

— Appendix A —

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Corn Creek Watershed Plan-EA Scoping Report

Lead Agency:



Sponsor:

Kanosh Town

Co-Sponsor:

💧 **Corn Creek Irrigation Company** 💧

— **October 2021** —

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1.0 Introduction

The United States Department of Agriculture Natural Resources Conservation Service (NRCS) is proposing improvements in the Corn Creek Watershed through the Watershed Protection and Flood Prevention Program (WPFP). The Corn Creek Watershed Plan-EA will be sponsored by Kanosh Town and co-sponsored by Corn Creek Irrigation Company.

This project's planning phase has been funded through the Watershed Flood Protection Operations (WPFO) Act (Public Law [PL] 83-566), which authorizes funding to help rural and urban communities protect, improve, and develop land resources in watersheds of up to 250,000 acres. This planning phase follows this law as well as the National Environmental Policy Act (NEPA) regulations and is called a Watershed Plan - Environmental Assessment (Plan-EA). This Plan-EA will discover and analyze any impacts the project actions have to the environment. The Plan-EA will comply with the Council on Environmental Quality's (CEQ) regulations—40 CFR Parts 1500-1508—which require an evaluation of the federal project's actions and potential environmental impacts.

The Plan-EA encompasses many elements:

- Analysis of potential options (alternatives) to meet the general purposes of PL 83-566 and the defined purpose and need of the overall project.
- A study containing a detailed analysis of affected resources that each alternative—which satisfy the purpose and need for the project—may have.
- Identification of potential minimization, mitigation, and avoidance measures that would reduce or eliminate possible impacts.
- A public participation and agency consultation and coordination plan throughout the development of the Plan-EA.

1.1 Purpose of Scoping Process

NEPA requires an early and open process to determine the scope and significance of the issues to be addressed by the Plan-EA. Participation of the involved and impacted public, agencies, and organizations is a vital component of the process to identifying issues and resource concerns. This ensures that those who are interested in or potentially affected by proposed alternatives have an opportunity to share concerns and provide insight and input during the initial phases of the planning process. The objectives of scoping include:

- Identify and notify interested and affected parties
- Provide information to agencies, Tribes, and the public regarding the proposed project
- Identify significant issues related to the project area

1.2 Scoping Process

A diverse group of participants—including public, stakeholder, tribal, and government agencies at local, county, and state levels—were invited to participate in the scoping process to identify issues and resource concerns. During the scoping process, project-related input, documents, and

comments were requested. Throughout the development of the Plan-EA, ongoing communication will be maintained with interested public, stakeholders, agencies, and Tribes. Interested parties can use a form found on the project website (<https://www.fransoncivil.com/corn-creek-plan-ea/>) to request inclusion on project updates. All public scoping activities, meetings, and comments will be documented to ensure NEPA, CEQ, and NRCS scoping requirements have been met. Detailed objectives are included in the Public Participation Plan, shown in Appendix A.

1.3 Organizational Involvement

Roles and responsibilities for the scoping process included:

- USDA-NRCS: *Lead NEPA Agency*
- Kanosh Town: *Project Sponsor*
- Corn Creek Irrigation Company: *Project Co-Sponsor*
- Franson Civil Engineers: *Third-party Engineering Consultant*

2.0 Scoping Process Summary

This section summarizes the scoping activities and outreach efforts coordinated for the proposed project.

2.1 Scoping Announcements and Comment Period Schedule

The project's initial scoping process with agencies and the public is outlined below. A 30-day comment period was held between April 29 and May 28, 2021, to solicit issues and resource concerns.

2.1.1 Agency Scoping Meeting

- **April 22, 2021:** Scoping meeting invitations sent to agencies, including cooperating agencies, via email by engineering consultant (Franson Civil Engineers)
- **April 23, 2021:** Scoping meeting invitations sent to agencies via mail by consultant (Franson Civil Engineers)
- **April 26 and May 6, 2021:** Scoping meeting invitations sent to cooperating agencies via mail by NRCS
- **May 11, 2021:** Agency Scoping Meeting held virtually, recording link is in Appendix B

2.1.2 Public Scoping Meeting

- **April 23, 2021:** Public scoping notices were mailed to Corn Creek Irrigation Company shareholders using the company's contact list and all 266 of Kanosh Town's P.O. boxes
- **April 26, 2021:** Letters and public scoping notices were mailed to the following tribes. An example of correspondence letters can be found in Appendix C.
 - Southern Ute Indian Tribe
 - Skull Valley Band of Goshute Indians
 - Indian Peaks Band of Paiutes
 - Kanosh Band of Paiutes
 - Ute Indian Tribe of the Uintah & Ouray Reservation
 - Shivwits Band of Paiute Indians/Paiute Indian Tribe
 - Paiute Indian Tribe of Utah
 - Navajo Nation
 - Hopi Tribe
 - Cedar Bank of Paiutes
 - Confederated Tribes of the Goshute Reservation
 - Southern Paiute
 - Northwest Band of the Shoshone Nation
 - San Juan Southern Paiute Tribe of Arizona
- **April 28 and May 5, 2021:** Meeting notice published in *The Chronicle Progress and UtahLegals.com* (See Appendix B)

May 12, 2021: Public Scoping Meeting held virtually with an in-person attendance option. A recording of the meeting—a link to which is in Appendix B—was made available on the project website within 24 hours after the meeting ended.

2.1.3 Comment Period

- **April 28, 2021:** (*Comment Period Opened*): Scoping notice, presentation materials, and meeting recording available at:
 - NRCS project website:
<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/ut/programs/planning/wpfp/?cid=nrkseprd1769083>
 - Project website: <https://www.fransoncivil.com/corn-creek-plan-ea/>
- **May 28, 2021:** (*Comment Period Closed*): Comments from all submission options gathered (See Appendix D)

2.2 Scoping Notices

A variety of materials were produced to announce the public scoping meeting: a flyer delivered via mail, a scoping notice placed on the project and NRCS websites, and an ad placed in *The Chronicle Progress* on two dates. All forms of notices are included in Appendix B. The list of recipients (agency, stakeholder, public, tribal) was prepared by the NRCS, sponsors/co-sponsors, and consultant.

2.2.1 Scoping Materials Content:

- Project summary
- Public Scoping Meeting details (date, time, how to attend)
- Comment period open/close details
- List of comment submission methods and instructions (email and physical letter)

2.2.2 Publishing Details:

- Public scoping notice mailed to Millard County Commissioners and 329 public residents on April 23 and April 28, 2021.
- Webpage with project, meeting, and comment period details posted on <https://www.fransoncivil.com/corn-creek-plan-ea/> on April 23, 2021.
- Scoping notice and meeting details posted in legal section of *The Chronicle Progress* and *UtahLegals* on April 28 and May 5, 2021.

2.3 Meetings

Several meetings were held to present the Plan-EA/NEPA process in order to maximize coordination understanding and processes; gather input for project concerns, opinions, and possible obstacles/opposition; and discuss possible/proposed alternatives. The list of meetings includes ones held with the NRCS project team, project sponsors and co-sponsors, agencies, stakeholders, and the public.

2.3.1 List of Meeting Dates, Times, and Virtual Platforms

Sponsor Kick-off Meeting:

April 15, 2021; 9:00 a.m.; virtual meeting via Microsoft Teams

Project kickoff meeting with NRCS, project sponsors/co-sponsors, and consultants to make introductions; discuss project purposes, and to setup project communication and outreach activities including the scoping meeting schedule.

Agency Scoping Meeting:

May 11, 2021; 2:00 p.m.; virtual meeting via Microsoft Teams

Meeting with agencies to present an overview of the NRCS funding, NEPA process, the project, and to solicit information/comments. A list of meeting attendees as well as links for the presentation and a recording of the meeting are all found in Appendix B.

