

MEMORANDUM OF UNDERSTANDING (MOU)

Between

**Utah Department of Natural Resources, Division of Forestry, Fire and State Lands
and the**

Utah Department of Environmental Quality, Division of Water Quality

I. NAME OF AGREEMENT

Memorandum of Understanding (MOU) for Long-Term Management of the Great Salt Lake (GSL) Causeway Bridge, Excavated Channel, Causeway Opening and Control Berm.

II. PURPOSE

The purpose of this MOU is to document a commitment on the part of the signatories to coordinate the long-term management of the GSL Causeway Bridge, Excavated Channel, Causeway Opening and Control Berm at the conclusion of the monitoring and compliance requirements contained within U.S. Army Corps of Engineers (USACE) permit SPK 2011-00755 issued on September 7, 2015 and by Utah Department of Environmental Quality, Division of Water Quality Amended 2015 SPK 2011-00755 March 2, 2015 401 Water Quality Certification.

III. AGREEING PARTIES

This MOU is hereby made and entered into by, between, and among the Utah Department Natural Resources, Division of Forestry, Fire and State Lands, (FFSL), and the Utah Department of Environmental Quality, Division of Water Quality (UDWQ) (collectively, the Parties) with respect to the following recitals:

WHEREAS, the State of Utah recognizes and declares that the beds of navigable waters within the state are owned by the State and are among the basic resources of the State, and that there exists, and has existed since statehood, a public trust over and upon the beds of these waters;

WHEREAS, the State of Utah also recognizes that the public health, interest, safety and welfare require that all uses on, beneath or above the beds of navigable lakes and stream of the State be regulated, so that the protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation and water quality will be given due consideration and balanced against navigational or economic necessity or justification for, benefit to be derived from, any proposed use;

WHEREAS, the State of Utah is the owner of the bed of Great Salt Lake through the Equal Footing Doctrine;

WHEREAS, the Utah State Legislature has designated the FFSL as the executive authority for the management of sovereign land, including the bed of Great Salt Lake, and the state's mineral estates on lands other than school and institutional trust lands.

Sovereign lands are define by the Utah State Legislature as “those lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the State by virtue of its sovereignty” Utah Code Ann. (UCA) § 65A-1-1;

WHEREAS, FFSL, through its management responsibilities has the power and duty to “promote water quality management for the [Great Salt] lake and its tributary streams”, UCA § 65A-10-8;

WHEREAS, FFSL is required to manage sovereign lands in compliance with the Public Trust Doctrine and applicable statutory and regulatory mandates UCA § 65A-10-1;

WHEREAS, FFSL considers the Causeway Bridge, Excavated Channel, Causeway Opening and Control Berm to be improvements owned by the Union Pacific Railroad (UPRR);

WHEREAS, FFSL has issued a Special Use Lease Agreement (SULA), No. 30000055, to UPRR for the Causeway, Causeway Bridge, Excavated Channel, Causeway Opening, and Control Berm.

AND

WHEREAS, UDWQ is the state's water pollution control agency which has the authority and responsibility to implement the Federal Clean Water Act;

WHEREAS, UDWQ, through the Water Quality Board has the responsibility to serve as staff in the execution of the Utah Water Quality Act. UCA § 19-5;

WHEREAS, UDWQ has the authority under UCA §19-5-104, to conduct studies, investigations, research and demonstrations relating to water pollution and causes of water pollution and to adopt, modify or repeal standards of quality of waters of the State;

WHEREAS, UDWQ is the state's water pollution control agency which shall collect and disseminate information relating to water pollution and the prevention, control and abatement of water pollution Utah Water Quality Act. UCA § 19-5; and

WHEREAS, the mission of UDWQ includes: 1) enforcing laws and rules associated with protecting and enhancing the surface and ground water of the State of Utah; 2) issue a 401 Water Quality Certification decision to any related USACE 404 permit issued; 3) developing water quality standards including standards specific for the Great Salt Lake.

IV. Now THEREFORE, the parties hereto mutually agree as follows

- A. Utah Division of Forestry, Fire and State Lands shall:
 1. Establish a *Causeway Committee* (Committee) as a subcommittee of the Great Salt Lake Technical team consisting of stakeholders who are actively involved in the management of Great Salt Lake. The Committee will serve in an

advisory capacity to UDWQ and FFSL by providing guidance and recommendations on the:

- a. Long term management of water and salt transfer through the UPRR Great Salt Lake Causeway;
 - b. Interpretation of salinity data of the South (Gilbert Bay) and North (Gunnison Bay) Arms of the Great Salt Lake on a bi-annual basis; and
 - c. Appropriate causeway opening and berm geometry to maximize benefits of the Great Salt Lake in accordance with the public trust doctrine and the Utah Water Quality Act. All Committee recommendations and guidance will be made available to the public.
2. After the monitoring period, receive recommendations from the Committee for proposed potential FFSL modification of the causeway opening, berm or channel;
 3. After the monitoring period, request input and recommendations from the Committee for proposed potential FFSL modification of the causeway opening, berm or channel;
 4. After the monitoring period, prior to any FFSL modification of the causeway opening, berm or channel, obtain necessary permits or approvals from USACE;
 5. After the monitoring period, prior to any FFSL modification of the causeway opening, berm, or channel, issue a Record of Decision (ROD) in compliance with FFSL rules; and
 6. After the monitoring period, prior to any FFSL modification of the causeway opening, berm or channel, seek approval from the Utah State Legislature, if necessary, for expenditures related to the modification, monitoring and maintenance activities associated with any modification to the causeway opening and/or berm geometry.

B. Utah Division of Water Quality Shall:

1. Participate in the Committee;
2. After the monitoring period, serve as the lead water quality monitoring agency;
3. After the monitoring period, receive recommendations from the Committee for the water quality monitoring options before and after the proposed FFSL modification of the causeway opening, berm or channel;
4. Provide recommendations to FFSL and the Committee based on the interpretation of Great Salt Lake water quality monitoring data;
5. Provide recommendations to FFSL and the Committee to ensure that any proposed changes to the causeway opening or berm geometry do not harm Great Salt Lake water quality and aquatic life designated beneficial uses;
6. Collaborate and coordinate with FFSL's ongoing activities associated with the Great Salt Lake in accordance with Utah Admin. Code R317-2-6, R317-15 and R317-2-13;
7. Expeditiously issue any related 401 Water Quality Certification required for proposed changes to the causeway opening or berm geometry, and
8. Execute an MOU with the UPRR to coordinate between UDWQ and UPRR the Long Term Management of the Great Salt Lake Causeway – Bridge, Excavated

Channel and Control Berm, [DATE]. No terms in that MOU are intended to modify, replace, or supersede any terms herein nor any terms found in SULA No. 30000055 between UPRR and FFSL.

C. It is mutually agreed by the PARTIES as follows:

1. This Agreement shall be interpreted in accordance with the laws of the State of Utah. In entering into this agreement neither party is relinquishing its rights, authorities or duties.
2. This agreement does not supersede, replace or override any conditions of the existing SULA nor the UDWQ and UPRR MOU for the Long Term Management of the Great Salt Lake Causeway–Bridge, Excavated Channel and Control Berm [DATE]. In the event of any conflict or disagreement between this agreement and the SULA, the SULA is controlling. In the event of any conflict or disagreement between this MOU and the UDWQ and UPRR MOU related to the Long Term Management of the Great Salt Lake Causeway–Bridge, Excavated Channel and Control Berm, UDWQ shall resolve the conflict or disagreement in a way that satisfies all of the parties to both MOUs, but UPRR and FFSL shall not be legally required to adhere to any term in any agreement to which it was not a party.
3. In the event of any conflict between the Parties of this MOU, the Project Managers for UDWQ and FFSL shall meet to attempt to resolve the conflict. If they are unable to resolve the conflict within a reasonable time, the Parties will meet with the Committee. If the Parties are unable to resolve a conflict, either Party may terminate this agreement upon giving the other Party ten (10) days prior notice.
3. The Parties to this agreement shall cooperate in the design, review and planning of modifications of the causeway opening, berm or channel.

V. EFFECTIVE DATE OF AGREEMENT

This MOU will become effective upon signatures of all parties and will be implemented by the end of the first year after the proposed mitigation (bridge structure, control berm, causeway opening, and channel) is completed by UPRR as approved by the USACE and UDWQ.

VI. TERMINATION OR AMENDMENT

This MOU will remain in effect until the Parties agree in writing to terminate or modify the Agreement, or extend the term hereof. Notice of intent to terminate this MOU or to negotiate amendments must be provided in writing to the other parties at least ten (10) days in advance.

This MOU is intended to be a binding agreement with respect to the responsibilities described herein. All parties will use their best efforts to live up to the specific terms of the MOU and to support each other in their respective responsibilities.

IN WITNESS WHEREOF, the parties hereby cause this Agreement to be executed.

Department of Environmental Quality
Division of Water Quality

Department of Natural Resources
Division of Forestry, Fire and State Lands

By

By

Erica Brown Gaddis, PhD
Director

Brian Cottam
Director/State Forester

Date:

Date:

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

By

By

Bret Randall
Assistant Attorney General

Frederic J. Donaldson
Assistant Attorney General

Date:

Date: