



Water Right Adjudications in Utah

*Natural Resources, Agriculture,
and Environmental Quality
Appropriations Subcommittee*

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www.waterrights.utah.gov

Agenda

- *Historical Context of Utah Water Law*
- *What is a Water Rights Adjudication?*
- *Why do we conduct Water Right Adjudications?*
- *The Utah Lake and Jordan River Adjudication*
- *Where are we going?*
- *Questions*



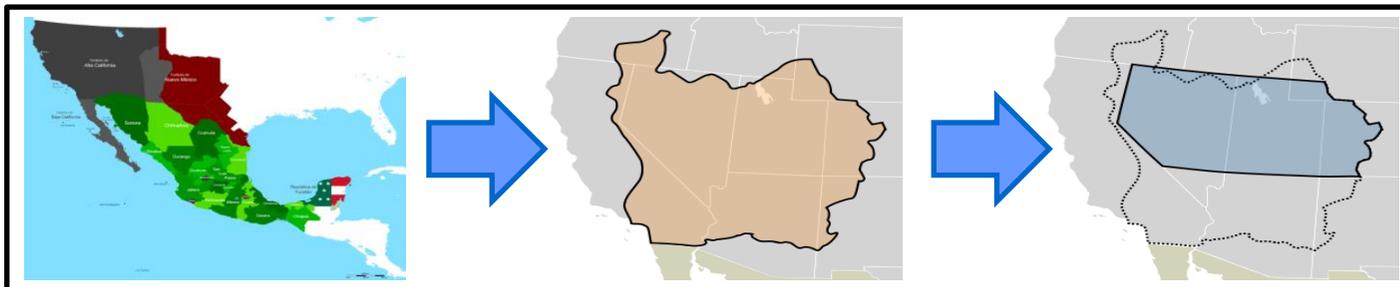
Historical Context – The Pioneer Era

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.

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.

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." However, **Salt Lake County** was the only one to assume these duties... other counties streams were diverted without public restriction.

- Diversions of water from streams continued to be made on a **community basis** to meet the immediate needs of the settlers **without being recorded**.
- **Conflicts continued to be settled through ecclesiastical channels** in some areas of the territory (e.g., 1879 LDS High Council Decision to divide waters of the Spanish Fork River).
- **Confusion** over existing water rights continued in spite of the best efforts of the LDS church and Utah Territorial Legislature.



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.

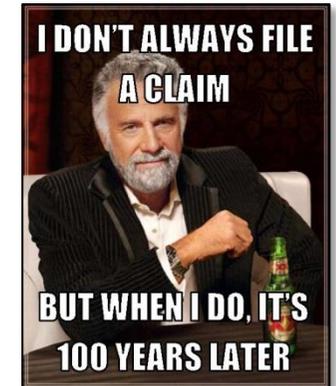
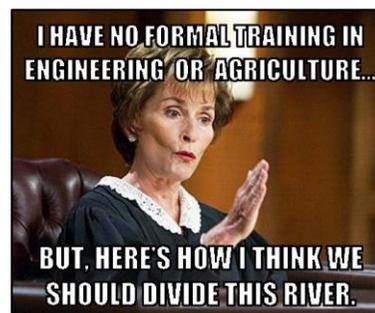
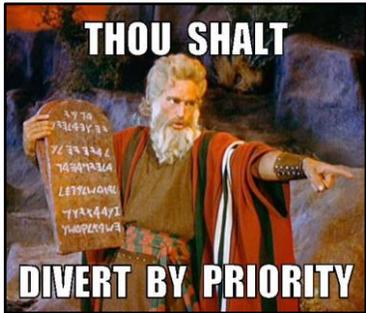
1903: State legislature enacted the first comprehensive **water law** which provided for appropriating surface rights, **recording of all existing water rights**, and the **adjudicating of rights** by the Court. However, the **Legislature failed to provide funding** to the local Courts.

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



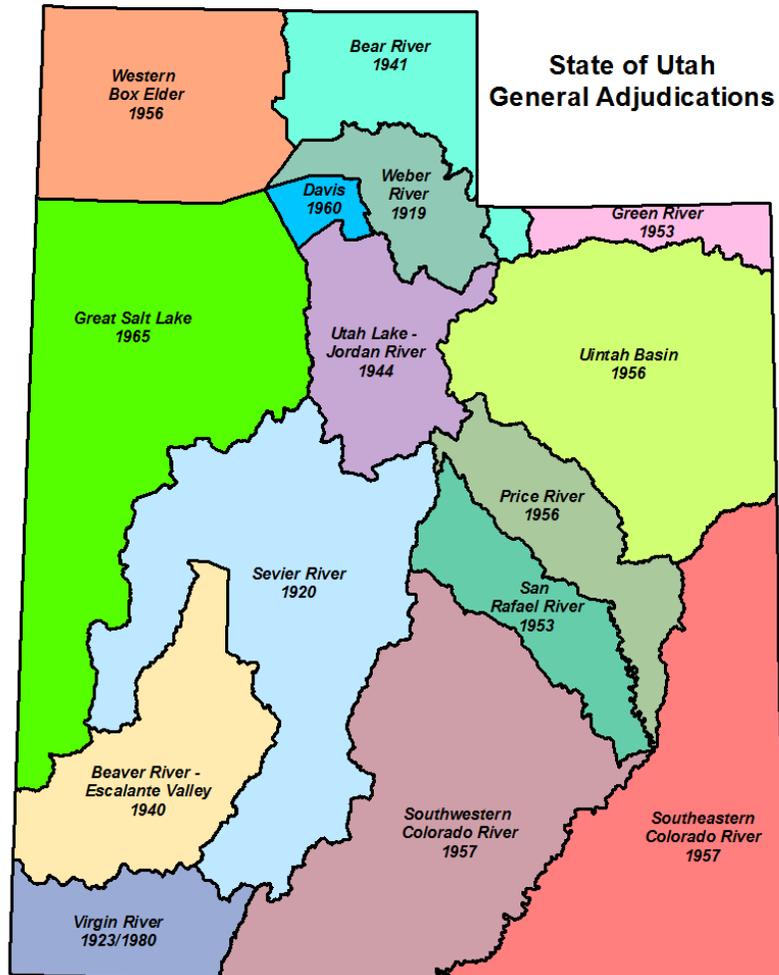
The Historical Case for Adjudication

- Prior to the enactment of the comprehensive Utah Water Law in 1903, rights to the use of water typically fell into a combination of five categories:
 1. Rights decreed by **ecclesiastical leaders**.
 2. Claims **filed for record** at the county.
 3. Rights **decreed by a court** (typically involving limited parties).
 4. Contracts or **agreements** among limited parties.
 5. Claims **never manifested in any record**, but evidenced by pre-statutory use.



- Consequently, 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.

What is a General Stream Adjudication?



What it IS...

- Action in State 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.



The Adjudication Process

1

PETITION



2

NOTICE



3

SUMMONS



4

PUBLIC MEETING



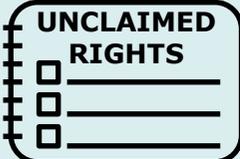
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NOTICE TO FILE CLAIMS WITHIN 90 DAYS



6

LIST OF UNCLAIMED RIGHTS



7

90 DAYS TO FILE OBJECTION



8

PUBLIC MEETING



9

OBJECTION RESOLUTION & DECREE



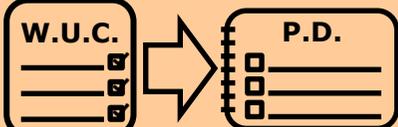
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CLAIM INVESTIGATION



11

PROPOSED DETERMINATION



12

90 DAYS TO FILE OBJECTION



13

PUBLIC MEETING



14

FINAL SUMMONS



15

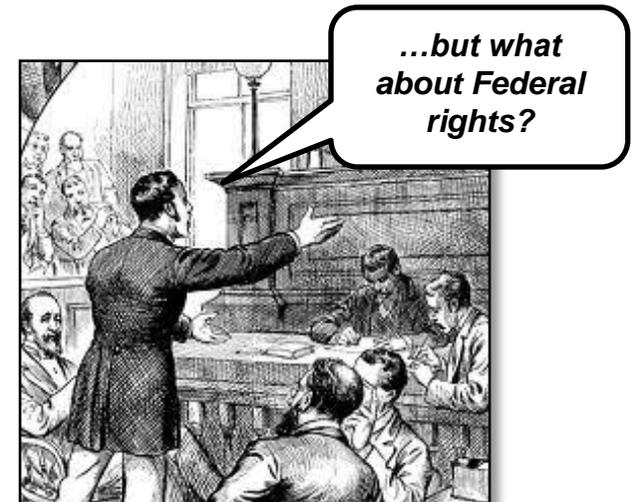
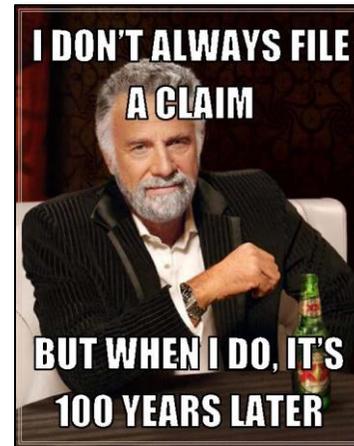
OBJECTION RESOLUTION & DECREE



Why Do We Conduct General Adjudications?

