



WESTERN RESOURCE
ADVOCATES

February 19, 2015

Sent via email

Bill Damery
wdamery@utah.gov
Utah Division of Water Quality
195 North 1950 West
P.O. Box 144870
Salt Lake City, UT 84114-4870

RE: Draft 401 Certification to Permanently Close the East Culvert of the UPRR Causeway

Mr. Damery:

Thank you for the opportunity to comment on the draft 401 Certification and on the Proposed Compensatory Mitigation and Monitoring Plan (Plan) related to the proposal to permanently close the east culvert of the Union Pacific Railroad (railroad or UPRR) Great Salt Lake causeway. These comments are submitted on behalf of FRIENDS of Great Salt Lake (FRIENDS).

Initially, FRIENDS would like to thank the Utah Division of Water Quality (DWQ), and you specifically, for the work you've put into the 401 Certification process over the past several years. We recognize the many challenges that have presented themselves throughout this process and we appreciate the tenacity that you have shown in addressing those challenges. Much more is known today about the conditions associated with permanently closing the culverts and constructing the bridge than a year ago, and decision makers are therefore in a much better position to correctly design the opening of the bridge structure along with possible adaptive management options. We especially appreciate DWQ's creativity with regard to the control berm concept and we are of the opinion that this feature will provide state and federal agencies with much needed options to adaptively manage the bridge opening as Lake conditions fluctuate.

Having said that, FRIENDS feels that there are a few areas where the draft 401 Certification and the Mitigation and Monitoring Plan fall short.

Five Years is Too Short a Mitigation and Monitoring Period.

As FRIENDS has consistently noted, five (5) years is much too short a mitigation and monitoring period to be effective, especially given the varying conditions of Great Salt Lake. With the continuing low Lake levels that exist today, we are left to wonder if what we are seeing is a new normal for the Lake, or if Lake levels will rise substantially in a few years' time.

COLORADO • 2260 BASELINE ROAD, SUITE 200 • BOULDER, CO 80302 • 303.444.1188 • FAX: 303.786.8054 • EMAIL: info@westernresources.org
NEVADA • 204 N. MINNESOTA STREET, SUITE A • CARSON CITY, NV 89703 • 775.841.2400 • FAX: 866.223.8365 • EMAIL: info@westernresources.org
NEW MEXICO • 409 E. PALACE AVENUE, SUITE 2 • SANTA FE, NM 87501 • 505.820.1590 • FAX: 505.820.1589 • EMAIL: info@westernresources.org
UTAH • 150 SOUTH 600 EAST, SUITE 2AB • SALT LAKE CITY, UT 84102 • 801.487.9911 • EMAIL: utah@westernresources.org

Regardless, because we cannot possibly predict what will happen with Lake levels in the next five years, it is imperative that your 401 Certification require the longest practical mitigation and monitoring period. Due to the unpredictable nature of Lake elevations and the significant implications related to the long-term management of the bridge opening, FRIENDS continues to advocate for a ten (10) year monitoring and mitigation period.

State Agencies Should Not be Responsible for Long-Term Management of the Control Berm.

As outlined in the Proposed Compensatory Mitigation and Monitoring Plan, UPRR is proposing to turn control of long-term monitoring and mitigation measures over to state agencies after the close of the initial monitoring and mitigation period. According to the Plan, as long as the control berms remain unchanged from the original design (or a modified design if analysis conducted within the initial period shows that the original control design is not performing as expected), UPRR will continue to maintain the control berms, along with the bridge, in its normal course of doing business. However, after that initial period, once a decision is made to modify the berms in any way, UPRR is proposing to wash its hands of that modification. As outlined in the Plan, if state and federal agencies determine that a modification to the berms is necessary after the initial period, the railroad will provide access to the berms, but the agencies will be required to provide both the expertise and the funding to make any needed changes. Further, once a change is made, UPRR will no longer maintain the berms, but will instead “notify the responsible party if adverse conditions are found.” Plan at 48. This is not a reasonable or practical proposal.

Instead, in exchange for providing UPRR with an easement to enact these mitigation measures, the State should require that the railroad be responsible for any long-term modifications or maintenance of both the control berms and the bridge opening that state and federal agencies deem appropriate. While UPRR and the various agencies are parsing this action as mitigation for the closing of the two culverts, the reality is that the existence of the causeway has significantly and permanently altered the ecosystem of the Lake. This, as they say, is the elephant in the room. DWQ should not agree to a plan that shifts the responsibility for long-term management of the control berms away from the railroad and onto the citizens of the State.

Adaptive Management Decisions Should Not be Limited to DWQ and the U.S. Army Corps of Engineers.

Recognizing that because of statutory and regulatory responsibilities UPRR is looking to DWQ and the U.S. Army Corps of Engineers as the lead state and federal agencies in this action, FRIENDS asks that DWQ devise an adaptive management process that includes appropriate state (Division of Forestry, Fires & State Lands, Division of Wildlife Resources, Utah Geological Survey) and federal agencies (Environmental Protection Agency, Fish and Wildlife Service, U.S. Geological Survey), as well as the various stakeholders with interests in the viability of Great Salt Lake. Any decision to modify the control berm structures should be as inclusive as possible and should be based on the best available sound science. We also request that DWQ create and maintain a means of disseminating information to the public related to the ongoing monitoring and mitigation efforts associated with this action.

Conclusion

Again, thank you for the opportunity to comment on this draft 401 Certification and on UPRR's Proposed Compensatory Mitigation and Monitoring Plan. As always, we very much appreciate your willingness to consider our input and to work with us towards improving the water quality of Great Salt Lake.

Yours,

A handwritten signature in black ink, appearing to read "Rob Dubuc".

ROB DUBUC
JORO WALKER
Attorneys for FRIENDS