



TECHNICAL COMMITTEE MEETING

Monday, April 23, 2012, 8:30 A.M.
Historic Utah County Courthouse, Suite 318
51 South University Avenue, Provo, Utah

ATTENDEES:

Chris Keleher, Chairman, Department of Natural Resources (DNR)
Richard Nielson, Vice-Chairman, Utah County
Greg Beckstrom, Provo City
Ben Bloodworth, Forestry, Fire, and State Lands (FFSL)
Neal Winterton, Orem City
Adam Cowie, Lindon City
Howard Denney, American Fork City
Mike Mills, June Sucker Recovery
Reed Price, Utah Lake Commission
Douglas Sakaguchi, Division of Wildlife Resources
Jim Hewitson, Lehi City
Lee Hansen, Saratoga Springs City

ATTENDEES:

Ty Hunter, Utah Division of Parks and Recreation
Ann Merrill, State Division of Water Resources
Sarah Sutherland, Central Utah Water Conservancy District

VISITORS:

LaDonn Christianson, landowner
Gene Shawcroft, CUWCD
Chris Finlinson, CUWCD
Karen Nichols, HDR Engineering
Thayne Mickelson, UDAF
Larry Crist, USFWS
Sterling Brown, Utah Farm Bureau
Carol Walters, UVEF
Todd and Louise Frye, Bonneville Sailing

ABSENT:

Mapleton City, Springville City, Vineyard Town, Woodland Hills Town, Utah Lake Water Users, Department of Environmental Quality, U.S. Army Corps of Engineers

1 **1. Welcome.**

2 Chairman Chris Keleher called the meeting to order at 8:36 a.m. He welcomed the Technical Committee
3 members and all visitors.
4

5 **2. Review and approve minutes from the March 19, 2012 meeting.**

6 Mr. Keleher asked for discussion, comments, or corrections for the minutes of the meeting held on March
7 19, 2012 and there were none. It was motioned by Mr. Lee Hansen to approve the minutes; it was seconded by
8 Mr. Greg Beckstrom. The motion carried and it was unanimously approved. Mr. Keleher thanked Mrs. Green for
9 the good job on the minutes.
10

11 **3. Report on phragmites removal program.**

12 Mr. Reed Price reported on phragmites removal. Word about the Utah Watershed Restoration Initiative
13 Grant should be received by the middle of May. In the 2012 Utah State Legislative session, SB 61 awarded one
14 million dollars to the Department of Agriculture for invasive plant removal. A significant portion was set aside
15 for large scale phragmites projects. The grant is a year-to-year grant. He was confident Utah Lake Commission

1 might get an additional \$100,000 to continue the phragmites removal efforts. After meeting with FFSL, it was
2 decided the next target area would be the north end of the lake between the Jordan River outlet and Lindon
3 boat harbor. It is a low residential area and burning may be possible with the right weather patterns. After the
4 North area is complete, they will move elsewhere and accelerate abilities to remove phragmites. Money was
5 set aside to purchase another Land Lamer and to allow the county to work more efficiently and safer.
6

7 **4. Report from June Sucker Recovery Implementation Program (JSRIP).**

8 Mr. Mike Mills reported on the June Sucker recovery program. Carp removal continues with a productive
9 month of March and was one of the largest months in terms of removing carp because of good weather.
10 Limited removal will occur over the summer as the fish scatter.

11 JSRIP continues with planning and NEPA efforts on the Provo River Delta Project with resource analysis and
12 potential impact analysis. Moving forward with the plan, there will be meetings with stakeholders, cooperative
13 agencies, land owners, and various interested parties.

14 Saturday, June 2, from 10 a.m. to 2 p.m., the Utah Lake Festival will be held at Utah Lake State Park and will
15 be similar past years with free admission.

16 Ms. Carol Walters said the Provo River delta is in the final step in the progress of a multi-step/multi-year
17 plan. This delta is vital for the June sucker recovery efforts, but with significant amount of community
18 opposition. When conflicts between personal property rights and public domain issues occur, there are
19 problems. A number of businesses and farms have been affected and shut down by the I-15 corridor project
20 and there were not a lot of comments. She felt part of what was occurring with the Provo River delta was the
21 impact on the popular ropes-course business. JSRIP was trying to find solutions so business is maintained. She
22 asked where boat activity occurs, if the lake backs up into the existing channel of the river. If part of the water
23 was diverted and a small stream still came down the existing course, would the water from the lake still back up
24 into that area. Mr. Mills said it would depend on the modifications done to the channel. One idea was to block
25 the Provo River so the current channel did not reach Utah Lake, but if left open, it would back up into the
26 present location. He corrected her statement of being the final step. It has been a long plan, but the delta
27 project alone would not be a final step as June sucker recovery involves different aspects. Mr. Beckstrom added
28 the lead agencies are evaluating the question Mrs. Walters asked. Can the lower section of the river be
29 sustained with flows to keep it from becoming a stagnant area? It was being evaluated to see if a combination
30 of circulation and water could be created to facilitate adapting the end situation.

