

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT
for
Strawberry Aqueduct and Collection System

Angler-Access Acquisition
and
Corridor Management

BACKGROUND

The Strawberry Aqueduct and Collection System (SACS), a component of the Bonneville Unit, Central Utah Project, consists of a series of pipelines, tunnels, aqueducts and reservoirs that capture water from the Colorado River Basin and divert it to the Bonneville Basin for use along the Wasatch Front.¹ The construction and operation of the Strawberry Aqueduct and Collection System altered stream flows on approximately 240 miles of ten streams. As mitigation for the impacts of reduced flows, only 6,500 acre feet of SACS water was initially committed for instream flows. The bulk of this water was required on Rock Creek to satisfy an instream flow commitment required by the Indian Deferral Agreement.² In most years there would have been only a small amount of SACS water, if any, available for instream flows in the other impacted rivers. As a consequence, it was estimated that about 73 percent of the adult trout habitat on impacted streams would be lost as a result of constructing and operating SACS.

Following years of discussion, a mitigation program was developed for SACS in 1988. To mitigate the impacts, several key agreements were made (including the *Aquatic, Wildlife* and

¹The Bonneville Unit is a system of reservoirs, aqueducts, pipelines, siphons, and conveyance facilities that transport water from the Uinta Basin to the Bonneville Basin. The Bonneville Unit is composed of the Starvation Collection System, the Strawberry Aqueduct and Collection System, the Diamond Fork System, the Municipal and Industrial System and the proposed Utah Lake Drainage Basin System.

²The Indian Deferral Agreement required a minimum flow of 25 cfs at USFS/Ute Reservation boundary on Rock Creek. A flow of 25 cfs is equivalent to approximately 18,250 acre feet per year. Therefore, the degree to which natural flows on Rock Creek needed to be supplemented with Project Water to meet the minimum flow of 25 cfs determined the amount of Project Water available for other rivers. In most years there would have been only a small amount of Project Water, if any, available for instream flows in other rivers. For instance, releases from Soldier Creek dam on Strawberry Reservoir would have been reduced to only a couple of cfs compared to an average summer flow of 26 cfs in recent years, following development of mitigation programs for SACS.

Wetland Mitigation Plans), and legislation was enacted identifying mitigation measures summarized as follows:

To protect and retain 50 percent of the pre-CUP trout habitat in the four largest streams affected by SACS (Rock Creek, West Fork, Currant Creek and middle and lower Strawberry River):

- Instream flows of 44,400 acre-feet of CUP water would be provided annually, in addition to 10,500 acre-feet annually of spills and bypasses (refer to Map 1, SACS Impacted Areas and Instream Flows in the Final EA).

To compensate for the remaining 50 percent loss, the *Aquatic Mitigation Plan* identified the following mitigation measures:

- Additional water rights would be acquired or otherwise provided for instream flows to supplement the 44,400 acre-feet of CUP water.
- Angler access would be acquired where instream flows were provided and in some instances, where stream habitat improvements were made, to replace lost angling opportunities. Fifty-one miles of angler access were identified along specific stream reaches.
- Instream habitat improvements and habitat protection and management would be provided on approximately 84 miles of streams in the Bonneville Unit Area, including many reaches identified for public access.
- A trout egg-taking station would be constructed at Strawberry Reservoir to replace a facility inundated when Soldier Creek Dam was constructed.

In addition to these measures that would provide mitigation for impacts on aquatic habitats, the terrestrial *Wildlife Mitigation Plan* and *Wetland Mitigation Plan* were signed identifying measures that included among other things:

- Wetland and riparian woodland mitigation on SACS streams for impacts caused by construction and operation of the Municipal and Industrial (M&I) System.
- Mitigation for terrestrial habitats impacted by Bonneville Unit features by acquiring and managing uplands for wildlife purposes.

Approximately 42.9 of the 51 miles identified for angler-access acquisition have been acquired. Approximately 26,728 acres of riparian and upland habitat have been acquired as terrestrial wildlife mitigation in or adjacent to the angler-access corridors. Approximately 490 acres remain to be acquired and managed to fulfill the terrestrial wildlife mitigation requirement. Approximately 126.5 acres of wetlands have been acquired in the angler-access corridors which completes the wetland acquisition mitigation responsibilities.

