



# Birdseye Area

*Area 51, Book 5*

*Proposed Determination*

*Public Meeting*

*May 29<sup>th</sup>, 2012*

**Utah Division of Water Rights**

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

**Adjudication Program Manager**

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

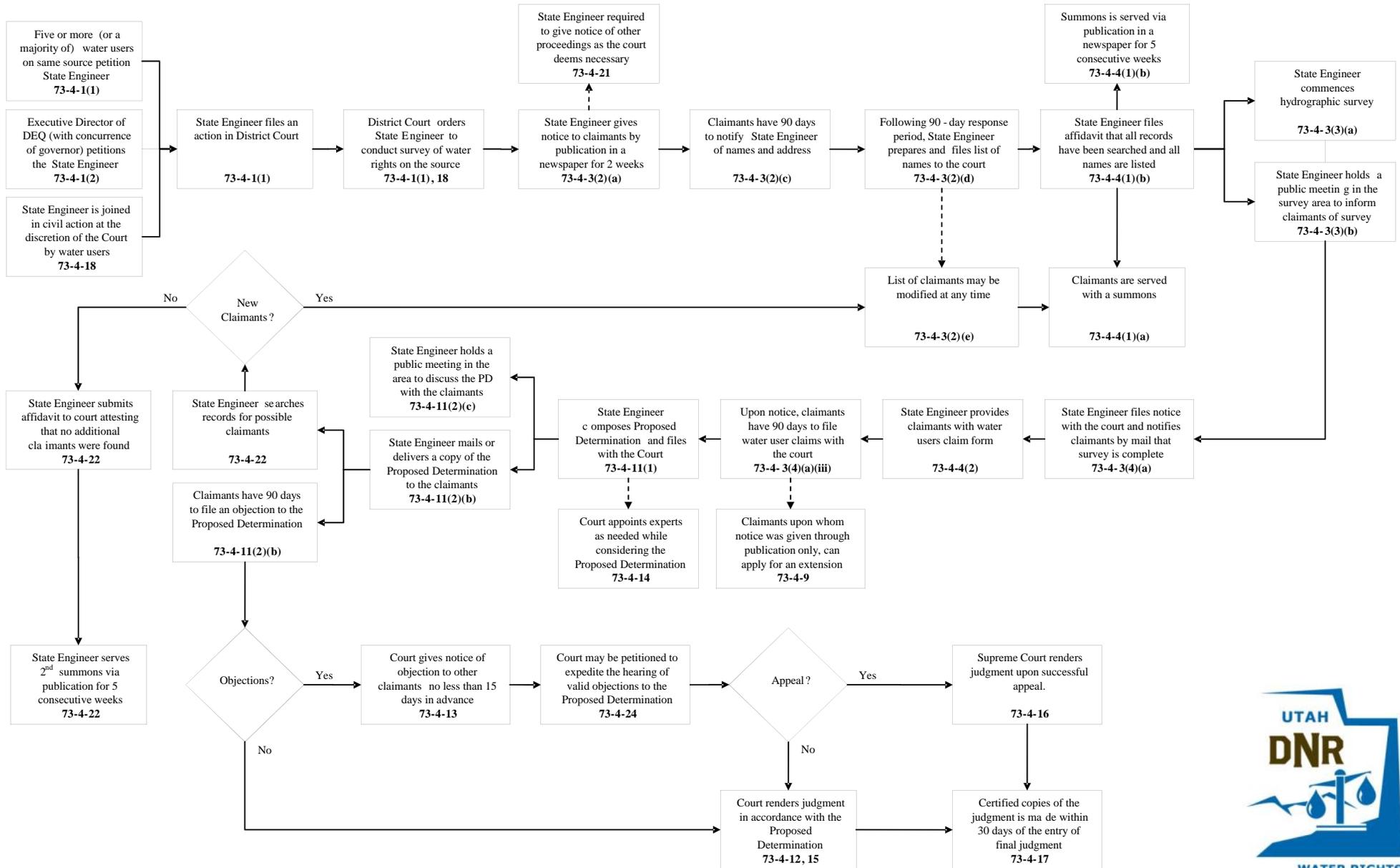


# *Agenda*

- Adjudication & Proposed Determination Review
- Significant Issues
- Current Status and Anticipated Timeline
- Questions



