West Big Cottonwood Creek Subdivision

Area 57, Book 17

Proposed Determination

Public Meeting

February 21st, 2018

Utah Division of Water Rights

Blake W. Bingham, P.E.

Assistant State Engineer - Adjudication

www.waterrights.utah.gov

Agenda

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

For online viewers, questions can be emailed to:

waterrights_adjudication@utah.gov

What is a Water Right?

A ***water right*** is a right to divert (remove from its natural source) and beneficially use water. The defining elements of a typical water right will include:

- A defined ***nature 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 beneficial use***

A water right MAY be evidenced by…

- Wells located on your property
- Irrigation ditches or head-gates located on your property

A water right is NOT…

- A share in an irrigation company
- A connection to a public water supplier (e.g., water that is provided by a municipality)

UTAH DNR WATER RIGHTS

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.

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Historical Context - Territorial Era

<u>1852</u>: 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.

<u>1877</u>: 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 the respective ***state or territory*** with regard to how water was appropriated.

<u>1880</u>: Due to ***failure to enforce*** the 1852 act, the legislature passed an act that replaced the County Court's authority with ***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).

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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 Enginee***r 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.

Willard Young
State Engineer

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.

1935: The legislature required all ***groundwater*** to be appropriated through the State Engineer's office similar to surface water.

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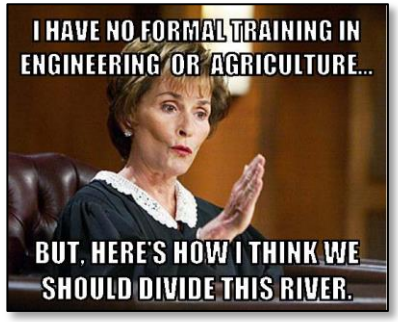
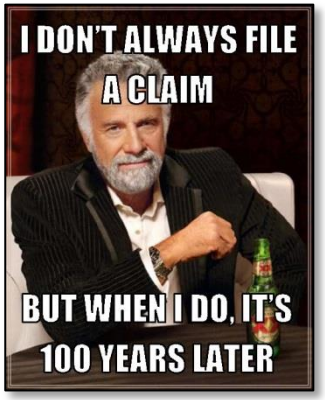
The Historical Case for Adjudication

- 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.

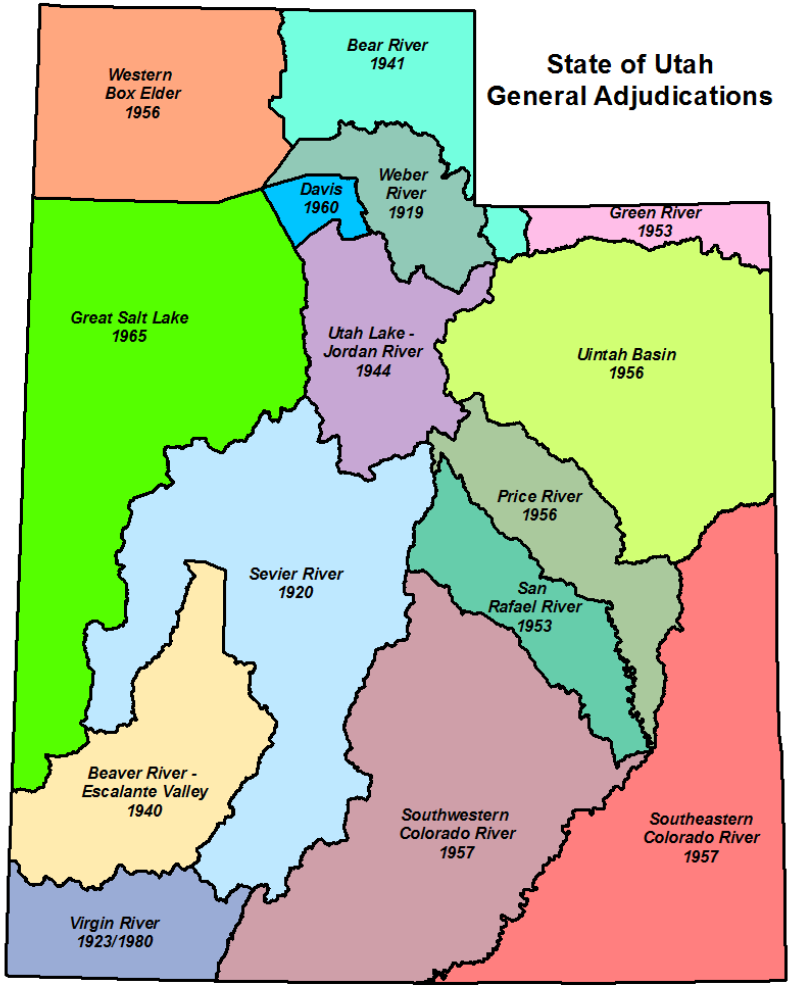
- In his biennial report for 1901-02, the State Engineer made the following observation:

  *"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. Doremus, Utah State Engineer

UTAH DNR WATER RIGHTS

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.

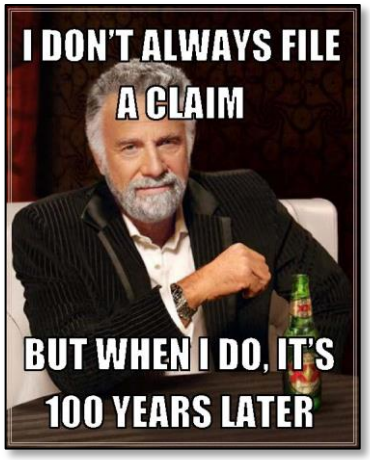
UTAH DNR WATER RIGHTS

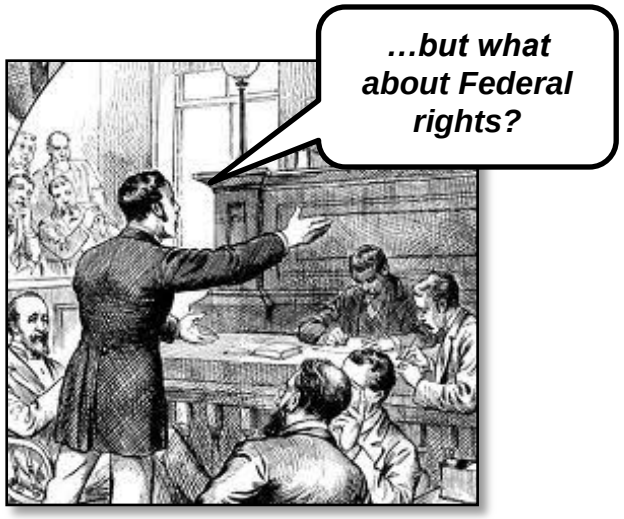
Why Do We Conduct General Adjudications?

1. Bring all claims on to the permanent record:

   - <u>Pre-Statutory Claims</u>
     - *Diligence Claims (1903)*
     - *Underground Water Claims (1935)*

   - <u>Federal Reserve Rights</u>
     - *Winter's Doctrine (1908)*
     - *McCarran Amendment (1952)*





2. To prevent a "multiplicity of suits" and bring clarity to the water rights picture.

3. Remove/reduce rights which have been wholly or partially abandoned or forfeited through non-use.

4. To obtain final comprehensive decrees on all water rights within the respective drainage.

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The Adjudication Process

1 PETITION

2 NOTICE

3 SUMMONS

4 PUBLIC MEETING

5 NOTICE TO FILE CLAIMS WITHIN 90 DAYS

6 LIST OF UNCLAIMED RIGHTS

UNCLAIMED RIGHTS

7 90 DAYS TO FILE OBJECTION

90

8 PUBLIC MEETING

9 OBJECTION RESOLUTION & DECREE

10 CLAIM INVESTIGATION

W.U.C.

11 PROPOSED DETERMINATION

W.U.C.

P.D.

12 90 DAYS TO FILE OBJECTION

90

13 PUBLIC MEETING

14 FINAL SUMMONS

15 OBJECTION RESOLUTION & DECREE

Filing your Water User's Claim

Notice to Submit Claims

1

Published
in a local
newspaper

Mailed
to water right
owners and
property owners

Water User's Claim Forms

2

BLANK
W.U.C.