Public Scoping Meeting:

May 12, 2021; 6:00 p.m.; virtual meeting via WebinarJam and in-person option at Kanosh Town Hall

Meeting to present an overview of the NRCS funding, NEPA process, project issues, and to solicit information/comments. Attendees were tracked. A link for the presentation and a recording of the public meeting are found in Appendix B. The meeting recording was made available on the project website within 24 hours of the meeting ending.

3.0 Comments

3.1 Public Scoping Meeting

The Public Scoping Meeting took place on May 12, 2021, at 6:00 p.m. As previously noted, a recording of the meeting was made available on the project website within 24 hours of the meeting ending. Participants of the scoping meetings were invited to submit comments via email or physical letter. Table 3-1 lists the project team members in attendance for the scoping meetings.

Table 3-1. Project Team Member Attendance

Name	Organization	Title
Frank Paxton	Kanosh Town	Sponsor
Brandon Stephenson	Kanosh Town	Sponsor
Chad Whitaker	Corn Creek Irrigation Company	Co-Sponsor
Brandon George	Corn Creek Irrigation Company	Co-Sponsor
Wayne Urie	NRCS-Utah	Watershed Coordinator
Leslie Warta	NRCS-Utah	Environmental Compliance Specialist
Jason Dodds	NRCS-Utah	Project Engineer
Tara Hoffmann	NRCS-Utah	State Cultural Resources Specialist
Layne Jensen	Franson Civil Engineers	Project Manager
Monique Robbins	Franson Civil Engineers	NEPA Specialist
Eleanore Chambers	Franson Civil Engineers	Public Involvement

3.2 Comments Received

There were multiple methods available for submission of comments: online form (accessible via the project website), email, or physical letter. Six comments were received: two Tribal, one agency, and four public. A question regarding the existing pipeline to Paiute Tribal land was asked by the Paiute Indian Tribe of Utah’s facilities director. One of the public comments was in full support of the project. Please see a summary of the comments below. Copies of the full comments can be found in Appendix D.

One commentator, Todd MacFarlane, prepared additional comments that “focuses much more attention on the proposes [sic] system-wide gravity pressurized irrigation system” that were purposely withheld. The NRCS team requested these comments in order to fully address them in the project development, and the commentator denied submitting them. As such, they are not included as part of this scoping report. Additionally, he “reserved the right to further supplement”

the comments received by the project team. Any comments received outside of comment periods are included in the administrative record and are considered to the extent possible by the project interdisciplinary team. The next opportunity to provide official comments will be during the Draft Plan-EA public review period, during which another public meeting will be conducted.

3.2.1 Summary of Comments

The following is a summary of comments that are grouped by topic.

Cultural Resources:

Commentor requests that appropriate ongoing consultation be made for any identified prehistoric sites, cultural features, or deposits that may be adversely affected by project activities and if encountered, work would cease and consultation with SHPO to evaluate their nature.

Design Features:

Questions related to a desire to understand the project better, including why improvements to the existing pressurized irrigation system are needed and what the full impacts to the surrounding properties and waterways. Concerns were expressed about the town's irrigation water being re-directed and "given" to new hay farmers moving into the area. Shareholder plans to continue to flood irrigate regardless of availability of pressurized irrigation water.

Commentor requests that the system be properly designed with outflow gates and/or valves at equal elevation, uphill from the existing channels. Commentor repeatedly expressed concern about the implementation of remote-control facilities including weirs and waterways that would remove local control. A strong recommendation was made that the project must be designed and built to include full redundancy capability, include back-up plans when using automation, and electronic technology not to be included in the project from the start. Specific requests included "a reliable, simple, low-tech back-up plan, including ability to deliver at least a full single ditch or double ditch, on a timed, turn system, every 14 days, and those shareholders have full control of their applicable proportionate share of the water during their respective turns." Another commentor's opinion is that there can be many unintended and unforeseen consequences from well-intended water projects.

Commentor agrees with a conceptual project proposal that a bypass pipeline in the canyon would capture low late season flows that are otherwise lost through seepage.

Fire Protection:

Commentor is concerned about the risk of fire and believes that an improved pressure pond would benefit the town of Kanosh if it were connected to the secondary pressurized irrigation system including fire hydrants.

Flood Control:

Commentor thinks that adequate flood control infrastructure is needed to handle and manage possible flood events but questions whether a larger dam is necessary. Suggests that a second opinion be sought.

Groundwater:

Commentor states that the groundwater aquifer is being unsustainably mined and that groundwater recharge is a good idea if it occurs or be enhanced incidentally without negatively affecting other pre-existing rights. Otherwise, it may be a conflict of interests between CCIC and those who have deep irrigation wells. Commentor does not believe this should be a priority of the project.

Project Objectives:

Commentor is concerned about the project objectives and the inclusion of the term “sustainable pressurized conveyance system” and how the definition of “sustainable” relates to the project.

Recreation:

Commentor is concerned about additional recreation opportunities which will impact traffic and have a negative impact on Kanosh Town and Corn Creek Canyon. It is the commenter’s opinion that additional recreation is not worth the cost/impacts and is not the responsibility of the sponsor/co-sponsor to provide additional recreational opportunities.

Riparian Areas:

The existing canal system has created a unique ecosystem, including rich riparian areas, relying on deep watering from the open canals. Commentor is concerned that the project will destroy the ecosystem of sub-irrigated meadows and requests that it be designed and constructed to minimize adverse impacts on the unique ecosystems.

Soils:

Commentor is concerned about the soils and suggests investing in long-term practices to build the soil in order to retain its ability to utilize and hold water, allowing the land to get by with less water.

Water Agricultural Management:

Commentor agrees that the Corn Creek watershed is lacking a water storage reservoir, which could be a real asset, but there are not any real suitable reservoir sites. Commentor is concerned that a smaller reservoir will eventually fill with sediment.

Water Rights:

Commentor has concerns about the water rights, including water and lands adjudicated in the Cox Decree. Commentor alleges that certain shareholders have expanded beyond their adjudicated acreage and indicates that additional agricultural lands are not added to the place of use without removing other lands to keep the total acreage the same. Commentor requests that shareholders

are notified and that they identify their places of use for inclusion in a Change Application to correct CCIC's current place of use. It is the opinion of the commentor that these issues should be sorted out prior to any possible system-wide pressurized water delivery system being considered.

Water Quantity:

Commentor is concerned that the too little water is being spread too thin and mentions that the aquifer is fed and entirely reliant on the snowpack, which is an unreliable water source. Commentor identifies that there is a lack of stream flow records and is concerned that the water isn't available to fill a reservoir.

Wildlife:

The UDWR's Fillmore Wildlife Management Area (WMA) is in the watershed area, which includes crucial winter habitat for mule deer and elk and used throughout the year by black bear, dusky grouse, and wild turkey. UDWR recommends that construction activities occur before December 1 and after April 15, to minimize disturbance and stress. Other identified species in the watershed area include bald eagle, Bonneville cutthroat trout, brown trout, and burrowing owl. UDWR recommends that an official species occurrence analysis be submitted for the project records from the Natural Heritage Database. Another commentor identified wildlife including elk, mule deer, coyotes, bobcats, and mountain lions, and a wide variety of birds, including eagles, hawks, Canadian geese, and wild turkeys.

4.0 Resource Concerns and Cooperating Agencies

4.1 Resource Concerns

Based on the required scoping concerns outlined in the National Watershed Program Manual Section 501.24B, and from any additional concerns identified by the public, stakeholders, tribal and/or agencies during the scoping meeting process, a list of resource concerns was compiled for the project. Table 4-1 identifies a comprehensive list of the resource concerns compiled for the project.