# What is Adjudication?



# *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.

**July 25, 1847:** At Sunday services, **Brigham Young** declares, “...*there should be no private ownership of the water, but that the mountain streams should belong to 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 leader’s acknowledgment of individuals who first put the water to beneficial use (primary and secondary rights).
- **Conflicts were settled through ecclesiastical channels**; at times being settled/decreed by the High Council.



# 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.”*

*“So far as shown by the reports, the court of Salt Lake County was the only one in [Utah] which assumed the duties relating to water conferred by this law... In other counties, streams seem to have been diverted without public restrictions.”*

**- USDA Report of Irrigation Investigations in Utah, 1904**

**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.

*“This law, like its predecessor, was enforced in only a few counties, and the certificates issued in those counties are generally considered worthless...”*

**- USDA Report of Irrigation Investigations in Utah, 1904**

- **Confusion** over existing water rights continues 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:** The **Office of the State Engineer** is created in order to conduct hydrographic survey of Utah waters (un-funded). Willard Young (son of Brigham Young) becomes the first State Engineer. Also attempted to incorporate a **voluntary system** of recording existing rights and appropriating new rights by **posting notice at the nearest post-office** and recording the details at the county—failed to take hold.



**Willard Young**  
State Engineer

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

- The definition and public **recording of all existing water rights**.
- The examining of streams and the **adjudicating of rights**; however, the legislature **failed to provide funding** to the local courts to complete the work.

**1919:** The legislature provided the “machinery” to adjudicate water rights on a given stream by appointing the **State Engineer** as the party responsible to develop a “**proposed determination**” of water rights for the court.

**1935:** Utah legislature amends the existing Utah law to include **groundwater**.



# *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 and 1902, 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***



# Getting Started - Some Basic Definitions

All waters in Utah are public property (UCA 73-1-1).

- A “*water right*” is a right to divert (remove from its natural source) and *beneficially use* water.

**Beneficial Use:** Beneficial use shall be the **basis**, the **measure** and the **limit** of all rights to the use of water in this state. - Utah Code Annotated 73-1-3

**A typical water right will include:**

- A defined nature and **extent of beneficial use**;
- A **priority date**;
- A **defined quantity** of water allowed for diversion by flow rate (cfs) and/or by volume (acre-feet);
- A specified **point of diversion** and source of water;
- A specified **place of use**.

**Adjudication:** The legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants in order to come to a decision which determines rights and obligations between the parties involved.

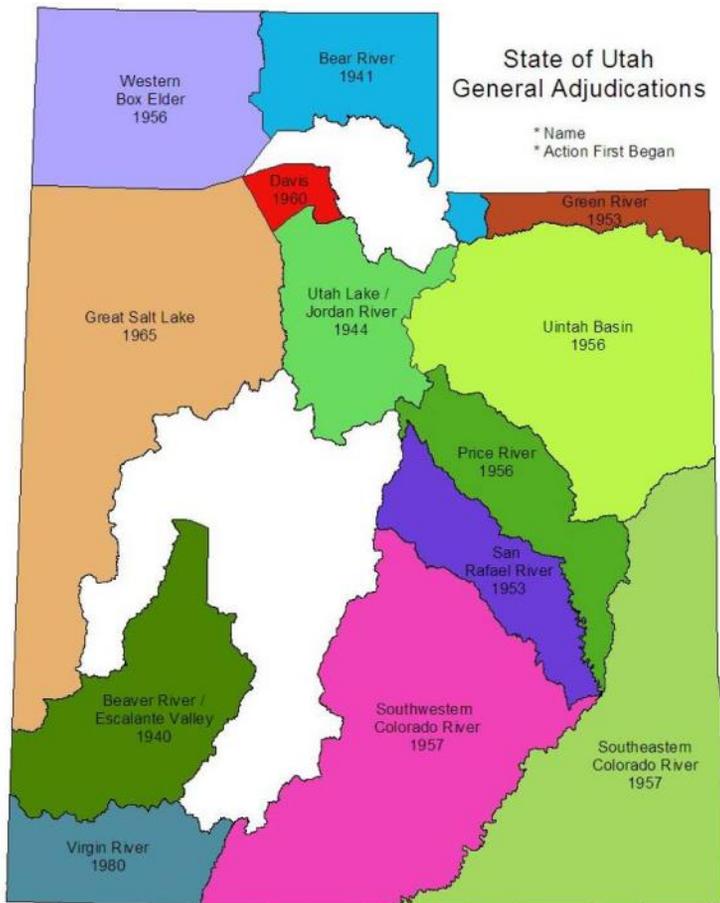
**Decree:** An authoritative order having the force of law.



