

# South Shore Preserve Federal Land Transfer

## Draft Environmental Assessment

August 2023

Utah Reclamation Mitigation  
and Conservation Commission

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# Chapter 1 Background, Purpose and Need

## Summary

The South Shore Preserve is located in Salt Lake County along the south shore of the Great Salt Lake. It consists of two management areas, the Delta Area and the Lee Creek Natural Area, which are connected together by the Rio Tinto Inland Sea Shorebird Reserve (Figure 1). The South Shore Preserve is managed by National Audubon Society (Audubon), who, along with the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) own a majority of the properties within the Preserve.

The Mitigation Commission is proposing to transfer ownership of its properties within the South Shore Preserve to Audubon, which include 784 acres of property, a flowage easement on 533 acres, and 750 water shares in the North Point Canal Company. Audubon would continue to manage the properties for the protection and enhancement of the properties ecological values as they have been since they were originally acquired. Restrictions would be placed on the deeds transferring the properties from the Mitigation Commission to Audubon that limit future uses to the protection, preservation, and enhancement of the ecological values in the South Shore Preserve.



South Shore Preserve – Delta Area



Figure 1 South Shore Preserve

- Mitigation Commission (784 acres)
- Mitigation Flowage Easement (533 acres)
- Audubon
- Kennecott

South Shore Preserve  
Delta Area

Rio Tinto  
Inland Sea  
Shorebird Reserve

South Shore Preserve  
Lee Creek Area

0 0.5 1 2 Miles



Salt Lake City  
International Airport



## Background

The Mitigation Commission is a federal agency established by Congress with passage of the Central Utah Project Completion Act in 1992, P.L. 102-575 (CUPCA).<sup>1</sup> The Mitigation Commission's mission is to plan, fund and coordinate the environmental mitigation and conservation programs authorized by CUPCA. Section 306(a) of CUPCA authorizes the Mitigation Commission to develop and implement a plan to preserve, rehabilitate and enhance wetlands around the Great Salt Lake. The first Mitigation and Conservation Plan developed by the Mitigation Commission in 1996 identified a vision for the Great Salt Lake (see side-bar) and identified the acquisition of land along its eastern and southern shores as one of the Mitigation Commission's highest priorities. The Mitigation Commission recognized the impact urban encroachment and development would have on the ecological function and value of wetlands associated with the Great Salt Lake and that,

### **Mitigation Commission Vision for the Great Salt Lake 2002 Mitigation and Conservation Plan**

*"A wetland and upland corridor owned by state, federal or local governments, private landowners or private organizations, along the shoreline of the Great Salt Lake has been preserved that allows dynamic fluctuations of lake level. Resident wildlife and migratory shorebirds in the Western Hemisphere and waterfowl in the Pacific Flyway are assured resting, feeding and nesting habitat during the normal lake fluctuations, as well as a buffer when the lake level fluctuates more extremely. Wetland hydrology is maintained in perpetuity and access for compatible recreation is available.*

*A commitment to preserve the ecological function and values of the GSL and associated wetlands exists among state and local governments, private landowners and private industry.*

*Diverse educational opportunities are available that promote general understanding of the complexity and value of the Great Salt Lake wetland ecosystem as well as public and political support for the Great Salt Lake's wetland, wildlife and intrinsic values."*

*"Partnerships are the strategy to accomplish this, as the need is far too great for any one entity to accomplish." <sup>2</sup>*

To implement this strategy, the Mitigation Commission developed a partnership with Audubon whose core mission is,

*"to protect birds and the places they need, today and tomorrow, throughout the Americas using science, advocacy, education, and on-the-ground conservation." <sup>3</sup>*

For over 100 years, Audubon has been building a legacy of effective conservation on behalf of birds and the ecosystems that sustain them through its network of members, chapters, centers, sanctuaries, and staff. Audubon's approach to ecosystem conservation through the lens of

<sup>1</sup> <https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg4600.pdf>

<sup>2</sup> Mitigation and Conservation Plan, March 1996; Utah Reclamation Mitigation and Conservation Commission

<sup>3</sup> <https://www.audubon.org/about#:~:text=The%20National%20Audubon%20Society%20protects,on%2Dthe%2Dground%20conservation.>

birds, places project sites in their local, regional, and hemispheric contexts, considering the myriad ways a site is important to birds throughout their entire life cycle.

#### *The Mitigation Commission and Audubon Partnership*

Shortly after the Mitigation Commission was established in 1992, it solicited input for proposals to facilitate accomplishment of the mitigation and conservation programs identified in CUPCA. Audubon responded and requested funding from the Mitigation Commission for a study to evaluate the feasibility of establishing a wetland preserve to help the Mitigation Commission achieve its vision for the Great Salt Lake. The study evaluated a 10,600-acre area north and west of the Salt Lake International Airport. The feasibility study concluded that the study area was highly suitable for a wetland restoration project because it included the intact pre-historic delta of the Jordan River where it flowed into the Great Salt Lake, including the remnants of shifting channels, secondary channels, playas, and upland islands, all of which were relatively unaltered by human activity. These pre-historic geologic features provide a rich diversity of habitat desirable to wildlife, particularly shorebirds.

From 1996 through 2005, Audubon, the Mitigation Commission, and The Nature Conservancy (TNC), entered into a cooperative agreement for land and water acquisitions within 4,000 acres of the original 10,600 acres in the Feasibility Study. The 4,000 acres were designated as the South Shore Preserve. Audubon's role was to negotiate purchases with landowners; TNC provided legal and administrative support for property acquisition; and the Mitigation Commission funded and completed the Federal land acquisitions within the South Shore Preserve. By 2005 the Mitigation Commission had acquired 744 acres of properties from five different landowners, a flowage easement on 533 acres, and 750 shares of water in the North Point Canal Company. The acquisitions expended all the funding authorized by Congress allocated to the Mitigation Commission for the acquisition and development of the South Shore Preserve consistent with the Mitigation Commission's Mitigation and Conservation Plan. In 2015 the Mitigation Commission was able to acquire an additional 40-acre private inholding within the South Shore Preserve Delta Area.

