



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF  
CESPK-CO-R

9 November 2007

MEMORANDUM FOR RECORD

SUBJECT: Traditional Navigable Waterways, Federally Navigable Determination for Utah Lake (SPK-2007-01601)

1. Utah Lake is located in Utah County, Utah.
2. The lake is a natural lake that drains in to the Jordan River, which flows into the Great Salt Lake. Utah Lake acts as a reservoir in that the flow into the Jordan River is regulated by a spillway located in the northwest corner of the lake. The spillway elevation is at approximately 4,489 feet above mean sea level.
3. The lake has a surface area of 96,900 acres and a shoreline of 76 miles.
4. Utah Lake is a popular location for water-based recreation, due to its large size and close proximity to major urban centers in Utah County and southern Salt Lake County. Utah Lake is used for recreational boating, swimming, waterskiing, iceskating, hunting, and fishing.
5. Based on information provided by the Utah Department of Natural Resources, plans have been made to conduct a commercial carp removal (fishing) operation in accordance with the June Sucker Recovery Program. The June sucker (*Chasmistes liorus*) is a federally listed, endangered fish species which is endemic to Utah Lake and its tributaries. The carp problem in Utah Lake presents a major impediment to the recovery of the June sucker fish. Carp fished from the lake would have the potential to be sold across state lines, satisfying the requirements of a 33 CFR 328.3(c) water of the U.S.
6. The lake also meets the three conditions of navigability per 33 CFR 329.5 which are:
  - a) Past, present, or potential presence of interstate or foreign commerce
  - b) Physical capabilities for use by commerce as in paragraph (a) of this section; and
  - c) Defined geographic limits of the waterbody.
7. The defined geographic limits of the lake are its ordinary high watermark (OHWM). The elevation of the OHWM is approximately 4489' (NAD 27 elev.), however it varies around Utah Lake due to ice and wave action. OHWM was established in the East (Provo) Bay of Utah Lake by BioWest (consultant) on the proposed Provo West Connector roadway project (in Sections 15 and 16, Township 7 South, Range 2 East, SLB&M). Physical characteristics used to determine the OHWM included: sediment deposits on riprap and on lacustrine fringe wetland vegetation (*Scirpus*) and driftlines and debris deposits were also observed w/in the OHWM study area. In all jurisdictional determinations encompassing the lake, it is critical that the District document the physical characteristics of the OHWM per 33 CFR 328.3(e).
8. Historically, the lake has been used by three Indian tribes: the Paiutes who mainly used the west side; the Utes who used the lake and its streams throughout the year; and the Shoshone who periodically

entered Utah Valley from the north. Utah Lake has been of central importance to all of the people who have occupied the lake plains.

9. Commercial fishing was important into the twentieth century (Utah History Encyclopedia, 1994).

10. Additionally, Utah Lake was determined to be federally navigable in two federal court cases (U.S. Supreme Court; 10<sup>th</sup> Circuit Court of Appeals):

a. In *Utah Division of State Lands v. United States*, 482 U.S. 193 (1987), the majority declares "Utah Lake is a navigable body of freshwater covering 150 square miles. It is drained by the Jordan River which flows northward and empties into the Great Salt Lake." *Id.* at 198. The majority makes this declaration because the finding that the lake is a navigable body of water is a prerequisite to a finding that the "bed and banks" of the water passed to the State upon statehood. Thus, under the *Rapanos* Guidance and Appendix D, the water is a TNW as the highest federal court in our country has determined the water body to be navigable-in-fact under federal law for the purpose of the Equal Footing Doctrine.

b. The conclusion that Utah Lake is jurisdictional is further supported by *Utah Division of Parks and Recreation v. Marsh*, 740 F.2d 799 (10th Cir. 1984). In that case, which was a 404 case, the court concluded "that the discharge of dredged or fill material into Utah Lake by plaintiff or others could well have a substantial economic effect on interstate commerce." *Id.* at 803. That court went on to state that "authority to regulate waters used in interstate commerce are consequently best understood when viewed in terms of more traditional Commerce Clause analysis than by reference to whether the stream in fact is capable of supporting navigation or may be characterized as 'navigable water of the United States.'" *Id.* at 804. However, the court was "convinced, [ ], that the challenged application of the [CWA] and the regulations is within the permissible bounds staked out by the Commerce Clause." Thus Utah Lake is jurisdictional

11. List of Reference Material:

Pelican Point, Saratoga Springs, Provo, Orem, Lincoln Point, West Mountain, Goshen Valley North, and Soldier Pass, Utah USGS 7.5-minute quadrangles.

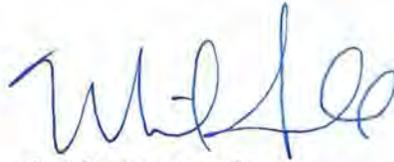
<http://www.waterquality.utah.gov/watersheds/lakes>

Powell, Allen K. 1994. *Utah History Encyclopedia*. University Press, University of Utah, Salt Lake City, Utah, 674 pp.

Utah Division of Water Quality. 2007. *Utah Lake TMDL: Pollutant Loading Assessment & Designated Beneficial Use Impairment Assessment FINAL DRAFT* (August 1, 2007). Prepared by Psomas and SWCA Environmental Consultants.

Utah Valley State College. 2005. *Utah Lake Comprehensive Management Plan Resource Document*. Horns, Daniel (ed.), Utah Valley State College, Department of Earth Science, May 2005.

12. James McMillan of the Utah Regulatory Office is the point-of-contact for this determination. He can be reached by phone at 801-295-8380 or e-mail [james.m.mcmillan@usace.army.mil](mailto:james.m.mcmillan@usace.army.mil).



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