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**FORMAL LEGAL OPINION**  
Attorney-Client Protected Document

2011-01

Issued January 18, 2011

Final Version

**Question:** Based upon your evaluation of the law and the official House Legislative District maps, is Craig Frank a representative from Utah House District 57?<sup>1</sup>

**Answer:** Craig Frank is not a representative from Utah House District 57. A review of the legal boundaries of House District 57 contained in the official maps enacted by the Legislature establishes that Craig Frank does not live within the boundaries of House District 57. Therefore, Article VI, Section 5 of Utah's Constitution prohibits his continued service in the office of representative because he has ceased to be a legal resident of House District 57 and is disqualified from service in the office as a matter of constitutional law.

**GENERAL FACTS**

Craig Frank was appointed to represent Utah House District 57 in 2003. He was elected to represent that district in 2004, and reelected in 2006, 2008, and 2010. At the time he was appointed to represent House District 57, and for the elections of 2004, 2006, and 2008, he was a resident of Pleasant Grove. On or about January 1, 2009, Representative Frank moved to the northern portion of the city of Cedar Hills. The question to be answered by this legal opinion is whether, after he moved in 2009, he was still a legal resident of House District 57 and, therefore, still eligible to hold office. Craig Frank does not dispute that he changed his legal residence in January, 2009. He has stated that his current legal residence is 10808 North La Costa, Cedar Hills, Utah, 84062.

According to Craig Frank, on Friday, January 7, 2011, he was testing a computer application available on the Utah House of Representative's website. If a person types in a street address, that application identifies the Utah State Representative and Utah State Senator who represents persons who reside at that address. Representative Frank typed in his own address: much to his

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<sup>1</sup> This formal legal opinion responds to your request for my formal opinion as General Counsel to the Legislature. The question posed and answered by this legal opinion requires an evaluation of the law and a review and determination of certain facts. The conclusion reached in this opinion is based upon that factual review and determination.

surprise, the application identified Representative John Dougall as the Utah House Representative for that address rather than Representative Frank. Believing that there was an error in the computer application, Representative Frank called the Chief Clerk of the Utah House of Representatives and requested that the computer application be fixed. Instead, the question of whether Representative Frank was a legal resident of his district arose.

## **REDISTRICTING FACTS**

Redistricting is like a giant jigsaw puzzle. The United States Census Bureau divides the state into more than 74,000 closed polygons, called Census Blocks, to each of which is attached specific population data.<sup>2</sup> A Census Block is the smallest geographic unit to which population is attached. In redistricting, the Utah Legislature combines Census Blocks to create congressional, legislative, and state school board districts that meet population equality and other requirements established by the United States Constitution and by the United States Supreme Court. Because Census Bureau data does not identify where the population resides within a Census Block, the Legislature, when redistricting, does not modify or split census blocks.

Because of the importance of Census Blocks, the United States Census Bureau works hard to establish appropriate Census Block boundaries. Before each decennial census is conducted, the Census Bureau establishes a deadline by which cities, towns, counties, school districts, and other local governments must provide data that identifies their legal boundaries. The Census Bureau uses these legal boundaries to create Census Block boundaries. In the year after the decennial census, the Census Bureau provides the final Census Block boundaries and the population associated with those Census Block boundaries to each state. The Utah Legislature relies on the Census Block boundaries established by the United States Census Bureau and uses the population figures attached to each of those Census Blocks in its redistricting process. Changes to municipal boundaries that are not reflected in the census data sent to Utah for redistricting in the year after the decennial census are not used by the Utah Legislature in redistricting.

## **ANALYSIS**

Article IX, Section 1 of the Utah Constitution grants unrestricted authority to the Utah Legislature to divide the state into congressional, Utah Senate, Utah House of Representatives, and state school board districts.<sup>3</sup>

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<sup>2</sup>For an example of Census Blocks with attached population figures for the area in question, see Exhibit A, Map - Census Blocks with Population Figures, attached.

<sup>3</sup>"No later than the annual general session next following the Legislature's receipt of the results of an enumeration made by the authority of the United States, the Legislature shall divide the state into congressional, legislative, and other districts accordingly." Utah Const. art. IX, §1.

In its Second Special Session in September and October of 2001, the Utah Legislature exercised that authority and enacted laws establishing new congressional, Utah Senate, Utah House, and state school board districts.<sup>4</sup>

In conjunction with establishing the new House district boundaries, the Legislature established the data on which it would rely to draw the maps. Utah Code Ann. Section 36-1-201 states "[t]he Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2000 national decennial census as the official data for establishing House district boundaries." The lines on the map produced from the official census data (attached as Exhibit B, Map - Cedar Hills North Municipal Boundary from Data Provided by the U.S. Census Bureau) show the legal municipal boundary of Cedar Hills. Those lines are also Census Block boundaries for that area of Utah County.

Relying upon official census data, the Legislature drew maps creating new boundaries for all 75 Utah House Districts. The Legislature drew district boundaries to ensure that each district was within the population range mandated by the United States Constitution and by United States Supreme Court cases elaborating on those constitutional requirements. In late 2001, the Legislature passed House of Representatives Redistricting Plan, House Bill 2001 3rd Sub. (attached as Exhibit C, H.B. 2001 3rd Substitute, House of Representatives Redistricting Plan), which established the boundaries for Utah House Districts. Maps showing the boundaries of each House District were included as part of the bill. One of those maps (found on page 25 of this legal opinion) shows the boundary between House District 27 and House District 57.

During the Second Special Session, the Utah Legislature also enacted statutes designating the legal boundaries of Utah House districts. According to Section 36-1-202, "[t]he legal boundaries of House districts are contained in the official maps on file with the lieutenant governor's office." The Legislature directs itself to "file copies of the official maps enacted by the Legislature, and any other relevant materials, with the lieutenant governor's office." It also provides that "[w]hen questions of interpretation of House district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the House district boundaries."<sup>5</sup>

Following the Second Special Session, the Office of Legislative Research and General Counsel, at the direction of the Utah Legislature, produced a publication entitled 2001 Redistricting in

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<sup>4</sup>See House of Representatives Redistricting Plan, Ch. 1, 2001 Laws of Utah 2nd Spec. Sess. (codified as Utah Code Ann. §§ 36-1-201, 36-1-203, 36-1-204 (2010)); State Board of Education Redistricting Plan, Ch. 2, 2001 Laws of Utah 2nd Spec. Sess. (codified as Utah Code Ann. §§ 20A-14-101 to -103 (2010)); Senate Redistricting Plan, Ch. 5, 2001 Laws of Utah 2nd Spec. Sess. (codified as Utah Code Ann. §§ 36-1-101 to -105 (2010)); Congressional Three Member Plan, Ch. 6, 2001 Laws of Utah 2nd. Spec. Sess. (codified as Utah Code Ann. §§ 20A-13-101 to -104 (2010)).

<sup>5</sup>Utah Code Ann. § 36-1-202 (2010).

Utah, and subtitled Official Maps of District Boundaries.<sup>6</sup> On page 1 of that publication, under the heading "Official Record," the document states "[u]nless modified, district boundaries established by the Utah Legislature and represented in this report will be in effect for the 2002 elections and will remain in effect until the next redistricting process is completed."<sup>7</sup> The Legislature provided the Lieutenant Governor with the official copy of that publication.

Besides the maps contained in H.B. 2001 3rd Sub., the publication contains additional maps that zoom in to show more detail for particular House District Boundaries. Pages 508 and 651 of that publication (attached as Exhibits D, Map - Utah House District 27 Southern Boundaries, and E, Map - Utah House District 57 Boundaries) show more clearly the boundary lines between House Districts 27 and 57.<sup>8</sup> A comparison of Exhibit B with Exhibits D and E shows that, generally, the northern boundary of House District 57 follows the municipal boundary of Cedar Hills as contained in the maps produced by the data provided by the United States Census Bureau.

Portions of the northern boundary of District 57 are labeled "City Bndry" on the maps attached as Exhibits D and E. On page 2 of the publication, under the heading "Identification of Boundary Lines," the publication states:

"The maps in this report identify every boundary of each district.... A district boundary that coincides with a municipal boundary is labeled 'City Bndry' only where there is no other corresponding geographic feature. The labels for this type of boundary often alternate between 'City Bndry' and the names of road or other geographic features."<sup>9</sup>

This language establishes that the maps in the report establish the official boundary lines for each house district. The term "City Bndry" is simply a label identifying where the boundary lies for the residents of the area and the county clerk.

In preparing this formal legal opinion, the Office of Legislative Research and General Counsel produced a map using Census Bureau data and State Geographic Information Database data (attached as Exhibit F, Map - Legislator Residences and House District Boundaries) that identifies:

- Craig Frank's residence;
- the current municipal boundaries of Cedar Hills; and

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<sup>6</sup>Utah State Legislature, Office of Legislative Research and General Counsel, 2001 Redistricting in Utah (2002).

<sup>7</sup>*Id.* at 1.

<sup>8</sup>*Id.* at 508, 651.

<sup>9</sup>*Id.* at 2.

- the boundary dividing House District 27 from House District 57 established by the Legislature in H.B. 2001 3rd Sub. and in the official maps on file in the Lieutenant Governor's office.

That map clearly establishes that Craig Frank's legal residence is in House District 27, not House District 57.

Utah Constitution Article VI, Section 5 provides that "[a] person elected or appointed to the office of senator or representative may not continue to serve in that office after ceasing to be a resident of the district from which elected or for which appointed." Despite being elected as a Representative by the residents of House District 57, Craig Frank is not a legal resident of that district. Consequently, the Utah Constitution prohibits him from serving in that office.

### CONCLUSION

The Utah Constitution prohibits Craig Frank from continuing to serve in the office of representative from House District 57 because his legal residence is not within the boundaries of that district according to the lines on the official maps enacted by the Utah Legislature.

