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Water Rights General Adjudications: What's Going on and Where Are We Now?

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The quality of Utah's future is closely linked to our ability to understand and manage our water resources. As one of the driest states in the nation, water is vital to the economic growth, quality of life, and environmental stewardship of Utah. The Utah Supreme Court has held that "a drop of water is a drop of gold." *Carbon Canal Co. v. Sanpete Water Users Ass'n*, 425 P.2d 405, 407 (Utah 1967). Consequently, knowing where we get our water, how much water is available, and how we put it to use is critical information for state water management and growth. The Water Rights General Adjudication (General Adjudication) process is intended to provide a framework for evaluating and decreeing water rights so that the public has a contemporary record of valid water rights.

Local practitioners across the state should be paying attention as General Adjudication activity has increased significantly in the last several years. Your clients' valuable interests may be affected. This article is intended to provide a basic overview of the importance of water rights and the basics of the General Adjudication process, provide a status update on the Utah Lake Jordan River General Adjudication (ULJR), and identify key upcoming events practitioners should be watching for.

Key Water Law Concepts & General Adjudication Basics

Water in Utah is the property of the public. Water rights authorize and define how private individuals are to put the public's water to beneficial use. Water rights are in the nature of real property rights but differ in some material respects. For example, unlike traditional real property rights, water rights are usufructory, meaning your "right" is the right to use the public's water subject to

specific restrictions set by the state. At the core of this principle is that one must "use" a water right for it to remain valid or you risk "losing it" through judicial forfeiture. Similarly, water moves in a hydrologically connected system where changes in one part of the system can drastically affect use elsewhere. To ensure order in the face of dynamic conditions, water rights are hyper-defined. A water right clearly identifies what kind of use water can be applied to, the volume of water needed to fulfill that use, the water source, the specific point-of-diversion, season-of-use, and place-of-use. Water right holders can only use their water right in conformance with these limitations. Official water rights are typically evidenced by common-law pre-statutory "diligence claims" based on actual use of water prior to 1903 (1936 for groundwater), a Certificate of Beneficial Use demonstrating the holder completed that statutory Application to Appropriate process, or a court decree. Due to their usufructory nature, individual water rights are subject to constant change. For example, over time water rights can be lost to forfeiture or used in a manner different than authorized. This change makes it difficult for individuals to assess the validity and scope of a particular water right and for the state to know the aggregate status of water rights in a watershed.

To create stability, inventory the state's water rights, and resolve disputes, the Utah Legislature created a special statutory civil action process called a "water rights general adjudication." Utah Code Title 73 Chapter 4. General Adjudications are large-scale quiet title suits initiated in a local district court, and they rely on the professional services of the Utah State Engineer, the state regulatory body over water rights. General Adjudications serve multiple functions but, at

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base, are intended to solicit and compile existing claims to water, review those claims against the state engineer's records, make a contemporary recommendation to the court on how water rights should be defined, and settle the adjudication with a binding court decree defining all water rights in the area. To do this, Utah is divided into thirteen active river basin-wide General Adjudications, and numerous divisions and subdivisions dividing the state into individual watersheds. Because a watershed has no particular regard for political boundaries, a General Adjudication can span multiple counties or judicial districts. Each subdivision is given a name and numerical indicator; for example, City Creek (57-09) or Dry Creek (57-10) are subdivisions of the ULJR. Subdivisions are also commonly referred to as "books."

General Adjudications in Utah operate using a discrete series of statutorily defined steps starting with a petition in the local district court and ending with final decree. It is essential that those with a valid claim to water follow the proper procedure to retain their water rights. Failure to do so may result in the water rights being decreed abandoned, reduced, or defined in a manner differently than the water user understands. This may result in your client losing a valuable property right.

The primary steps practitioners should know about, or may receive questions about, are: (1) the summons gives notice to all water users in a subdivision to join the local General Adjudication; this may be done by letter or general publication; (2) the notice to file claim, which alerts your clients they have ninety days to file a water user's claim or forever be barred from asserting the water right; (3) the list of unclaimed rights, which should be checked to ensure a water right to which your client has a valid claim and does not inadvertently go unclaimed and therefore decreed abandoned; (4) the issuance of the proposed determination which is prepared by the state engineer and filed with the court recommending how all water rights in a subdivision be decreed – practitioners should review the proposed determination to ensure their clients' water rights are accurately depicted and not impaired by other rights in the area; and (5) the ninety-day objection period beginning the day the proposed determination is issued and providing the only opportunity to file a formal disagreement with the court over the state engineer's recommendations.

For more information on the ULJR and governing documents, please visit the Utah State Court's General Adjudication website or the state engineer's General Adjudication website.

Where Are We Today & What Should I Be Looking For?

While there are multiple active general adjudications across the state, the ULJR General Adjudication is the most dynamic. The ULJR spans all of Salt Lake County, areas adjacent to Utah Lake in Utah

County and Juab County, and major sub-drainages extending east into the Heber Valley in Wasatch County, and south into Spanish Fork Canyon and Nephi area. The ULJR was commenced in 1944 as *Salt Lake City Municipal Corp. v. Tamar Anderson*, and is the oldest pending court case in the Third District Court. Until several years ago, the ULJR was primarily stalled with more than 180 unresolved objection proceedings, a few interlocutory decrees finalizing the adjudication for specific subdivisions, and little activity in initiating new adjudication subdivisions. Underscoring its importance, several years ago the legislature allocated almost \$1.9 million dollars to speed the pace of the ULJR and passed several new bills intended to streamline the General Adjudication process. The ULJR is presided over by Judge Laura Scott who has appointed a special master to assist in facilitating components of the complex proceeding.

The result of these recent efforts has been an explosion of activity and several years of tremendous progress.

ULJR Historic Objection Resolution

In general, all but a few of the historic pending objections have been resolved allowing the court to move forward with decreeing and finalizing subdivisions commenced decades ago. Most of these objections were filed in the late 1970s and early 1980s in the Spanish Fork Subdivision of ULJR. To orderly resolve these objections, the special master adopted a number of standing orders establishing a process for identifying objectors and successors, allowing objectors to assert their interest in pursuing the objection, notifying affected parties, and moving forward with litigation. Resolving these objections has settled long-standing controversies and allowed water users in the area to move forward with certainty in their

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affairs. The special master's standing orders not only give experienced practitioners much needed guidance to navigate this complex adjudication process but also assist pro se parties in understanding the process and protecting their water rights.

Salt Lake County East Division

Since 2013, the state engineer has initiated twenty-six new subdivisions along the Salt Lake County East Division, most of which were initiated in the last three years. These subdivisions cover all of the Salt Lake Valley east of the Jordan River and require a review of thousands of water rights. Being "the place" where settlement of Utah first began, the Salt County East Division includes some of the oldest water rights in the state. The history and origin of these water rights are documented in numerous historic decrees allocating the water of the Wasatch Canyons between early users and historic irrigation companies. Many of these original decreed water rights are still active today and make up a substantial portion of the municipal water supply of the central Wasatch Front. The court has issued interlocutory decrees finalizing the adjudication for seven of the twenty-six east division subdivisions, four books are in the objection resolution stage where a proposed determination has been issued and the parties are resolving pending objections (this could take two to three years), and for the remaining fifteen books, the time to file a water user claim has ended and the parties are waiting for the Sstate engineer to issue proposed determinations.

Primarily to account for the complexity of the fourteen Wasatch Canyons books and underlying historic decree rights, in 2018 Judge Scott issued an amended claims order allowing the parties, under certain circumstances, to submit amended water user's claims and postponed the publishing of all fourteen proposed determinations until after January 31, 2020. This is a key moment in the ULJR as these proposed determinations will cover arguably some of the most complex and contentious water rights in the state. Moreover, it is quite possible the state engineer will issue numerous proposed determinations within short order of another, making it imperative water users follow the proceedings very closely.

Provo River Division

The state engineer is also initiating new subdivisions in the Provo River Division of the ULJR in Utah County. The eleven new subdivision areas generally cover the northeastern corner of Utah County down to Provo and the Heber Valley and reach into the Upper Provo River far into the High Uinta Mountains. The state engineer has been commencing a new book on the Provo River Division every six to eight weeks. Once a subdivision book is commenced, local water users must pay particular attention so as not to miss the notice to file claims filing, which triggers the ninety-day period to file a water user claim. The state engineer has already collected

water user's claims and issued a list of unclaimed rights in the Lehi (55-4) subdivision. Notice to file claims have been issued in the American Fork South (55-5), Provo City South (55-6), and Provo City North (55-7) subdivisions. Water user's claims for these books will be due throughout late fall and early winter of 2019; check each subdivision area for specific dates. If water users do not timely file a water user claim asserting their water right, they will be forever barred from asserting that right again. Based on recent state engineer statements, the state engineer intends to next move to commencing adjudication subdivisions in Provo River Canyon and then leading into the Heber Valley throughout the winter of 2019–2020. Adjudication efforts for the Upper Provo River will begin in the spring of 2020.

Other Areas of the State

In addition to the ULJR, there are other General Adjudication efforts across the state practitioners should be aware of. For example, the state engineer recently resumed activity in the Ash Creek Subdivision of the Virgin River Adjudication (83-1). Additionally, the state engineer has filed a pending motion appointing the same special master overseeing the ULJR for the Virgin River General Adjudication. If appointed, the processes for objection resolution adopted in the ULJR will most likely be adopted in some form for the Virgin River General Adjudication. Practitioners in the southwestern corner of the state should be watching for activities aimed at solving pending historic objections, compiling and issuing proposed determinations based on previously filed water user's claims, and new summons and notice to file claims initiating new adjudication subdivisions.

In the Moab area, two forthcoming proposed determinations will soon be issued for the Moab North (05-2) and Moab South (05-5) adjudication subdivisions. Water users should be watching for these proposed determinations to review whether the state engineer's recommendations are accurate and that your water right is not impaired. Moab South (05-5) is also expecting the list of unclaimed rights to be issued in early November 2019, with objections to the list of unclaimed rights due in early February 2020.

Conclusion

The General Adjudication process is extremely important for both water users and the state at large. Knowing the extent and form of water rights not only helps create order and certainty for individuals, but allows the state to move forward with long-range planning. While the General Adjudication process is particularly relevant for those owning water rights, the General Adjudication also presents an opportunity for citizens of the state to pause and contemplate the importance and role of water in maintaining a "life elevated." Keep your eyes peeled, and good luck!