Table 4-1. Resource Concerns

Item/Concern	Item/Concern
SOILS	ANIMALS
Soil (Upland Erosion and Sedimentation)	Fish and Wildlife Habitat
Prime and Unique Farmland	Endangered and Threatened Species Special Status Species
Stream Bank Erosion	Invasive Animal Species
WATER	Wildlife Community
Surface Water Quality and Quantity	Migratory Birds
Ground Water Quality and Quantity	Ecologically Critical Areas
Water bodies – Waters of the U.S.	HUMANS
Regional Water Mgt. Plans	Cultural and Historic Resources
Floodplain Management	Environmental Justice
Wetlands	Public Health and Safety
Wild and Scenic Rivers	Land Use and Recreation
AIR	Scenic Beauty
Air Quality	Parklands
Clean Air Act	Ecologically Critical Areas
PLANTS	Scientific Resources
Endangered and Threatened Species Special Status Species	Transportation
Essential Fish Habitat	National Parks, Monuments and Historical Sites
Invasive Plant Species	Not Included – Do Not Occur in Utah
Natural Areas	Coral Reefs
Riparian Areas	Coastal Zone Management Areas

4.2 Cooperating Agencies

The NRCS sent letters requesting the following agencies participation as cooperating agencies on the project.

- Army Corps of Engineers (ACOE)
- Environmental Protection Agency (EPA)
- U.S. Fish and Wildlife Service (USFWS)
- Bureau of Land Management (BLM)

EPA formally declined cooperating agency status but requested that they be given the opportunity to review the Draft Plan-EA during the next public comment period. Confirmation was sent that they will be notified when this time comes. No other agencies expressed interest in becoming a cooperating agency at the issuance of this report. An example of an agency correspondence letter can be found in Appendix C.

Table 4-2. Cooperating Agencies

AGENCY	ACCEPTED / DECLINED
Army Corps of Engineers (ACOE)	No Response
Environmental Protection Agency (EPA)	Declined/requested opportunity to review the Draft Plan-EA during next public comment period
U.S. Fish and Wildlife Service (USFWS)	No Response
Bureau of Land Management (BLM)	No Response

5.0 Appendices

Appendix A: Public Participation Plan

A-1 : Public Participation Plan for Corn Creek Watershed Plan-EA

Appendix B: Agency and Public Scoping Meeting Materials

B-1 : Public Scoping Materials – Notice, Presentation, and Meeting Recording Link

B-1 : Agency Scoping Materials – Notice, Presentation, and Meeting Recording Link

B-1 : Agency Scoping Meeting Attendees

B-3 : Agency and Tribal Scoping Notice Mailing List

B-5 : Public Scoping Notice Advertisements (Newspaper, *UtahLegals*, Social Media)

Appendix C: Cooperating Agency and Tribal Letter Examples

C-1 : Cooperating Agency Letter Example

C-2 : Cooperating Tribal Letter Example

Appendix D: Scoping Comments Received

Appendix A: Public Participation Plan

Public Participation Plan For Corn Creek Watershed Plan- Environmental Assessment (EA)

OBJECTIVES OF THE PUBLIC PARTICIPATION PLAN

1. Ensure that the general public, including private groups, and government agencies; at local, county, and state levels are thoroughly familiarized with the proposed project.
2. Provide a forum for the reception and consideration of public input regarding the project. The desired input includes not only opinion, but also uncollected data. Seek input regarding the project problems and opportunities, the range of alternatives, and the potential project impacts.
3. Clarify the effects of the diverse alternatives under consideration.
4. Collect pre-existing resource data regarding the project watershed. The data will be collected from a multitude of agencies and citizens.
5. Incorporate written and verbal comments into the decision-making process.

TECHNIQUES TO ENSURE PUBLIC PARTICIPATION

1. Prepare a list of interested agencies with assistance of the NRCS.
2. Determine if participation by potential National Environmental Policy Act (NEPA) Cooperating Agencies is needed and if so, the required scope and extent of their participation.
3. Hold an Agency Scoping meeting to explain the issues and proposed project and request existing resource data about the watershed.
4. Contact local media representatives/newspapers to request their assistance with informing the public, two weeks prior to any scheduled public meeting(s) and regarding availability of documents (see below). Two meetings are envisioned, one (1) for scoping purposes and one (1) for receiving comments on the Draft PLAN-EA. Public meetings will be held virtually but may have the option of attending locally in-person.
 - a. Notices will be published in the legal section of the newspaper(s) with copies sent to parties on the mailing lists. The Draft PLAN-EA newspaper notice will include both the notice of availability of the Draft PLAN-EA and the schedule and meeting details for the Draft PLAN-EA public meeting(s). The Final Plan Environmental Assessment (Final PLAN-EA) notice will notify the public of the availability of the Final PLAN-EA.
 - b. Notices will be drafted by the Consulting Firm and submitted to the NRCS for approval prior to their release to the media. Draft news releases will be submitted in time to accommodate processing by the NRCS for publication in the news media (minimum 15 days prior to scheduled meetings or release of NEPA document).
 - c. A total of 4 news releases will be prepared by the Contractor: one (1) prior to the scoping meeting(s); one (1) concurrent with filing of the Draft PLAN-EA and prior to its public meeting(s); one (1) concurrent with filing the Final PLAN-EA; and one (1) concurrent with the completion of the Finding of No Significant Impact (FONSI).
5. Prepare and update project website to disseminate information and collect public involvement information via a google form.
6. Provide opportunities to share information and obtain input from project Sponsor/Co-Sponsor and the interested public.
7. Develop an email address list to facilitate electronic notification and updates as needed.
8. Mail scoping notices to shareholders/stakeholders.

CORN CREEK WATERSHED PLAN-EA
NRCS PL-566 WATERSHED OPERATIONS PROGRAM

SCHEDULE

Task	Item	Notice Date (Newspaper: 14 & 7 days prior Mailing: receive 2 weeks prior)	Meeting Date
1	Agency Scoping Meeting	email mtg invite (Teams)	May 11, 2021
2	Public Scoping Meeting*	Notice in newspapers, city websites Postcards to adjacent landowners	May 12, 2021
3	Internal Alternatives Meeting	N/A	August 2021
4	Technical Review of Preliminary Draft Plan-EA	N/A	July-Aug 2022
5	Draft PLAN-EA Public Meeting (<i>Notice of availability & date/location of meetings*</i>)		January 2023
6	Draft Plan-EA Finalization		February 2023
7	Final PLAN-EA (<i>Notice of availability*</i>)		March 2023
8	FONSI completion*		March 2023

*Publish in legal section of newspaper(s) and mail to parties on mailing lists. Submit draft notices to NRCS at least 7 days prior to scheduled news release or release of NEPA document.

Appendix B: Agency and Public Scoping Meeting Materials

Public Scoping Materials

Public Scoping Notice Link:

- <https://www.fransoncivil.com/wp-content/uploads/2021/04/Corn-Creek-Public-Scoping-Notice-compressed.pdf>

Public Scoping Meeting Presentation Link:

- https://www.fransoncivil.com/wp-content/uploads/2021/05/Corn-Creek-Public-Scoping-Meeting-FINAL-compressed_1.pdf

Public Scoping Meeting Recording Link:

- <https://event.webinarjam.com/go/replay/21/vlwqkaxf66a55ag>

Agency Scoping Materials

Agency Scoping Notice Link:

- <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e9e776d9-e0bd-4da6-92bb-8308642a4bfe>

Agency Scoping Meeting Presentation Link:

- <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d521e219-af89-4210-beb2-e96026d8f80e>

Agency Scoping Meeting Recording Link:

- [Agency Scoping Meeting Recording](#)

Agency Scoping Meeting Attendees

NAME	AGENCY & TITLE	CONTACT INFO
Sponsor & Co-Sponsor		
Brandon Stephenson	Kanosh Town, Councilmember	bstephenson@sunrise-eng.com
Chad Whitaker	Corn Creek Irrigation Company, President	whitakerfarm66@gmail.com
Brandon George	Corn Creek Irrigation Company, Board Member, Point of Contact	brandon.george@ipsc.com

