

WEBER NAVIGABILITY RULING FACT SHEET

(FULL VERSION)

USAC Board of Directors and Counsel

Background:

Judge Kelly's ruling affirms the navigability of the Weber River over "the one-mile stretch" – a one-mile reach of the river in the vicinity of the Browns Canyon Bridge. It does not formally adjudicate the navigability of the other ~124 total miles of the entire river, or even the other ~39 miles of the "Upper Weber" between Holiday Park and Echo, Utah.

What the ruling does and does not do:

- It DOES reopen the beds and banks of the Weber through the "the one-mile stretch" to lawful public recreational use.
- It DOES NOT reopen the beds and banks of the Weber to lawful public use above or below the 4 properties that make up "the one-mile stretch."
- It DOES NOT reopen the beds and banks of any other part of the Weber to lawful public use.
- It DOES NOT reopen the beds and banks of any other waterways of Utah effectively closed to public use by "The Public Waters Access Act" of 2010 (a.k.a. HB141).
- It DOES NOT repeal or otherwise affect the validity of HB141 anywhere.
- Finally, it definitely DOES NOT allow the public to trespass across private property to gain access to the beds and banks of the Weber through the "the one-mile stretch," or any other reach of the Weber, or any other waterway in Utah.

So, only one-mile of the Weber was reopened to public use? What's the point of that?

To succeed in this initial step of restoring lawful public use of Utah's rivers and streams, USAC, through its attorneys, brought two test cases asserting two distinct legal theories, one arguing federal navigability-for-title principles on a small reach of the Weber River and a second, on a small reach of the Provo River, that directly challenges HB141 under Utah law and seeks to reinstate public rights confirmed under *Conatser*. In both cases, USAC ultimately seeks to establish state-wide legal precedent from the Utah Supreme Court of the public's right to lawfully-access and use Utah's rivers and streams.

The Weber case targeted a section of the river where landowners took action to enforce HB141 after it became law in 2010. In the vicinity of "the one mile stretch" landowners posted "No Trespassing" signs that put the public on notice that it was no longer allowed to use the beds and banks of the Weber River for lawful recreational purposes. Members of USAC had lawfully used these beds and banks prior to the enactment of HB141, and were prohibited from doing so afterwards through the actions of these landowners.

USAC estimates that over its entire length, the Weber River runs through the lands of over one thousand property owners. USAC did not have the time and money to bring suit against all of them, and not all were actively prohibiting public use of the beds and banks through their properties. For practical and strategic reasons, USAC focused this lawsuits on “the one mile stretch,” where “the facts on the ground” maximized its chances of winning.

What will it take to get the whole Weber (or all waters of the state) reopened to public use?

Judge Kelly’s ruling was based on historical evidence of commercial traffic over a 39 mile stretch of the Upper Weber from Holiday Park to Echo. The next step will be for the State to use Judge Kelly’s ruling to assert public ownership of this entire stretch. Then the State will need to gather and consider evidence of similar uses on other parts of the Weber and on other Utah rivers. Now that the Court has instructed the State as to the correct test of navigability, the Coalition expects the State to make appropriate determinations on the Lower Weber, the Provo, the upper Bear and many other rivers that have a history similar to the Upper Weber’s. The Coalition will work closely with the State in an effort to make this happen as soon as possible.

It is possible that an appeal of Judge Kelly’s ruling could delay the process. But Judge Kelly’s ruling is factually and legally sound, and the Coalition is confident that it will be upheld on appeal.

Due to the need for further action by the State, as well as the uncertainties over whether there will be an appeal, the Coalition recommends that anglers hold off on using the “one mile stretch,” at least for the time being. This stretch covers only a short distance above and below the Browns Canyon bridge, and there are no signs marking its boundaries. Hopefully, the State will soon announce that the entire Upper Weber, from Holiday Park to Echo, is open again to public use.

Why is it taking so long for USAC members to regain lawful use of Utah’s public waters?

As we noted in our communication on April 10, 2015, this victory is but one step in a long journey to restore the public’s right to access and lawfully use its resource – the public waters of Utah. The courts move slowly. Legal research and legal work takes time and effort. All sides have the right to respond along the way. Life happens and deadlines get pushed back. Court calendars are fully booked and trials don’t get scheduled until all of the pre-trial details have been worked out. The good news is that after this long wait on the Weber River case we have a final ruling from the judge – and it’s 100% in our favor. Although the affected landowners may appeal this ruling to the Utah Supreme Court, we will be expecting good news from that court too, as we are in very good position going into an appeal.

Another bit of good news is that after more than three years, three sets of oral arguments, and three important but partial rulings, USAC's other lawsuit (it's "Right-to-Use" case) is going to trial at the end of August. After that trial, the judge in that case will issue his final ruling too. Hence, by October 2015, USAC expects to have final rulings on both of its lawsuits from the District Court judges.

USAC believes that with these rulings in hand, the Utah Legislature during the 2016 Legislative Session will finally be motivated to pass legislation that repeals HB 141 and confirms the public's rights to use their resource.

So, where can I fish now?

For the best-informed answers to that question, USAC strongly encourages its members and the public to contact the Regional Office of the Division of Wildlife Resources (DWR) responsible for oversight of the water you're interested in fishing. The contact information for all five Regional Offices can be found here: <http://wildlife.utah.gov/about-us/contact-us.html>. Please contact them. It's their job to help you identify where you can and cannot fish, and they want to help you.

How can I help USAC in its continuing fight to restore public access to, and lawful use of the public waters of Utah?

That's a loaded question, since there are so many ways to help. Here are just a few:

1. Be informed. Know what you can and cannot legally do. Contact the DWR with questions about where you can and cannot legally make use of the beds and banks of Utah's waterways.
2. Start talking / keep talking to your Legislators about replacing HB141 with a law that restores and secures the public's right to use its resource -- the public water of Utah.
3. Attend an event in support of USAC and its efforts. (See the sidebar of our emails for details.)
4. Make a donation to help rebuild our "war chest" ahead of the likely appeals of both final District Court rulings to the Utah Supreme Court. (Remember, donations, while much appreciated, are NOT tax deductible.)
5. Volunteer your services, or your special skills, in support of the cause. See the Contacts Tab on the USAC website: utahstreamaccess.org.