  
John L. Fellows  
General Counsel

# Exhibit A -- Map - Census Blocks with Population Figures

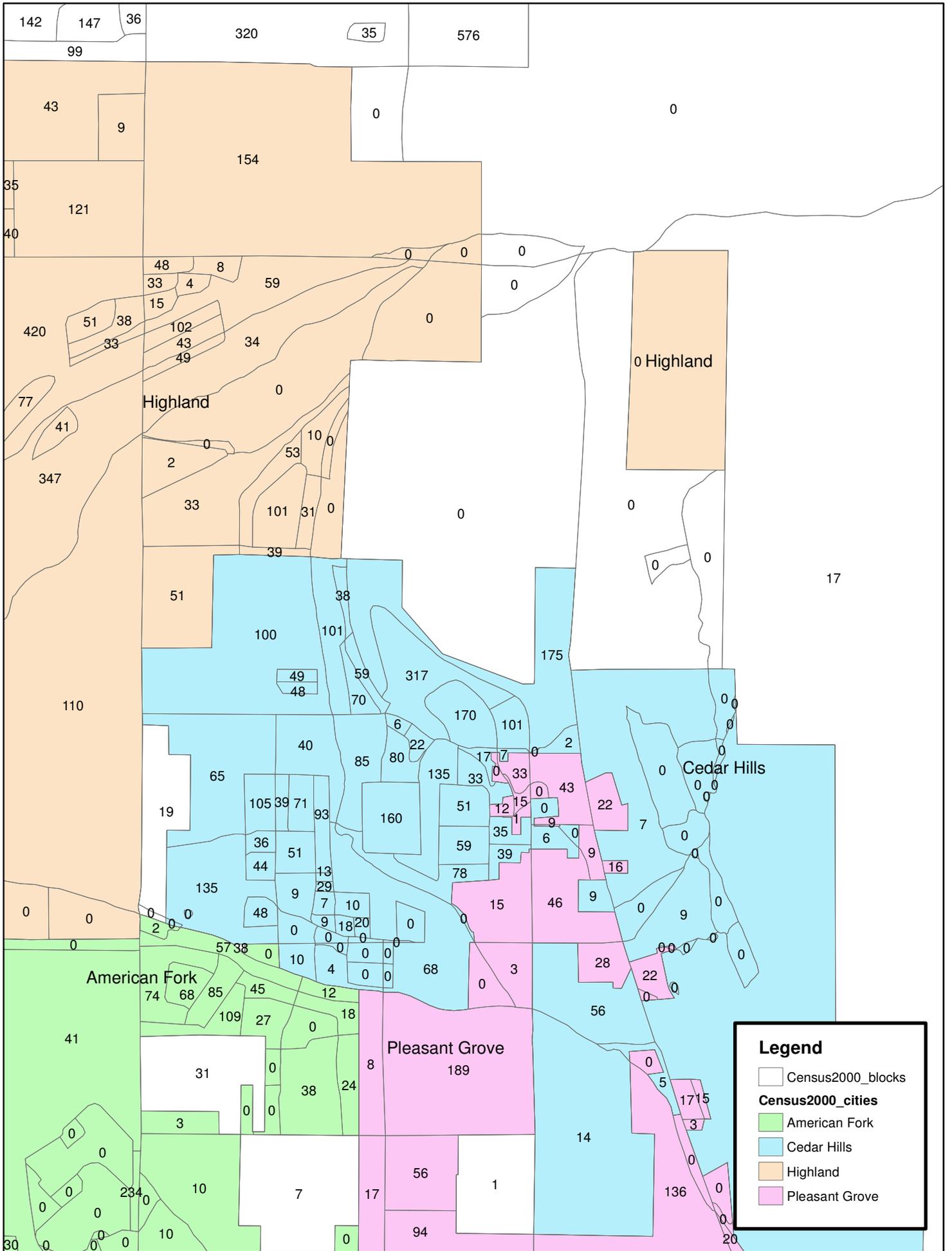
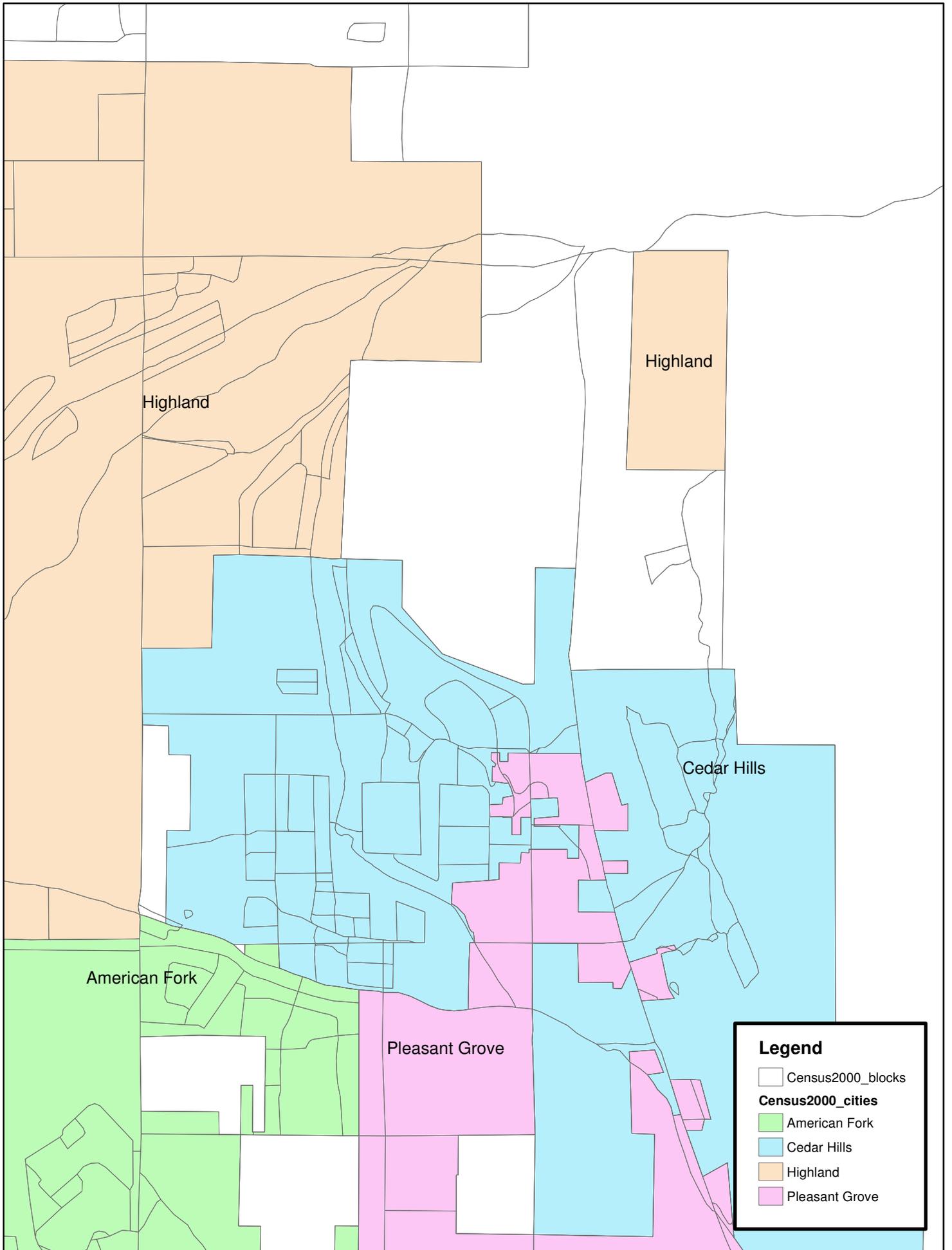


Exhibit B -- Map - Cedar Hills North Municipal Boundary from Data provided by the U.S. Census Bureau



Enrolled Copy

H.B. 2001

**HOUSE OF REPRESENTATIVES**

**REDISTRICTING PLAN**

2001 SECOND SPECIAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

**This act modifies statutory provisions governing Utah House of Representatives districts. This act eliminates current boundaries and establishes new boundaries. This act establishes certain maps as the legal boundaries of House districts and establishes procedures for addressing omissions and uncertain boundaries. This act takes effect on January 1, 2002 for purposes of nominating and electing members of the Utah House of Representatives and on January 1, 2003 for all other purposes.**

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

**36-1-201**, Utah Code Annotated 1953

**36-1-202**, Utah Code Annotated 1953

**36-1-203**, Utah Code Annotated 1953

**36-1-204**, Utah Code Annotated 1953

REPEALS:

**36-1-4**, as last amended by Chapter 112, Laws of Utah 1999

**36-1-5**, as last amended by Chapter 10, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **36-1-201** is enacted to read:

**Part 2. Utah House of Representatives**

**36-1-201. Utah House of Representatives -- District boundaries.**

(1) The Utah House of Representatives shall consist of 75 members, with one member to be elected from each Utah House of Representatives district.

(2) (a) The Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2000 national decennial census as the official data for establishing House district

boundaries.

(b) The numbers and boundaries of the House districts are designated and established by the maps attached to the bill that enacts this section.

Section 2. Section **36-1-202** is enacted to read:

**36-1-202. Official maps of House districts.**

(1) (a) The Legislature shall file copies of the official maps enacted by the Legislature, and any other relevant materials, with the lieutenant governor's office.

(b) The legal boundaries of House districts are contained in the official maps on file with the lieutenant governor's office.

(2) When questions of interpretation of House district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the House district boundaries.

(3) (a) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.

(b) Each county clerk shall establish voting precincts and polling places within each House district according to the procedures and requirements of Section 20A-5-303.

(4) Maps identifying the boundaries for House districts may be viewed on the Internet at the lieutenant governor's website.

Section 3. Section **36-1-203** is enacted to read:

**36-1-203. Omissions from maps -- How resolved.**

(1) If any area of the state is omitted from a Utah House of Representatives district in the maps enacted by the Legislature, the county clerk of the affected county, upon discovery of the omission, shall attach the area to the appropriate House district according to the requirements of Subsections (2) and (3).

(2) If the area is surrounded by a House district, the area shall be attached to that district.

(3) If the area is contiguous to two districts, the area shall be attached to the district that has the least population, as determined by the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking

of the 2000 national decennial census.

(4) Any attachment made under Subsection (1) shall be certified in writing and filed with the lieutenant governor.

Section 4. Section **36-1-204** is enacted to read:

**36-1-204. Uncertain boundaries -- How resolved.**

(1) As used in this section, "affected party" means:

(a) a representative whose Utah House of Representatives district boundary is uncertain because the identifying feature used to establish the district boundary has been removed, modified, or is unable to be identified or who is uncertain about whether or not he or another person resides in a particular House district;

(b) a candidate for representative whose House district boundary is uncertain because the identifying feature used to establish the district boundary has been removed, modified, or is unable to be identified or who is uncertain about whether or not he or another person resides in a particular House district; or

(c) a person who is uncertain about which House district contains the person's residence because the identifying feature used to establish the district boundary has been removed, modified, or is unable to be identified.

(2) (a) An affected party may file a written request petitioning the lieutenant governor to determine:

(i) the precise location of the House district boundary;

(ii) the number of the House district in which a person resides; or

(iii) both Subsections (2)(a)(i) and (ii).

(b) In order to make the determination required by Subsection (2)(a), the lieutenant governor shall review the official maps and obtain and review other relevant data such as census block and tract descriptions, aerial photographs, aerial maps, or other data about the area.

(c) Within five days of receipt of the request, the lieutenant governor shall review the maps, obtain and review any relevant data, and make a determination.

(d) When the lieutenant governor determines the location of the House district boundary,

the lieutenant governor shall:

(i) prepare a certification identifying the appropriate boundary and attaching a map, if necessary; and

(ii) send a copy of the certification to the affected party and the county clerk of the affected county.

(e) If the lieutenant governor determines the number of the House district in which a particular person resides, the lieutenant governor shall send a letter identifying that district by number to:

(i) the person;

(ii) the affected party who filed the petition, if different than the person whose House district number was identified; and

(iii) the county clerk of the affected county.

