



Technical Committee Meeting
Monday, June 23, 2008, 9:30 A.M.
Historic Utah County Courthouse
51 South University Avenue, Suite 212
Provo, Utah

ATTENDEES:

Bruce Chesnut, Orem, Chairman	Greg Beckstrom, Provo, Vice-Chair
Reed Price, Utah Lake Commission	Clyde Naylor, Utah County
Scott Bird, Mapleton	Bob Fisher, Woodland Hills
Ron Anderson, Lehi	Ty J. Hunter, DNR-Div. of Parks & Recreation
Lee Hansen, Saratoga Springs	Ann Merrill, DNR-Div. of Water Resources
Daniel Hales, Springville	Nathan Lunstad, Highland
Chris Keleher, Dept. of Natural Resources	Sarah Sutherland, Central UT Water Conservancy District
Dave Wham, Dept. of Environmental Quality	H. Barry Tripp, Forestry, Fire & State Lands
Michael Mills, JSRIP	Douglas Sakaguchi, DNR-Div. of Wildlife Resources
Chris Tschirki, Orem	Gene Shawcroft, Central UT Water Conservancy District
LaVere Merritt, Consultant	Rick Cox, URS Inc.
Jim Carter, Logan Simpson Design	Ron Kidd, JWCD

ABSENT:

American Fork, Genola, Lindon, Pleasant Grove, Santaquin, U.S. Army Corps of Engineers, Vineyard, Utah Water Users

1. Welcome and Introductions.

The meeting was called to order by Chairman Bruce Chesnut at 9:33 A.M. He asked everyone present to introduce themselves and acknowledged that it was Dan Hales first time at the Technical Committee representing Springville City. Ron Anderson introduced himself as representing Mayor Laurel Brady for the city of Lehi.

2. Review and approve the Utah Lake Technical Committee minutes from May 19, 2008.

Mr. Chesnut opened the floor to any questions or concerns regarding the minutes from the Technical Committee meeting on May 19, 2008.

Mr. Dave Wham had the following corrections:

a) Rewording in Section 4a on Page 6, paragraph four that begins, "Mr. Dave Wham said that there are lots of feedbacks within the systems.... to read as follows:

"Mr. Dave Wham said that once carp are removed there are a lot of positive feedback loops in the system that can help move the lake to a macrophyte dominated clear water state." The sentence following that begins, "Many different shifts occur within the system..." was asked to be deleted.

b) Change the paragraph in 4a on Page 7, paragraph 7 that begins, "Mr. Wham added that Dr. Rushforth showed that the Provo Bay diatoms....." to read as follows:

“Mr. Wham added that Dr. Rushforth showed that the Provo Bay diatoms were distinct from the rest of the lake as well as those from Goshen Bay. He also noted that the algal communities are very variable year to year. Regarding the issue of limiting nutrients, Mr. Wham said that the general consensus is that if nitrogen limitation is occurring, it is usually driven by excess phosphorous causing high biological production. Excess phosphorous also results in lower nitrogen-phosphorous ratios which are commonly associated with eutrophic systems. Low nitrogen-phosphorous ratios also result in shifts to more blue-green algae.”

Mr. Michael Mills requested that on Page 3, paragraph 4 that the sentence be deleted that begins “The June Sucker Recovery Implementation Program”.

A motion was made by Dr. Lee Hansen to approve the minutes as amended and seconded by Mr. Wham. The motion passed unanimously.

Mr. Chesnut explained that since the Steering Committee was still meeting downstairs Agenda Item 3, Master Plan Update would be addressed later on in the meeting. The meeting moved forward to Agenda Item 4.

4. June Sucker Recovery Implementation Program Update.

Mr. Michael Mills reported to the Committee that the June Sucker Recovery Implementation Program (JSRIP) has had a busy summer already. Together with the Utah Lake Commission they sponsored the Utah Lake Festival on June 7th. It was a big success and they were very pleased. The attendance was outstanding.

He reported that today and tomorrow the JSRIP is stocking about 25,000 June Suckers into Utah Lake. They will be loaded onto a boat and taken out into the lake and released.

