



Adjudication Update/Issues

What you need to know... and some other stuff you can probably forget.

Utah Water Law & Policy Seminar

March 18th, 2019

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Assistant State Engineer - Adjudication

Utah Division of Water Rights

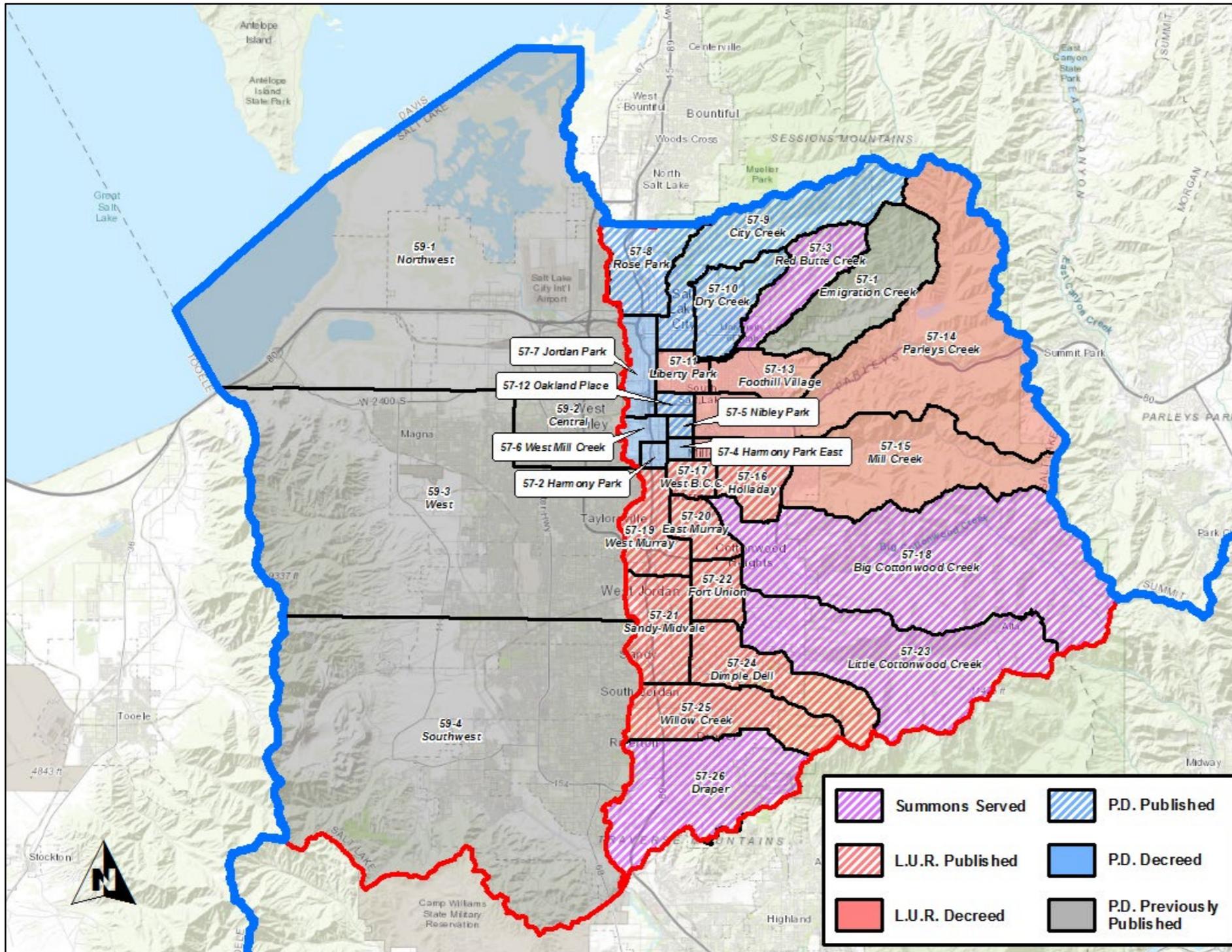
www.waterrights.utah.gov

Salt Lake County Status

Over the last 3 years...

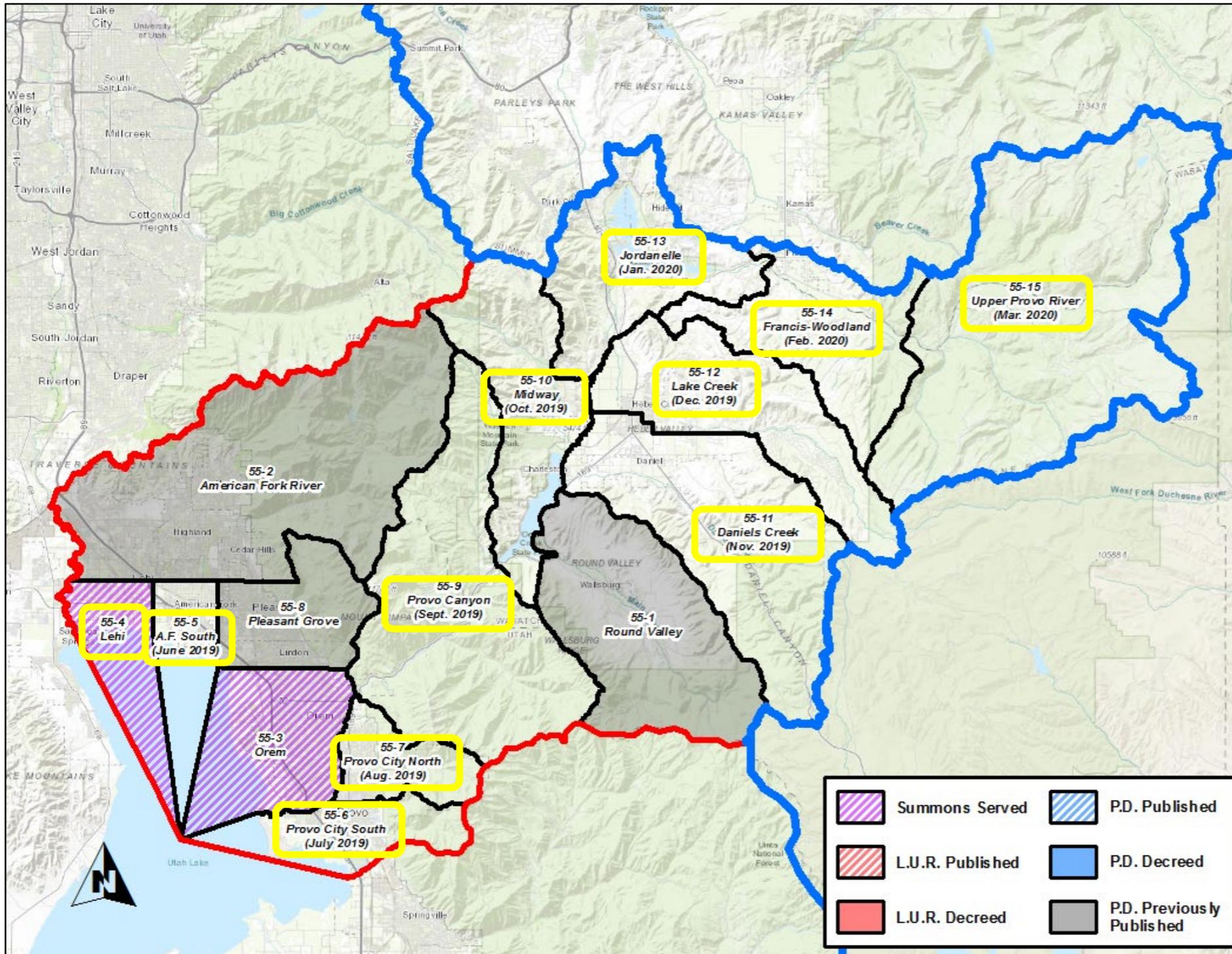
- **Initiated: 23**
- **LURs Published: 18**
- **LURs Decreed: 9**
- **PDs Published: 8**
- **PDs Decreed: 3**

Initiated process for addenda in the 59 area.

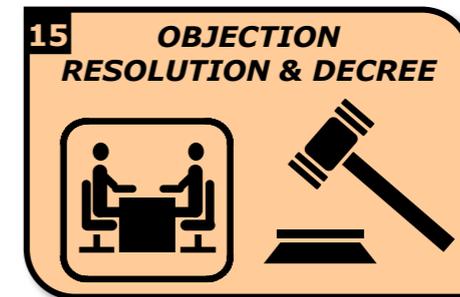
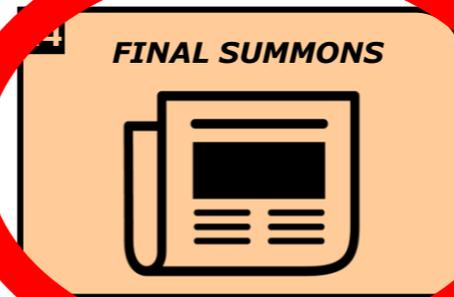
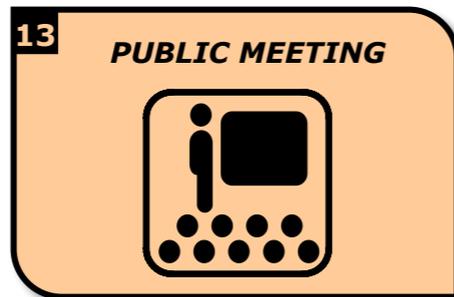
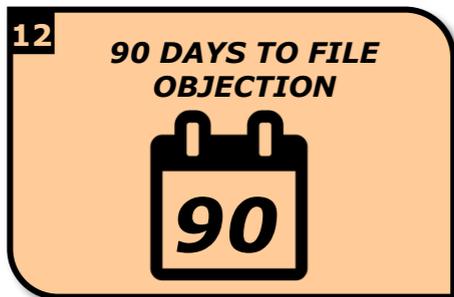
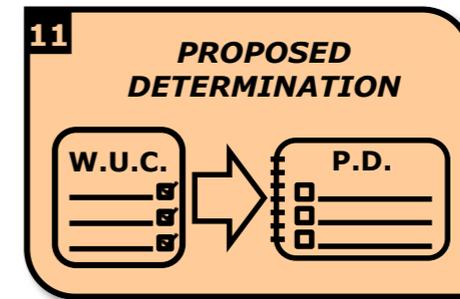
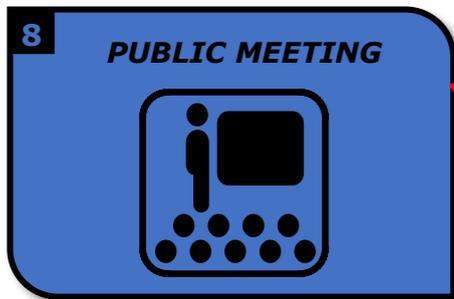
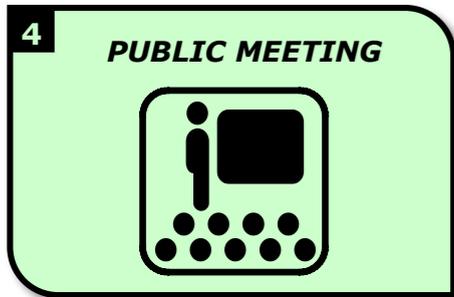
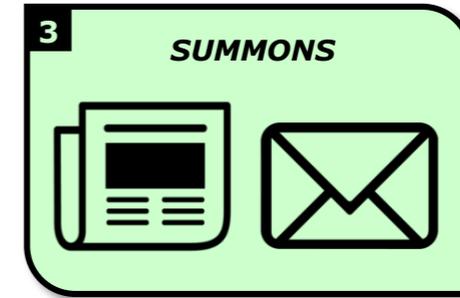
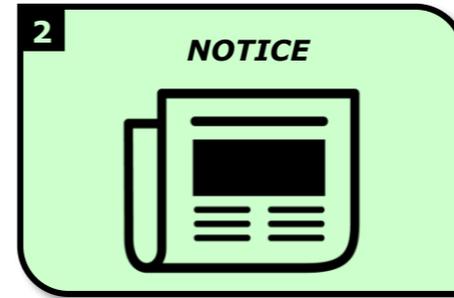
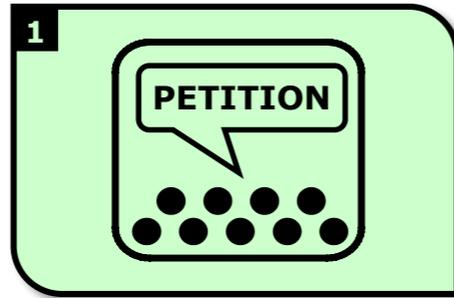


Provo River Division Status

- *Lehi (Jan. 2019)*
- *AF South (June 2019)*
- *Provo City South (July 2019)*
- *Provo City North (August 2019)*
- *Provo Canyon (September 2019)*
- *Midway (October 2019)*
- *Daniels Creek (November 2019)*
- *Lake Creek (December 2019)*
- *Jordanelle (January 2020)*
- *Francis-Woodland (February 2020)*
- *Upper Provo River (March 2020)*



The Adjudication Process



Current Issues – Claim Filing

Types of Right included in a Proposed Determination:

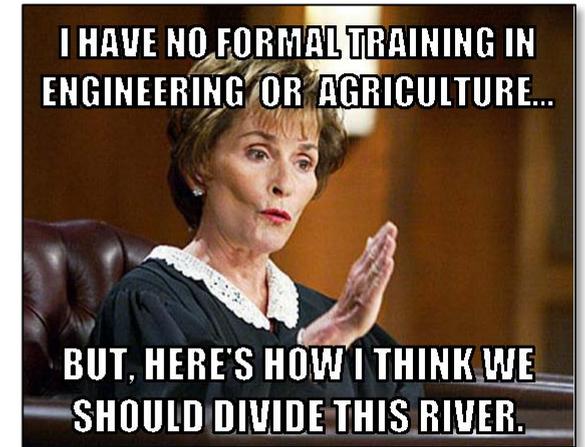
- Perfected Rights (e.g., Certificated rights, No Proof Required (NPRs), Decreed rights)
- Pre-statutory Claims (e.g., Diligence Claims, Underground Water Claims, Pending Adjudication Claims)
- Federal Reserved Claims
- Adverse Use Claims
- Elections (i.e., unperfected applications with a signed election form)
- Lapsed Small Domestics (HB 355)
- Included but not adjudicated: Perfected Share Statements, Approved Exchange Applications

Water Rights with PODs in multiple subdivisions:

- If a water right has already been included in a previous proposed determination, the State Engineer will honor the previous (i.e., initial) evaluation of the right and include the right in subsequent publications.
- The State Engineer may make corrections to rights where obvious inaccuracies, errors, or omissions exist.

Filing Water User's Claims:

- Once a water user's claim is filed on a water right, it is protected from being placed on the List of Unclaimed Rights in subsequent subdivisions.
- Claimants may petition the Court to file amended claims.
- Extension requests filed with the State Engineer under 73-4-10(2) are associated with the respective claimant (per subdivision) NOT with a specific water right number.



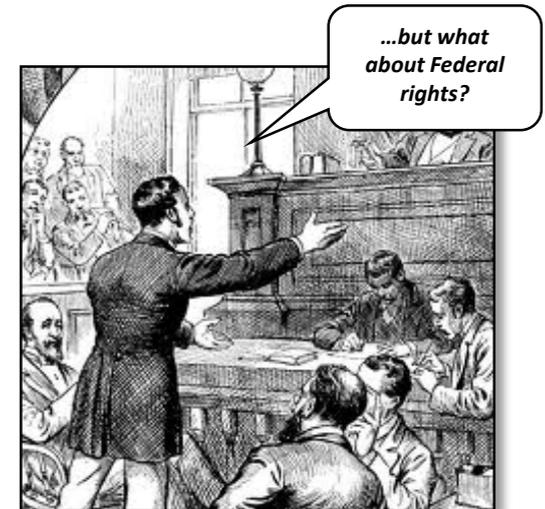
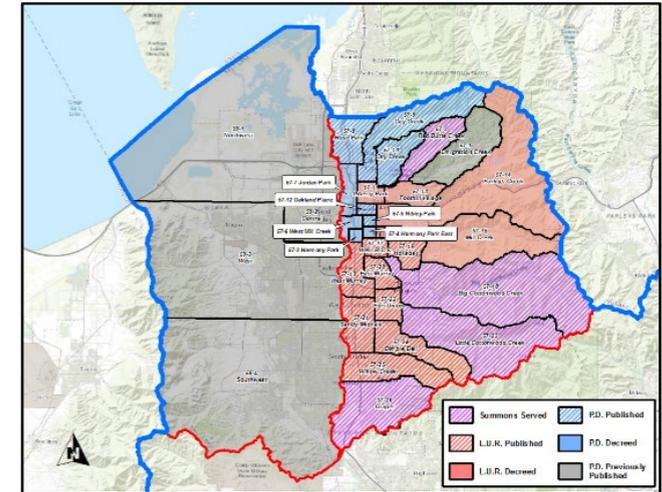
Current Issues - Addenda

Issuing Addenda to Proposed Determinations:

- Utah Code 73-4-11(4) authorizes the State Engineer to file addenda with the court. The State Engineer has been doing this for years, but can now do it legally (huzzah!).
- The preamble must explain the purpose for the addendum.
- Service of the addendum is limited to owners of record of perfected rights within the respective area, division, or subdivision.
- Following service of the addendum, the State Engineer holds a public meeting.

