



Utah Lake Technical Committee Meeting
Monday, January 14, 2008
Historic Utah County Courthouse
51 South University Avenue, Suite 211
Provo, Utah 84601
8:30 A.M.

ATTENDEES:

Bruce Chesnut, Orem, Chairman
Reed Price, Utah Lake Commission
Lee Hansen, Saratoga Springs
H. Barry Tripp, Forestry, Fire & State Lands
James McMillan, U.S. Army Corps. Of Engineers
Adam Cowie, Lindon
Jim Hewitson, Lehi
Deon Giles, Pleasant Grove
Jim Price, MAG
Chris Tschirki, Orem
Ron Kidd, JVVCD
Carol Mausser, Executive Assistant

Greg Beckstrom, Provo, Vice-Chair
Clyde Naylor, Utah County
Bob Fisher, Woodland Hills
Sarah Sutherland, CUWCD
Brad Stapley, Springville
Ann Merrill, DNR-Div. of Water Resources
Michael Vail, Genola
Chris Keleher, Department of Natural Resources
Doug Sakaguchi, DNR-Div. of Wildlife Resources
LaVere B. Merritt, Private Consultant
Woodworth Mataele, Lindon

ABSENT:

Howard Denney, American Fork
Don Blohm, Highland
Michael Mills, JSRIP
Norman Holdaway, Vineyard

Scott Bird, Mapleton
James Linford, Santaquin,
Ty Hunter, DNR-Div. of Parks and Recreation

1. Welcome and Introductions.

Chairman Bruce Chesnut welcomed all to the Utah Technical Committee Meeting and called the meeting to order at 8:32 A.M. He asked everyone to introduce themselves and state what organization they were representing.

2. Review and approve the Utah Lake Technical Committee minutes from November 12, 2007.

Chairman Chesnut asked everyone to review the minutes from the November 12, 2007 meeting and he gave a brief review of the major topics discussed at that meeting. Greg Beckstrom suggested that the sentence on Page 2, Item 3, Paragraph 4 the sentence that reads, "With the end of the legislative session coming to a close, the time line is short. " be reworded. The sentence will now read as follows, "With the legislative session starting soon, the time line is short."

It was moved and seconded to approve the minutes as corrected. The motion passed unanimously.

3, Presentation by James McMillan, US Army Corps of Engineers

Chairman Chesnut introduced James McMillan, Technical Committee representative from the U.S. Army Corps of Engineers and turned the time over to him. Mr. McMillan gave a short introduction of himself. He has been with the U.S. Army Corps of Engineers for about two and a half years. The office is located in Bountiful, Utah. Previous to this position, he was in the private sector. He is a soil biologist by training and has been involved with wetlands for about ten years. He was asked what areas he covers. In his position Mr. McMillan covers eight counties; Utah, Juab, Sanpete, Miller, Beaver, Piute, Wayne and Sevier. Most of the activity, however, is in Utah County. He informed the Committee that as of today he will be replaced by Terry Johnson who is with the Utah Department of Transportation (UDOT) and Mr. Johnson will now be covering all of Mr. McMillan's geographic area. Mr. McMillan is going to assume all of the UDOT projects. In essence, Mr. McMillan and Mr. Johnson have exchanged positions. Mr. Johnson can be contacted at 801-295-8380 and will now be the representative for the U.S. Army Corps of Engineers at the Technical Committee meetings.

Mr. McMillan began a Power Point presentation of the Regulatory Program Clean Water Act Update. As background, the Utah Regulatory Office is in the Sacramento District of the Corps of Engineers. The areas included in this District are Central California, Northern California, Nevada, Utah and West Colorado. The office in Bountiful is the Regulatory field office location. The goal for the Clean Water Act (CWA) is to protect the biological, chemical and physical functions of the nation's waters of the United States. The staffing for the CWA was assumed by the U.S. Army Corps of Engineers. The Corps Regulatory Mission is to implement Section 404 of the CWA and other applicable laws, provide balanced decisions to the public that reflect national concerns for the protection and use of important resources, and encourage compliance with environmental laws.