# What is a General Stream Adjudication?

## What it *IS*...

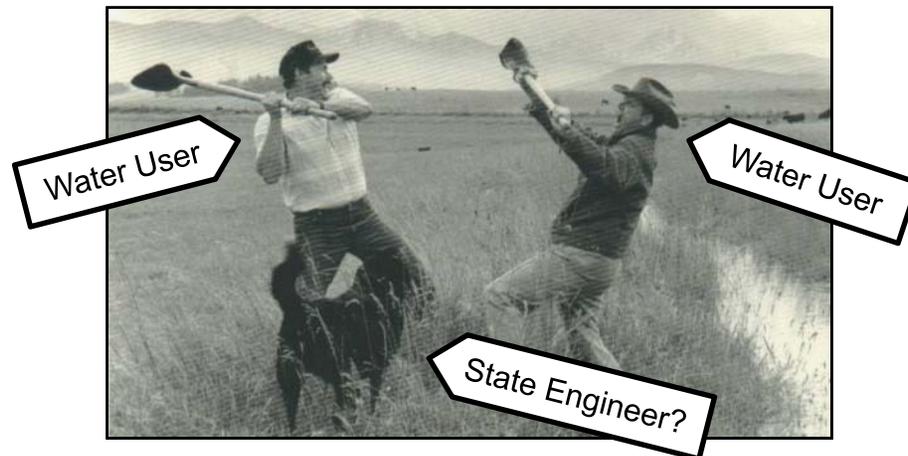
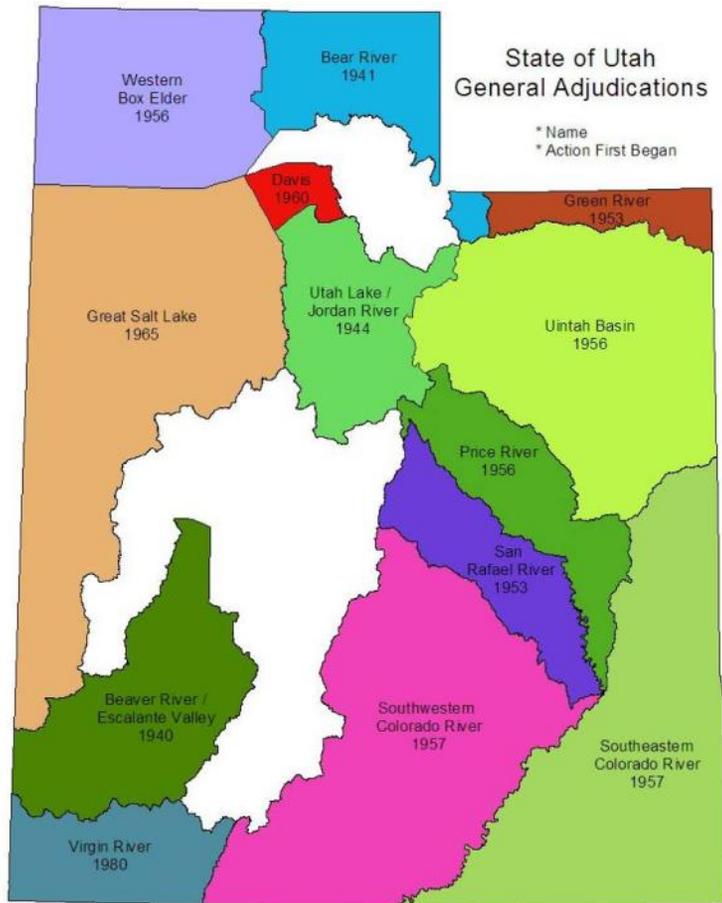
- Action in District Court
- Binds water users and the State Engineer (Division of Water Rights)
- Governed by Utah State Code: Title 73, Chapter 4.
- The first General Stream Adjudications took place in the 1920s – Sevier and Weber Rivers