**Section 5. Repealer.**

This act repeals:

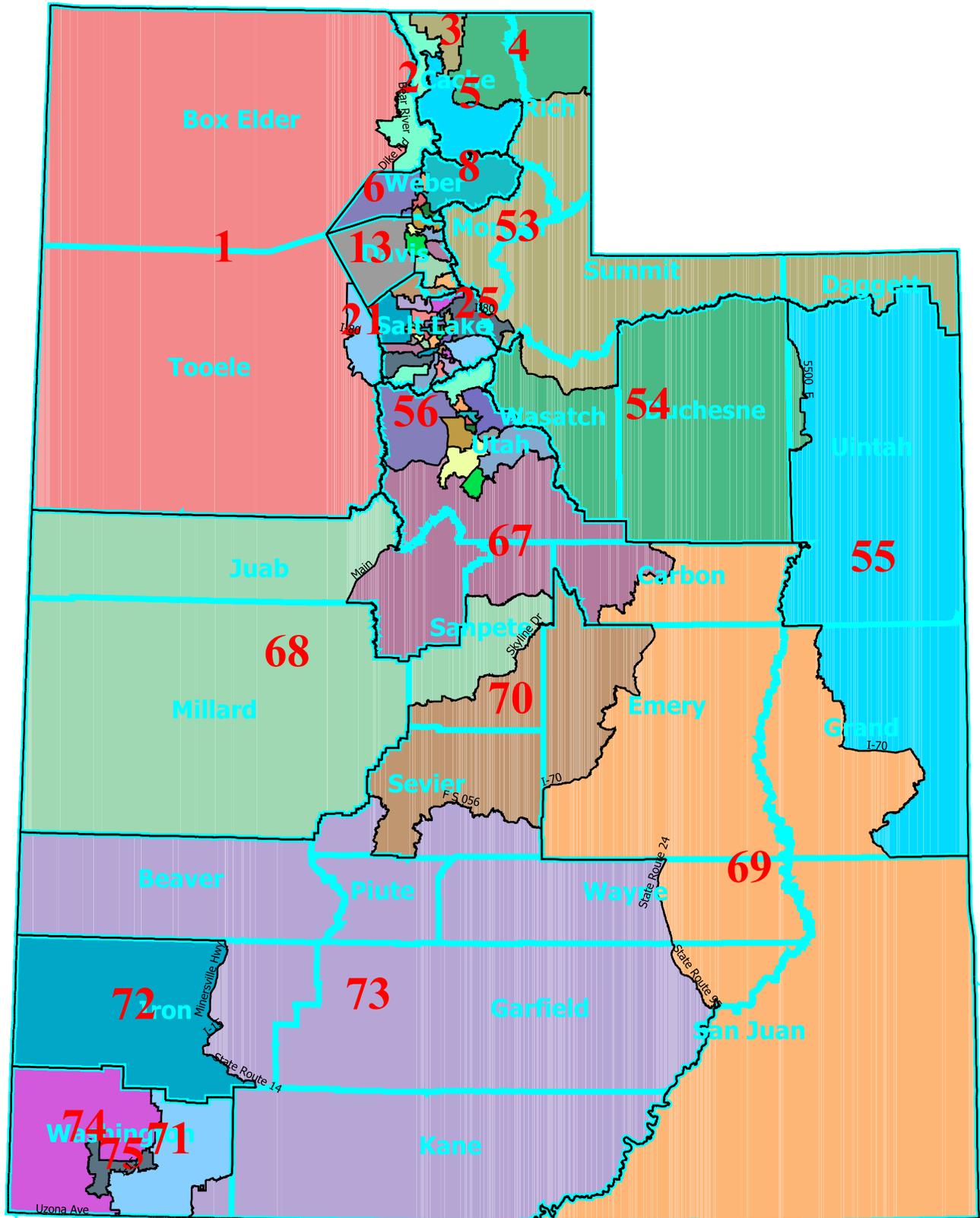
**Section 36-1-4, House districts -- Definitions -- Numbers and boundaries of districts --**

**Resolving omissions and ambiguity.**

**Section 36-1-5, Official maps of House districts.**

**Section 6. Effective date.**

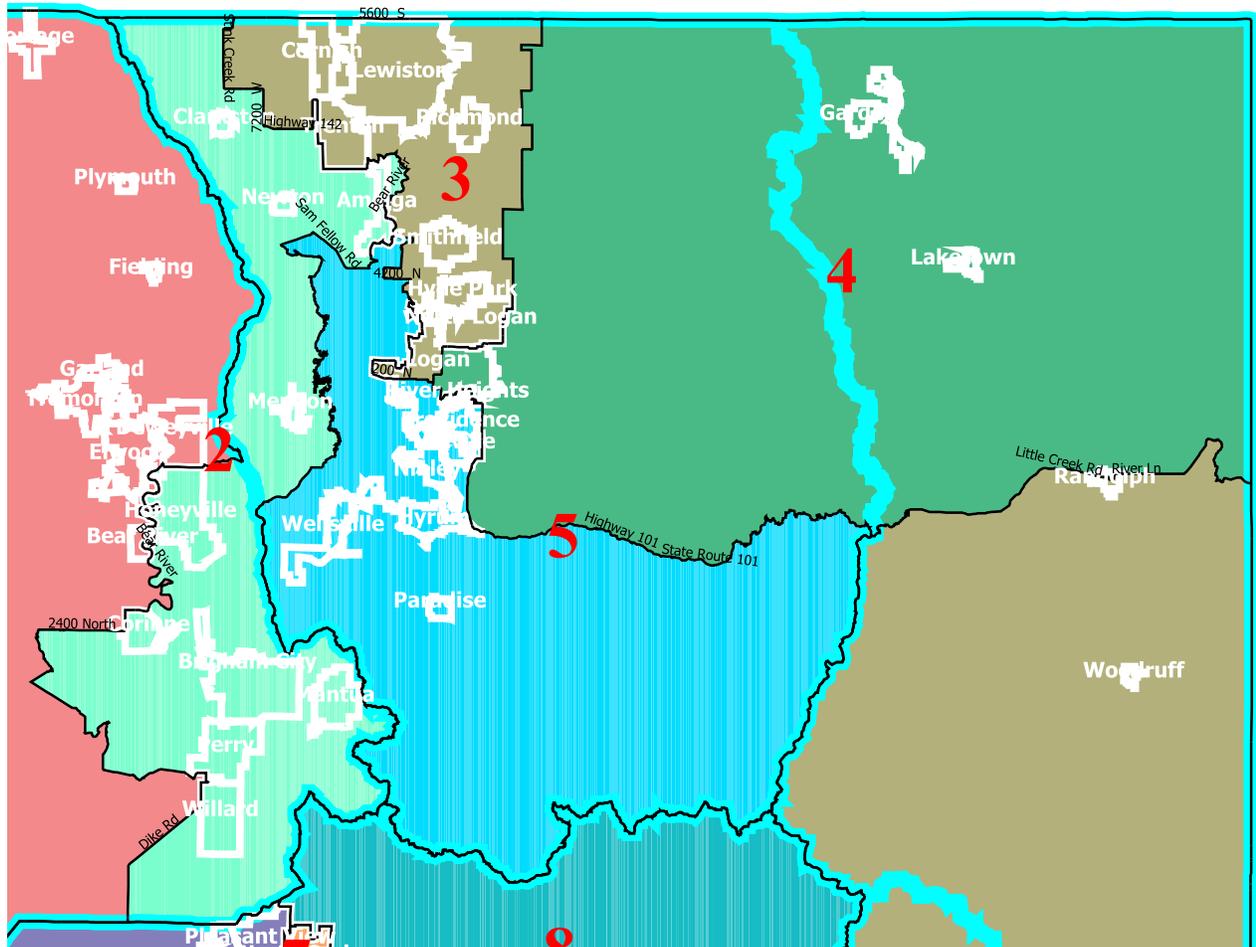
This act takes effect on January 1, 2002 for purposes of nominating and electing members of the Utah House of Representatives and on January 1, 2003 for all other purposes.



-  Counties
-  Cities
-  Districts

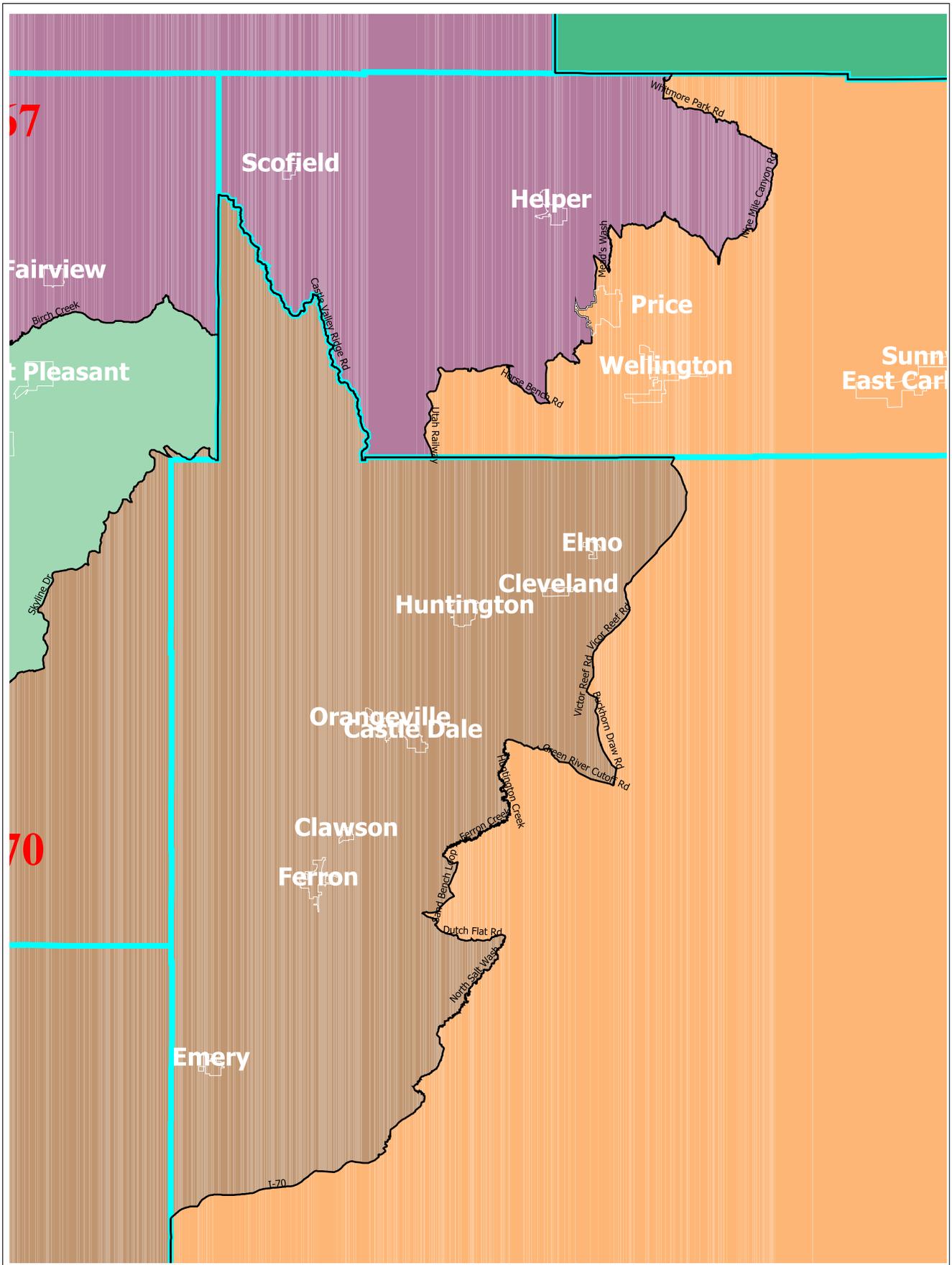
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 Utah House of Representatives - Statewide Overview