The JSRIP released an Environmental Assessment on Hobble Creek to restore the lower area, west of the I-15 where the stream is, and a public meeting is scheduled for Thursday, June 26, from 6:00 to 8:00 P.M. It will be held at the Department of Interior, Bureau of Reclamation offices in Provo.

JSRIP has been working with the RFPs they received regarding carp removal. The JSRIP were pleased with the number of responses received; however, the cost associated with the different proposals ranged from minimal to astronomical. The budget they have to work with for this RFP is \$500,000. Some of the proposals that fell within that budget weren't of the best quality. JSRIP has been in a process of narrowing the RFPs down and they have narrowed it down to two proposals. The original plan was to find someone to manage the whole project of fishing, marketing, and disposal. They were not able to find one applicant that could address all those processes within the budget. The proposals focused on different areas but not all of them. This required the JSRIP to try to make some links between the proposals. They are hoping to have a decision between those two applicants by the end of July. It would have been helpful if the JSRIP would have had more money. Based on the proposals they received \$500,000 isn't adequate to remove five million pounds of carp but they are going to see what they can get done regardless.

Mr. Chesnut asked Mr. Mills if he could update the Committee about some of the experiments they are doing with some of the local processing companies. Mr. Mills said they are starting some experiments on Friday with some local companies to see if they can keep the revenue for this project in the State. They met with Moroni Feed who makes turkey feed and fertilizer and they had expressed an interest in making fish meal out of the carp. They were provided with a load of fish on Friday and they turned it into fish meal last Saturday. Moroni Feed is going to see about the usage of that experiment, possibly in their compost pile. JSRIP is also going to send a load of fish to John Kuhni Sons Incorporated which is located south of Nephi and that company is going to do a similar experiment. Mr. Chesnut asked if Kuhni and

Sons send a lot of their product to out of state ranches. Mr. Mills said that they produce a wide variety of products for poultry, hogs, cattle and other animal feed.

Mr. Bob Fisher asked what form the fish are sent to these companies and Mr. Mills answered they are frozen and transported as whole fish that have been freshly caught.

Kuhni Sons Incorporated has asked for 50,000 lbs. of carp for their experiments. Those carp will be loaded onto a refrigerated truck and held for about three days because it will take that long to catch that many fish.

Dr. Hansen asked if there will be a problem with the PCBs in these fish. Mr. Mills said that is a major reason why the tests are being run. The JSRIP wants to see what the PCB levels are in the final product. Both the companies and JSRIP are running tests so that JSRIP can share their results with others. The testing results should be done by the end of July.

Mr. Chesnut asked if it was true that some of the bids came in at a much higher amount per pound than was anticipated. Mr. Mills said there were some bids that came in with an excess of two million dollars. He continued saying that there were some excellent proposals but the JSRIP would need more funding. It was summarized that the plan is to continue to evaluate the final two proposals, make a decision by the end of July and get done what they can with an initial effort. The JSRIP originally thought they would have a contract in place by now, but they are trying to work through the problems and do what they can to make it successful.

5. Presentation by Barry Tripp—Sovereign Land Boundaries of Utah Lake.

Mr. Chesnut introduced Mr. Barry Tripp to make his presentation on the boundaries of the Lake.

Mr. Tripp began saying that his Division was first involved in sovereign land boundaries back in 1994. The State Land Board approached the Division of State Lands and Forestry, the predecessor of the Division of Forestry, Fire and State (FFSL) to write a management plan for Utah Lake. They started work on the plan and discovered that even though the United States Supreme Court had ruled that the state of Utah owned the bed of the lake, they didn't stipulate on where the boundaries were between the bed of the lake, which were public lands, and the private lands.

They started negotiating with land owners around the lake. As time went on there were some trespasses issues that were highly visible and the state went before the District Court in Salt Lake City in those cases and eventually involved those upland owners who had not settled with them in a law suit.

Mr. Tripp stated that as background information there is a doctrine that is called the Public Trust Doctrine. This doctrine dates back to Roman law which the British based their laws on and, in turn, the United States based their laws on the British laws. What that doctrine says is that all navigable waters and seashores in the United States are considered to be public, allowing anyone the right to be able to pull their boats onto the shore and dock them or tie them to a tree, etc. Those lands are considered public lands or sovereign lands. The same doctrine prevails today on all navigable waters which include Utah Lake as well as the Great Salt Lake, Bear Lake, parts of the Colorado River, parts of the Green River, and the Jordan River.

