 84114-6300

www.waterrights.utah.gov



Questions?