The United States Bureau of Reclamation (Reclamation) and the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) issued a draft Environmental Assessment (EA) on July 31, 1998, analyzing the environmental impacts of completing the remaining angler-access and terrestrial wildlife mitigation acquisitions and establishing long term management guidelines for the mitigation lands. The Final EA was issued in November 1999.

DECISION

After reviewing the EA, Biological Assessment³, and public and agency comments, Reclamation and the Mitigation Commission have decided to implement the Modified Proposed Action as described in the EA. Under the Modified Proposed Action, Reclamation and the Mitigation Commission will acquire an additional 8.1 river miles of angler access and adjacent uplands and will establish a management framework for management of the angler-access corridors as summarized in the table below. The areas to be acquired are shown in orange on Map 2, SACS Angler Access Map, in the Final EA.

Summary of the Selected Alternative			
	Additional Miles to be Acquired ⁴	Additional Acres to be Acquired	Management Objective
Middle Strawberry River	4.25	1,769 minimum 2,380 maximum	<ul style="list-style-type: none"> ● Protection, restoration and enhancement of aquatic, riparian and upland resources. ● Angler Access
Currant Creek	1.25	23 minimum 600 maximum	<ul style="list-style-type: none"> ● Protection, restoration and enhancement of aquatic, riparian and upland resources. ● Angler Access
Duchesne River	1.8	33	<ul style="list-style-type: none"> ● Angler Access
West Fork	0	0	<ul style="list-style-type: none"> ● Protection, restoration and enhancement of aquatic, riparian and upland resources. ● Angler Access
North Fork	0	0	<ul style="list-style-type: none"> ● Angler Access
Rock Creek	0	0	<ul style="list-style-type: none"> ● Protection, restoration and enhancement of aquatic, riparian and upland resources. ● Angler Access

³A Biological Assessment was prepared by the Commission and reviewed by the U.S. Fish and Wildlife Service (FWS). The FWS concurred with the findings of the assessment that the Selected Alternative would not likely adversely affect any Federally listed threatened, endangered or candidate species or their habitat.

⁴Mileage is based on access to both sides of the stream.

Summary of the Selected Alternative			
	Additional Miles to be Acquired ⁴	Additional Acres to be Acquired	Management Objective
Lower Strawberry River	0	0	• Angler Access

Completion of the Selected Alternative (Modified Proposed Action) may require the use of eminent domain for property acquisition. The Mitigation Commission and Reclamation recognize the public views on the use of eminent domain and together have developed the following limitations on the use of eminent domain powers so as to minimize the socioeconomic impacts of such actions.

Reclamation would consider use of its eminent domain authorities to acquire lands and/or interests within the Modified Proposed Action only under the following conditions:⁵

- a. All other reasonable acquisition alternatives are unsuccessful.
- b. Such lands are required for mitigation for impacts of Reclamation projects (i.e., Bonneville Unit of CUP) pursuant to requirements of the Fish and Wildlife Coordination Act.
- c. Coordination and consultation with local, county and state governments about the potential condemnation has been conducted by the Mitigation Commission and/or Reclamation.
- d. Such lands are needed to further the purposes of CUPCA and accomplish Reclamation's and the Mitigation Commission's authorized plan.

The Regional Director, Upper Colorado Region, Bureau of Reclamation, is authorized to make the final decision with respect to utilization of the powers of eminent domain for the SACS mitigation program.

⁵The use of eminent domain authority by Reclamation for the implementation of the SACS angler access and corridor management program is appropriate. The Fish and Wildlife Coordination Act (FWCA, 16 U.S.C. 724a - 742j) requires water development agencies to mitigate for the effects of water project construction and operations. Section 8 of the Colorado River Storage Project Act (CRSPA) responds to the FWCA requirement by providing authority for mitigation and enhancement of fish and wildlife and recreation values. CUPCA amended CRSPA by transferring certain planning and implementation and funding administration tasks for CRSP Section 8 functions for the CUP from Reclamation to the Mitigation Commission. Reclamation projects and all Section 8 authorities not transferred specifically to the Mitigation Commission remain with Reclamation, including the power of eminent domain. Section 301(a)(2) of CUPCA specifically provides that the authorities of other agencies are not restricted (unless, of course, specifically) and section 301(h)(a) allows the Mitigation Commission to participate in condemnation proceedings initiated by other agencies.