When Utah became a state all navigable bodies of water became state owned under The Equal Footing Law. That law said that all navigable waters in the United States are public. When the thirteen colonies were settled their shorelines were governed by the Equal Footing Law and the Public Trust Doctrine. The Equal Footing Law dictated that every new state that had navigable waters would also be protected under the Equal Footing Law which reinforces the Public Trust Document.

In the State Constitution, Article 20 there's a paragraph that states "All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in section 2 of this Article, are declared to be the public lands of the State; and shall be held in

trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.”

When the State got involved in the lawsuits it was mainly to protect these lands from those individuals who indicated that they thought they owned them to the center of the lake. They wanted people who wanted to boat, fish and enjoy the beaches to be able to do so under the Law and not be inhibited.

At that time Governor Levitt was in office and he supported the FFSL in this action and eventually the state filed suit against all those who wouldn't settle in the lawsuit. There were originally 210 landowners that the action concerned. They settled with about 180 of the landowners. The rest are still in this lawsuit that was filed in 1997. Judge Dale Kimball presides over the case and has appointed a Special Master. Michael Goldsmith who is a law professor at BYU was appointed to that position.

The whole case is basically relying on and supported by use, title and possession at the time of statehood. The FFSL feels they have good data and testimony dating back to that time for this case that has been presented before the court. The landowner's attorney has indicated they really don't have any evidence reaching back to that period. Mr. Goldsmith has really been reaching out to the landowners and is waiting for the landowners to respond to him with the evidence they possess. All the landowners except for one are represented by one attorney. The appeal made to the Denver Tenth Circuit Court has recently been ruled in favor of the State.

a. Discussion.

Mr. Fisher asked for clarification regarding the shoreline and if the public land would also extend a few feet beyond the shoreline so that, for example, people could tie up their boats. Mr. Tripp answered FFSL walked the land with the landowners and then had the surveyor come down and map out what the FFSL and landowner had agreed on. They tried to settle on where the gravel, cobble or sand would meet the grasses. Nonetheless, according to the Public Trust Doctrine an individual would still have the right to tie a boat to a tree.

Mr. Lee Hansen inquired if that boundary line would still leave room for the shoreline trail and Mr. Tripp answered that it does.

Mr. Dan Hales asked about the 100 year water surface and Mr. Tripp said in 1983-84 the water level was approximately six feet above the compromise level putting it at about 4495 feet. That was probably the highest water level for Utah Lake in its history. Mr. Tripp said that he isn't sure if the new reservoir at Jordanelle will have any impact on preventing that increase from happening again. Mr. Hales commented that they have a map in the Springville planning office that shows the 100 year water elevation. He asked if Utah Lake is classified as impaired and Mr. Dave Wham answered that Utah Lake is listed as impaired for Total Dissolved Solids (TDS) and for Total Phosphorous. Mr. Hales asked if water quality requirements will be included in the Master Plan for Utah Lake and Mr. Wham said that there would be.

Mr. Chesnut confirmed with Mr. Hales that in replacing Mr. Brad Stapley on the Technical Committee he would also be included on the Recreation Subcommittee.

Mr. Hansen asked if there are any developments around the Lake that are below the level of 4495 feet. Mr. Ty Hunter replied that the closest area might have been Loch Lomond but that fill has been put in there now.

Mr. Michael Mills inquired as to how many outstanding landowners there are and Mr. Tripp answered there are about thirty landowners still outstanding. Mr. Chesnut asked if the property line around the Lake varies as they negotiate individually. Mr. Tripp said that they try to settle where it makes sense. There are two lines that go around the Lake. One is the compromise line and the other is the meander line. The compromise line is based on elevation which is 4489.045. The meander line which is a series of straight line surveys. The State didn't claim any land above

the meander line. They did have one man, Lawrence Lavery, whose property in Goshen had a meanderline that was higher, but FFSL settled with him at the fence line and by doing that the State lost some land but Mr. Lavery donated some other land to them in exchange. Primarily the State tried to settle at compromise when possible. There were seven access points to the Lake at the beginning of the process and now there are close to thirty.

