



ENVIRONMENTAL
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State Wetland Protection

Status, Trends, & Model Approaches

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Appendix: State Profiles

Utah

I. Overview

A characteristically arid state, less than one percent of Utah's total land area is covered by wetlands. However, the state has lost approximately 30 percent of its original wetland acreage to development, particularly around the Great Salt Lake, and human water demand.¹ In order to protect the state's few major wetlands, state, federal, and community actions include acquisition of important land, management of wildlife and habitat, education and outreach, and regulation of aquatic resources, among other activities. Indeed, multiple state agencies play a role in both regulatory and non-regulatory wetland-related activities.

II. Regulatory Programs

Wetland definitions and delineation

The State of Utah defines "waters of the state" as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state..."²

It should be noted that the Utah Pollutant Discharge Elimination System states that "'waters of the State' includes 'wetlands' as defined in the federal Clean Water Act."³

Wetland delineation criteria rely on the U.S. Army Corps of Engineers' 1987 *Wetlands Delineation Manual*.⁴

Organization of state agencies

The chief state agencies involved in wetlands issues in Utah include the Department of Environmental Quality (UDEQ) and the Department of Natural Resources (UDNR). UDEQ administers the state's §401 water quality certification program. UDNR divisions⁵ undertake a variety of wetland-related activities, including education and outreach, technical support and commentary, restoration, acquisition, and monitoring and assessment research; the agency's Division of Water Rights also conducts a stream alteration permitting program which occasionally involves the regulation of impacts to wetlands.

¹ Utah Reclamation, Mitigation, and Conservation Commission, *Wetland Projects*, at <http://www.mitigationcommission.gov/wetlands/wetlands.html> (last visited Sept. 10, 2007).

² UTAH CODE ANN. § 19-5-102(18). The state's definition of waters does not include "bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife." *Id.* § 317-8-1(59).

³ UTAH ADMIN. CODE, tit. R317-8-1(59).

⁴ U.S. ARMY CORPS OF ENGINEERS, WETLANDS RESEARCH PROGRAM TECHNICAL REPORT Y-87-1, CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL (1987), available at <http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf>.

⁵ The department/divisions distinction is important in Utah because many of the various legal authorities and statutory responsibilities are vested within the respective divisions, and not the Department.

Utah also has a group specifically devoted to the review and coordination of technical and policy actions that may affect the state's natural resources.⁶ The Resource Development Coordinating Committee (RDCC), a group of state and federal natural resource agencies, serves as a state clearinghouse for development projects involving natural resources, including wetlands. The RDCC ensures that the appropriate state and local agencies are involved and that the proposed actions are consistent with state plans.⁷

Utah Department of Environmental Quality. UDEQ's Division of Water Quality administers the state's §401 certification program. Less than one full-time equivalent (FTE) is devoted to the issuance of §401 certifications for the state. Program costs are usually funded by general state appropriations.⁸ Other activities include various research and development projects funded by federal grants.⁹ The program is based in Salt Lake City at the UDEQ headquarters.¹⁰

Utah Department of Natural Resources. Both UDNR's Division of Wildlife Resources and Division of Water Rights are the primary divisions conducting wetland-related activities within the agency, although other groups, such as the Division of Water Resources, provide comment during the RDCC state action review process.¹¹ All UDNR divisions are headquartered in Salt Lake City; regional offices vary among divisions.¹²

The Division of Wildlife Resources' Habitat Section conducts various wetland activities that contribute to state wildlife and habitat goals. For example, habitat restoration and land acquisition may involve jurisdictional wetlands. The Habitat Section often conducts impact analyses for development proposals (both within and outside the RDCC review process) that may involve wetlands. The group also participates in wetland mitigation bank siting with the U.S. Army Corps of Engineers ("Corps") and U.S. Fish and Wildlife Service. Dedicated monies from the sale of hunting and fishing licenses, as well as some federal monies, fund the program.¹³ The Division's Outreach Section also conducts wetland-related activities, including wetland-specific education and outreach and technical assistance. The wetland program manager

⁶ Governor's Office and Planning and Budget, *Resource Development Coordinating Committee*, at <http://governor.utah.gov/planning/rdcc.htm> (last visited Sept. 10, 2007).

⁷ Personal communication with Eric Millis, Utah Dep't of Natural Resources – Div. of Water Resources (Oct. 25, 2005).

⁸ Personal communication with William Moellmer, Utah Dep't of Env'tl. Quality – Div. of Water Quality (Oct. 25, 2005).