Property Owners
A blank water
user's claim will
be mailed to
property owners

Water Right Owners
A pre-filled water
user's claim
mailed to water
right owners

W.U.C.

Filing Your Water User's Claim

3

W.U.C.

90

District Court
or
State Engineer

Claimants will have ***90 days*** to complete/review and file their water user's claims with the ***District Court*** or ***State Engineer***. Claimants can request one ***30-day extension*** from the State Engineer prior to the conclusion of the 90-day period.

Field Investigation and Mapping

4

W.U.C.

Water user's claims that are filed are ***investigated*** and ***mapped*** by the State Engineer. This investigation forms the basis of the State Engineer's recommendation to the District Court.

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List of Unclaimed Rights

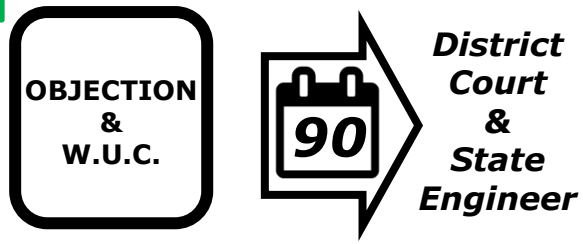
List of Unclaimed Rights (L.U.R.)

5

Water rights of record for which ***no claim was filed*** within the 90-day period will be included in the ***List of Unclaimed Rights***. A ***public meeting*** is held once the List of Unclaimed Rights is published / filed with the court.

Objections to the L.U.R.

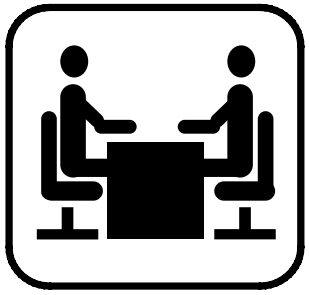
6



Claimants will have 90 days to file an ***objection*** to the List of Unclaimed Rights with the District Court. They must also file ***a water user's claim*** with the court and the State Engineer.

Objection Resolution (as needed)

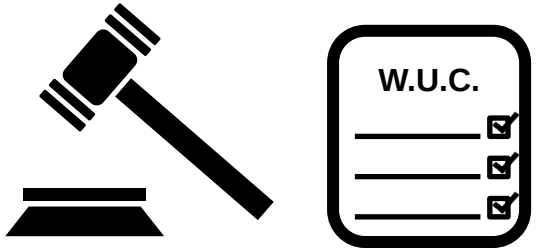
7



The State Engineer may choose to ***litigate***, file a ***concurring motion,*** or ***remain silent***. If the court allows the claim, the State Engineer will evaluate the claim in the Proposed Determination.

Judicial Decree

8



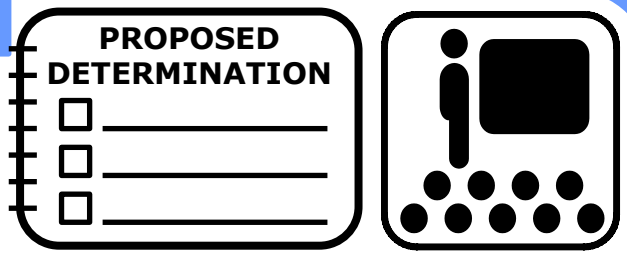
Once objections (if any) are resolved, the court renders a judgment that the ***rights on the L.U.R. are abandoned*** with the exception of those allowed as a result of a successful objection. It may also ***prohibit future diligence claims*** from being filed.

UTAH DNR WATER RIGHTS

Proposed Determination

Proposed Determination (P.D.)

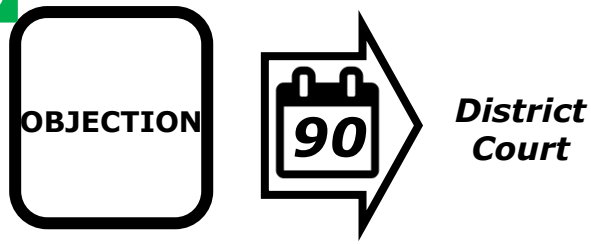
9



Water user's claims that are filed are ***investigated*** and ***mapped*** by the State Engineer and included in the Proposed Determination. A ***public meeting*** is held once the Proposed Determination is published / filed with the court.

