

Region #1: Glen Canyon Region (National Recreation Area)

Introduction:

The Glen Canyon Region (aka National Recreation Area (NRA)) is located along the eastern border of Kane County where Lake Powell defines the county line. This NRA was created in 1972 by an act of Congress¹ which set aside approximately 1.25 million acres in parts of southern Utah and Arizona, including Lake Powell. Most of the surface acreage is in Utah (1,203,656 acres)² spread over Kane, Garfield, Wayne and San Juan counties and is managed by the National Park Service.

The Glen Canyon NRA is a major recreational destination for southern Utah. The creation of Glen Canyon Dam impounded enough water to create Lake Powell at 186 miles long with over 1,900 miles of shoreline. At its fullest, it can contain 26.2 million acre-feet of water.³ It is a vital storage reservoir of the Colorado River Storage Project (CRSP), completed by the Bureau of Reclamation in 1966. Besides becoming a major southwest tourist destination, it produces hydroelectric power for the Western Area Power Administration (aka power grid) and resulted in the construction of Highway 89 (from Kanab), the Glen Canyon Bridge, and the creation of Glen Canyon City (now Big Water).

Kane County was fortunate that road access to the dam was determined to be best served from Kanab. It was the first (major) project that employed local people, but the County Commission foresaw the economic benefits from the (future) tourist trade. They also anticipated a construction-boom, which would be a source of much needed revenue.⁴ However, ranchers had already created their own access roads to tend cattle in places like Lone Rock (within the Glen Canyon NRA).⁵ They had been raising livestock since 1890, and have continued 100+ years of cattle ranching in the Glen Canyon area (and throughout the county).⁶

When the Glen Canyon NRA was created the enabling legislation authorized grazing, mining, hunting and fishing to continue.⁷ Grazing is managed by both the National Park Service and the

¹ 16 USC Chapter 1, Subchapter LXXXVIII: Glen Canyon National Recreation Area; From Title 16 – Conservation.

² “An Analysis of a Transfer of Federal Lands to the State of Utah,” Appendix A-Glen Canyon National Recreation Area Operations, pgs 653-670, Prepared by: Bureau of Economic and Business Research, University of Utah, Utah State University Department of Applied Economics, Weber State University Department of Economics, November, 2014.

³ U.S. Bureau of Reclamation, Colorado River Storage Project, Glen Canyon Quick Facts, <<http://www.usbr.gov/uc/rm/crsp/gc/gcFats>>

⁴ Utah State, Government Services, <http://historytogo.utah.gov/utah_chapters/utah_today/glencanyondam_controversy.html>

⁵ “An Analysis of a Transfer of Federal Lands to the State of Utah,” Appendix A-Glen Canyon National Recreation Area Operations, pgs 667, Prepared by: Bureau of Economic and Business Research, University of Utah, Utah State University Department of Applied Economics, Weber State University Department of Economics, November, 2014.

⁶ U.S. National Park Service, Glen Canyon National Recreation Area, Grazing, <<http://www.nps.gov/glca/learn/nature/grazing.htm>>

⁷ 16 USC Chapter 1, Subchapter LXXXVII: Glen Canyon National Recreation Area, §460dd-2 Public Lands, §460dd-4 Hunting and Fishing, §460dd-5 Mineral and grazing leases.

Bureau of Land Management (BLM), though the BLM specifically administers the permits. According to the National Park Service there are 34 grazing allotments (approximately 882,678 acres) that are partially or entirely within the Glen Canyon NRA, and grazing is permitted on 28 of them.⁸ However, most of these allotments have cliffs, slick rock and areas that cannot be grazed, so the actual *grazable acreage* is less than the reported acres.

According to Utah Code §17-27a-304, Kane County does not have jurisdiction over property owned by the state or the United States (federal). However, in a report on *An Analysis of a Transfer of Federal Lands to the State of Utah*, “The counties in which the Glen Canyon NRA is designated pay for road maintenance, law enforcement (including search and rescue off-lake), solid waste management, and emergency medical care for visitors over large portions...while receiving only a portion of the economic benefit from visitor spending.”⁹

Kane County pays for the maintenance of Lone Rock Road (Hwy. 89 to the Lone Rock beach area), which is inside the Glen Canyon Region (NRA). It is considered a ‘Class B’ road that once was gravel, until the county paved it. Yet, the public is not allowed free access to it; they pay an entry fee at the gate into the NRA. Kane County also has an agreement with Garfield County to maintain Hole-in-the-Rock Road (from Escalante) because it is more feasible for them to provide the maintenance.¹⁰ Although Kane County does receive a percentage of PILT funds (payments in lieu of taxes) to offset the loss of property-assessed taxes that would be available if the land wasn’t designated as an NRA, these funds are not allocated for roads. However, “...they can be used to offset somewhat a wide range of costs associated with county government, including transportation and law enforcement.”¹¹

In 1998, the BLM developed a ‘Grazing Management Plan’ designed to manage threats and encourage sound grazing practices to “minimize or avoid impacts to area resources.”¹² It has resulted in the reduction of Animal Unit Months (AUMs) within the Glen Canyon area as well as limitations placed on ranchers for what they can maintain or improve on their (leased) allotments. Kane County has been contesting the BLM’s management approach to grazing in this area because of the BLM’s stance that cattle are negatively impacting the areas resources. The National Park Service admits “AUMs and numbers of livestock fluctuated by allotment as a result of economic changes and drought.”¹³ But they are managing the NRA to protect the purposes and values enabled by legislation.

Federal land managers have recognized that to be most effective, federal lands planning must include state and local governments as full coordinating partners in the public lands planning

⁸ Grazing – Glen Canyon National Recreation Area, U.S. National Park Service;
<<http://nps.gov/glca/learn/nature/grazing.htm>>

⁹ ---, pg. 665.

¹⁰ According to “An Analysis of a Transfer of Federal Lands to the State of Utah” Garfield County receives Utah Department of Transportation funding to maintain this road, including the part that lies within the Glen Canyon NRA.

¹¹ “An Analysis of a Transfer of Federal Lands to the State of Utah,” Appendix A-Glen Canyon National Recreation Area Operations, pgs 667.

¹² Grazing – Glen Canyon National Recreation Area, U.S. National Park Service;
<<http://nps.gov/glca/learn/nature/grazing.htm>>

¹³ --- pg 4.

process. Congressional policy requires that federal planners coordinate with state and local governments, and that federal plans are consistent with plans of adjacent jurisdictions within the constraints of federal law. (*See Federal Land Policy and Management Act of 1976 in Appendix D, and National Environmental Policy Act in Appendix E*). Formal and informal relationships between county, state, and federal partners, based on mutual respect and understanding, will ultimately result in more cohesive and successful efforts to achieve common interests and objectives.

1) Water Sources – Management

There are multiple agencies that have shared jurisdiction in the Glen Canyon Region (because of the waterways located there). It requires coordination between all of them to effectively implement the main laws that govern the area. Absolute sovereign authority does not exist with one agency; rather, different agencies have primary authority over specific water issues. “A complex legal and administrative framework controls how federal, tribal, state, and local governments share legal authority over water quality and quantity, as well as over broader water development and management issues.”¹⁴

Because there is an impoundment of water, and a dam, the U.S. Bureau of Reclamation (BofR) oversees the dam and the water flow. The BofR controls how much water is in the lake and how much water is discharged below the dam. The National Park Service (NPS) oversees everything within the perimeter of the NRA, including the public use of waters on Lake Powell. The NRA extends beyond Lake Powell into Garfield, San Juan, and Wayne counties of Utah. These two agencies operate within the Department of the Interior, under the Assistant Secretary for Water and Science (BofR) and Fish, Wildlife and Parks (NPS).

Under the state of Utah, two departments share jurisdiction pertaining to water – the Department of Environmental Quality and the Department of Natural Resources. Under the Dept. of Environmental Quality, water is handled under the Division of Drinking Water and the Division of Water Quality. Under the Department of Natural Resources, water is handled through the Division of Water Resources and the Division of Water Rights. Each division has primary authority over specific water issues.

All of the agencies must comply (or assist in implementing) the laws that pertain to all waterways in the United States. This is run by the Environmental Protection Agency (EPA) and the Army Corp of Engineers (Corps). The EPA is an independent agency while the Army Corps of Engineers operates under the military, Department of Defense. The Army Corps of Engineers is actually the oldest water resource agency in the U.S., who first dealt with the construction and maintenance of navigatable streams and harbors. Both agencies help implement and enforce the Clean Water Act¹⁵ (CWA) and the Safe Drinking Water Act¹⁶ (SDWA). The CWA is the

¹⁴ Water Encyclopedia, Science and Issues, Legislation, State and Local Water, <www.waterencyclopedia.com/La-Mi/Legislation-State-and-local-Water.html>

¹⁵ Cornerstone of surface water quality protection in the United States, originally called the Federal Water Pollution Control Act of 1948; amended in 1972.

¹⁶ The main federal law that ensures the quality of America’s drinking water. Under the SDWA, the EPA sets standards for drinking water and oversees states, localities and water suppliers who implement those standards.

cornerstone of surface water quality protection in the U.S. It was created in 1948 under the Federal Water Pollution Act, and amended in 1972 to become the CWA.¹⁷ The SDWA is the main federal law that ensures the quality of America's drinking water. The EPA and Army Corp use these two laws to set the standards for drinking water and then oversee states, localities and water suppliers who implement those standards.

2) Water - Surface

Kane County is in a semi-arid region of the southwest known for its high desert prairies and colorful rocky cliffs. It has very specific water sources, both surface and subsurface from which residents draw to make life sustainable. In the Glen Canyon Region, the main body of surface water is Lake Powell, created by the damming of the Colorado River at Glen Canyon Dam. This huge reservoir serves the Upper Colorado Basin states, which are: Utah, Colorado, New Mexico, Wyoming and parts of Arizona above Lee's Ferry. However, the division line between Upper Basin and Lower Basin states runs right through Kane County. The eastern half of the county (including Lake Powell) is mapped in the Upper Basin, while the western half (including large segments of the Grand Staircase Escalante National Monument) is mapped with the three Lower Basin states (Arizona, Nevada and California).

The Colorado River Compact of 1922 equitably divided and apportioned the waters of the Colorado River System between the Upper and Lower Basin states for domestic and agricultural use (as well as storage) in perpetuity. It also apportioned water for the generation of electrical power, but its share is subservient to domestic and agricultural use. The Colorado River is managed under numerous compacts, federal laws, court decisions and decrees, contracts and regulatory guidelines known as "The Law of the River."¹⁸

The Upper Basin states have been apportioned 7.5 million acre feet (maf) of Colorado River water per year. Utah was apportioned 23% of that amount¹⁹ (approximately 1.7 maf) and Kane County became entitled to 10,000 acre feet (af) per year. This percentage changes during drought years, (when Lake Mead is at 1,075 feet in elevation or lower) reducing Utah's share from 1.7 maf to 1.4 maf. (The apportionment was also recalibrated because it is believed the original allocation was extrapolated from data showing years with an abnormally high water flow.)²⁰ As of July 1, 2015, Lake Mead's elevation was 1075.08 feet.²¹ Because of the compactual

¹⁷ Water Encyclopedia, Legislation, Federal Water, <www.waterencyclopedia.com/La-Mi/Legislation-Federal-Water.html>

¹⁸ U.S. Bureau of Reclamation: Lower Colorado River Region; Law of the River. Retrieved August 4, 2015 from <www.usbr.gov/lc/region/g1000/lawofrvr.html>

¹⁹ The Upper Colorado River Basin Compact of 1948 apportioned specific percentages to each state (Article III), and made sure apportioned water that wasn't used was not relinquished or forfeited to the Lower Basin states. (Article XVI) even if and when the Lower Basin states (i.e. California) developed quicker and needed the water.