31 Mr. Jim Hewitson asked about the progress of the carp population removal. Mr. Mills said 7.6 million
32 pounds of carp were removed out the lake. The last part of June, the commercial fishermen will reassess the
33 status of the population and gage where the current population is.
34

35 **5. Report from Utah Division of Forestry, Fire, and State Lands.**

36 Mr. Bloodworth reported Mr. Ryan Nesbitt would be leaving FFSL in June and Ms. Laura Ault would be the
37 new supervisor of sovereign lands.
38

39 **6. Report from Thayne Mickelson, Utah Department of Agriculture on Agricultural Protection Areas (APA).**

40 Mr. Thayne Mickelson, Utah Department of Agriculture, presented the criteria and process for the
41 Agricultural Protection Areas. (For further reference, see Code 404)

42 He referred to the Utah Code for Agricultural Sustainability Act in Utah, Utah Code Title, 17, Chapter 41,
43 deals with agricultural areas. The AG Protection Advisory Committee is made up of conservation district of
44 elected officials who reside in every county in Utah. Utah County has two conservation districts: Alpine and
45 Timp/Nebo Conservation Districts. The Alpine Conservation District Chair is Sid Smart and Timp/Nebo
46 Conservation District Chair is Jesse Warren. No more than five members are chosen from the Conservation
47 District Board. They give recommendations to the legislative body where the land is located. In the county, they
48 would give recommendations to the Utah County Commission to take action to allow an AG protection area.
49

Evaluating a proposal for an AG protection area, the applicable legislative body applies the following criteria:

- 1 • Whether or not the land is currently being used for agriculture production;
- 2 • Whether or not the land is zoned for agriculture use;
- 3 • Whether or not the land is viable for agriculture production;
- 4 • The extent and nature of existing or proposed farm improvements or the extent and nature of existing
- 5 or proposed improvements to; and
- 6 • In the case of an APA, anticipated trends in agricultural and technological conditions.

7 Also, the Farmland Assessment Act benefits are not affected because the parcel of land goes into the AG
8 Protection Area. He enumerated the limitations on local regulations when it involved the APA including not
9 restricting the viability of agriculture or changing the zoning designation.

10 He listed policies involved with state agencies. Each state agency shall encourage the continuity,
11 development, and viability of agriculture within APAs, by not enacting rules that would impose unreasonable
12 restrictions on farm structures or farm practices. The APA cannot trump an Endangered Species Act (ESA),
13 because ESA holds a greater jurisdiction than a local law would have. It wouldn't trump federal but it does
14 require the NEPA process to look at the impacts associated with the issues.

15 Eminent domain restrictions cannot be designated on any APA land for agricultural production unless it is
16 approved from the legislative body and advisory board. If anyone wants to condemn property within an
17 agriculture protection, they will file a notice of condemnation with the applicable legislative body and the APA's
18 advisory board at least 30 days before filing an eminent domain complaint. They have to meet the time, date,
19 place, and purpose and other requirements

20 The Utah Reclamation Mitigation Conservation Commission (URMCC) website explains how the project
21 functions. He expressed gratitude URMCC has been willing to talk about the issues and understand the AG
22 needs. Potential environmental impacts including public access, flood control, recreational opportunities,
23 nuisance, species control, hydrological changes, and conflicts with local planning, land acquisition, and
24 agriculture are evaluated. When URMCC talks about the conceptual planning approach, it says, "Although
25 alternative concepts from the channel and delta restoration project would be similar in many ways, there could
26 be significant differences due to land acquisition needs, impacts on existing development, and local planning
27 efforts." When alternative concepts are developed to meet the need and purpose of the delta project and the
28 criteria is equal, the decision should be made by various evaluations. It should be based on emphasizing low
29 operation and maintenance costs, minimizing impacts to existing homes and business owners, avoiding or
30 minimizing conflicts with existing or planned transportation infrastructure, adherence to the desires of the local
31 community, and minimize adverse impacts on existing recreational opportunities. Mr. Mickelson strongly
32 suggested adding agriculture to the list. In 1980 when NEPA was gaining strength in the process of looking at
33 things from an environmental perspective, an agreement went out stating when the NEPA process is happening,
34 the impacted interests of landowners, agencies, and business would be looked at as far as impacts.

35 He referenced an agricultural booklet for Committee members to evaluate. The largest taskforce with
36 varied backgrounds to address all the important issues and conflicts being dealt with in the agricultural
37 community were brought together by the Governor's office.

38 On summarizing the impacts, the top issue was food security. Utah can't produce enough foods for its own
39 people and the population is expected to double in 40 years. When population increases, the amount of land
40 for food production is reduced. The more AG land is destroyed the more the food will cost. Local farming gives
41 the ability to feed people in their own communities, independent of outside influences, and keep dollars, spent
42 on agricultural products in the local economy. When prime and important agricultural lands are converted to
43 urban development, the ability to produce food is lost and ability to be self-sufficient is decreased.

44 Different entities have actions they are to take. The state is to develop legislative policy that provides
45 protection for important AG lands and soils equal to wetlands in order to sustain food security. It is critical we
46 start looking at AG lands in the same way, utilizing the same exact scrutiny in the planning process.

47 The Utah Department of Agricultural and Food is to increase the capacity of the Utah Department of
48 Agriculture and Food directly to participate in the planning of state and local infrastructure needs when
49 agricultural lands are an issue. Local governments are encouraged to recognize the importance of agricultural

1 land uses in their general plans, policies, and ordinances, including specialized local food security plans that
2 work toward the goals. Questions should be asked such as Do you know how much food it takes to feed your
3 people? Do you know how much land mass you have to produce the food should transportation be stopped for
4 one month? If the trucking industry went on a strike, how long would it take before the shelves were empty?
5 Utah County is extremely valuable to the state of Utah as far as agricultural production with 69 percent of the
6 acreages and orchards are located in Utah County.