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NAME	AGENCY & TITLE	CONTACT INFO
NRCS		
Derek Hamilton	NRCS, Water Resources Coordinator	derek.hamilton@usda.gov
Wayne Urie	NRCS-Utah, Watershed Coordinator	wayne.urie@usda.gov
Jason Dodds	NRCS-Utah, Project Engineer	jason.dodds@usda.gov
Leslie Warta	NRCS-Utah, Environmental Compliance Specialist	leslie.warta@usda.gov
Consultants		
Layne Jensen	Franson Civil Engineers, Project Manager	ljensen@frasoncivil.com
Monique Robbins	Franson Civil Engineers, NEPA Specialist	mrobbins@frasoncivil.com
Eleanore Chambers	Franson Civil Engineers, Public Involvement	echambers@frasoncivil.com
Other Agencies		
Keith Meinhardt	Utah Department of Transportation	kmeinhardt@utah.gov
Clint Wirick	FWS	clint_wirick@fws.gov

Corn Creek Watershed Plan-EA Scoping Notice Mailing Lists

Agency and Tribal Mailing List

Invitation To:		Responsible Party		Stakeholder		Contact Name		Email		Phone		Mailing Address		City		State		ZIP	
Agency Mng	Public Mng	Email Date	Mail Date																
Sponsor	X	X	4/22/2021	4/23/2021	FCE	Kanosh Town	Frank Paxton, Mayor	fprankpaxton@gmail.com	435-759-2661	PO Box 9		Kanosh	UT	84637					
	X	X	4/22/2021	4/23/2021	FCE	Kanosh Town	Hayden George, Councilmember	haygeo55@gmail.com		PO Box 9		Kanosh	UT	84637					
	X	X	4/22/2021	4/23/2021	FCE	Kanosh Town	Brandon Stephensen, Councilmember	bstephenson@sunrise-eng.com	435-691-0942	PO Box 9		Kanosh	UT	84637					
Co-Sponsors	X	X	4/22/2021	-	FCE	Corn Creek Irrigation Company	Chad Whitaker, President	Whitakerfarm66@gmail.com	435-253-1995										
	X	X	4/22/2021	-	FCE	Corn Creek Irrigation Company	Roy Barton	jwbarton52@gmail.com											
	X	X	4/22/2021	-	FCE	Corn Creek Irrigation Company	Brandon George, Point of Contact	Brandon.george@ipsc.com	435-864-8922										
Cooperating Agency Letters	X		4/22/2021	5/6/2021	NRCS	USACE	Jason Gibson, Branch Chief Hollis Jenkins Pectol, Michael	jason.a.gipson@usace.army.mil Hollis.G.jenkins@usace.army.mil Michael.A.Pectol@usace.army.mil		533 West 2600 South #150	South	Bountiful	UT	84010-7744					
	X		4/22/2021	5/6/2021	NRCS	USFWS	Yvette Converse George Weekley	Yvette_Converse@fws.gov george_weekley@fws.gov utahfieldoffice_esa@fws.gov	801-975-3330	2369 Orton Circle Suite 50		West Valley City	UT	84119					
	X		4/22/2021	5/6/2021	NRCS	BLM	Fred Braun Eric Reid	fbraun@blm.gov ereid@blm.gov	435-743-3100	95 E 500 N St.		Fillmore	UT	84631					
	X		-	5/6/2021	NRCS	US EPA	Laura Margason	margason.laura@epa.gov		1595 Wynkoop Street		Denver	CO	80202-1129					
	X		4/22/2021	4/23/2021	FCE	US Bureau of Reclamation	Peter Crookston, Environmental Group Chief/NEPA Compliance	pcrookston@usbr.gov	801-379-1152	125 South State Street Room 6107		Salt Lake City	UT	84138-1102					
	X		4/22/2021	4/23/2021	FCE	US Fish and Wildlife Service	Clint Wirrick	clint_wirrick@fws.gov	435-896-6441	340 North 600 East		Richfield	UT	84701					
Government					FCE	US Forest Service	District Manager			115 E 900 N		Richfield	UT	84701					
					FCE	US Forest Service	Director			735 N 500 E		Provo	UT	84606					
	X		4/22/2021	4/23/2021	FCE	Utah Division of Drinking Water	Ying-Ying Macauley, Interim Director	ying@utah.gov	801-377-5717	PO Box 144830/195 North 1950 West		Salt Lake City	UT	84114-4830					
	X		4/22/2021	4/23/2021	FCE	Utah Division of Emergency Management	Kris Hamlet, Director/Judy Watanabe, Deputy Director	krishamlet@utah.gov	801-536-4200	PO Box 141775/1110 State Office Building		Salt Lake City	UT	84114-1775					
	X		-	4/23/2021	FCE	Utah Division of Forestry, Fire, and State Lands	Director			PO Box 145703		Salt Lake City	UT	84114					
	X		4/22/2021	4/23/2021	FCE	Utah Division of Water Rights	Teresa Wilhelmssen, State Engineer	teresawilhelmsen@utah.gov		PO Box 146300		Salt Lake City	UT	84114					
	X		4/22/2021	4/23/2021	FCE	Utah Division of Water Resources	Todd Adams, Director	toddadams@utah.gov	801-725-5201	PO Box 146201		Salt Lake City	UT	84114-6201					
	X		4/22/2021	4/23/2021	FCE	Utah Division of Wildlife Resources	Keith Lawrence, Central Region Native Aquatics Project Lead	klawrence@utah.gov	801-960-5220	1115 North Main Street		Springville	UT	84663					
	X		4/22/2021	4/23/2021	FCE	Utah Department of Agriculture	Craig Butters, Commissioner	craigbutters@utah.gov	385-277-6573	PO Box 146500		Salt Lake City	UT	84114-2220					
	X		4/22/2021		FCE	Utah Department of Agriculture and Food	Tom Tippets	tippets@utah.gov	435-813-2454										
	X		-	4/23/2021	FCE	Utah Department of Environmental Health	Director			PO Box 142104		Salt Lake City	UT	84114-2104					
	X		4/22/2021	4/23/2021	FCE	Utah Department of Environmental Quality	Scott Baird, Executive Director	scottbaird@utah.gov	801-536-0095	PO Box 144870		Salt Lake City	UT	84114-4879					
	X		4/22/2021	4/23/2021	FCE	Utah Department of Natural Resources	Tyler Thompson, Watershed Director	tylertompson@utah.gov	801-536-4876	PO Box 145610		Salt Lake City	UT	84114-5610					
	X		4/22/2021	4/23/2021	FCE	Utah Department of Public Safety	Jess Anderson, Commissioner	jessanderson@utah.gov		PO Box 141775/1110 State Office Building		Salt Lake City	UT	84114					
	X		4/22/2021		FCE	Utah Department of Public Safety	Angelia Crowther, Utah Floodplain Manager	acrowther@utah.gov	801-664-5861										
	X		4/22/2021	4/23/2021	FCE	Utah Department of Transportation, Region 4	Rick Torgerson, Region 4 Director	rtorgerson@utah.gov	800-378-3390	210 West 800 South		Richfield	UT	84701					
	X		4/22/2021	4/23/2021	FCE	Utah State Historic Preservation Office	Keith Weirhardt	kmeinhardt@utah.gov		300 S Rio Grande St		Salt Lake City	UT	84101					
	X		4/22/2021	4/23/2021	FCE	Utah Natural Heritage Program	Savanna Agardy	sagardy@utah.gov	801-245-7246										
	X		4/22/2021	4/23/2021	FCE	Utah Natural Heritage Program	Sarah Lindsey	sarahlindsey@utah.gov	801-538-4759	PO Box 146301		Salt Lake City	UT	84114-6301					