# Why do we Adjudicate?

## What it *DOES*...

- Makes a permanent record of existing rights and rights not formally recorded, such as “diligence” rights
- Brings certainty, security, and clarity
- Gives present definition and confirmation
- Resolves disputes
- Allows for future management and planning
- Removes rights from record that are no longer used



# The Proposed Determination Process



## The Proposed Determination

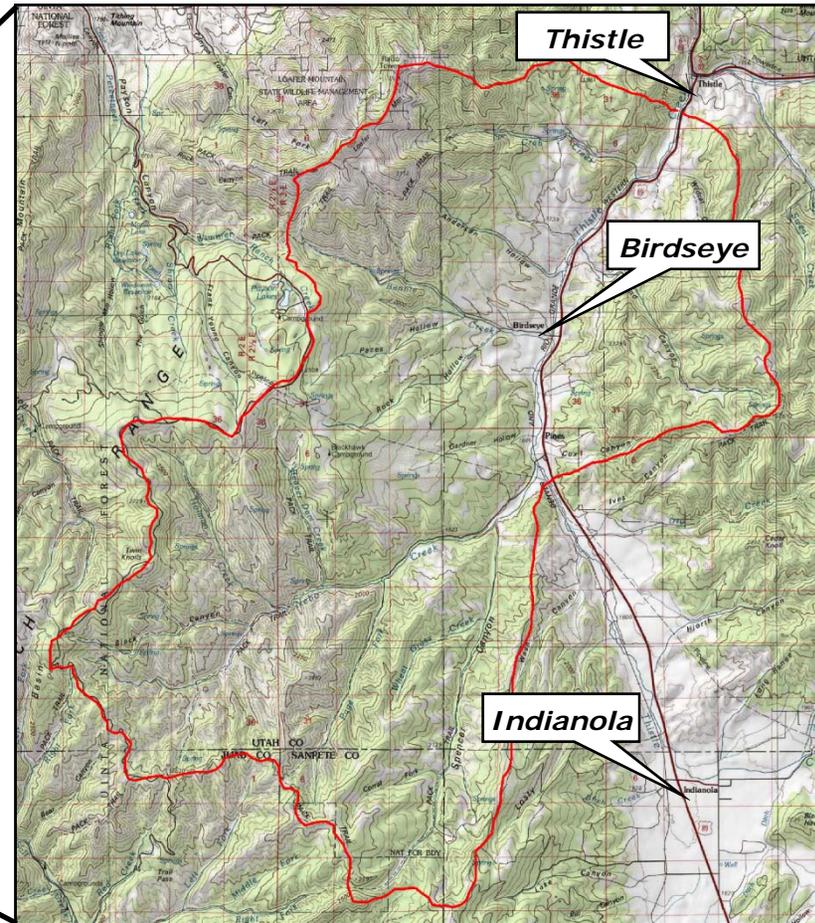
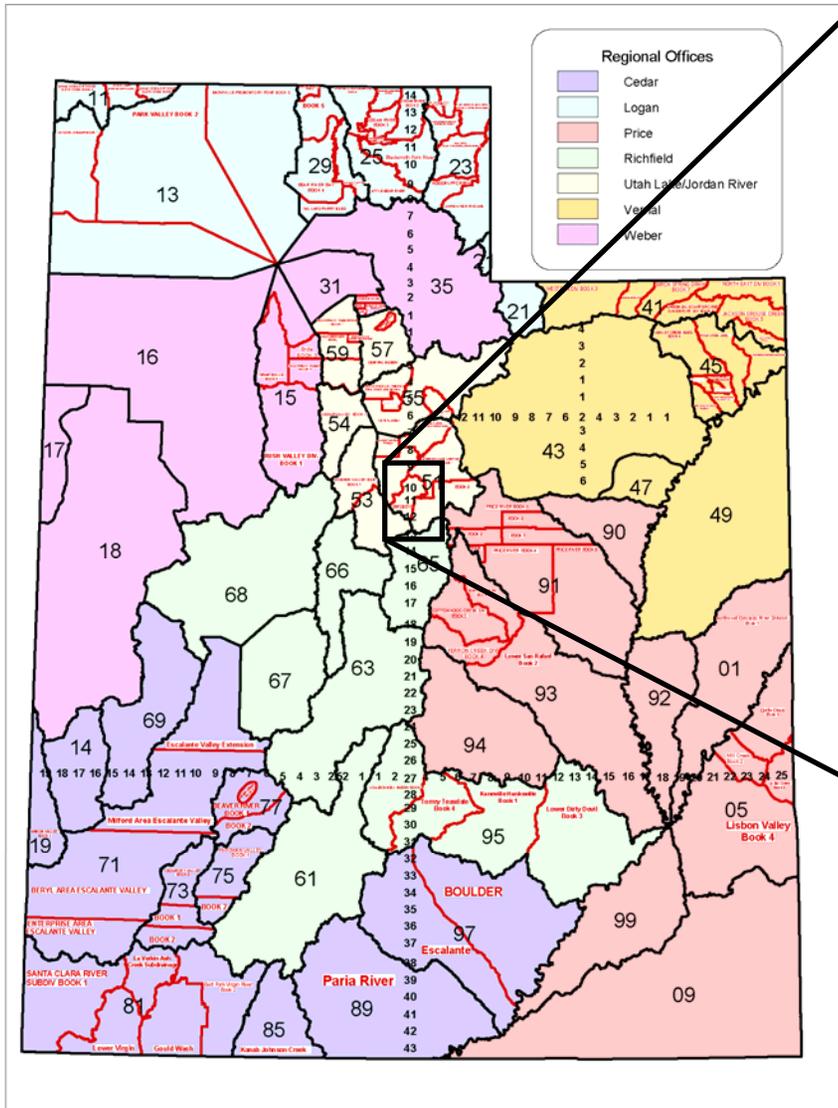
- Official recommendation of the State Engineer to the District Court

## 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.



# Birdseye Proposed Determination Boundary



Includes following surface sources:

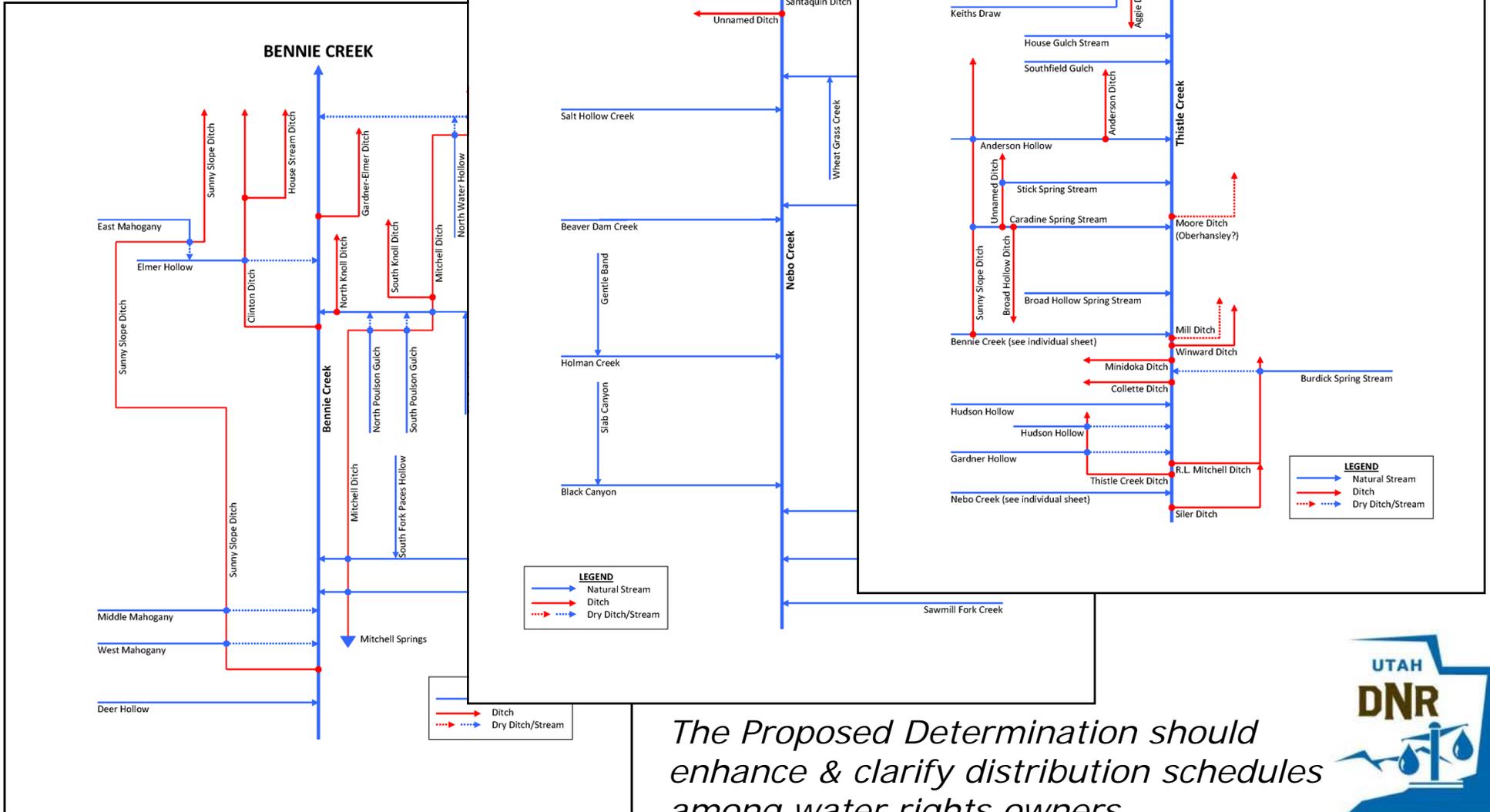
- Thistle Creek
- Bennie Creek
- Nebo Creek
- Crab Creek
- Blind Canyon
- Wildcat Canyon



# Issues

## Big-Picture Perspective

- Distribution -



*The Proposed Determination should enhance & clarify distribution schedules among water rights owners.*



# *Current Status and Anticipated Timeline*

## **Ongoing Efforts:**

- Final Field Reviews
- Hydrographic Survey Data Collection
- Initial Preparations of Water User's Claims

## **Anticipated Timeline:**

- Summer 2012 thru Spring 2013 – Complete Water Users Claims
- Spring 2013 – Finalize Hydrographic Survey Map
- Summer/Fall 2013 – Publish Proposed Determination

## **Other Issues:**

- Updating Title
- Change Applications
  - Election Order
  - Ponds
- Strawberry Exchanges



## *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?***

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*Questions?*