7 There are about 300 acres landowners have identified as valuable agricultural, prime farmland. Landowners
8 have combined as a group and they want to work with JSRIP to identify the best lands take and the best lands to
9 save, but not to the demise of AG lands. Mr. Lee Hansen asked how the land was being used. Mr. Mickelson
10 said alfalfa production, grasslands for grazing land, and corn; someone said it was previously used for sugar
11 beets. He was not interested in what was being farmed on it now, but its capabilities. He said looking at soil
12 quality, climate, and growing season – they have an impact on the capacity of soils. In 50 years, the land might
13 be vegetable production or used to raise cattle, because it has the soil qualities for both.

14 Mr. Beckstrom said his opinion was the APA was a tool to protect agricultural property owners from being
15 infringed upon by state and local development policies. Mr. Mickelson said it makes them stop to evaluate the
16 soils, conditions, uses, and everything. Mr. Cowie said population growth and developments come if water,
17 roads, and other amenities are in place. Mr. Mickelson said the estimate of additional population would depend
18 on transportation. Mr. Cowie wondered where the figures came. Mr. Mickelson said the population growth
19 estimates came from the Governor’s office of planning and budget. He hoped with the evaluation process, the
20 APA lands would be given scrutiny like the wetlands.

21 Mr. Price asked Mr. Mickelson to explain the process of how is to get the APA designation. He stated the
22 Technical Committee was being asked to give a recommendation to the County Commission if it was beneficial.
23 Mr. Mickelson said the most important are time elements. If nothing is acted upon by the County Commission,
24 the APA area is automatically made an AG protection area. The County is addressing this May 1. If the County
25 Commission fails to act or do their job in a timely manner set out in the code, it will automatically become an
26 APA. Mr. Price said the deadline for the proposal was the first part of June.

27 Mr. Mickelson said even with APA in place, it doesn’t mean the federal law is not going to work the process,
28 ESA is an extremely strong act in federal law, and for due reason. Hopefully the message is sent the local
29 citizens feel very strongly and the land should be for continued use of agriculture, and they think it should be
30 protected and preserved. Mr. Price asked if the AG Protection Advisory Board made a recommendation to the
31 County Commission yet. Mr. Mickelson said they had and it was to protect the area.

32 Ms. Christianson spoke in behalf of some landowners and said the papers portrayed the landowners as
33 trying to thwart the June sucker delta, which was not the intention. Land owners lost property in other
34 imminent domain issues, and felt they were not fairly compensated, ended up with no money, and had no land.
35 About 20-25 landowners are willing to sell their land, if fairly compensated. Others would like to keep their
36 land, utilizing it for cattle grazing and AG. They are willing to negotiate for things such as land swapping, to be
37 able to retain a portion. Landowners want to encourage discussion, and the delta restoration people have been
38 open discussing concerns. Everyone wants the lake to be better, cleaner, and landowners are not against the
39 goal. They want to preserve the June sucker using the best way and having the least impact on citizens and
40 agricultural land. The act does permit owners to petition to have APA removed from the AG protection. If the
41 landowner decides to sell, the petition would be granted.

42 Mr. Mickelson said the act was passed in the mid 1990s. Many bills have passed on Utah’s Capitol Hill in an
43 attempt to preserve and sustain a viable agricultural industry. But components of this bill have served a viable
44 purpose in sustaining productive agriculture. One provision is a developer of land within 300 feet of an AG
45 protection area must provide notice that they are living next to a farm or ranch. He read a paragraph of several
46 protections of what the act does. Developers build next to a dairy or farm, and residents disapprove of flies,
47 mud on the road, smells, etc. They then file a nuisance complaint with the city or county. The law causes those
48 in elected office to pause before decisions are made. Other items noted are:

- 49 • Political subdivisions located in APA areas should encourage the viability of the AG lands.

- 1 • Political subdivisions may not change zoning on APA without written consent of the landowner.
- 2 • Political subdivisions may insure that laws regarding public nuisance exclude any activities or operation
- 3 within the AP protection areas.
- 4 • A complete defense in a civil or criminal lawsuit for public nuisance is provided.
- 5 • A state agency shall encourage the continuity, development, and viability of agriculture in APA's by
- 6 avoiding rules or laws that create unreasonable restrictions of farm structures or farm practices unless
- 7 such rules have a direct relationship to public health or safety or required by federal law. Though not
- 8 perfect, it is a law to have people in authority pause, reflect, and reconsider.

9 Ms. Finlinson asked if there are no other reasonable alternatives after the local entity stops and evaluates,
10 what is the next step. Mr. Mickelson said they could move forward with the imminent domain procedures and if
11 a lawsuit were brought by the landowner, they would work through the legal processes to identify whether
12 there was no approved alternative or if there were, come to a legal understanding. Ms. Finlinson said it was her
13 understanding that if the AG protection board does not agree, there are no alternatives. Mr. Mickelson said
14 there is always an alternative because if it was brought back to the board, and they said no, the next option
15 would be legal action.

16 Ms. Walters said she represents a citizens' group that is environmentally concerned and shares concerns
17 about preservation of agriculture and maintaining good wildlife habitat and conservation issues. She came
18 looking at potentially conflicting interests.

