

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the General
Determination of All the Rights to the Use
of Water, Both Surface and Underground,
Within the Drainage Area of the Utah
Lake and Jordan River in Utah, Salt Lake,
Davis, Summit, Wasatch, Sanpete and
Juab Counties in Utah

General Case File

**SPECIAL MASTER’S FIRST
AMENDED AND RESTATED
STANDING ORDER NO. 2**
(ON MANAGEMENT OF OBJECTIONS
TO LISTS OF UNCLAIMED RIGHTS OF
RECORD BEFORE THE SPECIAL
MASTER)

Civil No. 360057298

(Judge Laura S. Scott)

Rick L. Knuth, Special Master

The Special Master, acting *sua sponte*, issued Standing Order No. 2 (On Management of Objections to Lists of Unclaimed Rights of Record Before the Special Master) on May 3, 2017, which the instant order (this “Order”) amends and restates:

A. General Provisions and Scope of Order

1. For purposes of this Order, an “Objection” means an objection to a “List of Unclaimed Rights of Record” filed by the State Engineer pursuant to Utah Code *Ann.* § 73-4-9.5. The provisions of this Order shall apply only to Objections as so defined.

2. A List of Unclaimed Rights of Record (“LUR”) within the meaning of Utah Code *Ann.* § 73-4-9.5 is a tabulation of water rights of which the State Engineer has a

record, but for which no water user claim/statement of claim has been filed. Accordingly, an LUR does not, by definition, include a water right not of record with the Division of Water Rights. Therefore, parties who have failed to file timely non-record claims should not file an objection to the LUR if they desire the State Engineer to evaluate their claims. Rather, they should file a motion pursuant to Utah Code *Ann.* § 73-4-10, requesting the District Court enter an order retroactively extending the time to file a water user's claim/statement of claim, within the meaning of Utah Code *Ann.* § 73-4-1, *et seq.*

3. The Court's review of an objection to the List of Unclaimed Rights is limited to determining whether a claimant's failure to file a timely statement of claim is excused by circumstances beyond the claimant's control, mistake, or other reason justifying relief. *See Utah Code Ann.* § 73-4-9.5(3).

4. The provisions of this Order have no application to objections to any State Engineer's Proposed Determination, within the meaning of Utah Code *Ann.* Sections 73-4-11 and 73-4-9.5.

B. Litigating the Objection—the Objection to the LUR and the State Engineer's Answer

5. Under Utah Code *Ann.* § 73-4-9.5(2), a claimant desiring to object to an LUR must file a written objection within ninety (90) days of service.

6. Each Objection to an LUR shall be filed with the Clerk of the Court in the particular subdivision sub-case that corresponds to the subdivision covered by the LUR.

7. The State Engineer shall file an answer to an Objection within twenty-eight (28) days of the date which is the later of (a) the date the objector files the Objection with the Clerk of the Court, (b) the date the objector files a water user's claim/statement of

claim with the Clerk of the Court, and (c) the date the objector files a water user's claim/statement of claim with the State Engineer.

C. Discovery—Scheduling Conferences and Discovery Standards

8. A scheduling conference may be requested by filing a motion for scheduling conference within fourteen (14) days of the date the State Engineer's answer to the Objection is filed.

9. The Tier 2 discovery standards and limits of Rule 26(c)(5), Utah Rules of Civil Procedure, will apply to each Objection, unless otherwise ordered. Pursuant to Rule 26(a)(3)(A)(iv), Utah Rules of Civil Procedure, parties to a general adjudication are not required to make initial disclosures.

D. Disposing of the Objection—Motions and Hearings before the Special Master

10. Motions may be filed pursuant to Rules 12 or 56 of the Utah Rules of Civil Procedure to dispose of the Objection. Such a motion may be filed at any time after the State Engineer has filed an answer to the Objection or the deadline to do so has passed.

11. Objections will be decided on the pleadings unless either the objector or the State Engineer requests a hearing on the movant's motion or reply memorandum or the non-movant's response to the motion. The request for hearing must be separately identified in the caption of the document.

12. Pursuant to the Court's Amended Order Appointing a Master and Order of Reference (Etc.), dated and entered September 12, 2017 ("Order of Reference"), after an Objection Proceeding is heard by the Special Master, the Special Master will submit to the Court a Report and Recommendation with the Special Master's decisions, findings, and

conclusions. Either the Objector or the State Engineer may file a written objection to the Special Master's Report and Recommendation within thirty (30) days of the filing of the Report and Recommendation.