Potential Reasons for Issuing an Addendum:

- To address unresolved issues prior to the issuance of an interlocutory decree on a subdivision such as those ordered by the Court as a result of objection proceedings.
- To propose global modifications that affect multiple water rights in a division or subdivision (e.g., duty value, conveyance losses, etc.).
- To evaluate Pending Adjudication Claims, Diligence Claims, and Underground Water Claims (including any segregated children) not previously included in the proposed determination.
- To evaluate Federal Reserved water rights claims not previously included in the proposed determination.
- To evaluate Federally owned perfected rights not previously included in the proposed determination due to lack of federal joinder at the time of publication.
- To address Water User's Claims filed in lieu of proof (i.e., "elections") consistent with Utah Code 73-3-16(7) that were not included in the proposed determination.
- Water rights that were "perfected" at the time of the publication of the proposed determination but for some reason missed; and
- Any water right ordered to be included by the Court.



Current Issues – Irrigation Companies

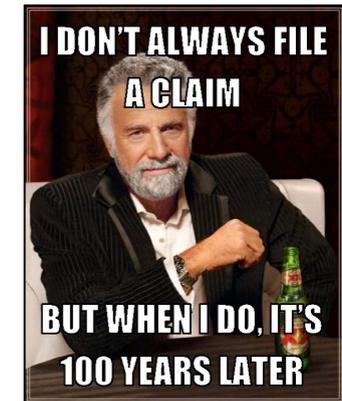
- **Decree Awards (Covered in more detail by Sarah)**

- Contemporary claimants may need to demonstrate chain of title for older decree awards.
- Utah Code 73-4-12 requires the State Engineer to assign priority dates for all water rights.
- The State Engineer attempts to ensure that prior decrees are incorporated into the framework of the respective proposed determination to the extent possible or reasonable.



- **Pending Adjudication Claims & Pre-statutory Use**

- WUCs asserting pre-statutory use will need to include information and evidence supporting the assertion.
- Pre-statutory claims may be barred by prior decrees.



- **Evaluating Irrigation Companies**

- Irrigation shares often supplement other privately owned water rights. Sole supplies must be evaluated by the State Engineer among the two competing interests.
- The mapping of irrigation is a “snap shot in time” to identify the extent of beneficial use (i.e., total amount of irrigation).
- The speed and accuracy of mapping of irrigation is GREATLY enhanced by the active & willing participation of the respective irrigation company!
- Shareholders who hold more shares than the footprint of their irrigated acreage may contribute to partial forfeiture of an irrigation company’s rights. Companies may allocate the loss to the respective shareholder (Utah Code 73-1-4.5).
- Irrigation shares owned by public water suppliers **may** be protected from forfeiture.



Current Issues – Public Water Suppliers

Public Water Suppliers:

Who qualifies as a Public Water Supplier (PWS) under *Utah Code 73-1-4(1)(b)*?

- Supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and is a
- Public entity, community water system (contingent on the number of connections/year-round residents), or a water users association that sponsors a US Bureau of Reclamation project.

Is a public entity that supplies irrigation water for their own use considered a PWS since municipal water rights can be used for irrigation?

No. Entities that only provide water to serve their own uses are not 'supplying water to the public' and therefore are not considered a PWS. Also, an irrigation right is limited to a specific type of use that does not include the other defining uses for a PWS (i.e., municipal, domestic, or industrial). Consequently, even if the public entity was supplying irrigation water to the public (i.e., not solely for its own uses), it would still fail to satisfy the defining types of water associated with a PWS.

Does an entity that once could be considered a PWS retain its status if it no longer meets the definition in the present day (e.g., a public entity that no longer provides municipal, domestic, or industrial water)?

Once the entity fails to meet the requirements within the statutory definition of a PWS, it loses its status as a PWS and the attendant protection against forfeiture (prospectively).

Does the period of nonuse of a water right that occurred while under ownership of a PWS remain excused even after the right is conveyed to a non-PWS?

The period of nonuse that occurred while under the ownership of a PWS retains its protection against forfeiture (and the presumption of quantity impairment) even after being conveyed to a non-PWS. However, any prospective period of nonuse once conveyed to a non-PWS is not excused.