a. Jurisdiction

Under the River Harbors Act (RHA and CWA) the waters that the Corps have jurisdiction over are:

- Traditional navigable waters (TNW)
- Interstate waters including interstate wetlands (Bear Lake)
- Others waters including interstate, non-navigable waters with interstate/foreign commerce connections
- Impoundments of waters otherwise defined as waters of the U.S. (Reservoirs)
- Tributaries of the above (usually)
- Territorial seas
- Adjacent wetlands (sometimes)

Greg Beckstrom asked if Mr. McMillan could give an example of water that would not be considered a water of the U.S. It was answered that there are several out in the West desert that are basically a ephemeral wash which is water that rarely, if ever, flows and never reaches a traditional navigable waterway. Typically, the Corps would not regulate those since they wouldn't involve any commerce. When assessing the jurisdiction of a certain project there are several scenarios that are considered. For instance, if the body of water has a direct connection to a river then it would qualify for jurisdiction. The Corps always has jurisdiction over wetlands when they are connected to a navigable waterway. If the wetland is abutting the tributary as is the Provo River, then it falls under their jurisdiction. However, something out in the middle of a field that is isolated they might not regulate. Normally the Corps does

not regulate ground water but if there is a shallow connection, hydrological connection, and it impacts a wetland, then it's possible they could assume regulation of that water.

There was a recent Supreme Court case on wetlands. The court case was Solid Waste Agency of Northern Cook County (SWANCC) vs. U.S. Army Corps of Engineers. Basically it was ruled that the Corps cannot regulate wetlands that do not have ties to commerce-connected waters. This case has now somewhat become the "hook" for determining jurisdiction. Another example of water that wouldn't be commerce-connected water would be prairie pot holes as in North Dakota.

Traditional navigable waters (TNWs) examples would include the Pacific Ocean, Yellowstone River, Utah Lake and the Great Salt Lake. Any wetlands adjacent to TNW's would be assumed as well. Relatively Permanent Waterways (RPWs) which are waterways that command flow anywhere between three months to all year round are jurisdictional under the CWA. The Provo River would be classified as a Permanent RPW. A Seasonal RPW might be a dry creek in the southern part of the county. Any wetlands directly abutting RWP's that flow directly or indirectly into TNWs are jurisdictional where there is a "significant nexus" for a wetland. Non-RPWs and any adjacent wetlands to Non-RPWs need to perform "significant nexus" to be classified as jurisdictional and the Corps is required to demonstrate that there is a connection between the wetland and the tributary next to it. It was questioned how the court decides in these issues. Mr. McMillan said the Corps has to demonstrate that the tributary is gaining water from the wetlands. In response it was questioned what if the water is running in the other direction. It was answered that usually the water flows both ways, however, if it doesn't then the Corps would probably not regulate that water. That's the kind of evaluation that makes each project unique. Other waters that they regulate have certain geographical features (e.g. ditches, canals) that transport relatively permanent (continuous, at least seasonally) flow directly or indirectly into TNWs or between two or more waters of the U.S., including wetlands.

Some typical non-regulated features include swales, erosional features, and small washes characterized by low volume, infrequent, and short duration flow. Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are also non-regulated. However, if a ditch were to eventually flow into a TNW like the Great Salt Lake then that could qualify for jurisdiction. Uplands transporting over land flow generated from precipitation like rain and snowmelt would be non-regulated. Finally, they do not regulate isolated waters. Mr. Beckstrom asked for an example of a hydrologically isolated wetland that is commerce-connected. Mr. McMillan replied that an example would be the Sevier Basin which is located throughout the state of Utah and possibly some reservoirs in Nevada that have recreation on them but, the water doesn't go anywhere.

b. Regulated Activities

Once jurisdiction has been established then the Corps decides whether to regulate the activity that is proposed. The Corps has issued two different programs:

- Work in, over, or under navigable waters of the US (Sec. 10 of the Rivers and Harbors Act of 1899). Examples of a permit that would be required under this Act would be a request for putting in a pipeline under the Colorado River or putting in piers on the Columbia River.
- Discharges of dredged or fill material into all waters of the U.S. (Sec. 404 of the Clean Water Act).