	Invitation To:			Responsible Party	Stakeholder	Contact Name	Email	Phone	Mailing Address	City	State	ZIP
	Agency Mtg	Public Mtg	Email Date									
Government	X		4/22/2021		RDCS Coordinator	Sindy Smith	sindysmith@utah.gov		PO Box 14114	Salt Lake City	UT	84114
		X	4/23/2021	FCE	Millard County Commission	Wayne Jackson, Commissioner	wjackson@co.millard.ut.us	435-743-4703	500 S Main St.	Fillmore	UT	84631
		X	4/23/2021	FCE	Millard County Commission	Dean Draper, Commissioner	ddraper@co.millard.ut.us	435-864-1400	71 S 200 W	Fillmore	UT	84631
		X	4/23/2021	FCE	Millard County Commission	Evelyn Warnick, Commissioner	ewarnick@co.millard.ut.us	435-864-1400	71 S 200 W	Fillmore	UT	84631
		X		FCE	Millard County Conservation District	Tracy Balch, Resource Coordinator	tbalch@utah.gov	435-201-0794 435-893-3336	340 North 600 East	Richfield	UT	84701
Tribes		X	4/26/2021	NRCS	Southern Ute Indian Tribe	Ms. Cassandra Atencio, NAGPRA Coordinator			P.O. Box 737 MS#88	Ignacio	CO	81137
		X	4/26/2021	NRCS	Southern Ute	MR. Melvin Baker, Chairperson			PO Box 737 Mail Stop #73 - 116 Capote Drive	Ignacio	Co	81137
		X	4/26/2021	NRCS	Skull Valley Bank of Goshute Indians	Ms. Candace Bear			407 Skull Valley Road	Skull Valley Reservation	UT	84029
		X	4/26/2021	NRCS	Indian Peaks Band of Paiutes	Jeanine Borchardt, Chairperson			PO Box 2062	Cedar City	UT	84721
		X	4/26/2021	NRCS	Kanosh Band of Paiutes	Ms. Corinna Bow, Kanosh Band of Paiutes			PO Box 116	Kanosh	UT	84637
		X	4/26/2021	NRCS	Ute Indian Tribe of the Uintah & Ouray Reservation	Ms Betsy Chapoose, Director			PO Box 190	Fort Duchesne	UT	84026
		X	4/26/2021	NRCS	Shivwits Band of Paiute Indians/Paiute Indian Tribe of Utah	Ms. Carmen Clark, Chairwoman			6060 West 3650 North	Irins	UT	84738
		X	4/26/2021	NRCS	Ute Indian Tribe of the Uintah & Ouray Reservation	Mr. Luke Duncan, Chairman			PO Box 190	Fort Duchesne	UT	84026
		X	4/26/2021	NRCS	Utah Division of Indian	Mr. Dustin Jansen			250 N 1950 W, Suite A	Salt Lake City	UT	84116
		X	4/26/2021	NRCS	Paiute Indian Tribe of Utah	Ms. Dorena Martineau, Cultural Resource Director			440 North Paulite Drive	Cedar City	UT	84721
		X	4/26/2021	NRCS	Navajo Nation Office of the President	Mr. Jonathan Nez, President			PO Box 7440	Window Rock	AZ	86515
		X	4/26/2021	NRCS	Hop Tribe Chairman's Office	Mr. Timothy L. Nuvangyaoma			PO Box 123	Kykotsmovi	AZ	86039
		X	4/26/2021	NRCS	Cedar Bank of Paiutes	Mr. Travis Parashonts, Chairperson			600 N 100 E	Cedar City	UT	84721
		X	4/26/2021	NRCS	Confederated Tribes of the Goshute Reservation	Mr. Clell Pete, Environmental Protection Department			HC61 Box 6104 195 Tribal Center Road	Ipapah	UT	84034
		X	4/26/2021	NRCS	Southern Paiute	Mr. Rick Pkyavit			715 South 960 West	Richfield	UT	84701
		X	4/26/2021	NRCS	Confederated Tribes of the Goshute Reservation	Mr. Rupert Steele, Chairman			HC61 Box 6104 195 Tribal Center Road	Ipapah	UT	84034
		X	4/26/2021	NRCS	Northwest Band of the Shoshone Nation	Ms. Patti Timblimboo-Madsen, Cultural Resources			707 North Main Street	Brigham City	UT	84302
		X	4/26/2021	NRCS	Northwest Band of the Shoshone Nation	Mr. Shane Warner, Chairman			707 North Main Street	Brigham City	UT	84302
		X	4/26/2021	NRCS	San Juan Southern Paiute Tribe of Arizona	Ms. Carlene Yellowhair, President			50 South Main Street, Suite 201 PO Box 2950	Tuba City	AZ	86045

CORN CREEK WATERSHED PLAN-EA

The United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS), with assistance from Kanosh Town as the project sponsor, and Corn Creek Irrigation Company as project co-sponsor, is considering proposed improvements within the Corn Creek Watershed, Millard County. Goals for this project include addressing concerns about flooding potential, potential failure of the existing debris basin due to seepage that is occurring in the embankment's foundation and water shortages each irrigation season caused by reduced flow in Corn Creek as the year progresses, which increases demand on groundwater resources, limits crop production and cropping options, and impacts economic development in Kanosh.

As part of the Environmental Assessment (EA), the public is invited to attend a virtual public scoping meeting held by NRCS, which will provide information about the proposed flood prevention and reduction and agricultural water management projects. At this time, NRCS is requesting comments on the project to identify issues and resource concerns.

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Written comments are requested between April 28, 2021 and May 28, 2021. They may be submitted via email or mail. They must be received or post-marked by May 28, 2021.

Project information, meeting details, and a recording of the meeting, afterwards, are available at: <https://www.fransoncivil.com/corn-creek-plan-ea>

MAIL:

Franson Civil Engineers
Attn: Corn Creek Watershed
Plan-EA

1276 South 820 East, Suite 100
American Fork, UT 84003

EMAIL:

mrobbins@fransoncivil.com

Published in Millard County
Chronicle Progress on April 28,
& May 5, 2021.

.....AFFIDAVIT OF PUBLICATION.....

STATE OF UTAH)

)SS

COUNTY OF MILLARD)

SHELLIE R. DUTSON being duly sworn, deposes and says:

1. I am a native-born citizen of the United States of America, and at all times hereinafter mentioned was over the age of 21 years, and reside at Millard County, State of Utah.

2. That I am the Managing Editor of the Millard County Chronicle Progress that said Millard County Chronicle Progress is a newspaper printed and published weekly at Delta, Millard County, Utah and that said newspaper has been published for more than 52 consecutive weeks prior to the first publication printed Corn Creek Watershed Plan hereto attached.

3. The Corn Creek Watershed Plan of which the annexed is printed copy, was published in a regular issue of said newspaper and not in any supplement thereof, at least once each week, for TWO (2) weeks in TWO (2) consecutive issues of said newspaper, commencing with the issue dated Apr. 28 2021, and ending with the issue dated May 5, 2021.

Shellie R. Dutson

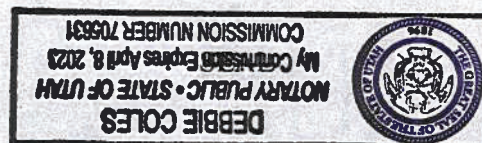
Subscribed and sworn to before me this

_____ day of _____ 2021.

Debbie Coles

Notary Public

Residing at Delta, Utah



Millard County Chronicle Progress

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Publication Name:

Millard County Chronicle Progress

Publication URL:

Publication City and State:

Delta, UT

Publication County:

Millard

Notice Popular Keyword Category:

Notice Keywords:

corn creek

Notice Authentication Number:

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Notice URL:

Corn Creek Watershed Plan-EA

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Notice Publish Date:

Wednesday, April 28, 2021

Notice Content

The United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS), with assistance from Kanosh Town as the project sponsor, and Corn Creek Irrigation Company as project co-sponsor, is considering proposed improvements within the Corn Creek Watershed, Millard County. Goals for this project include addressing concerns about flooding potential, potential failure of the existing debris basin due to seepage that is occurring in the embankment's foundation and water shortages each irrigation season caused by reduced flow in Corn Creek as the year progresses, which increases demand on groundwater resources, limits crop production and cropping options, and impacts economic development in Kanosh.

As part of the Environmental Assessment (EA), the public is invited to attend a virtual public scoping meeting held by NRCS, which will provide information about the proposed flood prevention and reduction and agricultural water management projects. At this time, NRCS is requesting comments on the project to identify issues and resource concerns.

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Written comments are requested between April 28, 2021 and May 28, 2021. They may be submitted via email or mail. They must be received or post-marked by May 28, 2021.