Objections to the P.D.

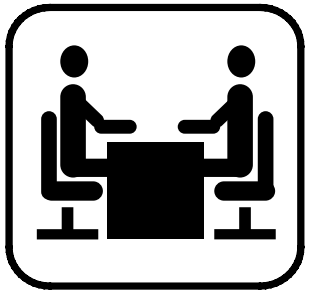
10



Claimants will have 90 days to file an ***objection*** to the Proposed Determination with the District Court.

Objection Resolution (as needed)

11



The State Engineer may choose to ***litigate*** against any objections, ***negotiate*** a settlement, or ***seek a voluntary withdrawal***.

Judicial Decree

12

Once objections (if any) are resolved, the court renders a judgment ***confirming*** the Proposed Determination or ***modifying*** it based on any objections filed.

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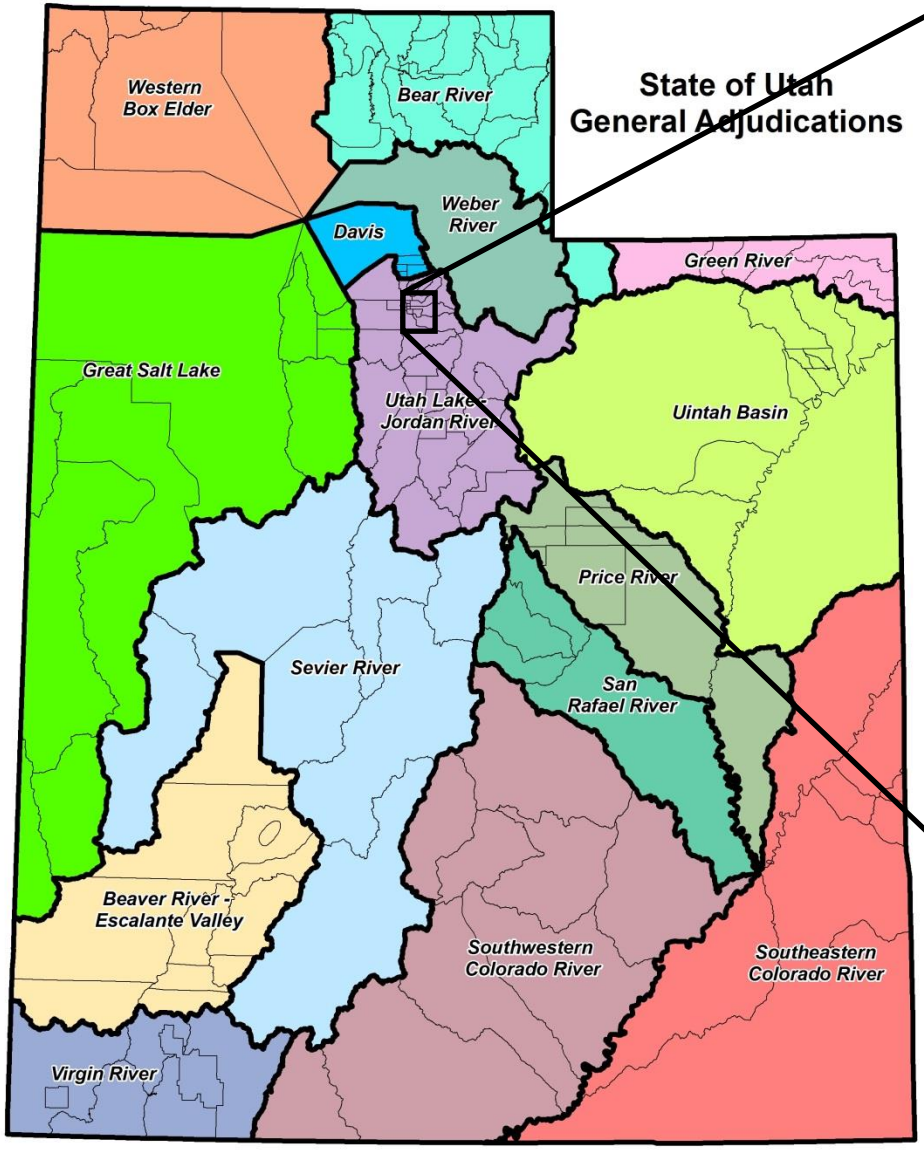
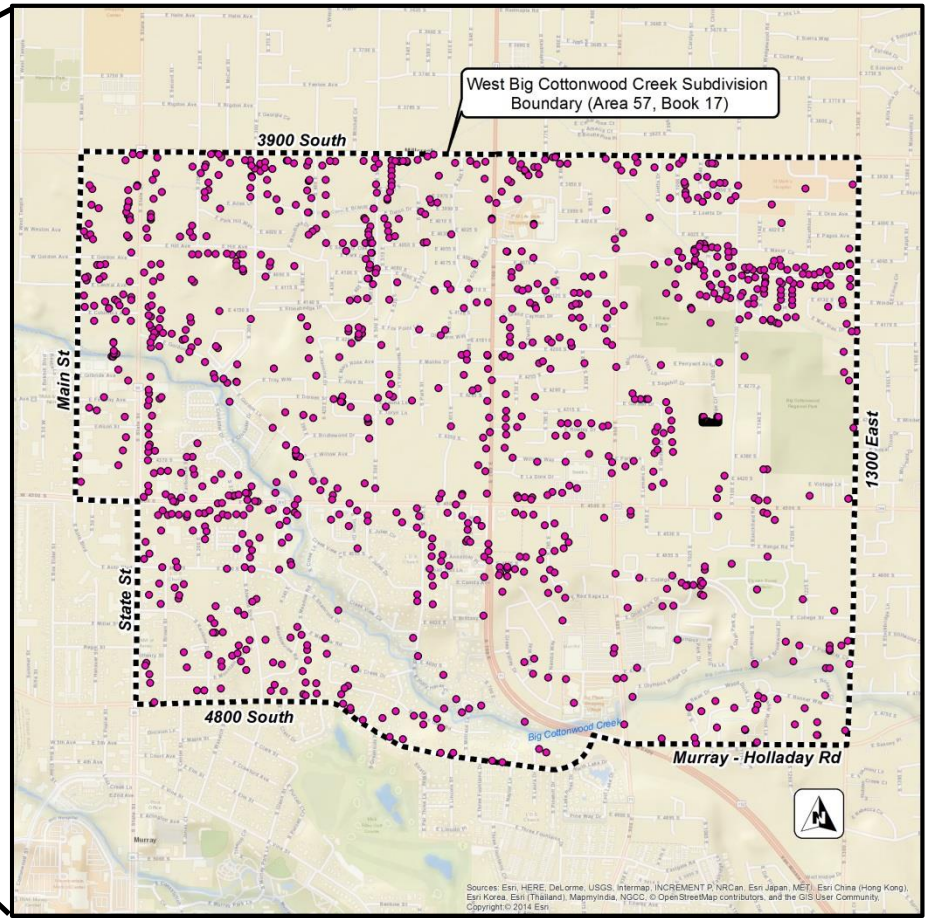
Holladay Subdivision
Proposed Determination Boundary





Statistics

- *Total Number of Water Rights on record: 982*
- *Most rights of record are underground wells*
- *Number of people/entities notified: 6,160*

UTAH DNR WATER RIGHTS

Issues and Anticipated Timeline

Issues:

- Out-of-date title to water rights on State Engineer records
- Location of "No Proof Required" (NPR) water rights

Anticipated Timeline:

March 2018:

- Notice to file claims to water right owners of record and property owners.
- 90-day claim-filing period begins.

June 2018:

- 90-day claim-filing period ends.
- State Engineer investigates filed water user's claims.

August 2018:

- State Engineer publishes the List of Unclaimed Rights.
- State Engineer holds a public meeting.
- 90-day objection period begins.

November 2018:

- 90-day objection period for List of Unclaimed Rights ends.

February 2020:

- State Engineer publishes the Proposed Determination.
- State Engineer holds a public meeting.
- 90-day objection period begins.

May 2020:

- 90-day objection period for Proposed Determination ends.

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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 as long as they file their water user's claim within the prescribed time frame.

- 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.

UTAH DNR WATER RIGHTS

Who can I contact to discuss the Adjudication Process?

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