This permit does not cover any specifications for excavation. It specifically says discharges. These are two very different acts.

Mr. Naylor asked if a waterline project in Utah Lake would fall into both Sections 404 and 10. Mr. McMillan answered that it can get confusing. Years ago Congress designated every lake and river as to the type of water they are and if they fall into the TNW classification. Utah Lake and the Great Salt Lake

are not Section 10 waters but are Section 404 waters. Some waters that are Section 10 waters are the Colorado, Bear Lake, Green River and possibly the Virgin River.

c. Exempted Activities

The exempted activities mostly apply to the agricultural industry. Section 404 (f) (1) exemptions include:

- Normal farming, silviculture, and ranching
- Maintenance
- Farm ponds, irrigation ditches
- Temporary sediment basins on upland
- Approved Section 208 activity (WWTPS)
- construction of farm roads, forest roads
- recapture clause

Congress has allowed farmers exemptions throughout the nation for normal farming practices. Wetlands are used all the time for farming and a permit is not required. In the case of a recapture clause, for instance, if someone was taking an area of farming to another land use like for a residential area, then this *would* require a permit and would return the project under the Corps' jurisdiction.

d. General Permits

There are two kinds of permits that the U.S. Army Corps of Engineers issue. They are:

- Nationwide Permits - these involve common activities that occur time and time again with a relatively small impact. Examples would be utility lines, residential development, commercial development, and bank stabilization.
- Regional General Permits - (GP40-Stream Alteration) for work in the state's waters, excluding lake bottoms, minor bank or stream stabilization, unless it is related to wetlands.

e. Standard Permits

- Individual Permits - are typically for impacts over 0.5 acres, or for controversial projects (i.e. June Sucker). To obtain this permit it requires public review which is usually 30 days. A notice is sent to all the adjacent landowners near the project for them to comment. The comments are evaluated. It can be requested to have a public hearing. Then there is a full public interest review and the review time is usually 60-120 days. The issues can pertain to anything from endangered species, socio- economics, environmental issues, etc. and the lead time on those types of involvements take much longer.

f. Standard Permit Evaluation: (404) (b)(1) Guideline

The Corps evaluations permits based on a (404)(b) (1) guideline. The considerations are:

- Least environmentally damaging practicable alternative
- Permit applications are evaluated based on a three-tiered impacts analysis:
 - a. Avoidance – is there a viable alternative?
 - b. Minimization – does this affect wetlands in the least way possible?
 - c. Compensatory mitigation (wetland creation, restoration, enhancement, etc.). – this is the last consideration as it usually requires more land.

Mr. McMillan finished his presentation and invited questions from the Committee. Mr. Beckstrom asked if the issue of adverse possession has ever been addressed and has it been challenged in litigation? Mr. McMillan answered that as an Agency they have not had to address that on a national level.

Mr. Beckstrom replied that a number of the members of the Committee would like to know what the Corps perceives the significant questions to be in regard to Utah Lake, its shorelands and the surrounding areas as these routes around the Lake are being planned.

Mr. McMillan replied that all the wetlands around the Lake are an important part of the Lake itself. From the Corps' perspective he advises to avoid the wetlands when siting things around the wetlands. If that is not possible then it's best to try to minimize the involvement of the wetlands and look at the possible alternatives. The Corps will not say, "No, you can't do it", but permits won't be given or denied outright. Projects will have to go through the Corps evaluation process. If there are other passable alternatives the Corps will be looking for those. If there is a possibility that the project can be done in the uplands instead of in the wetlands then the Corps will have to deny the permit as that is Federal law. Mr. Beckstrom asked if the Corps' interest was more in regard to the wetlands and the shoreline rather than the middle of the lake. Mr. McMillan replied that the Corps is very interested in the causeway proposals and other projects and will be very involved in the entire environmental analysis. They will be involved in the studies and how they will affect such things as the June Sucker, water current patterns on the Lake, navigation on the Lake, etc. In response to Bob Fisher's question, Mr. McMillan answered that if UDOT is involved with a project then he will be the contact person and if the project is a private developer then Terry Johnson will be the contact person. It was questioned how the Corps is involved with projects concerning the middle of the lake. Because the Lake is navigable water as decreed by the Supreme Court, the Corps is automatically involved.