1. *Bring all claims on to the permanent record:*

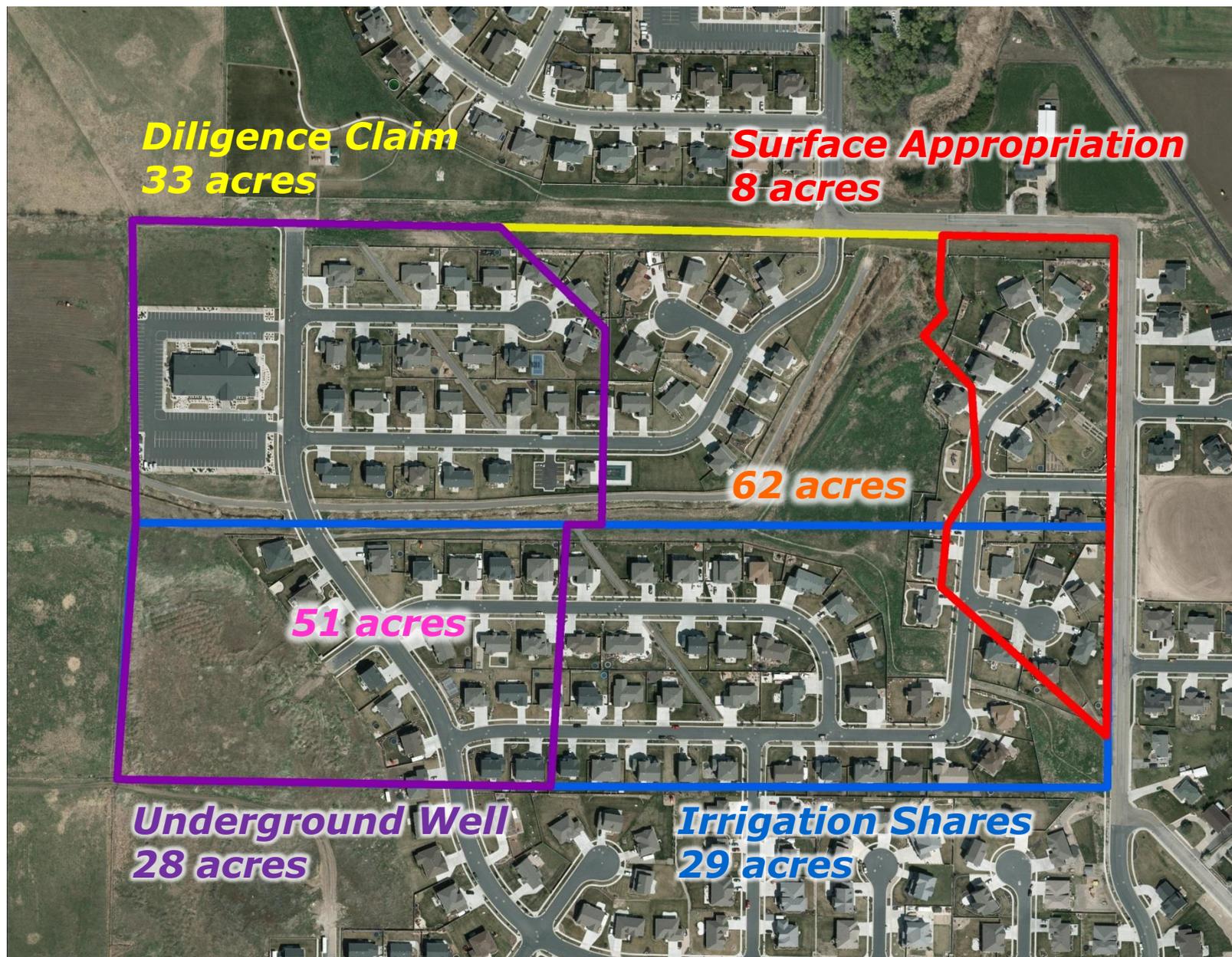
- Pre-Statutory Claims
 - *Diligence Claims (1903)*
 - *Underground Water Claims (1935)*
- Federal Reserve Rights
 - *Winter's Doctrine (1908)*
 - *McCarran Amendment (1952)*



2. *To prevent a "multiplicity of suits" and bring clarity to the water rights picture.*
3. *Remove rights from the record that have been abandoned or not used.*
4. *To obtain final comprehensive decrees on all water rights within the respective drainage.*



Clarity to Water Rights



33 ac

29 ac

8 ac

28 ac

Total ~~98 ac~~

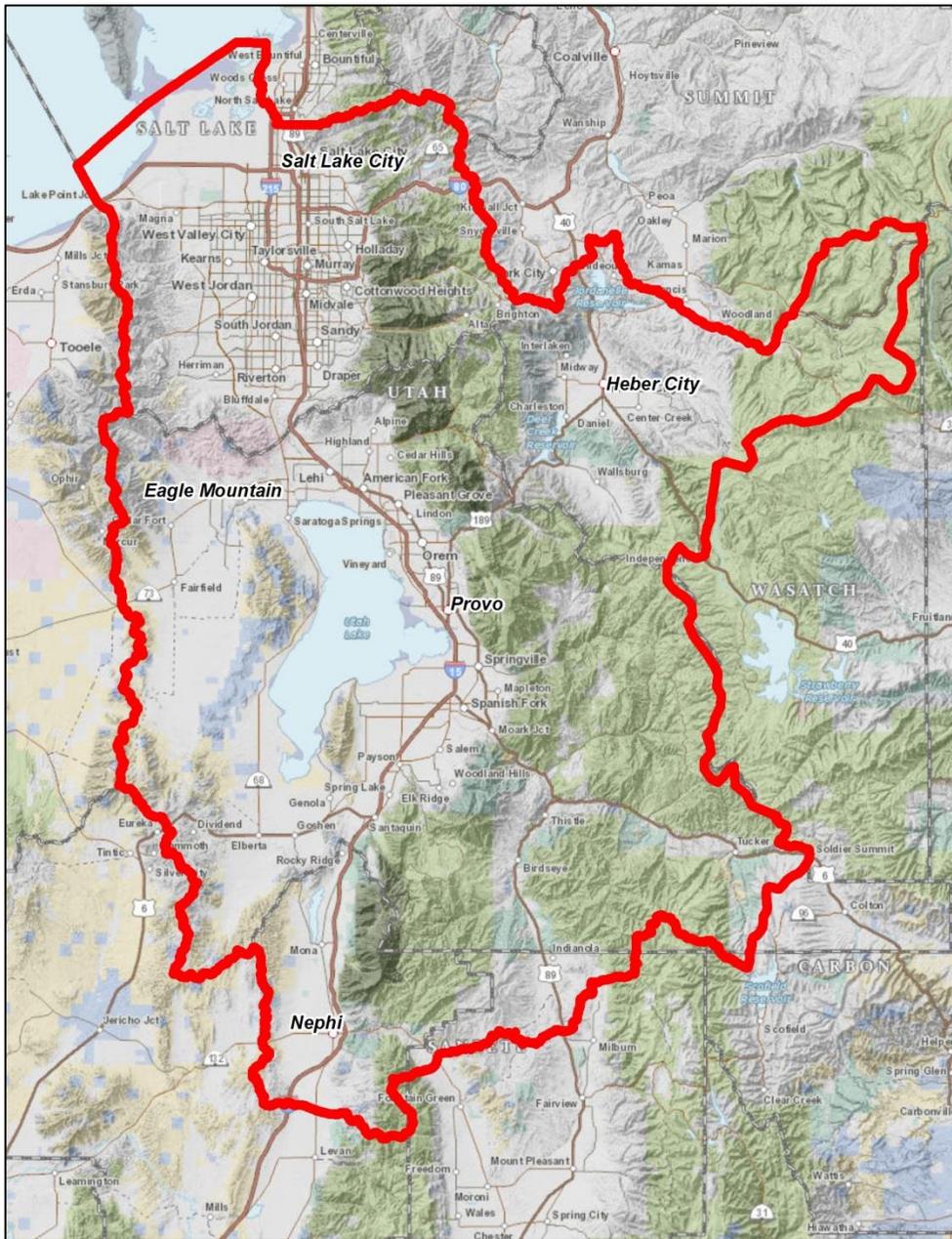
Total ~~62 ac~~

Total ~~51 ac~~

Total ?? ac



Utah Lake & Jordan River Adjudication



1925 – 1935: Utah and the United States is plagued with an extended drought that results in wide-spread shortages.

March 22, 1933: Salt Lake City files suit against various irrigation companies and the State Engineer for an adjudication of the Utah Lake and Jordan River drainage. However, the State Engineer lacks the funding and is unable to comply.

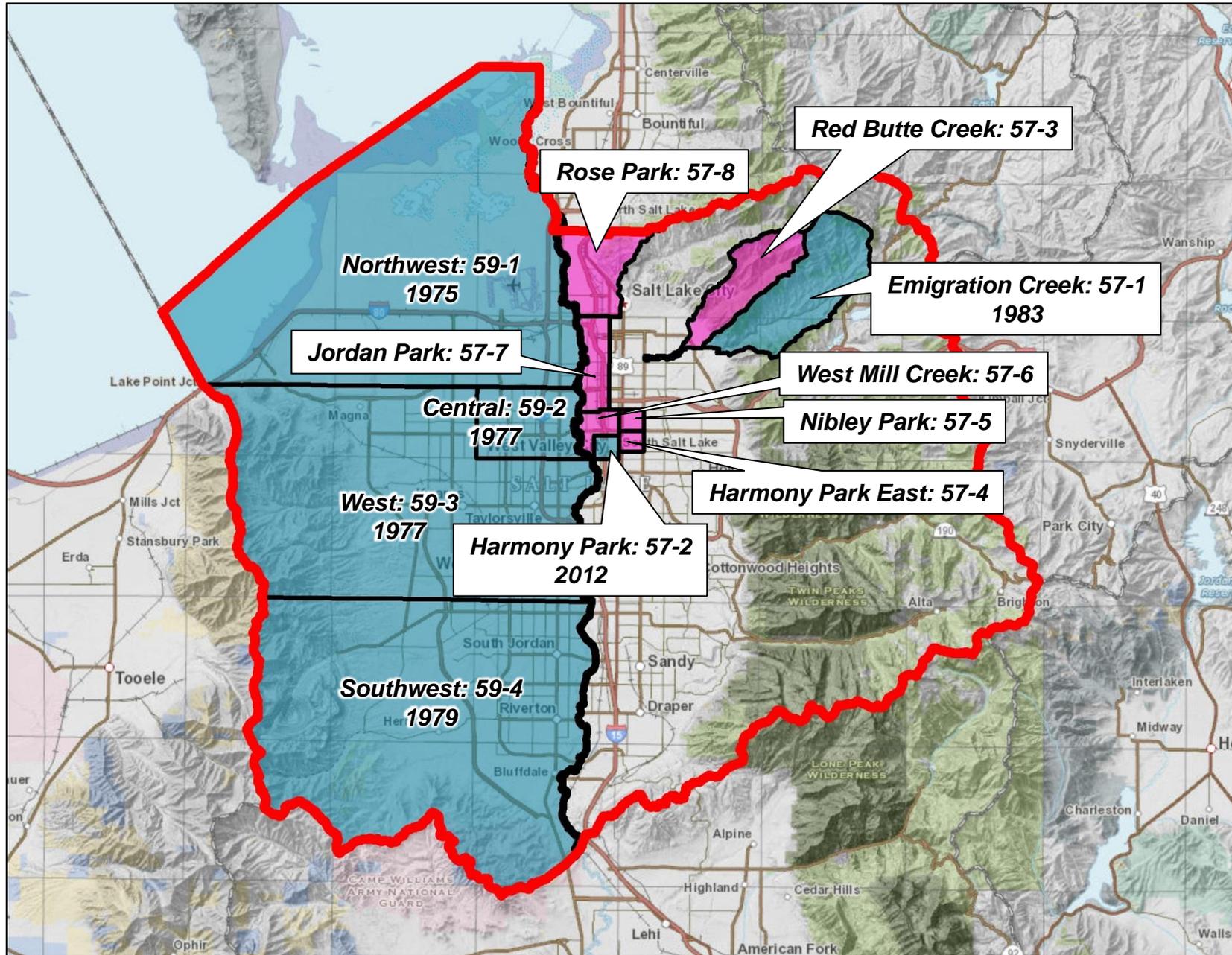
May 28, 1936: Salt Lake City and various canal companies file suit against roughly **3,000 defendants** and asks the court to take on the responsibility of determining the water rights since the State Engineer lacked funding.

July 10, 1940: Supreme Court rules that the district court lacks jurisdiction in the determination of water rights without first deferring to the determination made by the State Engineer.

September 1, 1944: Third District Court orders that the suit proceed under the general water rights adjudication statute and that the State Engineer make a determination of water rights.

June 21, 1972: Third District Court issues a clarification of scope to include ALL waters (both surface and underground) within the Utah Lake and Jordan River drainage.

Salt Lake County Adjudications



Where are we going?

“One does not ‘get out’ of a general adjudication. It is a sort of judicial black hole into which light, sound, lawyers, water—even judges—indeed, whole forests of paper, will disappear. The only way out is the other end.”

*- Michael J. Brophy
Arizona Water Attorney*

Efforts to get us out the other end of the Utah Lake & Jordan River Adjudication...

- 1. Revised statute to streamline and modernize the water rights adjudication process.***
- 2. Court appointed “Special Master” to help resolve the backlog of outstanding objections.***
- 3. Focus adjudicative efforts and resources within the Salt Lake and Utah valleys.***



Questions?

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