⁹ UDEQ is continuing the development of the state's Reference Wetland Network, a compilation of wetland profiles for the state's eco-regions. The agency is also the lead in the development of a state rapid assessment methodology in cooperation with the Corps, consultants, and UDNR staff, among others. See *Monitoring and Assessment for Wetlands* section below. Personal communication with Nancy Keate, Utah Dep'tment of Natural Resources – Div. of Wildlife Resources (Nov. 7, 2005).

¹⁰ Moellmer, *supra* note 8.

¹¹ The department/divisions distinction is important in Utah because many of the various legal authorities and statutory responsibilities are vested within the respective divisions, and not the Department.

¹² Personal communication with Bill James, Utah Dep't of Natural Resources – Div. of Wildlife Resources (Nov. 3, 2005).

¹³ Personal communication with Bill James, Utah Dep't of Natural Resources – Div. of Wildlife Resources (Oct. 31, 2005).

is funded largely by federal grants, with state appropriations for matching purposes.¹⁴ Staff activities are spread among many areas of habitat and wildlife protection and are not exclusively wetland-related.¹⁵

UDNR's Division of Water Rights is responsible for regulating the appropriation and distribution of water rights, including the operation of a stream alteration permitting program.¹⁶ The program focuses on the regulation of alterations to natural stream channels,¹⁷ which may also include associated fringe wetlands within 30 feet of a stream. Permits are issued for one year, after which compliance with the original permit conditions is assessed. Specific provisions regarding jurisdiction, thresholds, regulated activities, and the permit process are outlined in the state's rules.¹⁸ Two FTEs based in the Division's headquarters conduct permitting, compliance, and enforcement, although regional offices may also coordinate for on-the-ground actions. The program operates entirely on state funds.¹⁹

§401 certification

Any actions that require a federal permit, license, or approval that results in a discharge into waters of the state, including §404 dredge and fill permits and nationwide permits, require Clean Water Act (CWA) §401 certification. UDEQ staff rely on best professional judgment in reviewing for consistency with state water quality standards. Between 12 and 24 certifications are made annually. Project applications are generally approved with conditions. Outright denials are rare.²⁰

Nationwide permits

UDEQ does not review and approve, condition, or deny nationwide permits issued by the Corps. Section 401 water quality certifications are always issued with general conditions, which relate to the protection of spawning and preventing excessive siltation.²¹

Mitigation

The State of Utah has not adopted any legislation, policies, or guidelines regarding compensatory mitigation for wetlands and generally defers to the Corps for jurisdictional, wetland-related, mitigation issues.²² UDNR's Division of Wildlife Resources does play a role in siting wetland mitigation banks, providing technical advisory regarding wildlife species.²³

¹⁴ Personal communication with Nancy Keate, Utah Dep't of Natural Resources - Division of Wildlife Resources (Oct. 28, 2005).

¹⁵ *Id.*; James, *supra* note 13.

¹⁶ UTAH CODE ANN. § 73-3-29; UTAH ADMIN. CODE, tit. R655-13.

¹⁷ "Natural streams" are defined as "any waterway, along with its fluvial system, that receives sufficient water to sustain an ecosystem that distinguishes it from the surrounding upland environment." UTAH ADMIN. CODE, tit. R655-13-4.

¹⁸ *See* UTAH ADMIN. CODE, tit. R655-13.

¹⁹ Personal communication with Charles Williamson, Utah Dep't of Natural Resources – Div. of Water Rights (Oct. 25, 2005).

²⁰ Moellmer, *supra* note 8.

²¹ *Id.*

²² It should be noted that there does exist a special commission in the state that conducts directed compensatory mitigation activities: the Utah Reclamation Mitigation and Conservation Commission (URMCC). While state agencies do participate as partners or advisors, the commission is a federal executive branch agency. The URMCC was established under the Central Utah Project Completion Act of 1992, which both sets the terms and conditions

Compliance and enforcement

Compliance and enforcement procedures are outlined in the state's water quality standards.²⁴ However, violations to CWA §401/404 are handled at the federal level.

Tracking systems

Utah's RDCC is devoted to the review and coordination of technical and policy actions that may affect the state's natural resources, including §401 water quality certifications for actions involving wetlands.²⁵ The group essentially serves as a state clearinghouse, ensuring that the appropriate state and local agencies are involved in regulatory and non-regulatory capacities, and that the proposed actions are consistent with state plans.²⁶

III. Water Quality Standards

Utah has not adopted wetland specific water quality standards, but the rules do outline both numeric and narrative standards for "waters of the state."²⁷ Anti-degradation policies and use designations²⁸ are also described.²⁹ Section 401 water quality certifications are assessed based on whether or not the proposed actions will affect (surface or groundwater) "waters of the state."