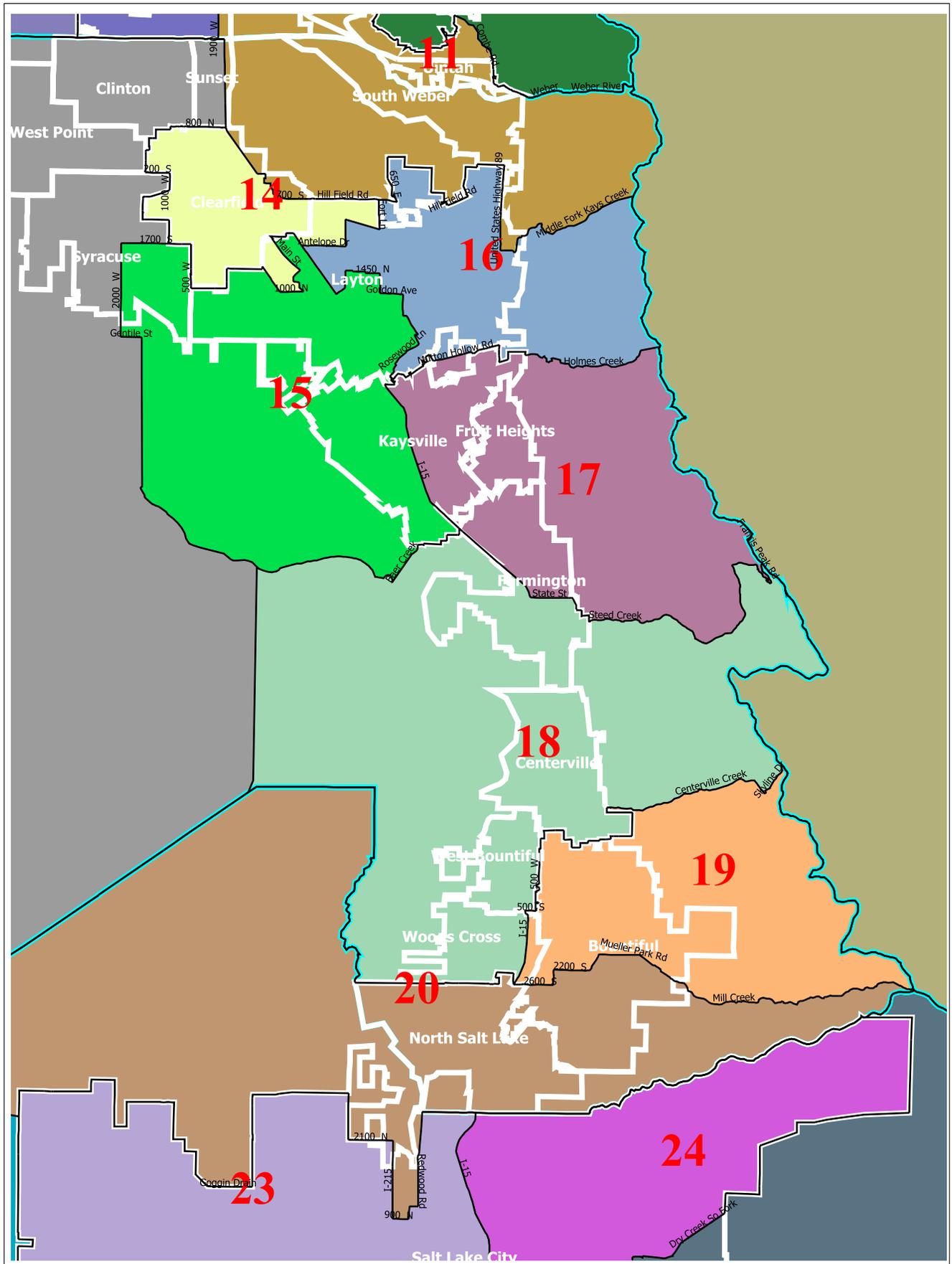
-  Counties
-  Cities
-  Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Box Elder,  
 Cache, and Rich Counties

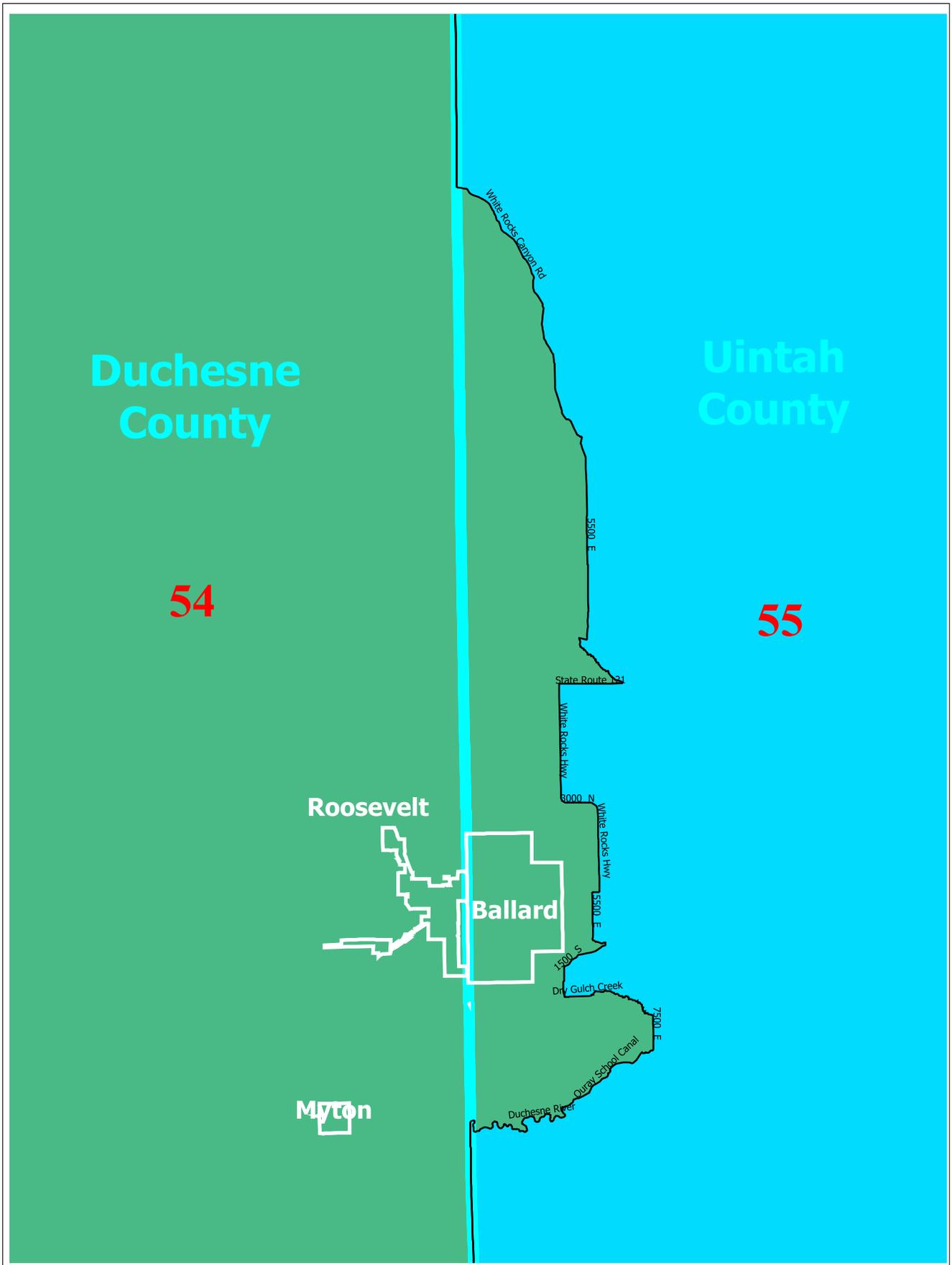


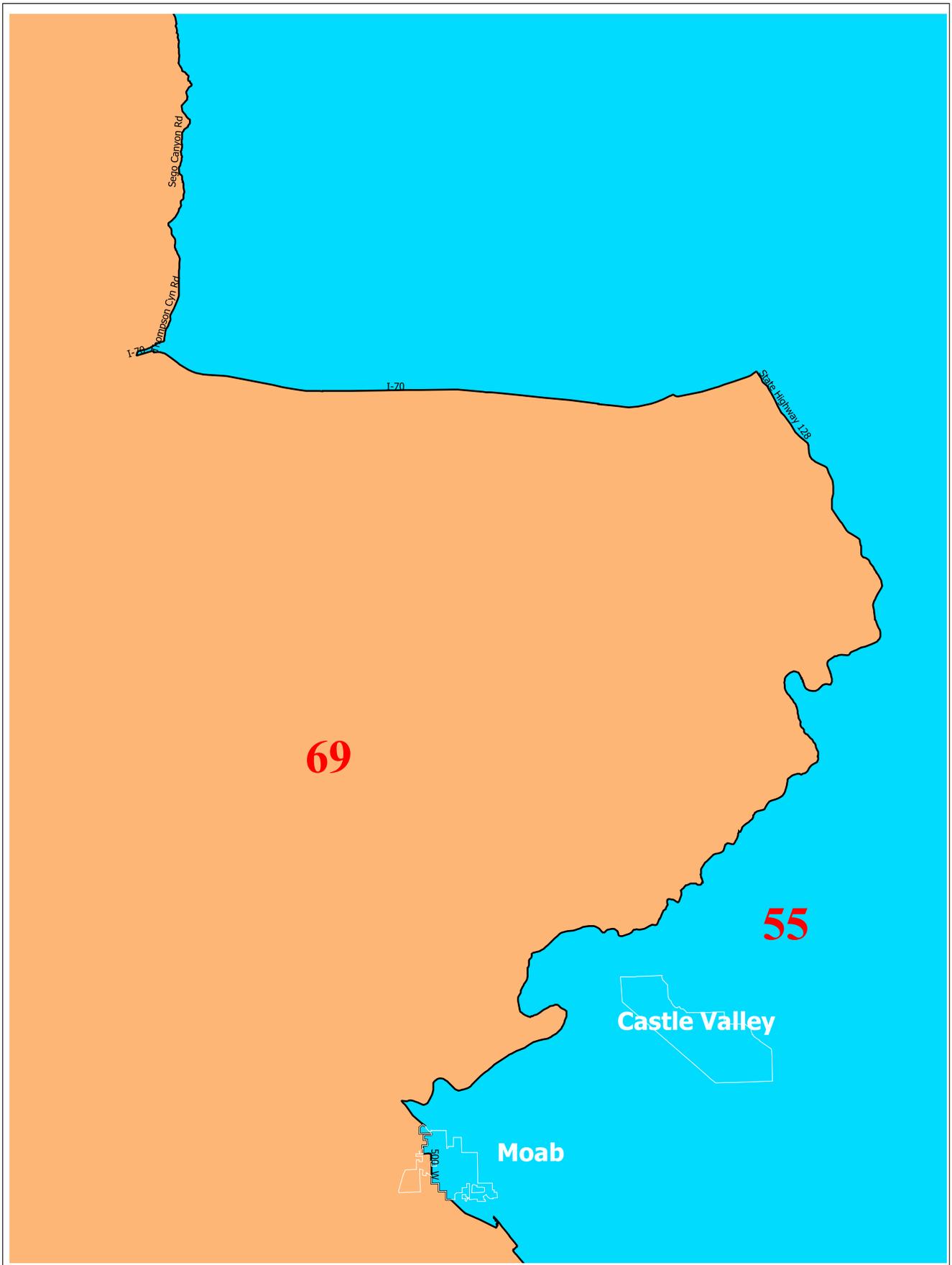
-  Counties
-  Cities
-  Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Carbon  
 and Emery Counties



