

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 THIRD
AMENDED AND RESTATED
STANDING ORDER NO. 1**
(ON MANAGEMENT OF OBJECTIONS
FILED ON OR BEFORE JUNE 28, 2016)

Civil No. 360057298

Rick L. Knuth, Special Master

The Special Master, acting *sua sponte*, issued Standing Order No. 1 (On Management of Certain Objection Proceedings Before the Special Master) on August 9, 2016 (amended and restated on November 3, 2016 and on September 26, 2017), which the instant order amends and restates:

A. General Provisions and Scope of Order

1. This Third Amended and Restated Standing Order No. 1 (this “Order”) restates that certain Order Governing Filing of Documents, dated and entered on December 19, 1994, addressing the filing of documents in the general case file and requiring the designation of specific adjudicative subdivisions in pleadings filed with the Clerk.

2. For purposes of this Order, an “Objection Proceeding” shall include an objection to any State Engineer’s Proposed Determination, within the meaning of Utah Code *Ann.* Sections 73-4-11 and 73-4-9.5 (each, an “Objection”).

3. The provisions of this Order have no application to Objections to Lists of Unclaimed Rights, which are the subject of the Special Master’s Standing Order No. 2.

4. *The provisions of this Order apply only to Objections filed on or before June 28, 2016.*

B. Commencing the Objection Proceeding—the Order to Show Cause

5. For Objections subject to this Order, an Objection Proceeding shall be commenced by the Special Master’s issuance of a “Notice and Order to Show Cause,” either *sua sponte*, or upon motion of an interested party upon good cause shown, requiring any person who has filed an Objection to a Proposed Determination (each, an “Objector”) to appear and show cause why the Objection should not be dismissed.

6. A motion for the issuance of a Notice and Order to Show Cause shall include copies of all responsive pleadings directed to the Objection, along with a proposed service matrix, setting forth:

a. The name and current address (if available) of the original Objector who interposed the Objection;

b. The Statement of Claim/Water User’s Claim number to which the Objection relates;

c. A copy of the page(s) from the Proposed Determination containing the State Engineer’s recommendation respecting the subject Statement of Claim/Water User’s Claim;

d. The name and current address of any attorney who has appeared for any party respecting the Objection; and,

e. The name and address of the present record title owner(s) of the water right to which the Objection relates, as that information is currently reflected in the database of the Utah State Division of Water Rights.

7. The Notice and Order to Show Cause will be served by certified mail, return receipt requested, and will be accompanied by:

a. An explanatory cover letter from the Special Master;

b. A copy of the subject Objection and of all responsive pleadings directed to the Objection;

c. A copy of the page(s) from the Proposed Determination containing the State Engineer's recommendation respecting the subject Statement of Claim/Water User's Claim;

d. A form of Notice of Intent to Proceed with Objection Proceeding ("Notice of Intent to Proceed"), substantively identical to the form available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/>; and,

e. A copy of this Order.

C. Responding to the Order to Show Cause—the Notice of Intent

8. In order for an Objection Proceeding to proceed, an Objector must file a Notice of Intent to Proceed, indicating an intention to pursue the Objection.

9. An Objection will be subject to a report and recommendation by the Special Master to the District Judge that the subject Objection be dismissed, with prejudice, where: (1) the Objector fails to file with the Clerk within thirty-five (35) days

of the filing of the Notice and Order to Show Cause a completed form Notice of Intent to Proceed, indicating an intention to pursue the Objection; (2) the Objector returns the Notice of Intent to Proceed, at any time, indicating an intention not to pursue the Objection; or, (3) the Objector fails to file any response to the Notice and Order to Show Cause.

D. Responding to the Objection—the State Engineer’s Answer and Disclosure of Potentially Affected Parties

10. Whenever a Notice of Intent to Proceed has been timely filed with the Court indicating an intention to pursue the Objection, the State Engineer shall file an answer or other responsive pleading pursuant to Rule 12, Utah Rules of Civil Procedure (“U.R.Civ.Pro.”), within seventy (70) days of the filing of the Notice and Order to Show Cause, except where the State Engineer has already done so.

11. The State Engineer’s answer shall contain a Disclosure of Potentially Affected Parties, disclosing the name and address of any person known to the State Engineer “whose water rights would be affected or drawn into question”¹ by the resolution of the Objection or the outcome of the Objection Proceeding (each, a “Potentially Affected Party”), as well as the rationale and methodology the State Engineer used to ascertain the identity of such Potentially Affected Parties.

12. In instances where the State Engineer has already answered an Objection, the State Engineer shall file a Disclosure of Potentially Affected Parties, disclosing the information outlined *supra* ¶ 9, as a separate pleading, within seventy (70) days of the filing of the Notice and Order to Show Cause.

¹ *Plain City Irr. Co. v. Hooper Irr. Co.*, 51 P.2d 1069, 1071 (Utah 1935).

13. The Objector shall file a Disclosure of Potentially Affected Parties, disclosing the information outlined *supra* ¶ 9, within fourteen (14) days of the date of service of the State Engineer’s Disclosure of Potentially Affected Parties. Failure of an Objector to file a Disclosure of Potentially Affected Parties within the time prescribed will be considered a statement that the Objector has not identified any Potentially Affected Parties beyond those disclosed by the State Engineer.