19 Mr. Beckstrom asked Mr. Mickelson or Mr. Brown how many APA acres were in Utah County or has the APA
20 designation around Utah Lake. Mr. Mickelson said he didn't know, because he did not have the data with him.
21 Someone asked if there were additional AP areas in the proposed locations. Mr. Mickelson said yes. A large
22 amount of property is actually set aside with a conservation easement. There is a process in order for that to be
23 taken out of the conservation easement. There is a challenge ahead of AG people. They want to get involved in
24 this process, and are pushing so they can help and plan ahead.

25 Someone asked if the land use changed with a development coming in and if the development takes away
26 the AG protection zone, if there was a process to go through to remove the AG protection zone. Mr. Mickelson
27 clarified if the landowner already decided to develop it or change the land use, the owner still has to go and get
28 it removed. If the land went into development for a subdivision, it needs to be removed from the AG protection
29 area. Mr. Brown said all APA's come up for renewal every 20 years. Mr. Hansen asked who decided whether to
30 grant the protection or not. Mr. Mickelson said it was the local legislative body, either city or county.

31 Mr. Mickelson thank thanked the group for allowing him to come and told the Technical Committee to
32 contact him if there were questions. He appreciated working with the Technical Committee, thankful for their
33 input, and looked forward to working with them again.

34 Ms. Finlinson asked what the process was, if the group was prepared to make a recommendation to the
35 County Commission, there should be more discussion. Mr. Price said they wanted Mr. Larry Crist to speak to the
36 group about ESA and then a discussion would be held to see if the Technical Committee could make a
37 recommendation to the Governing Board.

38
39 **7. Report from Larry Crist, US Fish and Wildlife Service on Endangered Species Act as it applies to June sucker**
40 **recovery.**

41 Mr. Keleher said Mr. Larry Crist is with the US Fish and Wildlife Service (USFWS); and is supervisor in the Salt
42 Lake office. He said ESA is perceived as a big 800-pound gorilla. When Congress passes different laws,
43 sometimes they don't explain how the laws should be interpreted when they have conflicting purposes and
44 leave it up to the supervising entities.

45 He noted the USFWS goal, "Our mission, working with others, to conserve, protect, and enhance fish,
46 wildlife and plants and their habitats for the continuing benefit of the American people." The BLM and Forest
47 Service have more of a multiple-use mandate, and balance a lot of things. USFWS is oriented towards
48 conservation. Their role includes National Wildlife Refuges, Wetland Conservation, Fishery Management,

1 Migratory Bird Protection, Waterfowl Management, Wildlife Habitat Restoration, Partnering with States, Law
2 Enforcement, and Endangered Species.

3 The ESA was passed in 1973 under the Nixon Administration. The purpose was to provide a means whereby
4 the ecosystems where endangered and threatened species depend, may be conserved, and to provide a
5 program for the conservation of such endangered and threatened species.

6 The frameworks of the program for the specific sections pertaining to the ESA are:

7 Section 4: Listing, critical habitat, and recovery plans, Section 5: Land acquisition, Section 6: Assistance to
8 States and Territories, Section 7: Interagency Cooperation, Section 8: International Cooperation, Section 9:
9 Prohibited Acts, Section 10: Exceptions, and Section 11: Penalties and Enforcement.

10 Section 4 sets requirements and standards for listing, and defines endangered vs. threatened. It gives
11 provisions for emergency listing, providing for citizen petitions, the mandated development of recovery plans,
12 the requirements for designation of critical habitat, and the description of candidate species. A species is listed
13 in one of two categories, endangered or threatened, depending on its status and the degree of threat it faces.
14 An “endangered species” is one that is in danger of extinction throughout all or a significant portion of its range.
15 A “threatened species” is one that is likely to become endangered in the foreseeable future throughout all or a
16 significant portion of its range.

17 The June sucker is an endangered species. Because of recovery programs, a future evaluation will be done
18 to see if could be down-listed to “threatened.” This will be evaluated in the future when a new recovery plan is
19 out. Over the last ten years, the majority of species listed were through the citizens’ petitions including
20 environmental groups, individual citizens, etc. Section 4 mandates recovery plans, and JSRIP is functioning
21 under an old recovery plan, but are in the process of completing an updated version because a lot has been.
22 The June sucker’s appropriate habitat is not Utah Lake but the lower 4.9 miles of Provo River, because they use
23 it for spawning and for nursery habitat. Candidate species have enough information warranted for listing, but
24 fall under the jurisdiction of the state. There is no extra protection but as a warning may be listed in the future.

25 When a petition is filled out, individuals or groups can petition USFWS to list or delist a species or
26 designate/amend. After receiving a petition, USFWS responds via a 90-day finding determining if the petition
27 contains substantial information that the petitioned act MAY BE warranted. If so, it is given a positive and a 12-
28 month finding is more detailed with an intensive review of the species. This is to determine whether the
29 petitioned action IS warranted. The outcomes include: 1) list the species; 2) find it not warranted; 3) find
30 warranted but precluded by higher priority actions (candidate species). The listing process is a five-factor
31 analysis including habitat destruction or modification, overutilization, disease or predation, and inadequate
32 regulatory mechanisms. Other factors include regulatory process based solely on biology (not economics),
33 requirements for public comment, and peer review. The five-factor analysis was done in 1985, the June sucker
34 listed in 1986, with the important factors of habitat construction and modification, non-native fish, and the
35 water quality in Utah Lake.