Middle Strawberry River Acquisitions on the middle Strawberry River will be in fee title with the exception of a 1-mile reach in the South ½ of Section 17 and the North ½ of Section 20, T 4S R 9W, Uintah Special Meridian, (hereinafter referred to as Section 17). In this 1-mile reach, a conservation easement will be an acceptable alternative to fee title acquisition. The acquired corridor will extend outward a minimum distance of 30' from the normal high water line on each side of the river. If acquired by an easement, the easement will restrict land uses that are inconsistent with the protection and enhancement of riparian and aquatic resources in the corridor. Examples of such inconsistent uses include construction of permanent dwellings, livestock grazing, clearing and harvesting of riparian trees and vegetation, use of pesticides and herbicides. Existing permanent dwellings and other ongoing uses such as water diversions from the river and bridge crossings would not be impacted by acquisition of the corridor; such existing permanent dwellings or bridges and authorized water right uses would continue. The easement will allow for site-specific resource protection measures that may include among other things, instream habitat improvements, fencing of sensitive vegetation, and noxious weed control. Where existing permanent dwellings are within 50 feet of the river's edge, fencing and/or privacy vegetation will be installed and/or planted by the Mitigation Commission, only upon the request and approval of the landowners, in order to minimize the impacts on the privacy of landowners and to lessen the threat of vandalism and theft on private properties.

In addition, a new gate will be installed approximately 1 mile to the east (downstream) of the existing gate's present location in Section 17. A small parking area will be constructed at this site and the road will be closed to the public beyond this point. The road will remain open to cabin lot owners, although they will be responsible for road maintenance west of the gate. The purpose for the new gate is to increase the distance between the public parking area and the 8 cabin lots. It is believed that increasing this distance will reduce casual public use of the river corridor in Section 17 and thereby reduce potential impacts on private lands from public use.

Currant Creek Acquisitions on Currant Creek will be in fee title or by conservation easement. The acquired corridor will extend a minimum distance of 50' from the normal high water line on each side of the river. If acquired by a conservation easement, the easement will restrict land uses that are inconsistent with the protection and enhancement of riparian and aquatic resources as described above for the middle Strawberry River.

Duchesne River Acquisitions on the Duchesne River will generally be by conservation easement. The acquired corridor will extend a distance of generally 50' more or less from the center line of the river, with a minimum of 20' of dry land above the normal high water line on each side of the river. In order to safeguard the expenditure of public funds, the easement will include on a case-by-case basis the right to implement site specific resource protection measures such as fencing, bank stabilization and instream habitat improvements. These measure will help insure a productive fishery in the same location where public access has been acquired. The easement will not restrict land uses as described above for the middle Strawberry River and Currant Creek. Fee title may be acquired in limited areas for parking areas and restrooms, or at the request of the landowner.

Why are there different management objectives and different property rights being acquired for the seven river reaches? The mitigation responsibilities for the Central Utah Project require the acquisition, management and protection of wetlands, riparian areas, upland habitats and angler-access on the seven river reaches. On some river reaches, such as the lower Strawberry River, mitigation is limited to providing angler access. On other river reaches, such as the middle Strawberry River, mitigation is for impacts on wetlands, riparian, upland habitats, aquatic habitats and angler access. The management objectives for each river reach reflect the level of mitigation that is being provided. On those river reaches where management objectives are not limited to angler access, resource managers must have control over land uses to meet those objectives. Therefore, the level of property rights acquired for each river reach is a function of the management objectives and the required mitigation for that river reach. The following table summarizes the mitigation being accomplished by implementation of the Selected Alternative on each river reach.