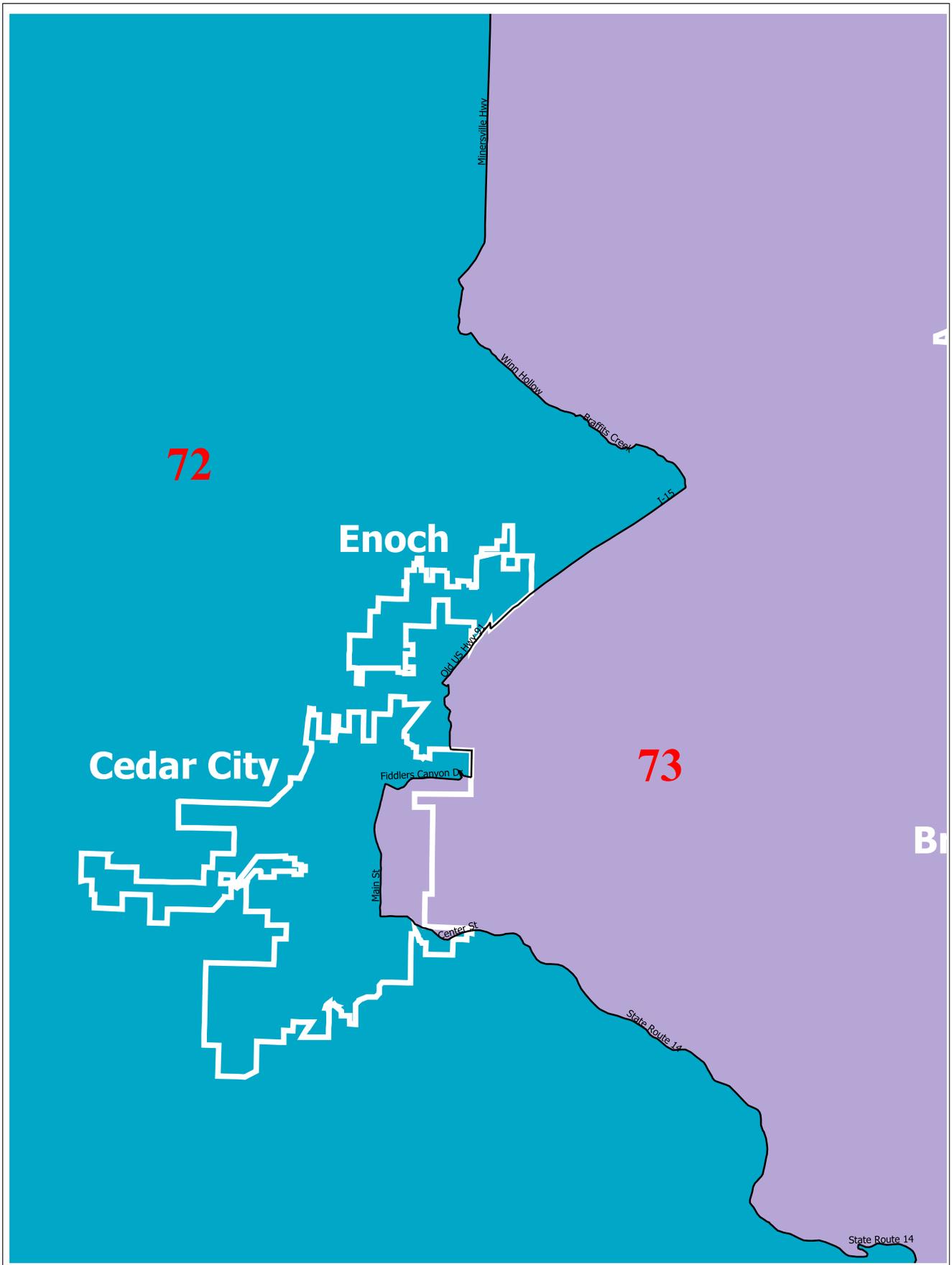
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 Utah House of Representatives - Davis County





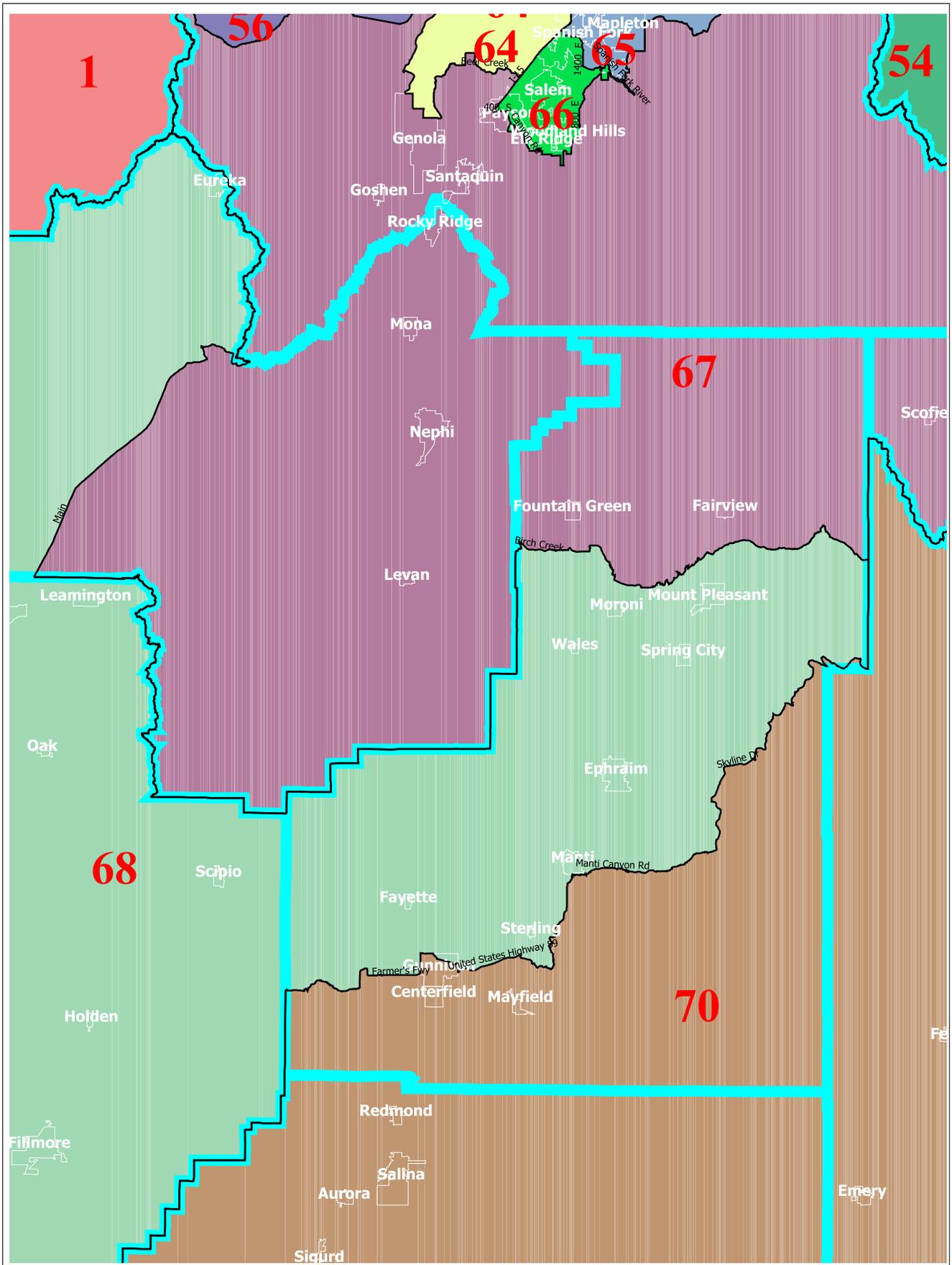
-  Counties
-  Cities
-  Districts

Enrolled Copy H.B. 2001  
Utah House of Representatives - Grand County



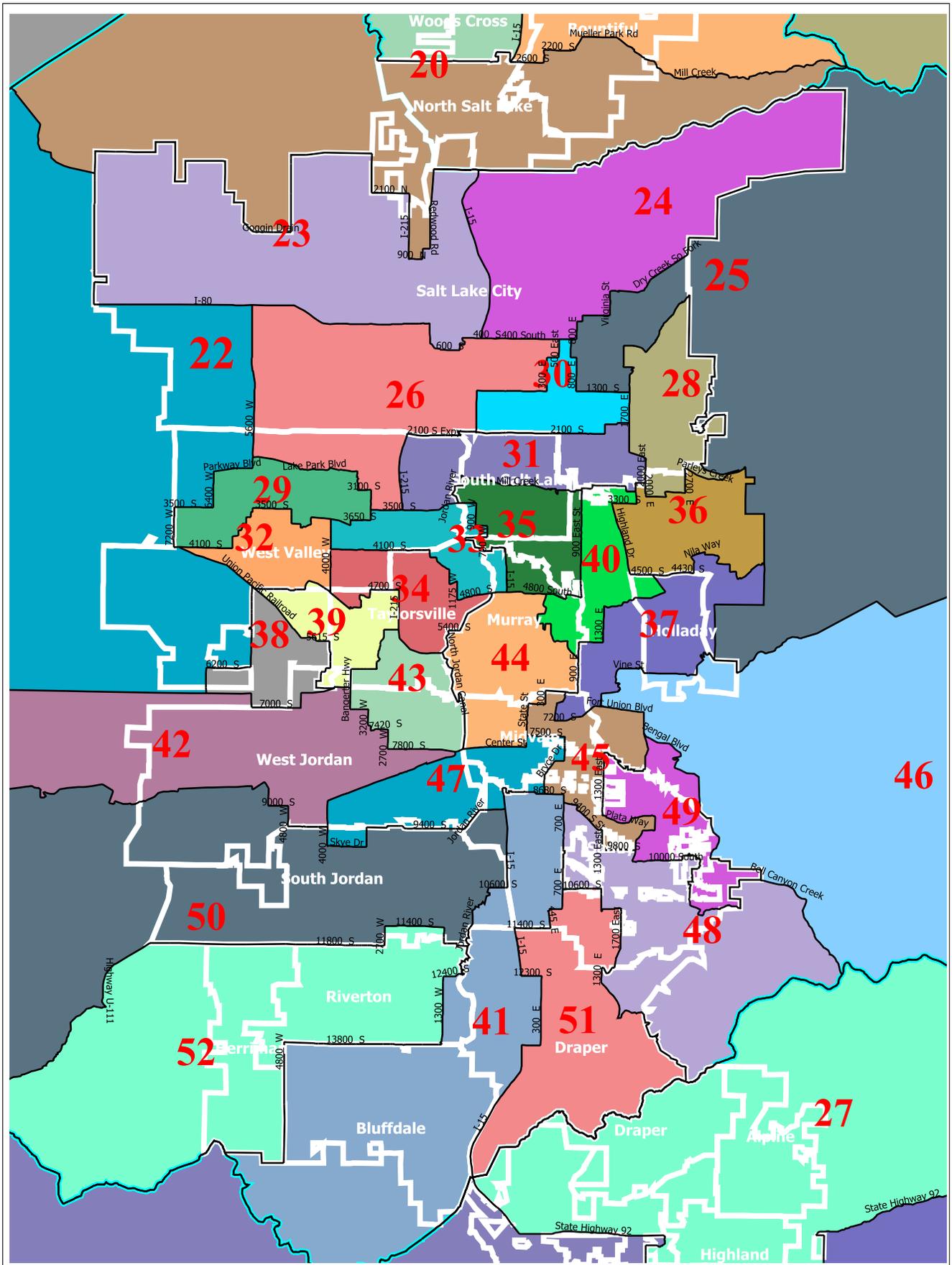
-  Counties
-  Cities
-  Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Iron County



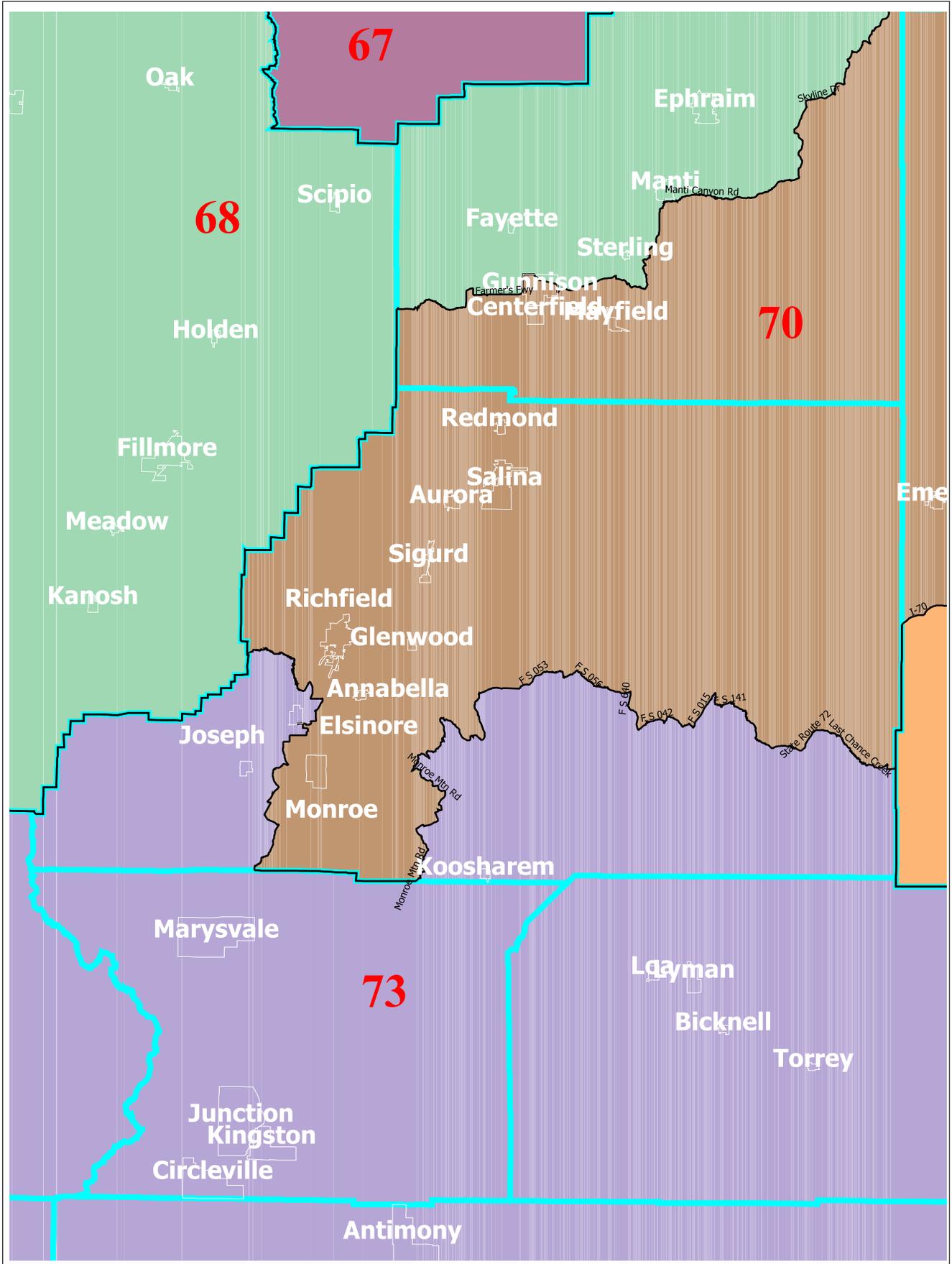
 Counties  
 Cities  
 Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Juab and Sanpete Counties



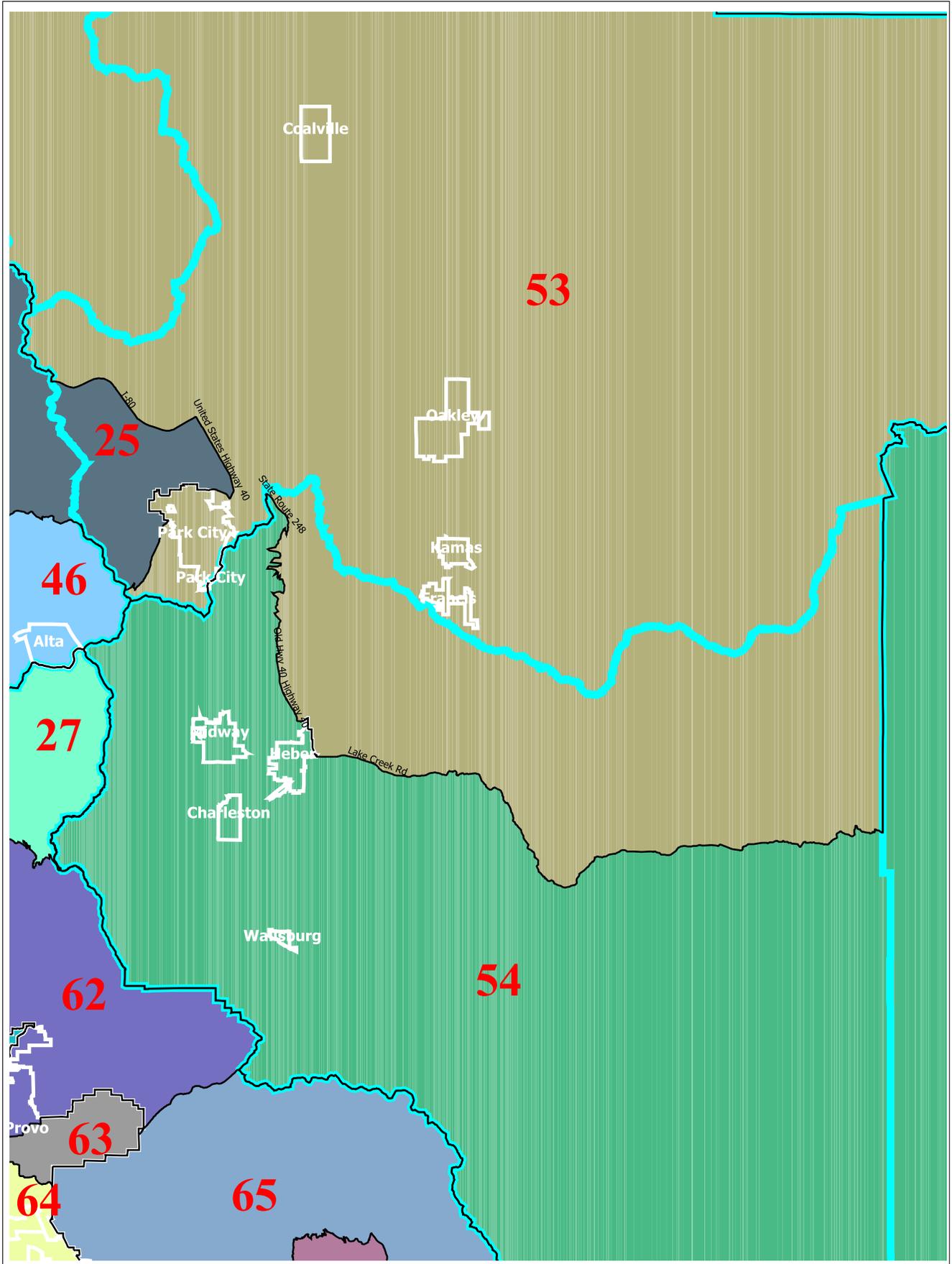
-  Counties
-  Cities
-  Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Salt Lake County



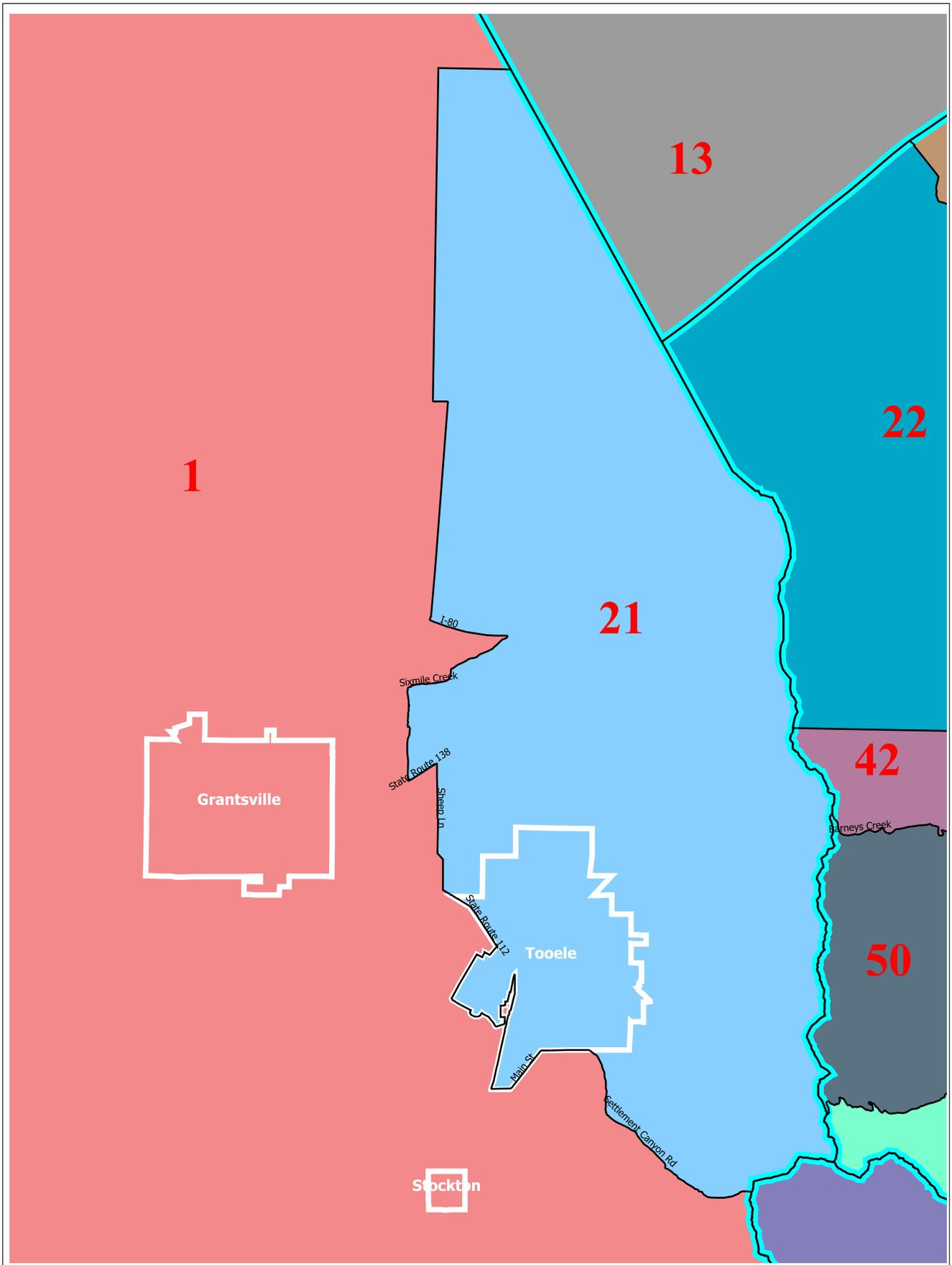
-  Counties
-  Cities
-  Districts

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 Utah House of Representatives - Sevier County



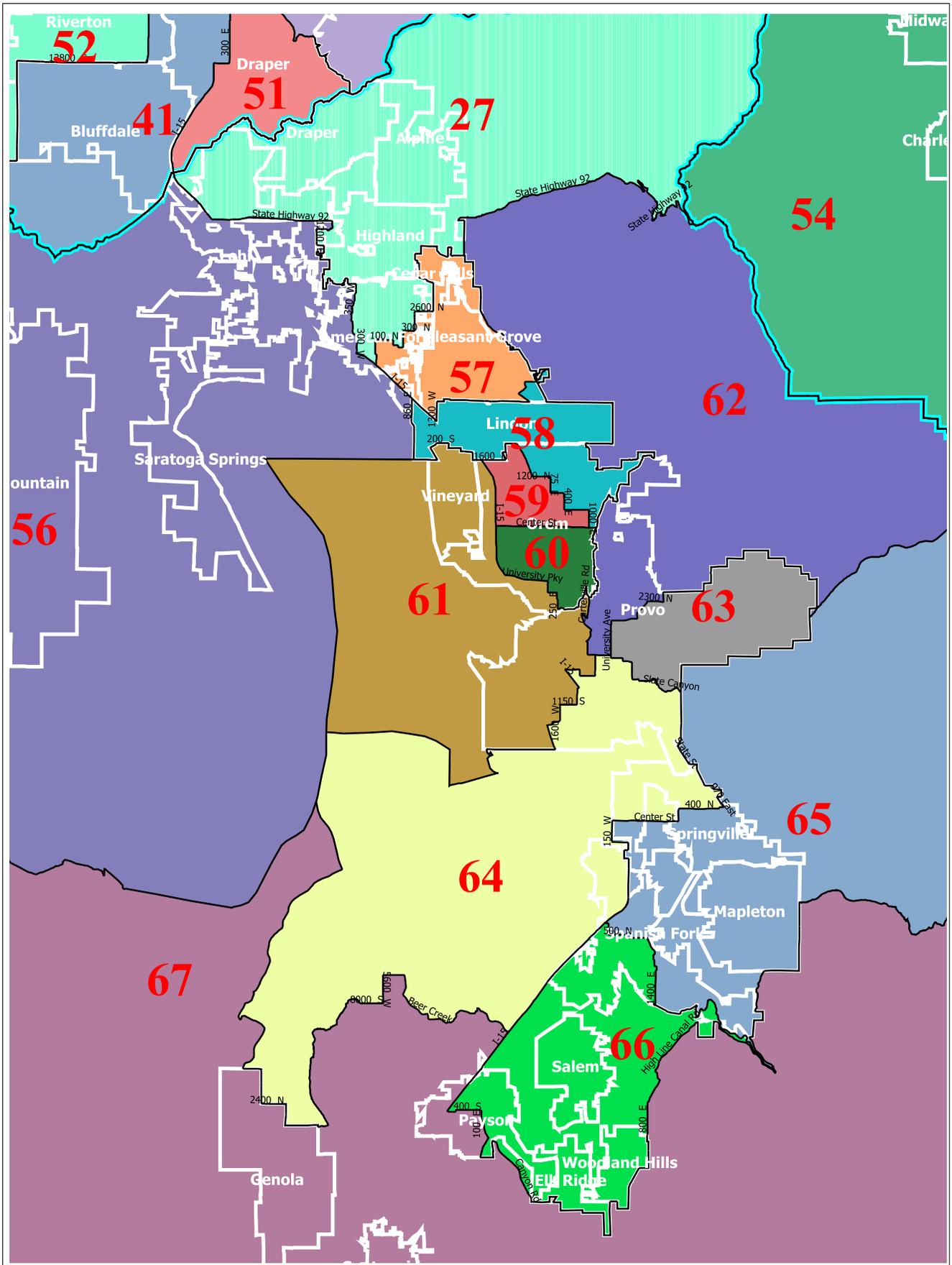
 Counties  
 Cities  
 Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Summit and Wasatch Counties



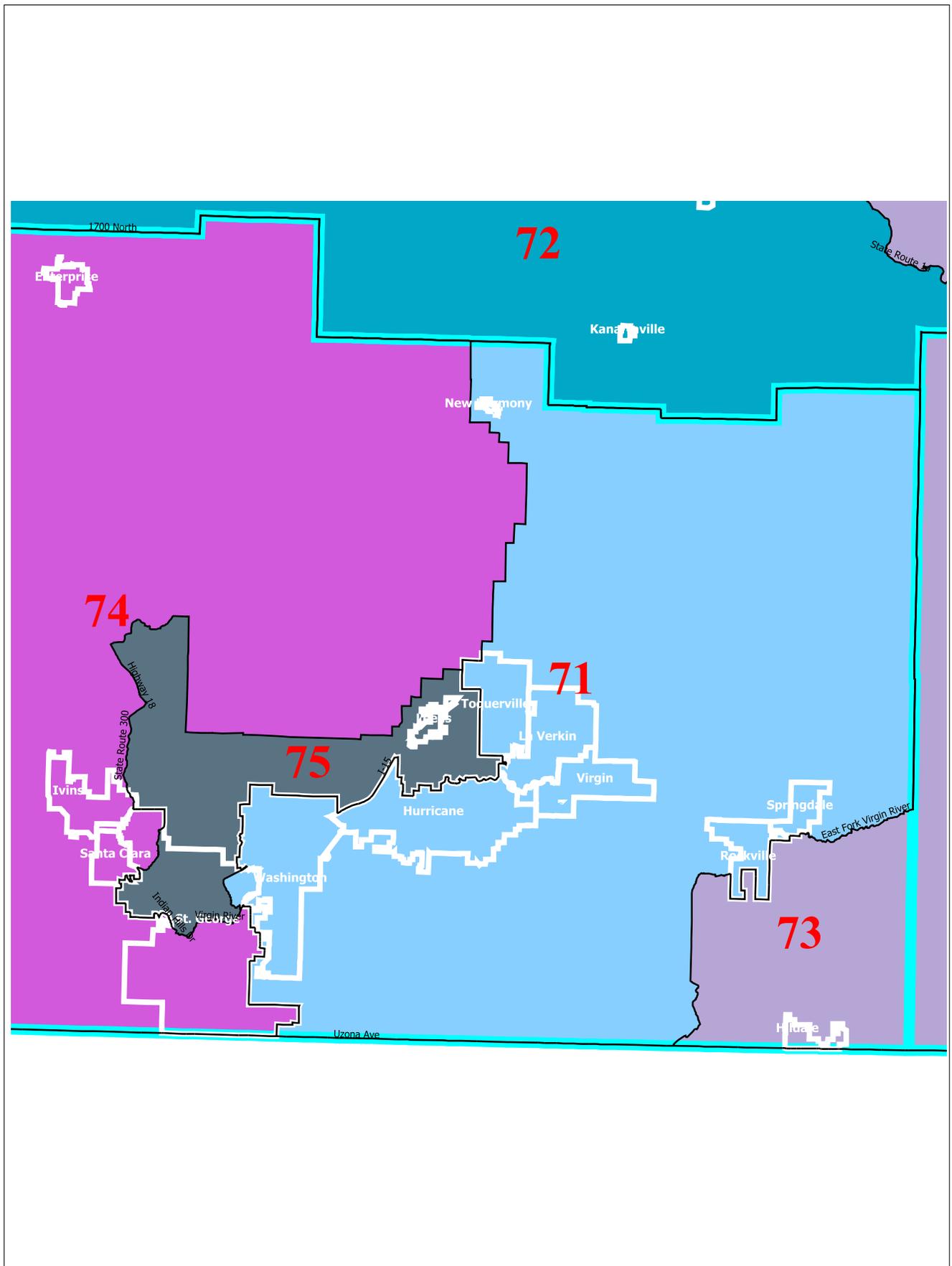
-  Counties
-  Cities
-  Districts

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 Utah House of Representatives - Tooele County