36 The critical habitat for June sucker is the lower 4.9 miles of the Provo River because the vast majority of the
37 June sucker goes there to spawn. It is historically where the population went. It provides an area for spawning
38 and for young fish to maintain the population. Over the years, the channel has been changed and nursery areas
39 were lost, and the June sucker declined. Habitat is essential to the conservation of a listed species that may
40 require special management and can include federal, state, tribal or private lands. Areas can be excluded if
41 benefits of exclusion outweigh the benefits of inclusion, and critical habitat protections apply only to federal
42 lands or actions.

43 Section 4(d) Rules does not necessarily apply to June sucker. It gives flexibility to tailor the prohibitions
44 against “take” and other things for threatened species to regulate. The June sucker is considered endangered.
45 If it became threatened, a little more flexibility could be used in terms of the “take” allowed or as deemed
46 necessary and advisable to provide for the conservation of the species.

47 Recovery is a natural goal of ESA and is the process by which the decline of an endangered or threatened
48 species is arrested or reversed, and threats to the survival are negated, so its long-term survival in nature can be
49 assured. As part of recovery, USFWD is required to do a recovery plan. June sucker recovery has done a lot of

1 work and research over the years. A revised recovery plan will be out this year. Once recovery is achieved, the
2 threats are addressed, criteria is identified for down listing to threatened, and then delisting, and taking it off of
3 the list entirely. Some things will carry over from the old plan into the new plan such as completing the lower
4 Provo River delta restoration and looking at other areas around the lake. The spawning areas in Hobble Creek
5 are relatively in a small stream and it has limited capacity to produce fish. The recovery plan is a dynamic thing,
6 but USFWD doesn't was to get locked into it and never look at anything again.

7 Other important things for recovery are complete warm water (native species) hatchery, the carp removal
8 project, improve water quality in Utah Lake, establishing and maintaining the natural June sucker recruitment in
9 Utah Lake, and revising the recovery plan. The natural recruitment has to do with the Provo River, Hobble Creek
10 and possibly Spanish Fork. Over the years, the Provo River has been the primary place for June sucker spawning.

11 The recovery plans are done by the Recovery Team (RT) who are appointed species experts, and are
12 recognized by the regional director of the Division of Wildlife Services. As a federal regulation, RT is also exempt
13 from backup. The RT reports directly to Mr. Crist and to the regional director. When a recovery plan is put
14 together, it goes through a public comment period so people have an opportunity to provide comments. If
15 some important thing was missed or not analyzed the public component helps.

16 Section 6 deals with grants and is a source of funding to the states for helping fund recovery activities. JSRIP
17 has been getting around between \$70-90,000 a year, which is not a lot but helps with surveys, monitoring, or
18 recovery actions. Endangered species funds \$7.4 million nationwide. The non-traditional funding of recovery is
19 land acquisition, habitat conservation planning assistance, and Habitat Conservation Plan (HCP). Land
20 acquisition was used to purchase lands for Hobble Creek.

21 Section 7 is quoted a lot when ESA is discussed. Section 7(a) (1) – Requires all Federal agencies shall use
22 their authorities in the furtherance of the purposes of this Act by carrying out programs for the conservation of
23 endangered and threatened species. Section 7(a)(2) says each Federal agency must, in consultation with the
24 Service, ensure that any action funded, authorized, of carried out by the agency is not likely to jeopardize the
25 continued existence of any endangered or threatened species or result in the destruction or adverse
26 modification of critical habitat.

27 Section 9 prohibits "take" of listed animals. Take is defined as to "harass, harm, pursue, hunt, shoot, wound,
28 kill, trap, capture, or collect, or to attempt to engage in any such conduct. Take is more than killing a species.
29 Harm includes significant habitat modification or degradation resulting in death or injury to listed wildlife by
30 significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined
31 as intentional or negligent actions creating the likelihood of injury to listed wildlife by annoying it to such an
32 extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding,
33 feeding or sheltering. Harass can also be things like affecting wildlife use of an area by activity.

34 Section 10 deals with exceptions, which are a way to authorize activities such as for research, take permits,
35 and other things prohibited under Section 9 of the Act. Researchers net fish and they occasionally harm
36 endangered fish, because there are exceptions for research. There are exceptions provided under HCPs. An
37 HCP happens when there might be "taking" of endangered, but there is no federal nexus, and the species is still
38 protected. HCP is a private process where Section 7 is a federal process. With a federal nexus, there is a process
39 under Section 7 allowing moving the project forward. When there is no federal nexus, it comes under section
40 10, and the HCP process.

41 Section 11 refers to penalties. These are associated with the take of endangered under the ESA. Penalties
42 happen in terms of extreme negligence. Civil penalties are \$25,000 for a "knowing violation," either threatened
43 or endangered; criminal penalties for an individual are \$100,000 for endangered or \$25,000 for threatened; for
44 an organization, it is \$200,000 per organization/per endangered and \$25,000 for threatened, and up to one year
45 imprisonment and/or forfeiture of property.

46 The June Sucker Recovery Program was formed with the help of the implementation recovery plans for the
47 June sucker, and was mandated under biological opinions with Section 7 consultation.

