

**EXECUTIVE TRANSPORTATION AND ENVIRONMENTAL COUNCIL  
MEETING SUMMARY**

**DATE:** Wednesday, January 9, 2008

**TIME:** 10:30 a.m.

**PLACE:** U.S. Army Corps of Engineers  
533 West 2600 South, Suite 150  
Bountiful, Utah

**THOSE PRESENT:**

James McMillan, U.S. Army Corps of Engineers  
Butch Waidelich, Federal Highway Administration  
Bryan Cawley, Federal Highway Administration  
Greg Punske, Federal Highway Administration  
Robin Coursen, Environmental Protection Agency  
Mike Styler, Department of Natural Resources  
Wilson Martin, Division of State History  
John Njord, Utah Department of Transportation  
Carlos Braceras, Utah Department of Transportation  
Shane Marshall, Utah Department of Transportation  
Julie Lewis, Utah Department of Transportation

**ITEM ONE: CHAIR AND HOST WELCOME**

Butch Waidelich called the meeting to order and welcomed those attending. He thanked James McMillan and the U.S. Army Corps of Engineers (USACE) for hosting the meeting today.

Butch presented two awards to the USACE from the Federal Highway Administration (FHWA): (1) The FHWA Exemplary Ecosystem Initiative Award for the Legacy Nature Preserve, and (2) The FHWA Environmental Excellence Award for Excellence in Ecosystems, Habitat, and Wildlife for the Legacy Nature Preserve. These awards have also been presented to UDOT and FHWA for their work on that project.

**ITEMS TWO & THREE: HOST PRESENTATION: U.S. ARMY CORPS OF ENGINEERS AND NEW WETLAND GUIDANCE**

James provided a presentation on the Regulatory Program Clean Water Act (CWA) Update. James was representing Jason Gipson, who was unable to attend the meeting today.

James reviewed the CWA goal and the Corps Regulatory Mission. He provided a summary of the Corps' regulatory program, waters under the Corps RHA/CWA authority, regulated activities, exempted activities, and permits (general and standard). The Corps follows the Standard Permit Evaluation – 404(b)(1) Guidelines. James said they have been working with UDOT on projects with this evaluation process.

James reviewed the Supreme Court Decision in the Solid Waste Agency of Northern Cook County (SWANCC) v. USACE. He said the Corps determined CWA jurisdiction over abandoned gravel pits by use of the Migratory Bird Rule. He also reviewed the two U.S. Supreme Court decisions on Rapanos and Carabell. In the Rapanos Decision, a determination must be made if wetlands having a surface hydrologic connection to a man-made ditch that drains into traditional navigable waters are waters in the United States. In the Carabell Decision, a determination must be made if a wetland is “adjacent” if separated by a man-made berm from a tributary to navigable waters. There was a 4-1-4 split Supreme Court. The justices issued five opinions in Rapanos, with no single opinion commanding a majority of the court. James reviewed Justice Kennedy’s conclusion (Significant Nexus) and the plurality conclusion (four who upheld decision). The dissenting opinion was the Corps regulations are reasonable interpretation of CWA. The decision/guidance does not address SWANCC nor does it affect the Joint Memorandum issued by the General Counsels of EPA and the Army.

James reviewed the Interagency Guidance on CWA Jurisdiction following Rapanos/Carabell v. U.S. He reviewed the Traditional Navigable Waters (TNWs), the plurality test, and Wetlands Adjacent to TNWs. He discussed Relatively Permanent Waters (RPWs) and wetlands directly abutting RPWs. James reviewed the Kennedy Test (Significant Nexus Evaluation). Shane confirmed that the eight-page evaluation form has to be completed on each wetland in a project. If they abut, he can include it in one form. If not, they have to complete a form for each. There are some waterways that are clearly navigable; others are tributaries that directly feed into those waterways. Some of these areas see water only every 5-10 years, and the Corps jurisdiction will come under question. John Njord said it is important to explain this process--whether a waterway is navigable or not--to the public.

James reviewed the hydrological factors and ecological factors of the Kennedy Test. He reviewed the wetlands not directly abutting RPWs, non-RPWs, wetlands adjacent to non-RPWs, other regulated waters and jurisdiction hooks, and typically non-regulated features. James presented pictures of ditches, swales, and erosional features. He discussed isolated waters and wetlands. For each specific request for isolated waters, field staff makes a case-by-case determination on jurisdictional status of resources. Headquarters concurrence is required.

James reviewed the tools to address Rapanos/Carabell. John asked about Corps jurisdiction if an unintentional ditch were created due to a project. James said the size does not matter. The Corps could still have jurisdiction over it. John said these could be intended for drainage, but the Corps could actually have jurisdiction over them.