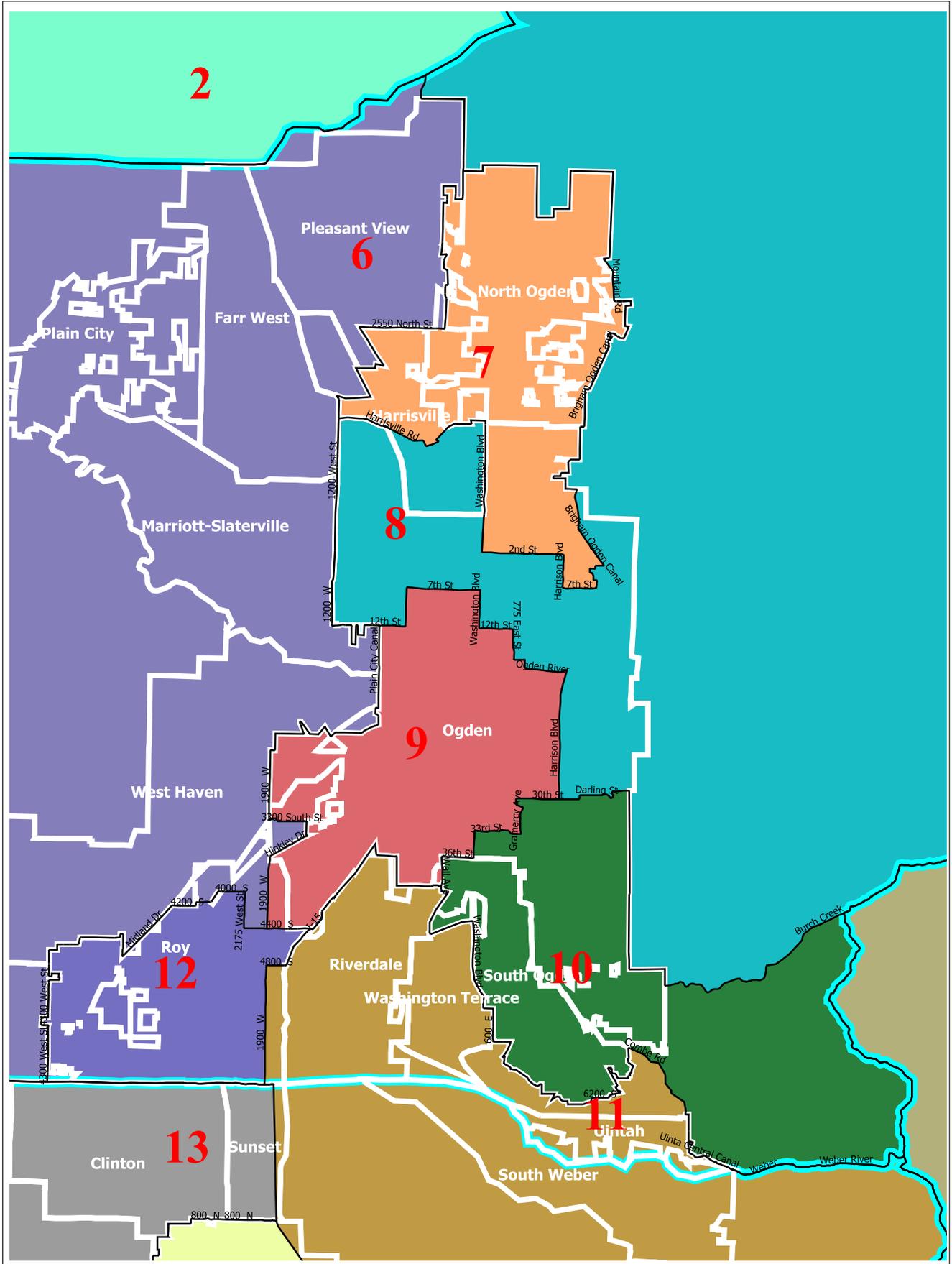
 Counties  
 Cities  
 Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Utah County



 Counties  
 Cities  
 Districts

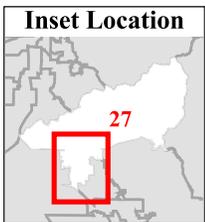
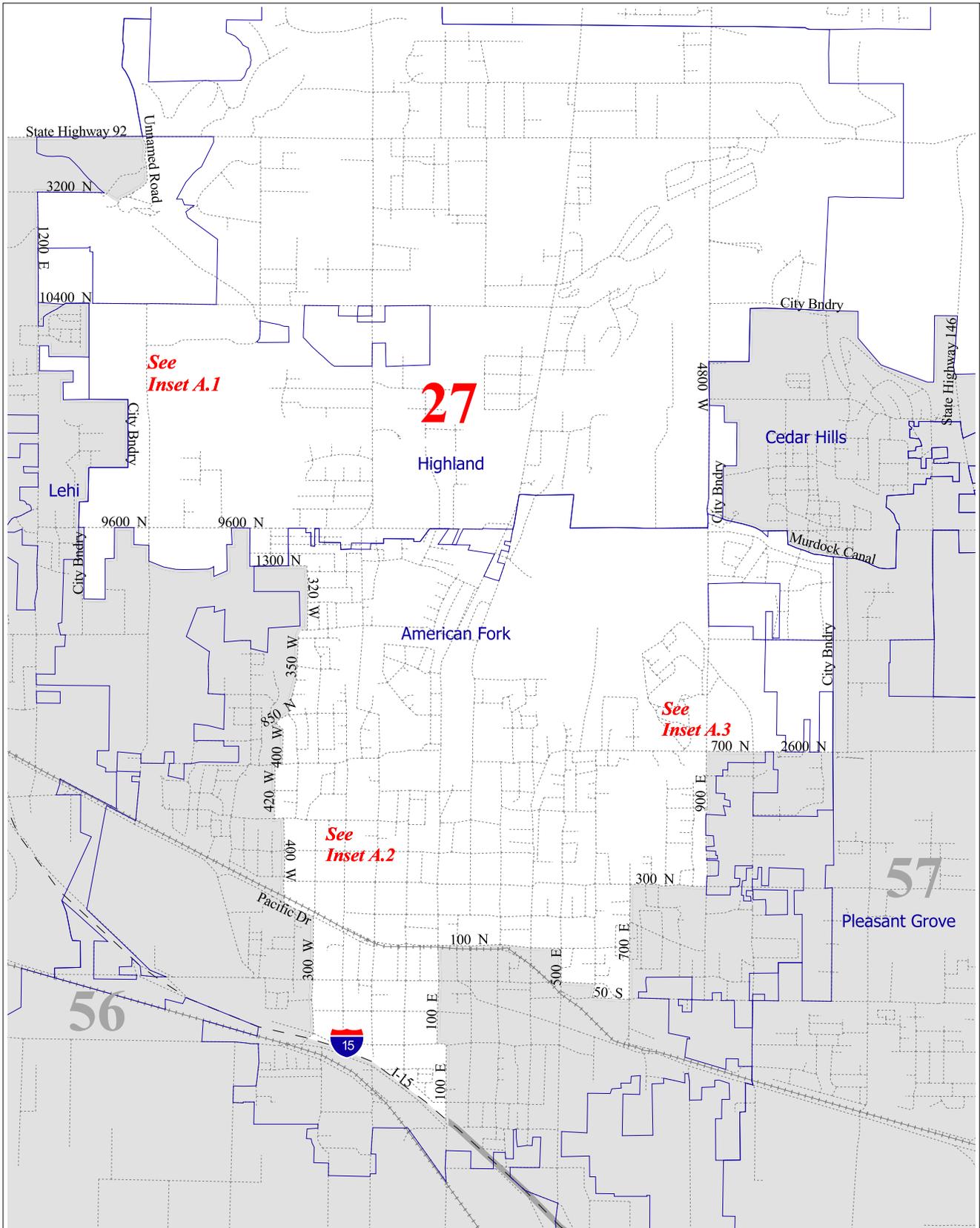
Enrolled Copy H.B. 2001  
 Utah House of Representatives - Washington County



 Counties  
 Cities  
 Districts

Enrolled Copy H.B. 2001  
 Utah House of Representatives - Weber County

# Exhibit D -- Map - Utah House District 27 Southern Boundaries

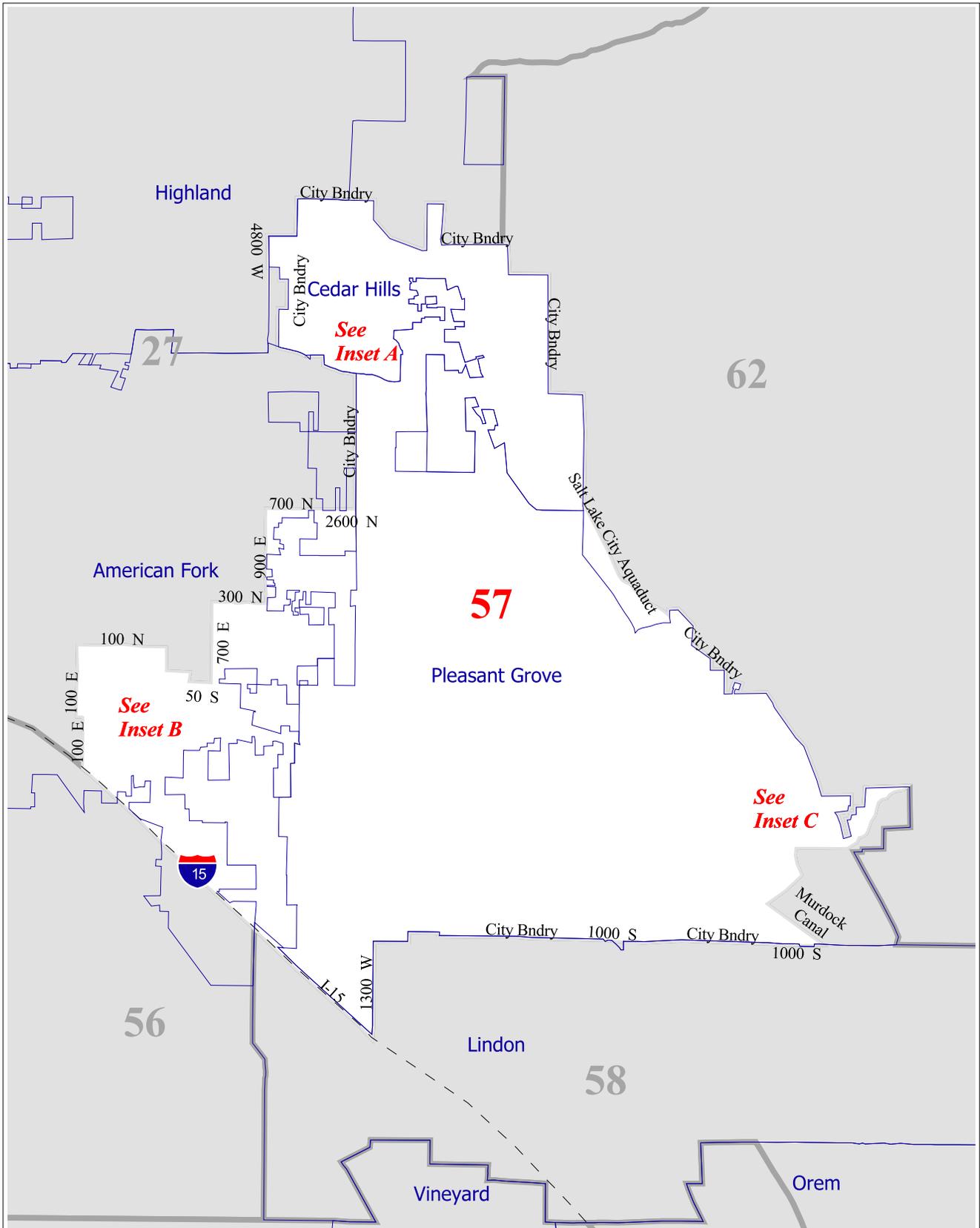


- 27 District
- State Bndry
- Counties
- Cities
- Other Districts

- Major Roads
- Local Streets
- Railroads

**District 27**  
**Inset A**  
Utah House of Representatives

# Exhibit E -- Map - Utah House District 57 Boundaries



- 57 District
- State Bndry
- Counties
- Cities
- Other Districts
- Major Roads
- Local Streets
- Railroads

**District 57**  
Utah House of Representatives

# Exhibit F -- Map - Legislator Residences and House District Boundaries