Project information, meeting details, and a recording of the meeting, afterwards, are available at: <https://www.fransoncivil.com/corn-creek-plan-ea>

MAIL:

Franson Civil Engineers

Attn: Corn Creek Watershed

Plan-EA

1276 South 820 East, Suite 100

American Fork, UT 84003

EMAIL:

mrobbins@fransoncivil.com

Published in Millard County Chronicle Progress on April 28, & May 5, 2021.

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Notice Keywords:

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**202109221855335751110
1218757556**

Notice URL:

Corn Creek Watershed Plan-EA

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Notice Publish Date:

Wednesday, May 05, 2021

Notice Content

The United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS), with assistance from Kanosh Town as the project sponsor, and Corn Creek Irrigation Company as project co-sponsor, is considering proposed improvements within the Corn Creek Watershed, Millard County. Goals for this project include addressing concerns about flooding potential, potential failure of the existing debris basin due to seepage that is occurring in the embankment's foundation and water shortages each irrigation season caused by reduced flow in Corn Creek as the year progresses, which increases demand on groundwater resources, limits crop production and cropping options, and impacts economic development in Kanosh.

As part of the Environmental Assessment (EA), the public is invited to attend a virtual public scoping meeting held by NRCS, which will provide information about the proposed flood prevention and reduction and agricultural water management projects. At this time, NRCS is requesting comments on the project to identify issues and resource concerns.

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Written comments are requested between April 28, 2021 and May 28, 2021. They may be submitted via email or mail. They must be received or post-marked by May 28, 2021.

Project information, meeting details, and a recording of the meeting, afterwards, are available at: <https://www.fransoncivil.com/corn-creek-plan-ea>

MAIL:

Franson Civil Engineers

Attn: Corn Creek Watershed

Plan-EA

1276 South 820 East, Suite 100

American Fork, UT 84003

EMAIL:

mrobbins@fransoncivil.com

Published in Millard County Chronicle Progress on April 28, & May 5, 2021.

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Corn Creek Watershed Plan Environmental Assessment

Public Scoping Notice

Project Information

The United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS), with assistance from Kanosh Town as the project sponsor, and Corn Creek Irrigation Company as project co-sponsor, is considering proposed improvements within the Corn Creek Watershed, Millard County.

The main objective of the project is to address concerns about flooding potential, potential failure of the existing debris basin due to seepage that is occurring in the embankment's foundation and water shortages each irrigation season caused by reduced flow in Corn Creek as the year progresses, which increases demand on groundwater resources, limits crop production and cropping options, and impacts economic development in Kanosh.

- Conceptual Improvements may include:
 - Flood Prevention
 - New reservoir/debris basin
 - Route flood flows around town and onto fields
 - Improve recharge of primary aquifer
- Agricultural Water Management
 - Improve irrigation water supply
 - Provide sustainable pressurized conveyance system
 - Increase reliability of water deliveries to Palute tribal lands


Public Scoping Meeting

As part of the Environmental Assessment (EA), the public is invited to attend an online public scoping meeting held by NRCS. A recording of the meeting will be available on the project website.

**Wednesday May 12, 2021
6:00 p.m.
[https://www.fransoncivil.com/
corn-creek-plan-ea](https://www.fransoncivil.com/corn-creek-plan-ea)**

Written comments are requested between April 28 and May 28, 2021

Project Vicinity Map



Project Timeline

The project is in the scoping phase of the environmental process to identify issues and resource concerns. Technical studies are scheduled to take place during the summer/fall of 2021, with a Draft Plan-EA to be circulated for review in 2022.

Submitting Comments:


Written comments may be submitted via email or mail

MAIL:
Franson Civil Engineers
Attn: Corn Creek
Watershed Plan-EA
1210 S 820 E, Suite 100
American Fork, UT 84003

EMAIL:
mrobbers@fransoncivil.com

Direct questions to:
Layne Jensen, Project Manager
Franson Civil Engineers
801-756-0309

Project Website:
Additional information can be found on the USDA-NRCS website:
<https://www.usda.gov/nrcs>
<https://nrcs.science.gov>
or
[https://www.fransoncivil.com/
corn-creek-plan-ea](https://www.fransoncivil.com/corn-creek-plan-ea)



U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

USDA is an equal opportunity provider, employer, and lender.

Appendix C: Cooperating Agency and Tribal Scoping Letter Examples



United States Department of Agriculture

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

May 5, 2021

RE: Formal request to be a Cooperating Agency in the development of the Corn Creek Watershed Plan-Environmental Assessment (Plan-EA) for proposed improvements in Millard County, Utah.

Dear _____ :

In accordance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR Part 1501.8, the Natural Resources Conservation Service (NRCS) is formally requesting that the Bureau of Land Management become a cooperating agency in the planning and development of the Corn Creek Watershed Plan-EA. The enclosed agency scoping notice includes project information and details on an **agency scoping meeting scheduled for May 11, 2021 at 2 pm.**

This request is made since your agency is identified as having special expertise or jurisdiction by law related to this project. The Plan-EA is being prepared to fulfill our NEPA compliance responsibilities pertaining to our federal financial assistance through the Watershed Protection and Flood Prevention Program as authorized through Public Law 83-566. Upon acceptance of this invitation, roles can be defined in an informal agreement or a memorandum of understanding. If your agency is unable to participate as a cooperating agency, please return a written explanation indicating that your agency cannot participate.

Please send notification confirming your decision to: Emily Fife, State Conservationist, NRCS, Wallace F Bennett Federal Building, 125 South State Street, Room 4010, Salt Lake City, Utah 84138-1100.

Thank you for your timely response and assistance with these efforts. If you have any questions, please contact Derek Hamilton, Water Resources Coordinator, at derek.hamilton@usda.gov or 801/524-4560.

Sincerely,

NORM EVENSTAD
Asst. State Conservationist - Water Resources

Enclosure

cc:

Alan Atkins, Area Conservationist, NRCS, Richfield, UT
Mike Marshall, District Conservationist, NRCS, Fillmore, UT
Derek Hamilton, Water Resources Coordinator, NRCS, Salt Lake City, UT



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Reference: Corn Creek Watershed Plan-EA

Dear :

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

Per the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations at 40 CFR Parts 1500-1508, an evaluation of potential alternatives and associated environmental impacts is required. Environmental impacts will be documented in the form of a Watershed Plan and Environmental Assessment (Plan-EA). For the purposes of compliance with NEPA and Section 106 of the National Historic Preservation Act (NHPA), the NRCS is the designated lead agency. Pursuant to Section 106 of the NHPA, Executive Order 13007, the American Indian Religious Freedom Act, we write to you at this time regarding the project and we welcome any information you would like to share with us regarding historic properties or places of traditional religious and cultural importance near the proposed project area that we should consider as part of our analysis. We would also appreciate your assistance in identifying any other Tribes with whom we should consult on this project.

We are inviting agency, organization, Tribal, and public input on the project during the scoping phase. Participation is a vital component of the project providing those who are interested in or potentially affected by the proposed project an opportunity to share their comments, ideas, and concerns regarding actions during the initial scoping stage of the NEPA process. You are encouraged to attend the public scoping meeting where the project will be presented and the attendees will have the opportunity to ask questions, express ideas and concerns.

Public Scoping Meeting

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

April 26, 2021

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Written comments may be submitted anytime during the open comment period from April 28, 2021, to May 28, 2021, via email, mail, or using the online comment submission form. To be considered and become part of the public record for the project, they must be received or post-marked by **May 28, 2021**.

- The comment submission form and additional information may be found at:
<https://www.fransoncivil.com/corn-creek-plan-EA/>
- Comments may be emailed or mailed to the following address:

Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

We look forward to hearing from and working with you on this important project. We welcome your call if you have questions on the proposed project or if you wish to arrange a meeting or initiate government-to-government consultation regarding this project.

If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,

EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

Norm Evenstad, NRCS, Water Resources Coordinator, Salt Lake City, UT
Alan Atkins, NRCS, Assistant State Conservationist for Field Operations, Richfield, UT
Jason Dodds, NRCS, Civil Engineer, Cedar City, UT
Mike Marshall, NRCS, District Conservationist, Fillmore, UT
Leslie Warta, NRCS, Environmental Coordinator, Salt Lake City, UT
Tara Hoffmann, NRCS, State Cultural Resources Specialist, Salt Lake City, UT
Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT
Richard M. Begay, THPO and Department Manager, Navajo Nation Historic Preservation
Department, P.O. Box 4950, Window Rock, Arizona 86515

Appendix D: Scoping Comments Received

Monique Robbins

From: CelticX <CelticX@protonmail.com> [TJ Lovato]
Sent: Wednesday, May 5, 2021 11:59 AM
To: Monique Robbins
Cc: Todd Macfarlane
Subject: Corn Creek Watershed Plan

To: Layne Jensen: Project Manager.

In regard to the Corn Creek Watershed Plan.

Just a couple questions or comments.

Obviously, the original reason for this flood control device was obvious. Although, currently and recently, not an issue.

The main tenants of the plan of Agricultural Water Management are declared as below.

1. To improve irrigation water supply.
2. Provide sustainable pressurized conveyance system.
3. Increase reliability of water deliveries to Paiute tribal lands.

since I have irrigation via the town pressurized conveyance system, and have never had issue with this system, I am curious of the goal here as it appears the current system works fine for the local residence of Kanosh.

My goal is to understand what is to happen here and to make sure the town of Kanosh is served well and provided the same great service they have been receiving for years. As well as understanding the full impacts of all surrounding properties and waterways.

So, why are those behind this attempting to improve the current system?

Folks of this town certainly do not want to see their irrigation water be re-directed away from the towns people and given to all the new hay farmers moving in from other areas. which is happening.

As well, we would NOT like to see any sort of remote control of weirs and waterways. The preference being that control of all such water and waterways stay under the control of local folks and Corn Creek Irrigation.

Please let me know your thoughts here.

TJ

Sent from ProtonMail for iOS



Timothy L. Nuvangyaoma
CHAIRMAN

Clark W. Tenakhongva
VICE-CHAIRMAN

May 7, 2021

Emily Fife, State Conservationist
Attention: Tara S. Hoffmann, State Cultural Resource Specialist
Natural Resources Conservation Service
125 South State Street, Room 4010
Salt Lake City, Utah 84138

Dear Ms. Fife,

Thank you for your correspondence dated April 26, 2021, regarding the National Resources Conservation Service (NRCS) in cooperation with Kanosh Town and the Corn Creek Irrigation Company, proposing improvements to the Corn Creek Watershed in Millard County. The Hopi Cultural Preservation Office appreciates the NRCS's continuing solicitation of our input and your efforts to address our concerns.

The Hopi Tribe claims cultural affiliation to prehistoric cultural groups in Utah. The Hopi Cultural Preservation Office supports the identification and avoidance of prehistoric archaeological sites and we consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties.

The Hopi Cultural Preservation Office concurs that informed and valid NRCS decisions are best made when based upon scientifically derived data. We request consultation on any proposal in Utah with the potential to adversely affect prehistoric cultural resources. If the cultural resources report identifies prehistoric sites that may be adversely affected by project activities, we request ongoing consultation including being provided with copies of the cultural resources survey report, any proposed treatment plans and the draft environmental assessment for review and comment.

In addition, we recommend that if any cultural features or deposits are encountered during project activities, these activities must be discontinued in the immediate area of the remains, and the State Historic Preservation Office must be consulted to evaluate their nature and significance. If any Native American human remains or funerary objects are discovered during construction they must be immediately reported as required by law. Thank you for your consideration.

Respectfully,

/ s /

Stewart B. Koyiyumtewa, Program Manager/THPO
Hopi Cultural Preservation Office

xc: Utah State Historic Preservation Office
Franson Civil Engineers, 1276 South 820 East, Suite 100, American Fork UT 84003



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Office of the Governor
Public Lands Policy Coordinating Office

REDGE B. JOHNSON
Executive Director

May 27, 2021

Submitted via electronic mail: mrobbins@fransoncivil.com

Layne Jensen
Project Manager
National Resources Conservation Service
1276 South 820 East, Suite 100
American Fork, UT 84003

Subject: **Corn Creek Watershed Plan**
RDCC Project No. 79283

Dear Mr. Jensen:

The state of Utah (State) supports the proposed improvements within the Corn Creek Watershed located in Millard County. In collaboration with the Utah Division of Wildlife Resources (UDWR), the State provides the following scoping comments for your consideration.

This watershed area includes UDWR's Fillmore Wildlife Management Area (WMA) and crucial winter habitat for mule deer and elk used throughout the year by black bear, dusky grouse, and wild turkey. Taking this use into consideration, UDWR recommends construction activities occur outside of Dec 1 and after April 15, to minimize disturbance and stress during the vulnerable time of the year.

In addition, the following species have been identified within or near the watershed area: bald eagle, bonnevillie cutthroat trout, brown trout, and burrowing owl. Bonneville cutthroat trout are managed under the *Range-wide conservation agreement and strategy for Bonneville cutthroat trout (Oncorhynchus clarki utah)*. Extensive restoration efforts were completed in the Corn Creek stream in the 1990s because of flooding and poor habitat conditions that resulted in a better stream and fishery.

Corn Creek Watershed Plan

May 27, 2021

Page 2

UDWR maintains the Utah Natural Heritage Database that curates data and observations for species listed under the Endangered Species Act and other species of interest. This can be a useful tool when assessing impacts to Utah's wildlife species. UDWR recommends an official species occurrence analysis be submitted for the project records from the Natural Heritage Database. Instructions on how to request an analysis are available online at <https://go.usa.gov/x63cH>.

The State appreciates the opportunity to provide scoping comments on the proposed Corn Creek Watershed and looks forward to continually working with Natural Resources Conservation Service to improve conservation practices. Please contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal line extending to the right.

Redge B. Johnson
Executive Director

Monique Robbins

From: Todd Macfarlane <toddmacfarlane@gmail.com>
Sent: Wednesday, May 26, 2021 8:14 AM
To: Monique Robbins
Subject: Preliminary Comments re: Proposed Corn Creek Project(s)
Attachments: Repeal.Amend LON 1.png; Corn Creek Adj. 2.pdf; Mac Corn Creek Project Comments 5.26.2021.b.pdf; CCIC KT Water Mem 12.6.2010.pdf; CCIC KT Sett Stip 1.2013.pdf; CCIC Amd Corr Deed 2013.pdf; Mac CCIC 4th Dist Complaint 2011.pdf; Mac CCIC 4th Dist Complaint 2011.pdf

Please see attached comments and other supporting materials, including the following links.:

<http://rangefire.us/2018/07/10/unfinished-business-constitutional-loose-ends/>

<http://rangefire.us/2016/08/11/prior-appropriation-and-beneficial-use-realities-nobody-wants-to-talk-about-5-6/>

<http://rangefire.us/2018/02/20/a-realistic-assessment-of-utahs-role-in-the-public-lands-debate/>

<http://rangefire.us/2018/04/10/water-lawyer-whiskeys-for-drinkin-waters-for-fightin-by-mancos-macleod/>

<http://rangefire.us/2018/04/08/johnson-canyon-water-prophet-by-mancos-macleod/>

INITIAL PRELIMINARY COMMENTS

Regarding the Proposed Corn Creek Project, including: Flood Control Structure, Storage Reservoir and System-wide Gravity Pressurized Irrigation System

Date: May 26, 2021

From: Todd & Heidi Macfarlane Family
Richard Q. Macfarlane Family Trust
Richard Q. Macfarlane Family
Turkey Track Ranch
Kanosh, UT

To: USDA-NRCS
Franson Civil Engineers
Corn Creek Irrigation Company
Utah State Division of Water Rights
Kanosh Town

Re: Proposed New Corn Creek Project, including:
Dam/Flood Control Structure; 500 AF Water Storage Reservoir &
associated infrastructure, and System-wide Gravity Pressurized
Irrigation System

Background:

Our comments are based on 150+ years of combined experience with multiple water/irrigation projects, and water resource masterplanning. Our family experience includes two full USDA careers (Richard Q. & Sara J. Macfarlane) with FSA and NRCS and their predecessor agencies; 30+ years civil engineering experience (Val Wheelwright), and 30+ years legal & water law experience (Todd Macfarlane), as well as 200+ years combined agricultural experience among the living generations.