14. All parties to an Objection Proceeding, including Potentially Affected Parties, have a continuing obligation to supplement their Disclosure of Potentially Affected Parties as they identify new potentially affected parties.

15. The Disclosure of Potentially Affected Parties by any party will be for notice and procedural purposes only, will be made without waiver of defenses, and the disclosure or non-disclosure of any party will not be admissible as evidence as to that party’s substantive rights.

E. Incorporating Potentially Affected Parties—Notice of Objection Proceeding, the Potentially Affected Party’s Notice of Participation and Answer, and Service Lists

16. After the time to file the Objector’s Disclosure of Potentially Affected Parties has elapsed, the Special Master will serve upon all identified Potentially Affected Parties a “Notice of Objection Proceeding and Opportunity to be Heard” (“Notice of Objection Proceeding”) by certified mail. The Notice of Objection Proceeding will include a form entitled: Notice of Affected Party Participation in Water Right Objection Proceeding (“Potentially Affected Party Notice”). The Potentially Affected Party Notice must be substantively similar to the form available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/>.

17. Potentially Affected Parties shall have forty-nine (49) days from the date of mailing of the Notice of Objection Proceeding to indicate that they wish to appear and participate in the Objection Proceeding by filing a Potentially Affected Party Notice with the Clerk of the Third District Court in the correct Subdivision sub-case as required by the Court's Order Assigning Subdivision Sub-Case Numbers for Objection Proceedings and Governing Filing of Documents in Subdivision Sub-Cases.

18. Within thirty-five (35) days of filing a Potentially Affected Party Notice, a Potentially Affected Party shall file a pleading that is responsive to the Objection, setting forth the party's claims and defenses.

19. Once the time has elapsed for Potentially Affected Parties to file their respective Potentially Affected Party Notices, the Special Master will post (and revise from time to time) official "Service Lists" of parties for each Objection Proceeding—*viz.*, the State Engineer, the Objector(s), and all Potentially Affected Parties who have timely filed a Potentially Affected Party Notice. The Service Lists will be available on the Utah Courts website, at: <https://www.utcourts.gov/waterrights/servicelists.html>. A Potentially Affected Party who fails to file a timely Potentially Affected Party Notice, or who otherwise fails to manifest a present intention to participate, will not be included in the Service List for the Objection Proceeding.

20. If a Potentially Affected Party fails to file a timely Potentially Affected Party Notice, or otherwise indicates that the Potentially Affected Party does not wish to participate, that Potentially Affected Party waives the right to participate in the Objection Proceeding before the Special Master; *however*, a Potentially Affected Party

who did not file a timely Potentially Affected Party Notice may seek leave from the Special Master to participate in the Objection proceeding by filing a motion to intervene, under Rule 24, U.R.Civ.Pro.

F. Setting the Schedule for the Objection Proceeding—Scheduling Conferences and Scheduling Orders

21. Following the filing of the Disclosures of Potentially Affected Parties, or the elapsing of the time permitted for the filing thereof, the Special Master will schedule and conduct a mandatory Scheduling Conference with the parties to the Objection Proceeding. The Scheduling Conference will be held no earlier than forty-nine (49) days after the Special Master serves Potentially Affected Parties with the Notice of Objection Proceeding. The Special Master will include notice of the Scheduling Conference with the Notice of Objection Proceeding.

22. Following the Scheduling Conference, the Special Master will issue a Scheduling Order containing deadlines for discovery, mediation and settlement negotiations, dispositive motions, and a final hearing date.

23. The Tier 2 discovery standards and limits of Rule 26(c)(5), U.R.Civ.Pro., will apply to each Objection Proceeding—with the following modifications:

- a. The Rule 26 discovery limits will be applied on a per-party basis instead of “per side”; and
- b. All parties represented by the same counsel will be treated as a single party.

24. Pursuant to Rule 26(c)(6), U.R.Civ.Pro, any party may move for extraordinary discovery.

G. Obtaining a Ruling—Decisions by the Special Master

25. When briefing on a motion to be considered by the Special Master is complete or the time for briefing has expired, either party may request a decision by the Special Master by notifying the Special Master that the matter is ripe for decision.

26. 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.

27. 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.

28. 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.

H. Responding to the Special Master’s Ruling—Objections to Reports and Recommendations

29. 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. Any party who has directly participated in the Objection Proceeding may file a written objection to the Special Master’s Report and Recommendation within 30 days of service of the Report and Recommendation.

30. A Potentially Affected Party who has failed to file a timely Potentially Affected Party Notice and who has not participated in the Objection Proceeding may file an objection (or respond to an objection) to a Report and Recommendation issued by the Special Master only if the party can demonstrate by clear and convincing evidence that (1) failure to participate was due to circumstances beyond the party’s control, or (2) the party could not have ascertained through the exercise of reasonable diligence that the outcome of the case would affect the party’s interests. *See Order of Reference.*

I. Obtaining a Ruling—Decisions by the District Court

31. 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.

32. 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), U.R.Civ.Pro.

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

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

34. 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 Proposed Determination Subdivision, the second number being the number of the book of the subject Proposed Determination, 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

<http://nrwt1.nr.state.ut.us/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.

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

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

36. 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.

37. 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.

38. 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 17th day of April, 2018.

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