Mitigation Accomplished on the Seven River Reaches				
	Angler Access (Aquatic Mitigation Plan) (miles)	Wetlands (Wetland Mitigation Plan) (acres)	Riparian (Wildlife Mitigation Plan) (acres)	Upland (Wildlife Mitigation Plan) (acres)
Middle Strawberry River	19.25	14.76	237	3,085
Currant Creek	9.4	26.6	165	24,676
Rock Creek	2.2	85.1	NA	NA
Duchesne River	7	NA	NA	NA
West Fork Duchesne River	9.3	NA	NA	NA
North Fork Duchesne River	1.85	NA	NA	NA
Lower Strawberry River	3.9	NA	NA	NA

REASON FOR THE DECISION

Reclamation and the Mitigation Commission selected the Modified Proposed Action for implementation because this alternative minimizes the impacts on private property owners while addressing the underlying need for the project. The environmental effects of the Modified Proposed Action were similar to those of the other alternatives analyzed. Implementation of the Modified Proposed Action will achieve the following objectives:

- Completes the outstanding mitigation responsibilities of the *Aquatic Mitigation Plan* by acquiring an additional 8.1 miles of angler-access.
- Completes the *Wildlife Mitigation Plan* by acquiring 490 acres of upland habitat to meet the remaining need for terrestrial wildlife mitigation.
- Satisfies the *Aquatic Mitigation Plan*, *Wildlife Mitigation Plan* and *Wetland Mitigation Plan* by protecting and managing mitigation lands for their riparian, wetland, and aquatic resource values. Establishes management guidelines and objectives for each of the angler-access corridors.
- Provides continuous public access throughout the angler-access corridors and identifies the appropriate level of infrastructure development (parking areas and restrooms) for public use.

In reaching this decision, Reclamation and the Mitigation Commission considered the effects of the alternatives on the issues of primary concern. The Modified Proposed Action addresses these issues while still achieving the objectives listed above. The primary issues are summarized below:

Socioeconomics Of primary concern to many property owners was the potential impact of increased public use in the angler-access corridors. There is a concern that increased angler use will lead to an increase in trash, human waste, theft and vandalism. Under the Selected Alternative, there would be an increase in angler use on the middle Strawberry River, Currant Creek and the Duchesne River. These impacts will be managed by constructing restroom and parking facilities and providing regular maintenance and management of the area. Impacts will also be mitigated by providing financial compensation to private landowners for the property rights acquired.

Also of primary concern to many property owners was the potential use of condemnation to acquire property or property rights. While the Mitigation Commission and Reclamation must satisfy the mitigation commitments of the Central Utah Project by acquiring additional access along the middle Strawberry River, Currant Creek and the Duchesne River, there are different approaches that will be used to achieve that objective while at the same time minimizing impacts on private property owners. These include fee simple purchase, conservation easements, purchase options, or life estates, to name a few. Under the Selected Alternative, only if all

reasonable attempts to acquire interests in lands on a willing seller basis fail by the methods listed above, will condemnation be used.

Wasatch and Duchesne counties were concerned about the impact on property tax revenues and the distribution of land within the county resulting from additional acquisitions. Under the Selected Alternative, the annual net decrease in property tax revenues in Wasatch and Duchesne county would range from approximately \$5,648 to \$8,866 depending on the acreage acquired, or about 0.0015% of the total property taxes collected in Wasatch and Duchesne county in 1997. The increase in Federal land ownership in Wasatch County would range from 0.24% to 0.47%. The increase in Federal land ownership in Duchesne County would be approximately 0.05%.

Resource Protection Concern was raised over the degree to which riparian and aquatic resources would be protected from incompatible land uses and the impact increased angler use would have on fisheries. Under the Selected Alternative, incompatible land uses would be controlled on the middle Strawberry River and Currant Creek by acquiring fee title interest or restrictive conservation easements to the angler-access corridors. On the West Fork of the Duchesne where easements have already been purchased, managers will work with private property owners to modify historic grazing practices to be more compatible with management objectives. On these river reaches, the management objectives are to provide protection and restoration of riparian and aquatic resources in addition to providing angler access. On the North Fork of the Duchesne, the Duchesne, and the lower Strawberry River the primary objective is to provide angler access.

Concern was also raised over the types of uses that would be allowed in the angler-access corridors. Under the Selected Alternative, only angling (or walking through to access upstream or downstream angling opportunities), walking, wildlife observation or photography will be allowed in areas acquired via access easements. All other activities such as camping, equestrian trails, trail construction, motor vehicle use (except on existing public roadways) will not be allowed. Where fee title interest has been or will be acquired, uses such as angling, walking, wildlife observation or photography will be allowed. Other uses such as camping, equestrian trails, trail construction, and motor vehicle use (except on existing public roadways) will not be allowed.