CUPCA authorizes the Mitigation Commission to acquire and dispose of real property and to enter into agreements with, among others, nonprofit conservation organizations such as Audubon to carry out the purposes of CUPCA. The Mitigation Commission's term expires twenty years from the date the Central Utah Project is declared to be substantially complete by the Secretary of the Interior, an action which has not yet occurred (CUPCA 301(b)(2)).

Starting with the Mitigation Commission's initial land acquisitions in the South Shore Preserve in 1996, the Mitigation Commission entered into a series of interim management agreements with Audubon. The interim agreements provide authority for Audubon to manage the federally

owned Mitigation Commission acquired properties in concert with lands owned by Audubon, as a seamless ecological unit. These interim agreements have and continue to provide funding to Audubon to support habitat restoration, protection and enhancement, water delivery, and other land management activities such as weed control and management of unauthorized access. Audubon has provided continued and uninterrupted management of the federally owned properties since they were acquired by the Mitigation Commission.

If property is still in ownership of the Mitigation Commission at the time of its termination, title to those properties would be transferred to the appropriate division within the Utah Department of Natural Resources.<sup>4</sup>

### Purpose and Need for the Project

CUPCA requires the Mitigation Commission to develop a Mitigation and Conservation Plan every five years describing the actions it intends to take during the subsequent five-year period to implement the mitigation and conservation measures authorized by CUPCA. The Mitigation Commission's 2016-2021 Mitigation and Conservation Plan identified the need to,

*“Transition from interim management agreements to permanent transfer of property to suitable entities to address immediate and long-term management needs of Commission-acquired properties” (Mitigation Commission 2016).<sup>5</sup>*

In 2021, the Mitigation Commission completed the transfer of approximately 1,300 acres to The Nature Conservancy (TNC) that were acquired as part of the Great Salt Lake Shorelands Preserve in Davis County. The Mitigation Commission's 2021-2025 Mitigation and Conservation Plan indicates that a similar agreement with Audubon to transfer Federal lands within the South Shore Preserve would also be pursued.

The purpose and need for the Proposed Action is to transfer long-term management and ownership of real property and water shares held by the Mitigation Commission within the boundaries of the South Shore Preserve to an entity who is best positioned to pursue the Mitigation Commission's vision for the Great Salt Lake.

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<sup>4</sup> CUPCA P.L. 102-575 Section 301 (k)(2) Transfer of Property and Authority Held by The Commission

<sup>5</sup> CUPCA P.L. 102-575 Section 301(h)(7) of CUPCA provides the Mitigation Commission the authority to acquire and dispose of real property and water rights through donation, sale or lease.

### *Decisions to be Made*

Based on the analysis presented in the EA and comments from interested agencies and the public, the Mitigation Commission will decide whether to convey any or all of their property interests and water interests within the South Shore Preserve to Audubon.

## Chapter 2 Description of Alternatives

### Introduction

NEPA requires Federal agencies to consider a reasonable range of alternatives in an EA that evaluate the potential environmental impacts of the federal action. At a minimum, an agency must consider the proposed action and the no-action alternative.<sup>6</sup>

### *Alternatives Considered but Dismissed from Detailed Analysis*

In addition to the Proposed Action and the No Action alternatives, a range of other alternatives were considered for analysis in this EA but these other action alternatives were dismissed from further consideration for the reasons described below.

- **Transfer to another conservation organization.** Figure 1 shows how Mitigation Commission owned properties are intermixed with Audubon owned or controlled properties. Audubon has been managing the Mitigation Commission owned properties since they were originally acquired along with their own properties or properties they control, as a single ecological unit. Transferring the properties to another entity who would have control separate and apart from Audubon has potential detrimental impacts to the cohesive management of the South Shore Preserve.
- **Transfer to another State, Federal or local government entity.** For the same reasons listed above, this alternative was dismissed from detailed analysis.
- **Transfer just a portion of the Mitigation Commission owned properties or property interests to Audubon.** This alternative does not entirely address the underlying need for the project, *“to determine long-term management and ownership of real property held by the Mitigation Commission within the boundaries of the South Shore Preserve”* as it would leave some ownership still in the name of the Mitigation Commission.

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<sup>6</sup> [https://scoutenv.com/2019/08/12/how\\_many\\_nepa\\_alternatives/](https://scoutenv.com/2019/08/12/how_many_nepa_alternatives/)

### Alternatives Considered for Detailed Analysis

Table 1 Summary of Alternatives	
<b>Transfer to Audubon (Proposed Action)</b>	<ul style="list-style-type: none"> <li>• The Mitigation Commission would convey ownership of approximately 784 acres of property, a 533-acre flowage easement and 750 water shares in the North Point Canal Company to Audubon.</li> <li>• Audubon would manage the properties and water shares in perpetuity subject to the protective restrictions to be incorporated into the conveyance deed that limits future uses to the protection, preservation and enhancement of the ecological value of the South Shore Preserve.</li> </ul>
<b>No Action</b>	<ul style="list-style-type: none"> <li>• The Mitigation Commission would not transfer any properties to Audubon.</li> <li>• The Mitigation Commission would continue to enter into temporary agreements with Audubon to manage 784 acres of property, 533-acre flowage easement and 750 shares water in the North Point Canal Company as part of the South Shore Preserve on an <i>interim</i> basis.</li> <li>• Upon the Mitigation Commission's termination, the 784 acres of land, 533-acre flowage easement and 750 shares of water would be conveyed to the State of Utah Department of Natural Resources.</li> </ul>

### Transfer to Audubon (The Proposed Action)

The Mitigation Commission and Audubon have a shared common vision for the Great Salt Lake and the need to protect some of the last remaining un-altered habitat along the south shore of the Great Salt Lake. The Mitigation Commission has worked in close partnership with Audubon for the last quarter century to achieve this vision. The Mitigation Commission's ownership is an integral part of the South Shore Preserve hence long-term management and ownership of the Mitigation Commission properties best resides with Audubon.