Carlos asked James to explain how USACE is organized. James said the USACE is divided into eight divisions. The Sacramento District is part of the South Pacific Division, which is one of the largest in the nation. There are 50 employees in the Sacramento District. The Utah Field Office is part of this district, and that office has 6-7 employees. James said 50 percent of his work is highway related, such as I-15, Mountain View Corridor, etc. Residential and commercial real estate work is starting to slow down. They also work with the Federal Aviation Administration on airport projects. In the Uintah Basin, they have an employee who is

designated to work on oil and gas projects. There is much work in the Basin at the present time. If a project gets controversial, it is routed to Sacramento for approval. The Corps can say no to a project. If they say yes, the Environmental Protection Agency can veto it. The Corps cannot regulate groundwater. Spring waters can be interstate.

Butch thanked James for his presentation and the excellent summary given on the USACE.

#### **ITEM FOUR: UDOT PROGRAM/PROJECT UPDATE - PRIORITIES**

Shane distributed copies of the UDOT Environmental Program for 2008. He reviewed the Environmental Impact Statement (EIS) and Environmental Assessment (EA) documents completed in 2007. He provided a statewide overview of 20 documents. They expect to complete 12 documents in 2008. Upcoming projects include SR-30, 1400 West to Main Street in Logan, and the 800 North Railroad Overpass and Widening in Clearfield. These are two projects where a 12-month timeframe is very doable. Butch compared Utah's projects to California's projects. Utah has a very ambitious workload, partly because we have the funds to do so. Greg said to complete 12 projects in a year is very ambitious. Butch said Utah's workload is large with a small staff, and they do a tremendous job.

Shane showed an overall map of the state with the proposed environmental projects for 2008. He explained an EA, which is a process where we do not know all the impacts. An EA does not have as many impacts as an EIS. Sometimes an EA needs to be upgraded to an EIS. An EIS is much larger than an EA and is a more involved process. An Environmental Study (ES) is a non-FHWA document that is state-funded only. FHWA is not involved with an ES. From a public perspective, there is not much difference between an EA and an ES. The USACE does perform work on a decision process. They request additional information if they have questions. John said they have had tremendous energy from legislators wanting to implement EIS processes for their various areas. Mike said one of these requests was for an EIS on the Causeway.

Shane provided details on the environmental projects by Region and the goals of each of these projects. He noted that in the back of the handout, there is the handout on the Statewide Environmental Document Schedule, which outlines the schedule for the 20 environmental projects.

The ETEC Members discussed Single Point Urban Interchanges (SPUIs). These interchanges are more efficient because there are fewer signals. They also have a good track record for safety.

Wilson asked about the Region One Project on 200 East, Center Street to 300 South, in Logan. This project borders a historic district. The Committee also discussed the EIS, Tooele Midvalley Highway. This will be a freeway or expressway. They are considering upgrading this project from an EA to an EIS. Tooele County will be a joint lead on this project.

**Action Item:** Greg said Shane should send a letter of intent to FHWA requesting to bump the Tooele Midvalley Highway from an EA to an EIS.

The Committee discussed several projects in Region Three. They have invited Provo City to be a joint lead on the EIS, Provo Westside Connector. Shane said they are very involved, and this is a complicated project. The public is mostly in favor of widening the I-15 Corridor in Utah County. We are looking for direction from the Legislature this session on this project. John said this is our number one project. Shane said the EIS, Geneva Road will go from seven lanes down to three to help with historic preservation areas. Shane said the projects in Utah County all have some wetland impacts. We are looking at a site to development a wetland mitigation bank.

The Committee discussed several projects in Region Four. There are historic resources through the SR 212 Telegraph Road widening project in Washington City. The SR-12 Escalante to Boulder, project is 20 miles long. They need to provide safety needs while preserving human and natural resources. The Red Hills Parkway will be widened to five lanes. The biggest environmental impact is the Deseret Tortoise Habitat. They are working with the USFWS on this matter. The SR-262 Montezuma Creek to Aneth Project has been an experiment. Joint leads on this project include UDOT, FHWA, and the Navajo Nation. The Navajo DOT is committed to this working. We have the benefit that there are some very strong needs in this area.

The Committee thanked Shane for his excellent report and all his work.

#### **ITEM FIVE: OTHER AGENDA ITEMS**

Greg said they have had direction from Washington that there should be more agency participation on projects. Their attorneys have read the code, which says “they shall” invite the agencies. They are looking at a programmatic approach where they review projects on a quarterly basis. Greg would like to discuss this in the next ETEC Meeting.

#### **ITEM SIX: FUTURE AGENDA ITEMS - SCHEDULE NEXT MEETING**

**Action Item:** Shane distributed a copy of future agenda topics for ETEC. He will add Greg’s topic on agency participation on projects to this list.

Wilson suggested we hold the next ETEC Meeting at the State Capitol. He will arrange for a behind-the-scenes tour of the renovated Capitol. Everyone agreed this would be great. The next meeting was set for Wednesday, April 2, 11:30 a.m. to 1:30 p.m., at the State Capitol.

**Action Item:** Julie will send an E-mail to ETEC Members on the April 2 proposed meeting date to determine if this works for everyone.

**ADJOURNED AT 1:20 p.m.**