A Biological Assessment was prepared and reviewed by the U. S. Fish and Wildlife Service. The Biological Assessment found that the Selected Alternative would not likely adversely affect any Federally listed threatened, endangered or candidate species or their habitats.

Management Concern was raised over who would manage the angler-access corridors. Under the Selected Alternative, the Utah Division of Wildlife Resources, and the U.S. Forest Service where the angler-access corridors fall within the boundary of National Forest System lands, would provide the appropriate level of management, and regulatory and interpretive signing commensurate with other similar areas. The Wasatch and Duchesne County Sheriff Departments would provide law enforcement that falls within their jurisdiction and authority.

SUMMARY OF ENVIRONMENTAL MEASURES

Site specific analysis of impacts from any ground disturbing activities (construction of parking areas and restrooms) would be conducted upon determining the exact location of those facilities. The scope of this analysis was limited to the general location and number of facilities as identified on Map 2.

The Mitigation Commission will monitor suitable habitat for Ute ladies'-tresses orchid. If conditions of occupied or potential habitat appear to be adversely impacted, and/or if direct harm to individual orchids is noted, the Mitigation Commission will coordinate with the U. S. Fish and Wildlife Service to determine the cause and suitable remedial actions. If conditions of occupied or potential habitat appear to be adversely impacted, and/or if direct harm to individual orchids is noted, the Mitigation Commission will coordinate with the FWS to determine the cause and suitable remedial actions. The Mitigation Commission and the FWS will evaluate these remedial actions once implemented to evaluate their effectiveness and revise them as appropriate. During site selection and construction of facilities such as vault toilets or parking areas, the Mitigation Commission will coordinate with the FWS to select sites that are most likely to avoid impacts to occupied or potential orchid habitat and to ensure that construction activities do not cause adverse impacts.

Reclamation and the Mitigation Commission have initiated consultation with the State Historic Preservation Officer and the National Advisory Council on Historic Preservation and will develop a cultural resource survey plan to locate all potential sites within the angler-access corridor. This plan would be implemented prior to the construction of any facilities or transfer of property out of Federal ownership.

PUBLIC INVOLVEMENT

A Scoping Notice was mailed to approximately 134 individuals and organizations on September 5, 1997, to solicit comments and concerns from the public and interested organizations. Twelve letters of comment were received and one individual provided comments in person. A draft EA or Executive Summary of the EA was sent to 156 individuals and organizations on July 31, 1998. Forty-nine comment letters were received. Reclamation and the Mitigation Commission considered the comments from agencies, private individuals and organizations and revised the document accordingly. Responses to comment letters are included in Chapter 5 of the Final EA.

FINDING OF NO SIGNIFICANT IMPACT

Based on information contained in the Final EA, Reclamation and the Mitigation Commission find that this action will not significantly affect the quality of the human environment, within the meaning of Section 102(2)(C) of the National Environmental Policy Act for the following reasons:

1. The impacts of this project are not considered to be significant upon the human environment, either to society as a whole or to the affected region, interests and locality;
2. Public health and safety are not affected by the proposed action;
3. The angler-access corridors are some of the few and relatively undeveloped riparian ecosystems in the region. These unique characteristics will be protected by implementation of the Selected Alternative;
4. The effects on the quality of the human environment are not highly controversial;
5. Based on the effects analysis, there are no effects which may be highly uncertain or involve unique or unknown risks;
6. The Selected Alternative does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration;
7. There are no significant, foreseeable cumulative effects beyond those described in that document;
8. Based on the Biological Assessment/Evaluation this action will not likely affect endangered or threatened species or critical habitat;
9. This action does not threaten a violation of Federal, State or local law or requirements for protection of the environment;

For these reasons, preparation of an environmental impact statement is not required.

IMPLEMENTATION DATE

Implementation of this decision may occur immediately upon signing.

FURTHER INFORMATION

Please direct questions on the EA or FONSI to Richard Mingo, Natural Resource Specialist; Utah Reclamation Mitigation and Conservation Commission; 102 West 500 South, Suite #315; Salt Lake City, Utah 84101 (Phone 524-3146).

Approved by:


Michael C. Weland, Executive Director
Utah Reclamation Mitigation and
Conservation Commission

Date: 11/17/99

Approved by:


Charles A. Calhoun, Regional Director
Bureau of Reclamation

Date: 11/19/99

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