²⁰ Utah Division of Water Resources, Utah's Perspective: The Colorado River at 4-5, 2nd (edition) 2002, as referenced in "The Lake Powell Pipeline" by Robert Winsor, retrieved July 30, 2015.

²¹ Bureau of Reclamation: Lower Colorado Region, Lake Mead at Hoover Dam, Elevation (Feet), <www.usbr.gov/lc/region/g4000/hourly/mead-elv.html>

allotments that have been secured since 1922 (and 1948) and interim guidelines that run through 2025²² Utah's portion of the Colorado River allotment will remain the same.

Up to this date, Kane County has not utilized its apportionment; it is currently in negotiations with the Utah Department of Water Resources, Washington County Water Conservancy District and several other agencies to build a pipeline from Lake Powell. The Lake Powell Pipeline (LPP) will be a 138-mile underground conveyance system that will run from Lake Powell to the Sand Hollow Reservoir in Hurricane.²³ The plans call for a spur in the line as it passes by Kanab City limits, and will divert Kane County's allotment to a storage system (yet to be built). The water will be purchased by the Kane County Water Conservancy District and paid for by sales and impact fees. The pipeline will run along a utility corridor (Highway 89) that was established by President Clinton in 1998 (Law 105-335) allowing it to go through the Grand Staircase Escalante National Monument. Construction is slated to begin in 2020 and be completed by 2023.

As of April, 2015, the LLP has taken a step closer to becoming a reality. The Utah Legislature passed SB 281, "The Water Infrastructure Funding Bill" which sets up the fund to begin paying for the costs of the pipeline. The state of Utah will pay for the pipeline upfront and the counties that use it will pay the state back over a 50-year period (as they draw water). The next step is to obtain all the licenses and permits from multiple agencies, which include: the Federal Energy Regulatory Commission, BLM, NPS, BofR, Army Corp of Engineers, Bureau of Indian Affairs, Federal Highway Administration and the EPA.

It is estimated that over 80% of the water drawn from the Colorado River is used for agriculture. In the Upper Colorado River Basin, over 50% of land and water use is dedicated to feeding cattle and horses.²⁴ **More to add.**

Kane County lies across four watersheds which are all a part of the Colorado River System: (1) The Escalante River (from the Aquarius Plateau) flows directly into the upper portion of Lake Powell; (2) Last Chance Creek and Wahweap Creek flow from the Kaiparowits Plateau into the main body of Lake Powell; (3) The Paria River-Kitchen Corral Wash system (from Bryce Canyon) terminates below Glen Canyon Dam; and (4) Johnson Wash flows to Kanab Creek and into the Grand Canyon. The first three end up in the Glen Canyon NRA, but all of them are considered "waters of the United States" as defined by a final rule (Clean Water Rule²⁵) jointly announced by the EPA and Army Corps of Engineers on May 27, 2015. The revision takes into account the interconnectedness of tributaries, wetlands, and other waters, and how they affect downstream waters. Less than 10% of the named tributaries and other waters are perennial in

²² Bureau of Reclamation, Record of Decision Interim Guidelines for the operation of Lake Powell and Lake Mead, (November, 2007).

²³ Lake Powell Pipeline, authorized through the Utah legislature on May 1, 2006 through the "Lake Powell Pipeline Development Act"; Authorized the Utah Board of Water Resources to build the pipeline and proposed how it will be paid. Provisions located in Utah Code Annotated 73-28-401-405.

²⁴ Report: Water to Supply Land – Irrigated Agriculture in the Colorado River Basin, by M. Cohen, J. Christian-Smith and J. Berggren, Pacific Institute, May, 2013; <www.pacinst.org/reports/co_river_ag.2013>

²⁵ Congressional Research Service, "EPA and the Army Corps' Rule to Define 'Waters of the United States'," CRS Report (R43455) by Claudia Copeland, Specialist in Resources and Environmental Policy, June 29, 2015. www.crs.gov retrieved from <www.fas.org/sgp/crs/misc/R43455.pdf>

Kane County; the availability and location of these waters has always been a key component of livestock management.

3) Water – Subsurface

Discussion on aquifers...

4) Air Quality

5) Energy Resources

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