48 Looking at the diamond core, the Utah Lake system, Provo River biological opinion, there is a history of things
49 mandating the formation of the recovery program so the June sucker would not continue to decline. With the

1 progress, the future hope is to down list the June sucker. One of the key components is the Provo River Delta
2 Restoration. There is no specific plan of exactly how it must be done but alternatives are given.

3
4 **8. Review proposal to designate land near Utah Lake as Agriculture Protection Area and consider making a**
5 **recommendation to the Governing Board about the proposal.**

6 Mr. Cowie said it was listed in 1986, and asked if the delta project was part of the June sucker recovery plan.
7 Mr. Crist said it did not identify the specific delta plan, but arose over years learning about the biology of the
8 species, spawning, and restoring the nursery. Mr. Mills said the first recovery plan did state the habitat interface
9 with the Provo River and Utah Lake had to be restored in order to support recruitment but did not use the word
10 delta. Ms. Christianson said veteran fishermen feel it might not be successful because of predator fish. Mr. Crist
11 said the department was addressing things through a number of different ways. If the habitat were modified,
12 more aquatic vegetation would grow in the lake providing cover and an escape area from predation.

13 Mr. Beckstrom said with the less-than-enthusiastic supporters of the June sucker recovery plan and delta
14 restoration project, that he sensed the June sucker recovery program is victimized by consternation regarding
15 the ESA. He categorized two perceptions the criticism is based upon. The first is many species have come and
16 gone. The ESA says in effect, "no more extinction." Many endangered species are protected and there is no
17 evaluation to any real legitimacy. The second perception is lots of federal money is being spent on a program
18 nearly 40 years old, and has effectively delisted a small percentage of species that been listed as endangered.
19 Mr. Crist agreed species have been going extinct, but are now going extinct at a much faster rate. It is due
20 mostly with the conflict of human development and possibly climate change. With these factors, the need for
21 the ESA needs to take into account threatened and sensitive species to slow it down. An important thing is ESA
22 is trying to preserve ecosystems. There is benefit to Utah Lake because good things are happening for Utah Lake
23 and the community as a whole, and it can be argued if it was worth the cost or not.

24 Mr. Beckstrom said he hears from people who are generally supportive of endangered species protection
25 and ecosystem preservation, but that the absence of any case-by-case evaluation of whether or not every
26 species needs to be protected is a flaw. Mr. Crist said he didn't disagree. Someday revisions of the ESA would
27 allow for something case-by-case, but it was not in the original act. So, we are working with laws that exist. He
28 had heard some discussion of that of whether there is a mechanism or not or a way to open that door for
29 consideration. It is also hard to figure out, well this species is important and that one is not. Sometimes, we can
30 make those decisions based on what we know and then there is often a lot that we don't know. Mr. Beckstrom
31 asked about the criticism and perception regarding the actual delisting of listed species. Mr. Crist said he agreed
32 a lot of endangered species have not been delisted. Resources are being put into the program, and there is real
33 progress. He felt it would be a possibility to get a down listing, followed by a delisting. There is an increase in
34 numbers of June suckers in the lake because of the program, including natural recruitment. There are 40 listed
35 species in the state with recovery actions on six to eight of them, but there is not enough money to address all
36 the species. Species are picked that are important because they are a keystone ecological species and may be
37 important to communities, water use, etc. Specific conflicts regarding June sucker and water uses are trying to
38 get resolved so people can develop water and still have June sucker.

39 Mr. Shawcroft asked about the interface between Provo River and Utah Lake, and if it would be impacted by
40 the new recovery plan. Mr. Crist guaranteed it was still important. Mr. Shawcroft said he did not want anyone
41 leaving thinking with a new recovery plan the need for utilizing the Provo River might go away. Mr. Crist said a
42 public draft will come out for comment with a lot of similarity with the existing recovery plan, but it will be more
43 refined. He assured all that the Provo River is still considered important for the recovery of June sucker.

44 Mr. Hansen said many comments are the June sucker is really a worthless fish. Mr. Crist felt the June sucker
45 could be indicative of conditions in the lake -- water quality of Utah Lake has changed over time and the habitat
46 of the lake was the result of carp introduction. If the June sucker is recovered, improvements will be seen in
47 Utah Lake itself in terms of water quality and amenities. Mr. Beckstrom said in terms of the APA and the June
48 sucker, it raises the public perception of agricultural preservation, having the stakeholders put on the table the
49 concern and intensity of their interests. Mr. Crist said the initial reaction would increase the level of awareness,

1 but didn't know if it would change anything. Mr. Crist asked if Mr. Mickelson had any understanding of how it
2 might affect the idea of trying to implement a delta restoration project. Mr. Mickelson said it might cause
3 recognition for the need to evaluate everything and open up avenues for review.

4 Mr. Mills said he had not dealt enough with the APA to have an educated opinion on it. Mr. Brown said it is
5 a state law and state agencies, including the district have to deal with the AG protection. If something moves
6 forward, then it is not a state issue, but becomes a federal issue. ESA is a powerful law and trumps certain
7 things. He asked whether the designation of AG had anything to do with a federal process. Mr. Price said Ms.
8 Christianson asked the same question. A message is sent to the Mitigation Commission not to forget about
9 landowners. Ms. Christiansen concurred stating a federal policy protection act encourages federal agencies to
10 defer to state protections to work it out and gives legal authority to the governor to make decisions.

11 Mr. Crist said his experience with working with ESA is every time you try to implement something it results
12 in change. People are concerned because they are vested in the way things are now. He believed the Governor
13 would say to work it out and find a compromise that works and still allows the program to implement what is
14 warranted, but allows taking into account the concerns of stakeholders. When implemented, it is generally a
15 negotiated settlement. Mr. Price said it should be pointed out it is still early in the implementation of this
16 particular project. Ms. Christianson said it should not be interpreted as a way to thwart the effort, but just send
17 a message early in the process to sit down and work something out amenable for all involved. Mr. Keleher said
18 a concern might be if a decision is made, would it interfere with future plans. Mr. Nielson said a County
19 Commission public hearing is set on May 1. The Technical Committee can identify what the political issues are
20 and let the Governing Board decide.

21 Mr. Mills said the news media covered the project at length and things people are reading in the articles are
22 the extreme. The reality is people planning this project are listening to the landowners and having meetings
23 between the planners and landowners. Changes based on the landowners input are being considered. This was
24 before the APA idea came up; JSRIP recognized the need to work with landowners. Agriculture is considered
25 whenever a NEPA document is involved.

26 Mr. Beckstrom said his perception of the agricultural protection designation is largely consistent,
27 compatible, even promoting of Utah Lake Master Plan. For the most part, agricultural land uses and the
28 preservation of them near the shoreline of Utah Lake is probably preferable than most alternatives. Mr. Keleher
29 said in his perception, the delta restoration project certainly fits within the goals and objectives of the Master
30 Plan. Mr. Beckstrom said he has not heard of a practical and legal conflict, if any, between an APA designation
31 and the ultimate development of the restoration project. Ms. Walters asked if it was Mr. Crist's perception
32 there was conflict. Mr. Crist said he didn't see what the conflict was.

33 Mr. Cowie said that Mr. Price had noted that AG protection fits on both sides of the Master Plan. Mr. Price
34 concurred that the APA designation is supported by the Master Plan. Protection is identified in the Master Plan
35 and points out the June sucker recovery efforts are supported by the Master Plan. Mr. Cowie said asked if the
36 delta would be open to public access or have restricted conservation uses. Mr. Mills said all the alternatives
37 include opening the area to public access. Mr. Cowie clarified the trail around the perimeter was one of the
38 goals of Utah Lake and so it could be maintained. He asked if transportation routes might be thwarted by a
39 delta project. Mr. Price said there was a road planned to the east of it and but it was rerouted. Mr. Cowie listed
40 other things in the Master Plan that are furthered by creation of the delta including June sucker, public access,
41 creating more shoreline, habitat restoration, additional recreational, water quality, and it doesn't hamper
42 transportation. Mr. Price concurred with those Mr. Cowie identified.

43 Ms. Walters said she wondered if the two subjects were "versus." Mr. Price said the proposed project is
44 over 500 acres and questioned the size. Mr. Mills said 500 acres was on the extreme side. Mr. Mickelson said
45 when projects are done there are tacked-on benefits to gain support, such as recreation. When extra things are
46 added, it becomes part of the taking process and legal problems could occur. Mr. Cowie said the role of the
47 Technical Committee is to envision the entire scope of the Master Plan and what is needed in a proposal. Then
48 it should be asked if the proposal furthers the goals of the Master Plan.

1 Ms. Walters said potential delta acres range from 250 to 600. She said Mr. Reed Harris felt the delta would
2 eventually go in, but the question is the size and if it would be sufficient to establish recruitment. She asked
3 what the acreage was necessary to establish recruitment. Mr. Mills said he did not have an answer and it was
4 part of alternative analysis, and ongoing research. When the EIS is complete, it will compare alternatives, weigh
5 the costs, and the benefits of the different options. Mr. Mickelson said that it could be done in a number of
6 areas and could be split up. Mr. Crist said he would say it is an aspect they would look into but they need a core
7 project on Provo River because it is the biggest tributary with an associated delta.

8 Mr. Mickelson said from discussions there is 300 acres considered prime for agriculture. It is as really good
9 farmland they desire to keep for agriculture. Mr. Hansen asked if the APA was put in place for food production,
10 as discussed, does it include fisheries as fish of Utah Lake literally saved the population. Ms. Finlinson said one
11 issue is the delta restoration project and she felt the ESA is going to end up ruling. Another issue is the broader
12 question of AG protection in general and it needs to be addressed when the Technical Committee is ready. Mr.
13 Mickelson said he would rather see endangered species and agricultural lands maintained in the state as
14 opposed to suburban and parking lots any day.

15 Ms. Finlinson said those are not the only projects cut off by the APA, but local control is gone once the APA
16 status is granted. Mr. Brown said he differed from her opinion because control is firmly in local hands. Those
17 who pull it out or put it in are local people. Ms. Finlinson said true, but once it is put in, it is under the control of
18 the appointed AG Protection Board and not the elected officials. Mr. Brown said his point was they were local
19 people. Mr. Mickelson said the board is an elected body. Ms. Finlinson asked who elected them. Mr. Price said
20 they were appointed. Mr. Mickelson said they could get a ballot and the ballots are available for anyone to vote
21 for a conservation district and you can request the ballots from the Department of Agriculture in the process.
22 Ms. Finlinson said in the general terminology, she didn't think that it would be considered an elected office. Mr.
23 Price asked if it was because it doesn't go through a general election where everyone has the opportunity. Mr.
24 Mickelson said that was true. Mr. Beckstrom said he understood if a property owner from agricultural area gets
25 their property designated as an APA, then they decide they are ready to move on. They choose to do something
26 other than agricultural use, such as developing their property into something else. He heard they couldn't
27 develop it until the property is removed from the AG designation, which is required by the local agricultural
28 advisory board. Mr. Crist said to pull AG land out of APA that they have to go through the advisory board, the
29 city, and county governments. Mr. Beckstrom wanted to clarify if the property owner has the unilateral
30 authority to remove it from AG preservation or if it requires the consent of the agricultural board to remove it
31 from agricultural protection.

32 Mr. Mickelson read section 306, "Any owner may add land to existing AG protection area." The applicable
33 legislative body shall grant the petition for removal from an AG protection area as the case may be even if
34 removal from the land would result in an AG protection area of less than the number of acres established by the
35 applicable legislative body as the minimum. In order to give notice of the removal to all persons who have may
36 acquire or seek to acquire an interest in the land in or adjacent to the agricultural protection area, removed
37 from AG protection area, file a legal description of their specific boundaries with the county recorder, deeds
38 affected with a planning commission. They may not charge a fee in connection with the petition to remove. The
39 remaining land in the AG protection area is still an APA or industrial protection area, respectively. If the
40 municipality annexes any land that is part of an AG protection area located in the unincorporated part of the
41 county, the county legislative body shall within 30 days after land is annexed review the feasibility of the land
42 remaining in the AG protection area according to the procedures and requirements of section 307. Mr.
43 Beckstrom said it would create a great deal of comfort with municipal leaders.

44 Mr. Cowie asked if the Technical Committee should have to give a recommendation on it. Mr. Price said the
45 Technical Committee is supposed to review and understand issues, and makes a recommendation to the County
46 Commission. They can see how we, as a recognized organization with technical expertise and elected officials
47 who sit on the Governing Board, have weighed the issue, by giving it good thought and reasoning.

48 Mr. Hansen asked if it goes into an APA, does that preclude the delta restoration from happening on that
49 land. Mr. Price said the process would continue, from what Mr. Mickelson and Mr. Crist said. The federal

1 hammers appear to be bigger than the local hammer -- if they needed to come down. Mr. Nielson said one
2 issue is with imminent domain as it throws an extra wrench in the system if it is in an AG protection area, and
3 adds an extra level of complication. Mr. Beckstrom said it didn't seem to be an issue because his senses are the
4 joint agencies have indicated a desire not to go through a condemnation process. Mr. Crist said the NEPA
5 process forces them to look at all the impacts.

6 Mr. Beckstrom said it generates a lot of discussion with relevant issues, but in the final analysis, he has a
7 hard time grasping the real practical or real significance one way or the other. Mr. Hansen concurred. Mr.
8 Keleher asked if other of the Technical Committee felt the same way or if anyone had any other thoughts. Mr.
9 Hansen said it didn't go away as an issue of interest, but the comment here is it complicates what happens down
10 the road if this protection goes in. His belief is that it is premature to put this protection in place now. It is
11 something that might happen down the road but all it does is complicates what it going to happen anyway. Mr.
12 Beckstrom clarified that this property is going to receive the APA designation. Ultimately the County
13 Commission will act on it or they are not going to act on it. If they don't act on it, then the designation becomes
14 automatic. The County Commission will act on it by approval, unless someone stands up and says we strongly
15 recommend you don't approve this designation for various reasons. Mr. Hansen said the reason is there; it
16 complicates what is going to happen anyway and makes it more expensive for the agencies.

17 Mr. Beckstrom motioned the Technical Committee send a report to the Executive Director on the discussion
18 with the relevant issues of the Technical Committee by not making any specific recommendations regarding the
19 this specific agricultural protection area designation. The Technical Committee is to study agricultural
20 preservation area designations around the shorelines of Utah Lake in a broader independent discussion.
21 Objectively, the broader discussion should be evaluated and needs to occur independently of the Provo Delta
22 Restoration Project discussion. It was seconded by Mr. Hansen. There was no further discussion. The motion
23 passed unanimously except a nay from Mr. Adam Cowie. He expressed concern the Governing Board asked the
24 Technical Committee for an opinion and he felt the Technical Committee should give them one, instead of just
25 saying an opinion would not be given. He felt it was the Technical Committee's duty to uphold the elements of
26 the Master Plan and to give an opinion on matters pertaining to things regarding the lake, and he felt the
27 Technical Committee bypassed that responsibility. Mr. Keleher expressed his gratitude for the professionals
28 who came to present.

29
30 **9. Other discussion items.**

31 Mr. Keleher asked if there were any items to be discussed. There was none.

32
33 **10. Confirm that the next meeting is scheduled for Monday, May 21, 2012.**

34 Mr. Keleher reminded the committee their next meeting will be held in Suite 212 of the Historic Utah County
35 Courthouse on Monday, May 21, 2011 at 8:30 a.m.

36
37 **11. Adjourn.**

38 Mr. Nielson motioned to adjourn the meeting, seconded by Mr. Cowie. The voting was unanimous. The
39 meeting adjourned at 11:00 a.m.