13. Parties requesting a ruling from the Special Master shall not file a request for submission with the District Court; requests for ruling and/or orders in Rich Text format should be electronically filed only where an order is sought from the District Judge. Instead a request for decision from the Special Master shall be sent to the Special Master via email at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding (or Subdivision sub-case, depending on the scope of the issue to be decided). The party's request for decision shall state whether a hearing has been requested and the dates on which the following documents were filed:

- a. The motion;
- b. The memorandum opposing the motion, if any;
- c. The reply memorandum, if any; and
- d. The response to objections in the reply memorandum, if any.

14. In conjunction with a request for decision, parties may also submit a proposed order for the Special Master's signature, but only under the conditions provided in Rule 7(j)(6), U.R.Civ.Pro. Like a request for decision, proposed orders shall be presented to the Special Master by emailing a proposed order, in MS-Word format, to the Special Master at RLKNUTHPLLC@outlook.com, with a copy to other parties/counsel in the Objection Proceeding or Subdivision sub-case.

15. After a party has submitted a request for decision and/or a proposed order to the Special Master, that party shall file a “Notice of Submission of Request to Submit for Ruling from Special Master” (“Notice of Submission”), which shall be substantively similar to the form available on the Utah Courts website at: <https://www.utcourts.gov/waterrights/>. The party shall also certify that the Notice of Submission has been duly served on all parties/counsel whose names appear on the Service List for the Objection Proceeding or Subdivision sub-case.

E. Obtaining a Ruling—Decisions by the District Court

16. To aid in the uniformity of final orders on Objections, in instances where there has been no objection to a Report and Recommendation, the Special Master will submit a form of order or judgment to the District Judge. Parties may notify the Special Master by email when the time for objection to a Report and Recommendation has passed, and the Special Master will notify the District Judge that the matter is ready for a final ruling.

17. In instances where an objection to a Report and Recommendation has been asserted, or when a decision is sought regarding a matter outside the scope of the Special Master’s reference—*e.g.*, a request for an extension to file a statement of water user’s claim (*see* Order of Reference)—the party shall request a decision and/or submit a proposed order as prescribed by Rules 7(g) and (j), Utah Rules of Civil Procedure.

F. Filing Documents—Reciprocity and the Three-Number Set

18. Documents filed with the Clerk of the Court are deemed filed with the Special Master.

19. To facilitate browser-searching of the Court’s on-line docket, each pleading filed in connection with any Objection Proceeding subject to this Order shall include, in the title input into the Court’s Xchange or GreenFiling systems, an Objection Proceeding number consisting of a three-number set, the first number of which shall correspond to the two-digit number of the area of the subject subdivision, the second number being the number of the book of the subject subdivision, and the third number being the ordinal number assigned to the Objection in the State Engineer’s online listing of the objections for that Subdivision, under <https://www.waterrights.utah.gov/adjstatus/default.asp>. The three numbers in the three-number set shall be separated by hyphens—*viz.*, “XX-X-XX”—such that the Court’s on-line docket can be effectively searched for the three-number set employing search functions in commonly-used web browsers. The Objection Proceeding numbers will be assigned by order.

G. Appearing before the Special Master—Procedural Rules and Location of Hearings

20. Objection Proceedings before the Special Master will be conducted in conformity with the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

21. All hearings before the Special Master will be held at the Matheson Courthouse, 450 South State Street, Salt Lake City, Utah 84114-1860, unless otherwise ordered, and will in all instances be recorded.

22. Parties may request leave to appear telephonically at status conferences and scheduling conferences, and the Special Master shall freely grant leave for those proceedings. The Special Master may grant leave to appear telephonically at other hearings or proceedings as may be appropriate, in the judgment of the Special Master.

23. Any agency of the United States of America may appear telephonically in any Status Conference or Scheduling Conference, unless otherwise ordered. Counsel for the United States should email the District Judge's judicial assistant in advance of the hearing for a conference call-in number.

SO ORDERED this 10th day of May, 2018.

By: /s/ Rick L. Knuth
Rick L. Knuth
Special Master