Mr. Chesnut commented that the Land Use Subcommittee has specialized people serving on it that can provide a lot of resource information. Mr. Tripp distributed handouts that show land settlements.

Mr. Greg Beckstrom asked about the history and significance of the meander line. Mr. Tripp said that back in 1856 when the survey was made the instructions to the surveyors were to create the townships by sections and when they got to a navigable body of water they were to meander around it. They didn't patent anything on those navigable bodies of water basically because of the Public Trust Doctrine. Surveyed section lots exist where partial sections adjoin navigable water bodies.

Mr. Beckstrom asked if at the time anything below the meander line was intended to be federal land. It was answered that it was determined that whatever interest there was below the meander line would be state land. Now the sovereign line boundary is being determined. Mr. Beckstrom questioned what happens if there is land between the meander line and the sovereign land boundary line. Mr. Tripp answered that the meander line is now moot because there are now settlement agreements recorded in the county recorder's office. These were done by negotiation. The original surveyors created these lines but once the State was created in 1896 under the Equal Footing Law the land under the Lake became State owned property. In 1987 when the State filed against the Federal government the United States Supreme Court ruled that the State owned the bed of the Lake but they didn't stipulate the boundary. That is why the FFSL is now creating a boundary because the property cannot be managed without knowing the boundary location. Mr. Beckstrom requested clarification that if anywhere an agreement has been reached with the landowner the meander line is now irrelevant. Mr. Tripp replied that is correct; however, sometimes they did settle on the meander line. Mr. Chesnut asked if the boundary is now really established between the State and the landowner. Mr. Naylor affirmed that. Mr. Tripp said the State issued quit claims in the process to land above a certain point and the landowners issued quit claims for below the agreed boundary. If it was different than the meander line then the agreement superseded the meander line.

Mr. Fisher said the South Utah Valley Water Association just bought a parcel of land near Spanish Fork for a regional treatment plant. He asked Mr. Tripp how he could find out if the boundaries had been settled for that land. There was discussion concerning the area and Mr. Naylor suggested he could find out in the County Recorder's office. Mr. Tripp also invited Mr. Fisher to call him for assistance.

Mr. Beckstrom asked who the FFSL was working with in regard to a certain area in Orem and Mr. Tripp said they were working with the Justice Department on the indicated area of land. He said they have a proposed boundary settlement at this point. Mr. Scott Bird asked how long it would be before that was settled and Mr. Tripp said it is not known at this point.

There was additional discussion of the boundary map.

Mr. Chesnut thanked Mr. Tripp for his presentation and invited any further questions to be directed by email to Mr. Tripp. He then asked that the meeting return to Agenda Item 3 and turned the time over to Mr. Rick Cox.

3. Master Plan update.

Mr. Rick Cox reported that subcommittee meetings had been held and a lot of good information was obtained in those meetings. He thanked Doug Sakaguichi and Greg Beckstrom for their written comments on the Current Conditions Report that were very helpful. The consultants are working on incorporating all the comments.

The Visioning Statement has been revised many times and the newest draft is expected to be presented to the Governing Board at the Commission meeting this Thursday and also will be added to the website. He stated that progress is being made.

He asked the Technical Committee to be aware of some key dates. At the Governing Board meeting, June 26th, there will be a two-hour presentation in preparation for the Opportunities and Constraints Workshop. Five key issues will be addressed; lake level fluctuations, transportation corridor study, water quality, buffer zones and dredging. That meeting will begin at the usual hour of 7:30 A.M. Mr. Beckstrom encouraged everyone to make sure their representative on the Governing Board is present at that meeting.

Another key date to remember is July 9th when the Opportunities and Constraints Workshop will be held from 9:00 A.M. to 12:00 P.M. The policies will be discussed at that workshop and how to implement the vision, and opportunities and constraints will be identified. The meeting will be held in the Ballroom of the Historic County Courthouse.

Other key dates are the next Public Open Houses to be held in Provo on July 30 at County Health & Justice Building in Room 1600 and on July 31 in Lehi at the Senior Citizen's Center. Both Open Houses are being held from 7:00 P.M. to 9:00 P.M.

Mr. Cox reported that at this time the process is about 37.2% through the Master Planning effort and about 50% of the time is expired.