Under the Proposed Action, the Mitigation Commission would transfer the Federal ownership in the South Shore Preserve to Audubon:

- The Mitigation Commission would transfer through donation all the federal ownership of the following property and water shares within the South Shore Preserve to Audubon including.
  - approximately 784 acres of property
  - 533-acre flowage easement

- 750 shares of water in the North Point Canal Company.
- Deeds transferring the properties and water shares to Audubon would include language that limits future uses of the properties to the protection, preservation, and enhancement of the ecological values of the South Shore Preserve. The deeds would be recorded with Salt Lake County and would encumber the properties in perpetuity. A draft transfer document is included as [Appendix 1](#).
- Audubon would continue to manage the Federal properties transferred to them, much the same as they have been for the past quarter century. The Delta Area in particular, would be managed consistent with the 2017 South Shore Preserve Management Plan.<sup>7</sup> The Plan identifies a vision, “to provide diverse habitat for birds naturally occurring on the Lower Jordan River with a focus on saline wetlands primarily managed as shorebird habitat.” This would be accomplished through an adaptive management process that manipulates the water depth, timing and duration of inundation, of salt concentration of water and soil to create a continuum of fresh to brackish, to saline wetlands in seventeen water management units within the South Shore Preserve. Vegetation, aquatic insect production and avian response would be monitored, evaluated and management prescriptions adjusted accordingly.

Under the Proposed Action, the need to determine long-term management and ownership of Mitigation Commission-owned properties within the boundaries of the South Shore Preserve would be resolved. This would maximize the likelihood that the habitat values for which the properties were acquired would be protected into the future.

### The No Action Alternative

Under the No Action Alternative, the Mitigation Commission would not transfer any properties or water shares to Audubon. The Mitigation Commission would continue to pursue interim agreements with Audubon to manage the 784 acres of property, 533-acre flood easement, and 750 shares of North Point Irrigation Water as part of the South Shore Preserve. If the property and water shares remain in Federal ownership upon the Mitigation Commission’s termination, the properties would transfer to the State of Utah Department of Natural Resources and the State would determine how the properties would be managed.<sup>8</sup>

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<sup>7</sup> The 2017 South Shore Preserve Management Plan focus is on the Delta Area of the South Shore Preserve and does not include the Lee Creek Area.

<sup>8</sup> CUPCA P.L. 102-575 Section 301 (k)(2) Transfer of Property and Authority Held By The Commission





South Shore Preserve - Lee Creek Area

## Chapter 3 Affected Environment

### Introduction

The South Shore Preserve is located along the southern shore of the Great Salt Lake, a remnant of the ancient Lake Bonneville, and supports a rich and dynamic biological system of regional, national, and global importance. Having no outlet, Great Salt Lake water varies in both elevation and salinity over time due to the combined effects of freshwater flowing in from three rivers (the Bear, Weber, and Jordan Rivers), numerous smaller river tributaries and creeks, precipitation, and groundwater and outflow generated by evaporation. The lake water also receives stormwater runoff and discharges from wastewater treatment plants in the area. This variation in water level influences the nutrient base and habitats for plants, invertebrates, reptiles, amphibians, mammals, and birds. The variation also creates a mosaic of habitats including wetlands (ranging from freshwater to hyper-saline playas), shorelines, and uplands.

### Lake Elevation

Water level in the Great Salt Lake is dynamic, with seasonal variations of a few feet and historic variations of up to 20 feet. Lake levels fluctuate from year to year but have been trending downward since 1990 as shown in Figures 2. The south end of the lake reached a historic low elevation of 4,188.2 feet in November 2022 but with the record-breaking snowpack during the 2022-23 winter, the south arm of the lake is up 5.8 feet from the historic low as of June 19, 2023. Because of the very gradual elevation contours in the Great Salt Lake basin, small changes in lake level can drastically change the land area covered by the lake. The lake surface area was approximately 2,300 square miles in 1986-87 when the Great Salt Lake elevation was high and dropped to approximately 941 square miles in 2021 before the lake reaching its historic low, a 59% reduction in surface area. The [USGS the Great Salt Lake Hydro Mapper](#) provides real-time and interactive information on the Great Salt Lake's current and historic elevation, salinity levels and how these attributes affect the lake's resource characteristics.

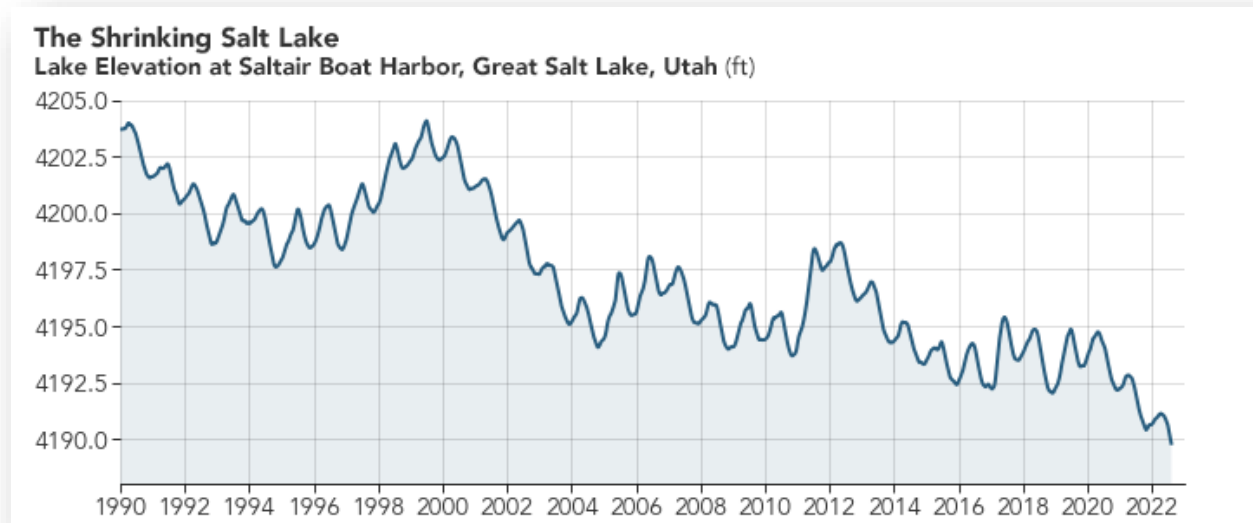


Figure 2 Landsat Image Gallery <https://landsat.visibleearth.nasa.gov/> The Great Shrinking Lake

Salinity in the Great Salt Lake is highly correlated with lake levels. The recent historic low level of the Great Salt Lake has resulted in salinity levels over 19% and has severely impacted the production of brine flies and brine shrimp, the two key species in the lake's food web and food source for some avian species. Lake fluctuation also causes dynamic shifts in the types and locations of available nesting and foraging habitat around the lake shore.

