



# Utah's Perspective on Forfeiture and Abandonments

*Association of Western State Engineers*

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**Utah Division of Water Rights**

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# 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

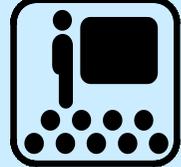
Claimants have 90 days following notice of the completion of the hydrographic survey in which to file a Water User's Claim with the District Court or State Engineer. (UCA 73-4-3)

**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)

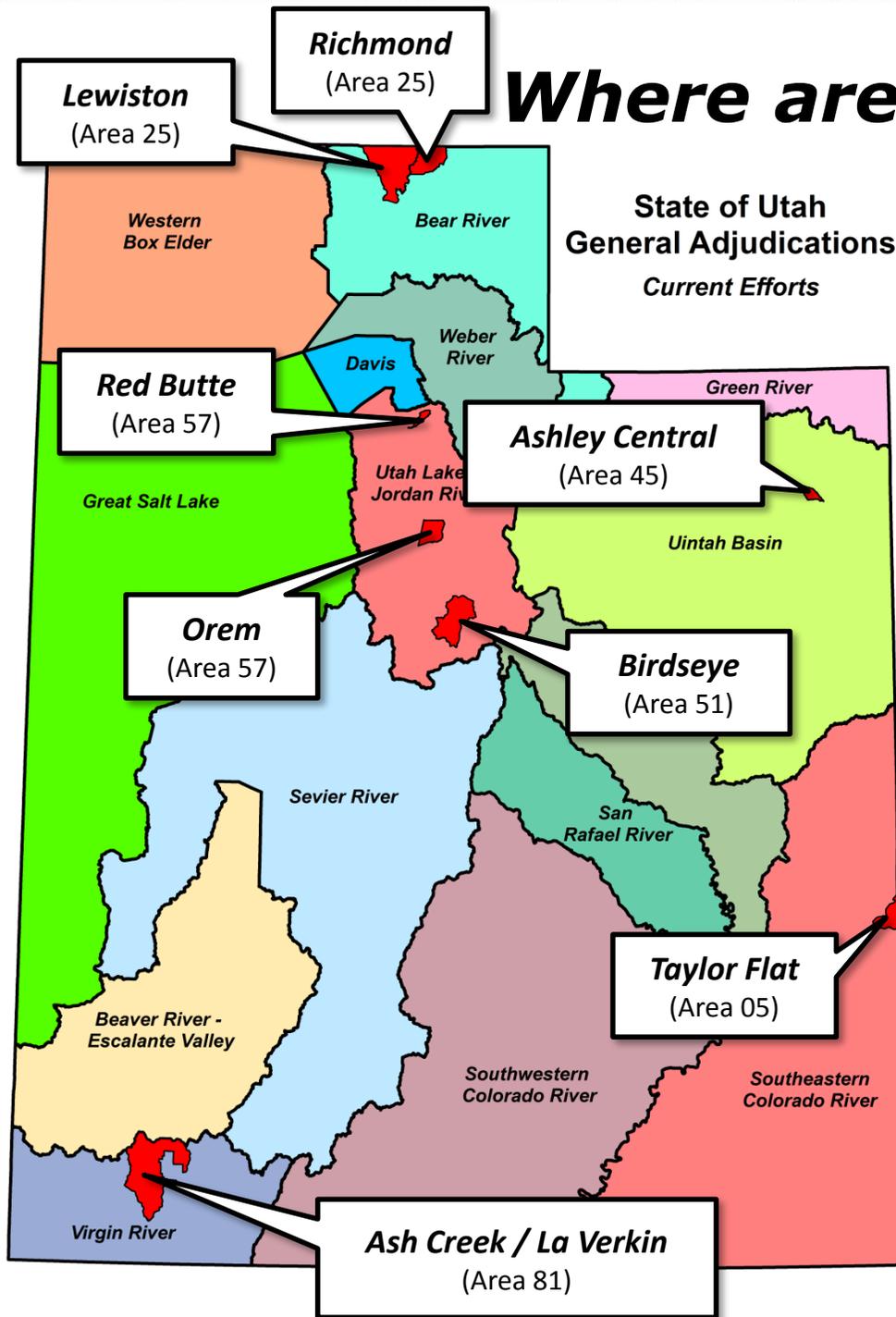
**12** DECREE



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

# Where are we today?

## State of Utah General Adjudications Current Efforts



- **State-wide Program** focusing on Adjudication
- Consists of **11 staff members**
  - Program Manager
  - Adjudication Engineer
  - 3 Attorneys
  - 2 Adjudication Team Leaders
  - 4 Adjudication Technicians (3 interns)
- **Regional Offices** support Adjudication efforts as available.
- Continually working with the **Attorney General's office** to resolve objections to previous Proposed Determinations in order to obtain interlocutory decrees. There are **over 400 un-resolved objections** on record.

# *Summary of Utah Law*

**Abandonment (common law):** Requires the water user to demonstrate intent and some sort of act of relinquishment. No requisite time period. (Uncommon)

**Forfeiture (statutory):** 7-year period of consecutive non-use or failure to file a claim during a general adjudication. Can be unintentional but must be a result of a judicial action.

## **Exceptions:**

1. If the period of non-use occurred more than 22 years prior to judicial action (i.e., 15 years after 7-year period).
2. Water users can file non-use applications
3. Forfeiture does not apply in the following circumstances:
  - a. Use of water according to a lease.
  - b. Land under a state agreement or federal conservation following program.
  - c. When water is unavailable due to the water right's priority date.
  - d. Storage water right that is stored for present or future use or limited by safety, regulatory, or engineering restraint that cannot be reasonably corrected.
  - e. Water rights where substantially all of the water has been used.
  - f. Water rights held by public water suppliers for the reasonable future use.
  - g. A supplemental water right during a period of time when another right can satisfy beneficial use.
  - h. Water rights subject to an approved change application.



# ***Utah's Forfeiture Challenges***

- Dormant water rights that are suddenly resurrected impose severe disruption to junior appropriators who have relied upon the availability of the water over a long period of time.
- In 2011 the Utah Supreme Court prohibited the State Engineer from looking at non-use (i.e., un-adjudicated forfeiture) when considering change applications.
- After several earlier attempts, the Utah Legislature revised the statute to allow the State Engineer to address "Quantity Impairment" when considering change applications.
- Utah's general adjudication process is inadequate to address forfeiture on a state-wide, timely, and on-going basis.



# ***Abandonment/Forfeiture Discussion***

- To what extent is forfeiture an issue among other western states?
- How vigorously (if at all) do states pursue water right forfeiture suits or actions?
- What approaches have been successful or unsuccessful in addressing forfeiture?
  - Pro-active vs. Reactive
  - Comprehensive vs. Individual
  - Administrative vs. Judicial
  - Ongoing vs. Intermittent