Mr. Reed Price expressed his appreciation to all those who had taken the time to review the documents he had sent regarding the Master Plan. He thanked everyone for committee attendance, emails and feedback and for all the work that they will yet do as the process is not yet completed.

Mr. Chesnut added his acknowledgment for all the hours that have been contributed to the Master Planning effort. He also acknowledged those serving on the Steering Committee.

6. Other Business.

Mr. Price commented that he had been contacted last week by an individual in Saratoga Springs who owns shoreline and is interested in removing the phragmites by himself. Other neighbors are also interested in doing the same but are concerned with any action taken against them should they do it inappropriately with regards to sovereign lands or any issues that are connected with the U.S. Army Corps of Engineers. This gentleman was approaching the Commission in seeking a solution to this problem and Mr. Price said he wanted to those citizens get the parties together that can help facilitate them in eliminating these phragmites since ridding the shoreline of phragmites is one of the Commission's goals. Mr. Tripp questioned what the man's name is and Mr. Price replied that his name is Mark Kehoe and he had told Mr. Price that he had been referred to him by Mr. Tripp. Mr. Tripp said he had spoken with Mr. Kehoe before and had directed him to speak with Craig Searle, Special Projects, with the County. The County is currently doing a lot of work in eliminating phragmites near the Lindon Marina. He said as long as the citizens cut down the phragmites without damaging the bed of the lake the Corps is okay with them doing it on their own. There are large penalties that can be assigned by the U.S. Army Corps of Engineers within the law if someone does damage to the bed of the Lake. The County has a procedure that they follow that stunts growth of the phragmites and then kills it. There was discussion in regard to the different procedures involved in phragmites removal such as chemicals, spraying, and machines. It was

pointed out that there is a withdrawal on the lake in regard to dock building until the lake management plan is finished.

Mr. Hales added that the Army Corps is mostly involved in tracking and he suggested that the individuals may need a 404 permit to do any type of tracking inside the Lake.

Mr. Price said he knew they were hesitant to spray. Mr. Kehoe had been in communication with someone in Florida who had been successful in removing phragmites but they were concerned with regulations.

Mr. Price requested information that he could relay to Mr. Kehoe.

Mr. Hansen said he had visited with Mr. Kehoe at one of the Open Houses. He said that Cross Marine has equipment and has been working in Charleston harbor in eliminating phragmites. Cross Marine owns the equipment that is like a giant tiller that rips up the phragmites roots but possibility would rent it to them.

Mr. Hunter commented that they felt the chemical treatment was more cost effective. They estimate it costs about \$200/acre to treat the phragmites. Chemical treatment seems to be the most effective for spotting or small areas and mechanical elimination is better for large areas.

Mr. Price will try to arrange a meeting with the interested property owners, Craig Searle with the County and the Army Corps of Engineers.

Further discussion ensued about different methods of treating the phragmites i.e. mowing, helicopter spraying and burning. Mr. Hunter said that DWR is currently burning phragmites in Farmington Bay but they have the ability and rights to regulate the water levels. Mr. Hansen said they tried burning in Saratoga Springs and they discovered the phragmites won't burn if they are too close to standing water.

Mr. Dave Wham updated the Committee on the PCB testing they have been doing. The Department of Environmental Quality (DEQ) sent off Utah Lake samples to the EPA and it is expected to have the results from those sediment samples within a month. At the same time the DEQ also sent samples to Dr. Sam Rushforth for diatom analysis. They did some e-coli testing also and the numbers came back very low as they expected but now they have actual data. E-coli samples were taken from mid-lake, Jordan River outlet, Provo Bay, State Park Boat Harbor and west of Bird Island.

Mr. Hunter requested data from DEQ on anything on the harbor. They are always trying to change people's perception of the Lake.

7. Confirm that the next Technical Committee meeting will be held on Monday, July 28, 2008, 9:30 AM.

There is a possibility that the Governing Board won't be meeting on July 31st. With the Opportunities and Constraints Workshop being held on July 9th and the Open Houses on July 30 and 31, the monthly meeting may be cancelled. There is a possibility that the Technical Committee scheduled for July 28 will be cancelled as well, but Mr. Price will notify everyone by email closer to the scheduled meeting time.

8. Adjourn.

The meeting was adjourned at 10:39 A.M.