### Avian Use of the Great Salt Lake

Because of the variety and abundance of shorebirds at the Great Salt Lake, the lake was designated as a Hemispheric Site of Importance by the [Western Hemisphere Shorebird Reserve Network](#) in 1991. Birds of regional, national, and international importance are drawn to its 15,000 square miles of water environment, remote islands, shoreline, and 400,000 acres of wetlands. An estimated 10 million birds representing 338 species rely on the lake and adjacent wetlands and uplands for resident feeding and sanctuary, breeding, or migratory stopovers.<sup>9</sup> Similarly, the National Audubon Society has designated each of the five bays of the Great Salt Lake as Important Bird Areas.<sup>10</sup> Migratory stopover sites like the Great Salt Lake have huge implications for shorebirds' chance of survival.<sup>11</sup> Some birds relying on the Great Salt Lake, such

<sup>9</sup> <https://wildlife.utah.gov/gslp/wildlife/birds.html>

<sup>10</sup> <https://www.audubon.org/important-bird-areas>

<sup>11</sup> Catry T, Granadeiro JP, Gutiérrez JS, Correia E. Stopover use of a large estuarine wetland by dunlins during spring and autumn migrations: Linking local refuelling conditions to migratory strategies. PLoS One. 2022 Jan 25;17(1):e0263031. doi: 10.1371/journal.pone.0263031. PMID: 35077514; PMCID: PMC8789102.

as Wilson's phalaropes, travel thousands of miles each season from Utah to southern Chile and Argentina. Birds that cannot properly refuel do not survive and species populations dwindle.

For some species, such as the Wilson's phalarope (*Phalaropus tricolor*), the lake is a major staging area. On a single day in July 2001, the population of Wilson's phalaropes was estimated at 566,834. Numbers of red-necked phalarope (*Phalaropus lobatus*), the populations of which seem more variable, have been estimated as high as 240,000 on a single day. Studies suggest that at least 5,000 to 10,000 snowy plovers (*Charadrius alexandrinus*) nest on the alkaline flats surrounding the lake. The current estimates for breeding American avocets (*Recurvirostra americana*) and black-necked stilts (*Himantopus mexicanus*) are 40,000 and 30,000, respectively, with peak lake-wide counts of 250,000 and 65,000, respectively (Paul and Manning 2002).



Figure 4 White-faced ibis photo Alan Schmeirer

The Great Salt Lake is important to many other bird species as well. Millions of eared grebes (*Podiceps nigricollis*) stage on the lake, fattening on the brine shrimp. One of the world's largest populations (about 21,600) of white-faced ibis (*Plegadis chihi*) nests in the marshes along the east side of the lake and forages in shallow wetlands and flooded agricultural fields. The Great Salt Lake hosts the largest number of breeding California gulls (*Larus californicus*), including the world's largest recorded single colony. About 160,000 breeding adults have been documented in recent years. The American white pelican (*Pelecanus erythrorhynchos*) colony on Gunnison Island, where up to 20,000 breeding adults have been recorded, ranks in the top three populations in North America. Numerous other species depend on the lake, such as other species of gulls, waterfowl, herons, egrets, terns, raptors, and songbirds (Paul and Manning 2002).

While Utah's record-breaking snowpack in 2022-23 has given the Great Salt Lake a well-timed and needed boost, it is still well below the lake's optimal level of 4,200 feet. The conditions at the Great Salt Lake are particularly grave for the future well-being of 42 species of shorebird

that rely on the Great Salt Lake during migration and nesting.<sup>12</sup> To better understand the dynamics between lake levels and shorebird populations, a diverse partnership implemented the Intermountain West Shorebird Survey in Utah in the Fall of 2022. The goal of the survey is to evaluate shorebird distribution and abundance at Utah's important shorebird migratory sites and provide a foundation for management of resources. During the annual spring and fall migrations, professional biologists and volunteers census sites per the methods outlined in the Utah Shorebird Survey Plan.<sup>13</sup>

The results of the Fall 2022 survey are compiled in the *Fall 2022 Migratory Shorebird Surveys in Utah* and their associated [Story Map](#). In total, 221,118 individual shorebirds were identified at the Great Salt Lake Ecosystem, representing 28 species. Wilson's Phalarope and Red-necked Phalarope were the most abundant group of birds counted (n = 166,603, 73 percent). American Avocet and Black-necked Stilts were the second and third most abundant species counted with 29,757 and 19,312 birds respectively.

Although the Great Salt Lake provides important habitat for wildlife, it has been extensively altered by human development along the lake's eastern and southern shore. Wildlife habitat, wetlands, rivers, and the lake have been extensively altered as a result of urban and agricultural development during the past century. The wetlands adjacent to the Great Salt Lake have been extensively altered or lost, invasive species have been introduced, and many of the streams that flowed into the Great Salt Lake have been diverted for agricultural uses and urban development. The human disturbances have also resulted in more infrastructure, noise and light pollution near the eastern edge of the Great Salt Lake. Very few undisturbed habitats remain.

The South Shore Preserve is a notable exception, and includes some of the last remaining, functional wetland habitat along the southern shore of the Great Salt Lake. The South Shore Preserve is located in Salt Lake County, Utah just west of Salt Lake City Airport and the growing urbanization of Salt Lake City (Figure 1). Approximately 784 acres are owned by the Mitigation Commission, 1,919 acres owned by Audubon and the remaining properties are privately owned. As previously described, Audubon has been managing Audubon and Mitigation Commission properties as well as other leased land as an integrated ecological unit since they were first acquired.

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<sup>12</sup> Baxter, Bonnie K. and Jaimi K Butler. "Great Salt Lake Biology: A Terminal Lake in a Time of Change." Great Salt Lake Biology (2020).

