

NOV 29 2017

IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH STREAM ACCESS COALITION,
Appellee and Cross-Appellant,

v.

VR ACQUISITIONS, LLC AND
THE STATE OF UTAH,
Appellants and Cross-Appellees.

SUPPLEMENTAL BRIEFING
ORDER

Case No. 20151048-SC

The court heard oral argument on the first request for supplemental briefing in this case on June 14, 2017. This case is now under advisement on full briefing and oral argument by the parties.

On November 22, 2017, this court filed *Utah Stream Access Coalition v. Orange Street Development*, 2017 UT 82, ---P.3d---. The *Orange Street* opinion held that the Public Waters Access Act, Utah Code section 73-29-101 *et seq.*, “invokes a legal term of art embedded in federal law” to define the navigability of state waters for the purpose of administering and enforcing the act. *Orange Street*, 2017 UT 82, ¶ 3. Applying this standard, our opinion in *Orange Street* upheld a determination by the Third District Court that Utah Stream Access Coalition (USAC) had a right of access to a portion of the Weber River on the basis of a determination that that portion of the river was “navigable.” *Id.*

In this case it appears that the navigability question was identified but not litigated by the parties. The navigability question, however, arguably seems antecedent to the public trust question raised by USAC and litigated in the district court.

In light of the above, the court requests simultaneous supplemental briefing by the parties on the following questions regarding the justiciability of this matter:

- (1) Is a determination of the navigability of the stretch of the Provo River in question a necessary antecedent to a determination of the constitutionality of the Public Waters Access Act, rendering any opinion

made before determining navigability an advisory opinion based on a hypothetical state of facts?

(2) Have the parties stipulated that the relevant stretch of the Provo River is non-navigable for purposes of the disposition of this case? Is that a matter that the parties may stipulate to and that the court should respect?

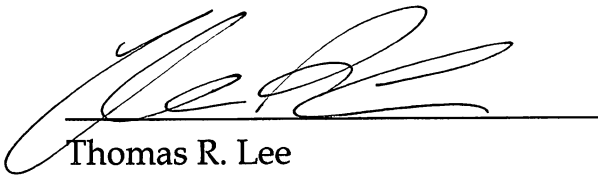
(3) Has USAC forfeited its right to litigate the navigability of the relevant stretch of the Provo River in these proceedings? Is that a question that can be forfeited by the parties?

Simultaneous briefs shall be filed no later than 5:00 p.m. on January 5, 2018. Reply briefs must be filed no later than 5:00 p.m. on January 19, 2018. The supplemental briefs shall clearly indicate Supplemental Brief on their covers, shall be limited to 7,000 words for opening briefs and 3,500 for reply briefs, and shall comply with Supreme Court Standing Order No. 8; with rule 27 of the Rules of Appellate Procedure as to size, margins, typeface, and contents of cover; and with rule 26(b) as to the number of copies filed and served. They should also include a separate table of authorities limited to the citations provided by the supplemental analysis. Compliance with other formatting and content provisions of the appellate rules, including the binding and color and cover requirements described by subparts (c) and (d) of rule 27, is not required for a supplemental brief. The parties shall not be permitted to stipulate to an extension. The parties shall comply with the briefing schedule upon its issuance. At this time, no oral arguments have been scheduled for this briefing, and no additional oral argument will be held absent further order of the court.

FOR THE COURT:

Date

Nov. 29, 2017



Thomas R. Lee

Associate Chief Justice

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2017, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

CRAIG C. COBURN
ZACHARY E. PETERSON
craig-coburn@rbmn.com
zachary-peterson@rbmn.com

NATHAN D. THOMAS
nthomas@joneswaldo.com

THOM D. ROBERTS
thomroberts@agutah.gov

W. CULLEN BATTLE
cbattle@fabianvancott.com

TYLER R. GREEN
tylergreen@agutah.gov

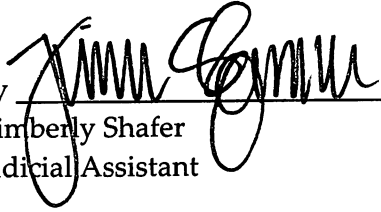
JOHN L. YOUNG
jlyoung@yahlaw.com

ELIZABETH BUTLER
ebutler@joneswaldo.com

MICHAEL D. ZIMMERMAN
JOHN J HURST
mzimmerman@zjbappeals.com
jhurst@zjbappeals.com

STANFORD E. PURSER
spurser@agutah.gov

ERIC P. LEE
eric@hlhparkcity.com

By 
Kimberly Shafer
Judicial Assistant

Case No. 20151048
District Court No. 100500558