Mr. Beckstrom stated that he understands what the Corps is trying to achieve in the regulation for the preservation of the wetlands, but would like to know what are the interests that they are trying to protect or prevent when the Corps evaluates and regulates what goes on in the navigable waters outside of the wetlands? Mr. McMillan answered that the Corps is required to evaluate the effects that activities have on the resources. The Corps is trying to avoid any adverse impact on the Lake or to a species and then they have to determine whether or not to issue or deny a permit.

Mr. Chesnut thanked Mr. McMillan for his presentation and expressed the need to have the Corps' involvement in the Utah Lake process.

4. Master Plan

a. Review Progress

Mr. Chesnut turned this Agenda item over to Reed Price, Executive Director of the Utah Lake Commission. Mr. Price reviewed that the Negotiations team has been working with URS, Inc. in getting the contract documents put together which focuses on their scope, pricing and project timeline. It has gone well and the final documents will be reviewed with the Executive Committee on Wednesday of this week. The process should be in full swing after the Governing Board meeting on January 24th.

b. Review expectations of Technical Committee and Subcommittee members

In the interaction in the negotiation process there were meetings that the Negotiation Committee hoped to have on a regular basis including Subcommittee meetings, but that turned out to be quite expensive. Although the Subcommittees will still be used, URS will be contacting members of the Technical Committee and Subcommittees via phone to find out the municipalities' or agencies' views. The first step URS wants to do is to assess the current situation as in what types of plans the committees

have and then they will compile a current situation assessment report. The Subcommittees should still get together on a regular basis even though those meetings will not be coordinated by URS. Mr. Price will meet with all the Subcommittees to keep everyone coordinated with the Master Plan. He requested that all members of the committees be prepared to respond quickly when called by the consultant so URS can keep to their proposed schedule.

He invited everyone to review the list of the Technical Subcommittee members. He reminded everyone that even though they may have someone from their organization as a representative on a Subcommittee, they could still be contacted themselves as a member of the Technical Committee's representative for that organization. The Kick-Off meeting where URS will be talking to the Steering Committee and other key members is temporarily scheduled for January 31st. Therefore, at the beginning of February Technical Committee and Subcommittee members should be prepared to give advice to the consultant.

Mr. Chesnut reviewed that Mr. Price will be taking the lead in bringing the Subcommittees together and keeping them updated. Each Subcommittee should elect a chairman for their committee. The consultant will want to meet with each Subcommittee on a personal basis. Lee Hansen asked if the Subcommittees will meet before the consultant contacts them. Mr. Chesnut replied that initially they will not, but after the consultants assess the current situation and compile their report then the consultant will meet with them. Mr. Price clarified that the Subcommittees are scheduled to meet with the consultant in April. As soon as the workshops have been approved the complete schedule will be sent out to everyone. Mr. Fisher questioned if there is a diagram of how everything fits together. Mr. Price explained that he has copies of all the time tables and they will be forwarded to all the Technical Committee members as soon as they are approved. As members of the Technical Committee if someone wants to look at those now keeping in mind they are pending until approved, then they can welcome to do so.

5. Review resolution requiring appropriate review of all projects affecting Utah Lake.

Mr. Chesnut asked Mr. Price to present the resolution. Mr. Price reviewed that at the last meeting there was a resolution presented and discussed regarding funding for anything that benefits the Lake. There was a concern expressed during discussion of that resolution from the division of Forestry, Fire and State Lands that maybe the Commission was getting involved in issues that hadn't been thought out yet. The legal counsel of the Commission didn't think that the wording carried any concern; however, the division of Forestry, Fire and State Lands thought it might be advisable to draft a resolution that would recommend that studies or findings that the Commission becomes involved with as proposals are presented or introduced by going through a procedure of review. This review would determine whether or not the information received would be consistent with the Master Plan and if it should be included with the Master Plan. Mr. Price has drafted the following resolution:

RESOLUTION 2008-1

A RESOLUTION OF THE UTAH LAKE COMMISSION RECOMMENDING THAT ANY PROPOSED STUDY, FINDING AND RECOMMENDATION COMING BEFORE THE GOVERNING BOARD BE REVIEWED BY THE COMMISSION, ITS TECHNICAL COMMITTEE AND SUBCOMMITTEES.

WHEREAS, the bed of Utah Lake is sovereign land;

WHEREAS, Article XX of the Utah Constitution accepts sovereign lands to be held in trust for the people and managed for the purposes for which the lands were acquired; and

WHEREAS, the State of Utah Division of Forestry, Fire and State Lands, a member of the Utah Lake Commission, is responsible for managing the sovereign lands of the state; and

WHEREAS, the Commission is supportive of the role of the Division of Forestry Fire and State Lands in its management of Utah Lake under the Public Trust Doctrine; and

WHEREAS, sovereign lands are subject to the Public Trust Doctrine; and

WHEREAS, the Public Trust Doctrine establishes the right of the public to use and enjoy these trust waters, lands and resources for a wide variety of recognized public uses; and

WHEREAS, the Division of Forestry, Fire and State Lands must manage sovereign lands in compliance with the Public Trust Doctrine; and

WHEREAS, as the Utah Lake Commission is beginning the process of developing a master plan for Utah Lake and its shorelands; and

WHEREAS, many concepts have been, are being and will be proposed that, if implemented, would affect Utah Lake and its shorelands; and

WHEREAS; the Utah Lake Commission desires to determine if implementation of proposed concepts would be consistent with the Public Trust Doctrine as well as the Master Plan; and

WHEREAS; the Commission recently adopted Resolution 2007-8 supporting funding for projects and studies that will affect Utah Lake;

NOW, THEREFORE, upon motion and second, be it resolved by a majority vote of the Governing Board of the Utah Lake Commission as follows:

1. Any proposed studies, findings and recommendations coming before the Governing Board will be submitted to the Commission and its Technical Committee and subcommittees for review and consideration for consistency and compatibility with the Master Plan and/or possible inclusion in the Master Plan.

END OF RESOLUTION

Mr. Chesnut opened discussion. Adam Cowie asked if there previously has been a process for submitting things to the Commission. Mr. Price answered that there is some wording in the Interlocal Agreement regarding review of private development proposals and proposed agency actions. This resolution goes a little deeper to involve public trust, doctrine and sovereign land management responsibilities. This is the work product of the Master Plan. There was some discussion of the intent of the resolution. Mr. Price said he clarified the specifics of the resolution with Dick Buehler of Forestry, Fire and State Lands on the phone.

With no further discussion, Mr. Chesnut entertained a motion. A motion was made and seconded to approve the resolution. The resolution was approved unanimously. The resolution will be reviewed by the Executive Committee on Wednesday.

6. Other Business.

Dr. LaVere Merritt, private consultant, has written a general information document on Utah Lake that he would like to share with the Committee members. He often speaks at various meetings and assemblies and uses this document to address questions. He welcomes response from the Committee members and would appreciate any feedback on any information in the document.

Chris Keleher announced that Michael Mills will replace Kris Buelow on the June Sucker Program. Mr. Buelow has moved to Washington due to family work changes.

Mr. Lee Hansen, Saratoga Springs, reported that a study has been done wherein was found that there is some form of calcium phosphate that is precipitating in the Lake. During the collection of the samples there seemed to be a dead zone close to the Springville sewage plant where they didn't observe any fish activity or bird activity. The results of the study will be put together in a document for review.

7. Confirm that the next Technical Committee meeting will be held on Monday, February 25, 2008.

Mr. Chesnut reminded everyone that the next meeting of the Technical Committee will be held at the same location in Suite 211 on February 25, 2008.

8. Adjourn.

The meeting was adjourned at 9:48.