<sup>13</sup> <https://www.wildlife.utah.gov/news/utah-wildlife-news/1679-statewide-shorebird-surveys-restarted-after-30-year-hiatus.html>



FIGURE 3 American Avocet Photo Bob Roll

The preserve is a composite of natural saline shoreline, playas and mudflats, freshwater impoundments and emergent marshes, wet meadows, adjacent uplands, all managed as an intact ecosystem to provide prime avian habitat for migrating, nesting, and foraging birds.



## Chapter 4 Environmental Effects

The Proposed Action consists of a transfer of real property and water shares to Audubon with deed restrictions. There would be no material change in the way the properties and water shares are managed and Audubon would continue to manage the Mitigation Commission's properties as it has been for the last 23 years. Because the proposed transfer of ownership would not change land management, there would be no impacts on the environment resulting from the Proposed Action.

### Resources Considered but For Which No Impacts Are Anticipated

The following bulleted list of resources were considered in the analysis but because current management of the properties would remain unchanged there are no impacts anticipated to occur:

- Wetlands
- Wildlife
- Federally listed endangered species
- Public access and recreation
- Air quality
- Water rights, water supply, water quality
- Mosquito and invasive weed control
- Vegetation and land use
- Climate change

### Resources Which Could Potentially be Impacted by the Transfer of Property out of Federal Ownership

Federal law provides a higher level of protection to some resources when the properties are held in Federal ownership compared to private ownership. These federal protections would be lost under the Proposed Action with the transfer out of Federal ownership to Audubon. The following resources are those in which federal protections would be lost. The potential impacts to each resource are described along with a description of measures that are included as part of the Proposed Action that mitigate the potential impact.

#### *Cultural resources*

Section 106 of the National Historic Preservation Act requires all Federal Agencies to identify the impacts their actions would have on cultural and historical resources. Section 106 defines the transfer, lease, or sale of property out of Federal ownership as an "adverse action" unless there are adequate and legally enforceable restrictions or conditions to ensure *long-term* preservation of the property's historic significance (36 CFR 800.5(a)(2)(vii)).<sup>14</sup>

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<sup>14</sup> <https://www.law.cornell.edu/cfr/text/36/800.5>

The State of Utah has legally enforceable State statutes similar to those at the Federal level including:

- Utah Native American Graves Protection and Repatriation Act, Utah Code Annotated (UCA) 9-9-401 and subsequent sections
- Rule 230-1 Ancient Human Remains on Nonfederal Lands That Are Not State Lands, UCA 9-8-309
- Utah State Antiquities Act UCA 9-8-301 to 9-8-308 and implementing rule, Protection of Paleontological Resources, UCA 79-3-508 UCA 9-8-404 (part of Title 9, Heritage, Arts, Libraries, and Cultural Development) UCA 9-8-404

### *Environmental Effects*

Under the Proposed Action, the Mitigation Commission will consult with the State of Utah Historic Preservation Office to develop language to be included in the deed transferring the properties to Audubon. Any deed restrictions and conditions required by State statute, would ensure long-term preservation of the property's historic and prehistoric significance, and therefore no impacts to cultural resources are anticipated.

Under the No Action Alternative, the properties would continue to receive Federal protections afforded by Section 106 of the National Historic Preservation Act. Upon the termination of the Mitigation Commission, their properties would transfer to the State of Utah at which time the State statutes would apply.

### *Endangered Plant Species*

The Endangered Species Act of 1973 (ESA; 16 U.S.C. § 1531 et seq.) was enacted by Congress to protect critically imperiled species from extinction as a "*consequence of economic growth and development, untempered by adequate concern and conservation*".<sup>15</sup> The U.S. Supreme Court found that the plain intent of Congress in enacting the ESA "*was to halt and reverse the trend toward species extinction, whatever the cost.*"<sup>16</sup> Section 9 of ESA prohibits the collection, malicious damage or destruction of *endangered plants on Federal lands*. Unlike animal species, these protections under ESA do not extend to Federally listed **plants on private property**. The transfer of federal properties to Audubon would therefore limit the protections afforded by ESA to federally listed plants.

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<sup>15</sup> <https://www.law.cornell.edu/uscode/text/16/1531>

<sup>16</sup> <http://congressionaldigest.com/issue/endangered-species-act/legislative-background-on-endangered-species/>



### *Environmental Effects*

There are no known federally listed plants or suitable habitat within the South Shore Preserve including those lands owned by the Mitigation Commission. Additionally, Audubon's core mission is *"to protect birds and the places they need, today and tomorrow, throughout the Americas using science, advocacy, education, and on-the-ground conservation."* Under the Proposed Action, if there were ever to be a federally listed plant identified on properties formerly owned by the Mitigation Commission, it is highly likely that Audubon would take measures to preserve, protect and enhance the habitat and conditions necessary for a listed plant to survive consistent with their mission. Deed restrictions would also limit future uses of the properties for ecological preservation and would limit uses incompatible with the preservation of listed plant species. For these reasons, it is not anticipated that the transfer of federal ownership to Audubon would result in any impacts to federally listed plants, even though the federal protections under ESA would be more limited under private ownership.

Under the No Action Alternative, the plant species listed under the Endangered Species Act would continue to receive Federal protections while the properties are still owned by the Mitigation Commission. Upon the termination of the Mitigation Commission, the properties would be transferred to the State of Utah where they are not federally protected under the Endangered Species Act. However, federally listed plants do receive a higher level of attention and management to keep the plants from becoming listed in the future.<sup>17</sup>

### *Section 4(f) of the U.S. Department of Transportation Act Protection*

Section 4(f) of Chapter 1 of the U.S. Department of Transportation Act of 1966, precludes the use of certain federal properties, colloquially referred to as section 4(f) properties or resources, for use on highway projects unless the impacts from the use of those properties are considered to be *de minimis*. Section 4(f) resources are significant **publicly** owned parks, recreation areas, and wildlife and waterfowl refuges, and significant publicly or privately-owned historic properties. Section 4(f) requires that the Secretary of Transportation may approve such a project only if there is no feasible and prudent alternative to using the 4(f) property and the project includes all possible planning to minimize harm resulting from the use of the property for the highway project. Being federally owned and managed for wildlife, the Mitigation Commission's properties are considered 4(f) properties. Once transferred to Audubon, those properties would be privately owned and would not be considered 4(f) properties by the Federal Highway Administration; therefore, the legal protections provided to the properties by Section 4(f) of the DOT Act would be lost.