IV. Monitoring and Assessment

Monitoring and assessment for wetlands

Utah is in the process of developing a reference-based rapid assessment methodology for wetlands with funding from the U.S. Environmental Protection Agency. The methodology will have multiple purposes, including water quality assessments (particularly assessments related to the Utah's use designations for waterfowl and shorebirds), evaluating mitigation requirements, identifying restoration sites, and developing Special Area Management Plans, among other purposes. UDEQ is leading the effort, in cooperation with the Corps, UDNR, and others.³⁰

Monitoring and assessment for streams

UDEQ's Division of Water Quality operates a stream monitoring program that focuses on the assessment of surface water quality in order to determine consistency with the state's use

for completing a major water diversion, storage and delivery project, but also for mitigation the impacts of the project. The URMCC also engages in mitigation banking through private entities and conservation groups such as The Nature Conservancy. See Utah Reclamation, Mitigation, and Conservation Commission, <http://www.mitigationcommission.gov/index.html> (last visited Sept. 10, 2007).

²³ James, *supra* note 13.

²⁴ UTAH CODE ANN. § 19-5-115.

²⁵ Governor's Office and Planning and Budget, *supra* note 6.

²⁶ Millis, *supra* note 7.

²⁷ UTAH ADMIN. CODE, tit. R317-2-7.

²⁸ *Id.* R317-2-6. Use designations relate to drinking water, recreational use, aesthetics, use by aquatic wildlife, waterfowl and shorebirds, agricultural uses, and for the Great Salt Lake, mineral extraction. *Id.*

²⁹ *Id.* R317-2-3 & R317-2-6.

³⁰ Keate, *supra* note 14.

designations. Data are used to identify impaired water bodies, and reports are written to raise awareness of the issue throughout the state.³¹

The stream monitoring program consists of a network of 63, long-term, basin-intensive monitoring stations. In general, samples are collected every six weeks³² and a reference-based assessment methodology is used to determine if stream segments are meeting their use designations. Determinations are based on a combination of quantitative assessment, best professional judgment, and site visits.³³

V. Restoration and Partnerships

Utah does not operate a formal, state-level restoration program; however, restoration-related activities are conducted regularly at UDNR. The Wildlife Resource Division's Habitat Section conducts restoration that benefits certain wildlife and habitat. In fact, Utah statutes establish a Wildlife Habitat Account that may be used to fund projects that benefit waterfowl, including preservation, development, and restoration of wetlands (and grants to conservation organizations conducting these activities). The account is funded by revenue from the sale of licenses, permits, and certificates of registration.³⁴ UDNR staff also provide technical support to parties conducting restoration and mitigation within the state, including private landowners, consultants, Utah Department of Transportation, and others, and coordinate regularly with U.S. Department of Agriculture restoration programs.³⁵

VI. Education and Outreach

The UDNR Division of Wildlife Resources' Outreach Section has conducted multiple wetland education activities, including the development of a wetland-specific curriculum for the 4th grade and the supply of wetland-related materials for teachers to check out and use in their classrooms.³⁶ The Habitat Section also conducts education and outreach activities informally as opportunities arise, for example, speaking at public meetings or providing a lecture to a local conservation group.³⁷

VII. Coordination with State and Federal Agencies

Utah developed a State Wetland Conservation Strategy that addressed topics such as wetland education programs and the development of a state wetland assessment methodology. Although

³¹ See Utah Department of Environmental Quality, *Monitoring and Assessment of Water Quality*, at <http://www.waterquality.utah.gov/watersheds/monitor.htm> (last visited Sept. 10, 2007).

³² Water quality sampling and analysis are consistent with U.S. Environmental Protection Agency guidelines.

³³ Utah Department of Environmental Quality, *supra* note 31.

³⁴ UTAH CODE ANN. § 23-19-43.

³⁵ James, *supra* note 13; Keate, *supra* note 14.

³⁶ James, *supra* note 13; Keate, *supra* note 14.

³⁷ James, *supra* note 13.

the strategy was not formally adopted, some state staff have used it to guide wetland protection efforts.³⁸

The state has formalized its coordination process through the RDCC, which serves as a clearinghouse for projects that might affect natural resources, including wetlands. The RDCC ensures that the appropriate state and local agencies are involved and that proposed actions are consistent with state plans.³⁹

VIII. Acronyms and Abbreviations

CWA – Clean Water Act

FTE – Full-Time Equivalent

RDCC – Resource Development Coordinating Committee

UDEQ – Utah Department of Environmental Quality

UDNR – Utah Department of Natural Resources

URMCC – Utah Reclamation Mitigation and Conservation Commission

³⁸ Keate, *supra* note 14.

³⁹ Millis, *supra* note 7.