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<sup>17</sup> <https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered/state-te-data/utah>

### *Environmental Effects*

Under the Proposed Action, the properties transferred to Audubon would no longer be considered 4(f) resources. However, the deeds transferring the properties to Audubon would include restrictive covenants that limit the use of those properties to wildlife and habitat conservation, unless otherwise approved by the Mitigation Commission or its successors. If a highway project were proposed on lands formerly owned by the Mitigation Commission, Audubon would need to request approval from the Mitigation Commission to approve this non-conforming use of the property. The Mitigation Commission would likely not authorize use of the former federal properties for use in a highway project unless the Mitigation Commission concurred with a determination that the impacts of such use were *de minimus*. Because of the restrictive covenants limiting the use of the properties to wildlife and habitat conservation that would be included in the deed to Audubon, the potential loss of 4(f) status would not likely result in any significant increased risk of impacts from construction of a new highway within the South Shore Preserve.

Under the No Action Alternative, the federal properties would be considered 4(f) resources and protected from development by the Department of Transportation Act. Upon termination of the mitigation commission the properties would be transferred to the State of Utah and they would still retain their 4(f) resource status if the State continued to manage the properties for the benefit of wildlife.

### *Socioeconomics*

The Federal government is exempt from paying property taxes on Federally-owned properties. To help offset the loss of property tax revenues that would otherwise have been paid to counties if the federally owned properties were in private ownership, counties receive Payments In Lieu of Taxes (PILT) from the United States.<sup>18</sup> The formula used to compute PILT payments is contained in the PILT Act and is based on population, revenue sharing payments, and the amount of Federal land within an affected county. PILT payments are in addition to other Federal payments to states, such as oil and gas leasing, livestock grazing, and timber harvesting. Salt Lake County received \$258,186 from the Federal government through the PILT program in 2022. Of this amount, approximately \$2,025 was for the 784 acres owned by the Mitigation Commission within the South Shore Preserve.

### *Environmental Effects*

Under the Proposed Action approximately 784 acres of Mitigation Commission owned properties and appurtenant water shares would be transferred to Audubon and would be subject to property taxes from Salt Lake County but no longer subject to PILT payments. Audubon would likely petition the County for tax exempt status. If Salt Lake County concurred

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<sup>18</sup> <https://www.doi.gov/pilt>

that the properties were tax exempt, then Salt Lake County would have a net decrease in tax revenues of approximately \$2,025 annually resulting from the loss of PILT payments currently being received under Federal ownership and the potential tax-exempt status under Audubon ownership.

Under the No Action Alternative, Salt Lake County would continue to receive PILT payments of approximately \$2,025 annually from the Federal Government. Upon termination of the Mitigation Commission the properties would transfer to the State of Utah and PILT payments to Salt Lake County would cease.

### *Cumulative Impacts*

One of the environmental impacts that NEPA requires Federal agencies to assess is the cumulative impact of their actions. Cumulative impacts on the environment are the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts can be adverse or beneficial, direct or indirect, short-term or long-term.

As noted in Chapter 1, the Mitigation Commission completed a similar transfer of approximately 1,300 acres to TNC in 2021 in Davis County. The Federally owned Mitigation Commission properties were intermixed with properties owned by TNC and together managed as the Great Salt Lake Shorelands Preserve the same as Audubon manages the Federally owned Mitigation Commission properties at the South Shore Preserve

The Mitigation Commission signed a Finding of No Significant Impacts on the transfer of property to TNC. It is not anticipated that the impacts of this prior transfer of Mitigation Commission owned properties to TNC would incrementally add to the impacts of the Proposed Action and no cumulative impacts are anticipated.

### *Executive Orders*

#### *Environmental Justice*

Executive Order 12898 requires each federal agency to make achieving environmental justice a part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority race/ethnic populations and low-income populations. In addition to avoiding disproportionate negative effects, the Executive Order also requires federal agencies to ensure that no persons are excluded from participation in or denied benefits of programs, policies, and activities because of their race, color, or national origin. There are no anticipated management changes and thus

no adverse effects resulting from the transfer of Federal ownership to Audubon. Therefore, minority and low-income populations would not be disproportionately impacted. The benefits associated with the preservation and continued management of the South Shore Preserve by Audubon for wildlife conservation would be enjoyed equally by all.

#### *Protection of Wetlands*

Executive Order 11990, Protection of Wetlands, was signed by President Carter on May 24, 1977, requires federal agencies to minimize the destruction, loss or degradation of wetlands and to avoid new construction in wetlands unless there is no practicable alternative. Continued management of the federal properties for wildlife conservation, and in particular for shorebirds, is consistent with and supports the objectives Executive Order 11990.

#### *Floodplain Management*

Executive Order 11988 of May 24, 1977, requires federal agencies to avoid, to the extent possible, the adverse impacts of occupying and modifying floodplains and to avoid supporting floodplain development wherever there is a practicable alternative. Continued management of the federal properties for wildlife conservation is consistent with and supports the objectives of Executive Order 11988.

#### *Migratory Birds*

Executive Order 13186 of January 10, 2001, establishes the responsibilities of federal agencies to protect migratory birds and their habitats. This order requires federal agencies to avoid or minimize the adverse impacts of their actions on migratory birds, to conserve and restore migratory bird habitat, to ensure compliance with the Migratory Bird Treaty Act and other relevant laws, and to enhance cooperation and coordination with other agencies and stakeholders on migratory bird issues. This executive order aims to improve the conservation of migratory birds and their habitats by the federal government, and to fulfill the government's duty to lead in the protection of this international resource. Continued management of the federal properties for wildlife conservation is consistent with and supports the objectives of Executive Order 13186.

#### *Invasive Species*

Executive Order 13112, Invasive Species, was signed by President Clinton on February 3, 1999. It established the National Invasive Species Council to coordinate federal actions to prevent and control invasive species. It also requires federal agencies to identify and minimize the impacts of invasive species on the environment, economy, and human health. These actions would no longer be required with the transfer of properties out of Federal ownership. However, Audubon would continue to manage the properties in accordance with the South Shore Management plan that includes the control of invasive species. Audubon currently has a robust effort to control invasives.

## Chapter 5 Consultation and Coordination

The Mitigation Commission consulted with Audubon in the preparation of this Environmental Assessment. The Mitigation Commission also consulted United States Department of the Interior Central Utah Project Completion Act Office.<sup>19</sup>

Section 106 of the National Historic Preservation Act, 36 CFR 800.3, requires federal agencies to take into account the effects of their undertakings on historic properties. Historic properties include those that are either located on tribal lands, or when any Native American tribe or Native Hawaiian organization attaches religious or cultural significance to them, regardless of their location. Tribal consultation is a key component of the Section 106 review process and requires Federal agencies to consult with Indian tribes that may attach religious and cultural significance to historic properties that may be affected by an undertaking. Tribal consultation will take place concurrent with the release of this Draft Environmental Assessment.

Section 106 of the National Historic Preservation Act, 36 CFR 800.3, also requires consultation with the Utah Division of State History, State Historic Preservation Office prior to the transfer of ownership to Audubon. It is anticipated that the State Statutes protecting cultural resources, which mirror Federal statutes, and restrictive language governing future land uses that will be included in the deed transferring properties to Audubon will provide the legally enforceable restrictions and conditions to ensure long-term preservation of the property's historic significance.

### Next Steps

This draft EA evaluates and discloses to the public and interested agencies the impacts that would likely result from the Proposed Alternative or No Action Alternative. Most importantly, it provides the public an opportunity to comment on the proposal. The Executive Director of the Mitigation Commission will consider the results of the analysis and the comments from the public in response to the draft EA which will inform his decision to modify the alternatives, consider new alternatives or accept the draft EA as written. A Final EA will be prepared and released to the public and a determination will be made regarding the severity of the impacts of the alternatives.

Concurrent with the Final EA, the Executive Director may issue a Finding of No Significant Impacts (FONSI) based on the analysis presented in the Final EA and comments from the public. Alternatively, the Executive Director may find that the analysis in the Final EA and comments from the public do not support the conclusion of a FONSI and that a more in-depth

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<sup>19</sup> The Department of the Interior Central Utah Project Completion Act Office has associated authorities and responsibilities related to the Central Utah Project program and has accepted a request to be a Cooperating Agency as provided in CEQ 1501.6.

environmental analysis in the form of an Environmental Impact Statement be prepared and issued to the public for review and comment.

### List of Appendices, Tables and Figures

Appendix 1	Draft Quit Claim Deed Mitigation Commission to Audubon
Table 1	Summary of Alternatives
Figure 1	South Shore Preserve Map
Figure 2	Lake Elevation Great Salt Lake, 1990 - 2022

# APPENDIX 1

Draft Quit Claim Deed Mitigation Commission to  
Audubon

**Record in Salt Lake County**

**Please return recorded copy to:**

Contract No. MC-\_\_\_\_\_

**Utah Reclamation Mitigation and  
Conservation Commissions  
230 S. 500 East, #230  
Salt Lake City, UT 84102**

**Salt Lake County Parcel ID Nos.**

07063000010000	Delta Area
07051000080000	Delta Area
07071000030000	Delta Area
07084000070000	Delta Area
07084000080000	Flowage Easement
07073000040000	Flowage Easement
06124000050000	Flowage Easement
06132000030000	Flowage Easement
06354000060000	Lee Creek Area
06352000070000	Lee Creek Area
06253000030000	Lee Creek Area

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**QUITCLAIM DEED**

THE UNITED STATES OF AMERICA, acting by and through the UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION (Mitigation Commission or Grantor), pursuant to Section 301(h)(7) of the Reclamation Projects Authorization and Adjustment Act of 1992, P.L. 102-575, as amended (CUPCA), for exchange of valuable consideration does hereby grant, transfer, quitclaim, and convey unto the NATIONAL AUDUBON SOCIETY, County of \_\_\_\_, State of \_\_\_\_\_, and its successors, and assigns, without any express or implied warranties, special, general, or otherwise, all the right, title, and interest of the Grantor in and to the following described lands in Salt Lake County, State of Utah, as subject to reservations made herein, to wit:

**See Exhibit A attached hereto and made a part hereof for complete legal descriptions.**

Together with all appurtenances thereto belonging or in anywise appertaining, including without limitation the land, water shares, permits, hereditaments, easements, incidents and appurtenances belonging thereto or used in connection therewith.

Subject to coal, oil, gas, and other minerals reserved to or outstanding in the United States or third parties as of the date of this deed; also subject to rights-of-way for roads, railroads, telephone lines, transmission lines, ditches, conduits, or pipelines on, over, or across said lands



in existence on such date.

This deed is not intended, nor shall it be construed or interpreted to abandon or relinquish rights by the Grantor to exercise a reserved easement in the future under provisions of the Act of August 30, 1890.

TO HAVE AND TO HOLD SO LONG AS:

- 1) In accordance with the October \_\_\_, 2023 Final Environmental Assessment and Finding of No Significant Impacts issued by the Mitigation Commission, the National Audubon Society protects, conserves and manages the property herein conveyed as a valuable element of the natural habitat of the Great Salt Lake ecosystem, recognized by the Mitigation Commission and the National Audubon Society as the South Shore Preserve and Lee Creek Area provides significant wildlife habitat, ecological, scenic, aesthetic and open space values, including flora, fauna, and soils; and the maintenance of such natural habitat helps support wildlife populations.
- 2) The National Audubon Society, its successors, and assigns, shall not transfer, grant or convey any interest whatsoever in, to, and over any part of the above-described land without the prior consent, in writing, of the Grantor or the Utah Division of Wildlife Resources as Grantor's successor and assign pursuant to Section 301(K) of CUPCA.
- 3) The National Audubon Society shall comply with the requirements of the Utah State Antiquities Act, UCA 9-8-301 to 9-8-308 and implementing rule; Protection of Paleontological Resources, UCA 79-3-508 UCA 9-8-404 (part of Title 9, Heritage, Arts, Libraries, and Cultural Development); Utah Native American Graves Protection and Repatriation Act, Utah Code Annotated (UCA) 9-9-401; and UCA 9-8-309 Rule 230-1 Ancient Human Remains on Nonfederal Lands that Are Not State Lands or related laws which provide sufficient continued protection of cultural and historical resources which may be found on the property.
- 4) In accordance with the Utah Noxious Weed Act (UCA-4-17), Administrative Rule 68-9, and the Salt Lake County Noxious Weed List, the National Audubon Society shall use best management practices to control noxious weeds on the above-described land.
- 5) In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 6), the Utah Pesticide Control Act (UCA-4-14), and State of Utah Administrative Rule 68-7, the National Audubon Society shall not use any banned or severely restricted chemicals and shall comply with all applicable pesticide applicator certification requirements, label instructions, and best practices when transporting, storing, handling, disposing of, and using herbicides to control weeds on this property.
- 6) In accordance with the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) and current guidelines published by the U.S. Fish and Wildlife Service's Utah Ecological Services Field Office, the National Audubon Society shall avoid disturbing active nests of any of the 1,026 bird species (50 CFR 10.13) protected by the Act. The National Audubon Society shall inspect trees for active nests prior to any trimming or removal and, to the extent possible, shall avoid conducting habitat-altering projects during peak breeding season from April through August.

- 7) In the event that at any time in the future the National Audubon Society determines that any of the land or appurtenant rights described above is no longer needed for the purposes for which it was intended as described above, the lands and appurtenant shares shall revert to the Grantor or its successors and assigns. Such reversion shall be confirmed by a recordable document that is agreeable to both the Grantor or its successors and assigns and the National Audubon Society.
- 8) In the event the Grantor or its successors and assigns determine that there is any violation or breach of the conditions or restrictions herein contained by the National Audubon Society, whether caused by legal or other inability to perform said conditions or restrictions, or otherwise, the Grantor or its successors and assigns shall give the National Audubon Society written notice of such and the National Audubon Society shall have a minimum of ninety (90) days, or any longer period that the parties subsequently agree, to correct the same. In the event that said violation or breach of conditions or restrictions cannot be corrected by the National Audubon Society within such (90) day period, or other period agreed upon, the National Audubon Society shall forfeit any and all right, title, and interest in only those lands and appurtenant rights in question, and such lands and appurtenant rights shall revert to the Grantor or its successors and assigns. Such reversion shall be confirmed by a recordable document that is agreeable to both the Grantor or its successors and assigns and the National Audubon Society.

The disposing federal agency is the Utah Reclamation Mitigation and Conservation Commission.

WITNESS the hand of said Mitigation Commission this \_\_\_\_ day of \_\_\_\_\_  
A.D., 2023.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Michael Mills, Executive Director  
Utah Reclamation Mitigation and  
Conservation Commission  
Grantor

APPROVED AS TO LEGAL SUFFICIENCY

By: \_\_\_\_\_  
U.S. Department of the Interior  
Office of the Regional Solicitor



ACKNOWLEDGMENT

State of Utah                    )  
  )  
County of Salt Lake            )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared before me Michael Mills, the signer of the foregoing Quitclaim Deed, who duly acknowledged to me that he is the Executive Director, Utah Reclamation Mitigation and Conservation Commission, and that he executed the same for and on behalf of the United States of America, and acknowledged the same to be the act and deed of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of  
Residing at  
My commission expires: \_\_\_\_\_

## ACCEPTANCE

National Audubon Society accepts this Quitclaim Deed on the term and conditions stated herein and releases Grantor and its successors and assigns from any claims, liabilities or other responsibilities that may arise subsequent to the date of this Quitclaim Deed that result from National Audubon Society's use as described in this Quitclaim Deed.

[SIGNATURE BLOCK FOR AUDUBON]

[ACKNOWLEDGMENT OF AUDUBON]

## **Exhibit A – Legal Descriptions**

**Record in Salt Lake County**

**Please return recorded copy to:  
Utah Reclamation Mitigation and  
Conservation Commissions  
230 S. 500 East, #230  
Salt Lake City, UT 84102**

Contract No. \_\_\_\_\_

**WATER SHARE  
QUITCLAIM DEED**

THE UNITED STATES OF AMERICA, acting by and through the UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION, GRANTOR, pursuant to Section 301(h)(7) of the Reclamation Projects Authorization and Adjustment Act of 1992, P.L. 102-575, as amended (CUPCA), for exchange of valuable consideration does hereby grant, transfer, quitclaim, and convey unto NATIONAL AUDUBON SOCIETY, County of Salt Lake, State of Utah, and its successors, and assigns, without any express or implied warranties, special, general, or otherwise, all the right, title, and interest of the GRANTOR in and to the following described water shares in Salt Lake County, State of Utah, to wit:

750 shares of Class B capital stock in the North Point Consolidated Irrigation Company described in the STOCK PURCHASE AND WATER SUPPLY AGREEMENT, Contract No. 8-LA-46-L0160, between the Utah Reclamation Mitigation and Conservation Commission and the North Point Consolidated Irrigation Company executed January 9, 1998, and December 19, 1997, respectively, attached hereto and made a part hereof.

The disposing federal agency is the UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION.

WITNESS the hand of said Grantor this \_\_\_\_ day of \_\_\_\_\_ A.D., 2023.

Approved for legal sufficiency

THE UNITED STATES OF AMERICA

\_\_\_\_\_  
U.S. Department of the Interior  
Office of the Solicitor

\_\_\_\_\_  
Michael Mills, Executive Director  
Utah Reclamation Mitigation and  
Conservation Commission,  
Grantor

ACKNOWLEDGMENT

State of                    )  
                                  ) ss.  
County of                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared before me MICHAEL MILLS, who duly acknowledged to me that he is the Executive Director, Utah Reclamation Mitigation and Conservation Commission, and that he executed the same for and on behalf of the United States of America, and acknowledged the same to be the act and deed of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of  
Residing at  
My Commission expires on:



## ACCEPTANCE

National Audubon Society accepts this Water Share Quitclaim Deed and releases Grantor and its successors and assigns from any claims, liabilities or other responsibilities that may arise subsequent to the date of this Water Share Quitclaim Deed that result from National Audubon Society's use as described in this Quitclaim Deed.

[SIGNATURE BLOCK FOR AUDUBON]

[ACKNOWLEDGMENT OF AUDUBON]