Beyond Corn Creek Irrigation Company and our property in Kanosh, this background experience also includes current and former ownership interests in multiple farms with pressurized sprinkler irrigation systems in multiple irrigation and water companies, including Manti Willow Creek Irrigation Company, Manti Irrigation Company, Kanab Irrigation Company, North Six Mile Irrigation Company, and White Hills Water Company, with initial pressurized system construction in North Six Mile, 45 years ago (1977), where we have been directly involved in extensive maintenance and repair work on the system just this spring (2021).

By way of further background, although our multi-generational family roots are in Iron County, our family first acquired a small dairy farm in Chester (Sanpete County) in 1965, and then later a small cattle ranch (200 mother cows) in the Manti Willow Creek Irrigation Company in 1973. The Willow Creek operation consisted of approximately

200 acres of irrigated farm ground, flood irrigated from Willow Creek, and a supplemental irrigation well. It also included multiple artesian wells, and hundreds of acres of sub-irrigated meadows where the cattle spent most of the time when they weren't grazing on Forest Service grazing allotments in the summer. Most of the crops (alfalfa and grain) from the irrigated acreage were used to feed calves, after weaning, until they were sold in the Spring. The cow herd was wintered primarily on hundreds of tons of "wild hay" produced on the sub-irrigated meadows. Based on the natural ecosystem at the time, this was a very sustainable operation that had operated on this basis for approximately 100 years, ever since pioneers first settled Sanpete Valley, and was surrounded by multiple other small cattle ranching operations, with virtually identical business models, running a combined total of approximately 2500 head of cattle in that area, which provided essentially the sole means of financial support for multiple small family ranching operations.

Then, in the late '70s and early '80s, some of those surrounding operations started replacing their flood irrigation systems with "more efficient" pressurized sprinkler irrigation systems, and eventually we did as well. In many cases attempts were made to expand the irrigated acreage beyond the physical limitations of the previous flood irrigation, and undoubtedly pressurized sprinkler systems made these made these irrigated farms more productive – at least temporarily. But within not more than five (5) years (late '80s), years before the concept of Global Warming was even a twinkle in Al Gore's eye, the meadows started drying up. Within less than 20 years, without the tail water and deep watering that resulted from flood irrigation, the meadows had completely dried out, the artesian wells had gone dry, and the small cattle operations, that had relied primarily on the sub-irrigated meadows as the heart of their operations, were completely destroyed. Today, 40 years later, the cattle are almost all gone, with less than 20% of the cattle today that were there 40 years ago. The irrigated farms are still semi-productive, but none of them are big enough to support a single family household, let alone any multi-generational interests. And it isn't possible to expand irrigation beyond the original adjudicated acreage, to include the former meadows, based on other senior priority water rights held by downstream users under the Cox Decree, including all the water rights held by the Delta area irrigation companies.

Additional background information is provided in the following links, which are fully incorporated by this reference:

<http://rangefire.us/2018/07/10/unfinished-business-constitutional-loose-ends/>

<http://rangefire.us/2018/04/10/water-lawyer-whiskeys-for-drinkin-waters-for-fightin-by-mancos-macleod/>

<http://rangefire.us/2018/04/08/johnson-canyon-water-prophet-by-mancos-macleod/>

Our primary point here, as further illustrated in the supplemental materials we are providing, is that, based on our fairly extensive background and experience with this

subject matter, it must be acknowledged there can often be many unintended, and sometimes unforeseen consequences from otherwise well-intended water projects.

Based on our collective experience, we have also learned that when it comes to technological “advancements,” in all forms, including their use in water projects, there is actually much more to the equation than often meets the eye, including a multitude of long-term vulnerabilities that are often completely overlooked and not even recognized, let alone accounted and/or planned for when projects are initially planned, designed, and constructed. This reality has once again been brought forcefully home to us just this spring as we have been involved in major repair work on the North Six Mile pressurized irrigation system. Given current supply chain issues, after extensive, time-consuming effort, it took us over a month just to get applicable repair parts, and we were very lucky to get the parts at all, without which major parts of the system would not have received any water until the repairs were ultimately made. Anyone who hasn’t been in a position to have to find and buy any significant amount of large PIP irrigation pipe this spring won’t even begin to understand these realities, which suppliers claim are not going to be changing any time soon.

And we have experienced the same issues with all aspects of electronic technology, from long-term reliability and performance to maintenance and repair both as it is connected to water systems, and otherwise. Consequently, our standing caveat is: Technology is great – as long as it works. On that score, one of our brand new, high-tech phase control panels, intended to run a booster pump, would not work. It was supposed to completely automate the system, but was malfunctioning instead. Technicians from MountainLand Supply spent many days working on it without any luck. The system was down the whole time – right during the height of irrigation season. Finally, we just switched it to manual, and that has been the best move so far.

Right now, there is at least a 17-week wait for semi-conductors (computer chips) that are used in almost everything. That is almost an entire irrigation season. Add to that, a growing number of failures resulting from hacking, including everything from the Colonial Energy gas line to Intermountain Farmers (IFA) entire computer system.

For those reasons, among others, although we don’t mind rolling the dice with technological advancements, we are adamant about redundant capacity, and that reliable, low-tech back-up plans always need to be designed, planned and constructed into any new system from the outset. Unfortunately, over the years, we have seen many, many (almost all) systems designed, planned, and constructed with no reliable back-up plan whatsoever. In many cases, such systems are designed and built using the most recent, then-current advanced techniques, technology and materials, with no other back-up plan. From the outset, they seemed to have been designed to be completely replaced at some point 40-50 years down the road with a new government funding program, and whatever the newest, latest, greatest, flavor-of-the-week techniques, technology and materials happen to be.

On that score, 45 years ago, when the new North Six Mile system was built, the latest and greatest material was Transite (asbestos concrete) pipe. Based on challenging recent repairs we made just this spring, we now know just how fragile and vulnerable that pipe and accompanying components are at this point, which makes the whole system very vulnerable. And what we learned is that getting your hands on any significant quantity of large diameter PIP irrigation pipe right now is virtually impossible.

In contrast, despite much neglect, much of the basic, pioneer Corn Creek irrigation water distribution system has been in place, and is still functional, a full 140 years later. Although there have been problems with the dam and diversion infrastructure (which there often are – the history of early diversion dams washing out around the West is long), but with a stable dam structure, although the basic distribution system has been sorely neglected, it is still substantially functional.

In fact, although we own multiple agricultural properties, some of which rely on very advanced irrigation systems, the entire reason we acquired the place we have in Kanosh, and the reason we have always hung onto it, and are more adamant about this than ever before, is simply as a big-picture back-up plan. For our family, our entire Kanosh operation is little more than a back-up plan to our other operations – which means that we have been willing to devote a very good share of our lives and extensive resources to this back-up plan. But that helps illustrate just how seriously we take back-up plans.

We acquired this property almost 20 years ago because of its unique location and character, in the foothills, at the head of the ditch, with at least one branch of Corn Creek running through the full length of the place, as part of an old, low-tech pioneer flood irrigation system, which had obviously been in place for over 100 years, and was/is still fully functional, and had never been pressurized.

Although earlier Corn Creek dam/diversion structure(s) (like many) had obviously had problems and been replaced with what appeared to be an ample structure, the other basic components of the old pioneer system have obviously been in place and functional for a substantial period of time. And that old pioneer irrigation system, has essentially created a unique ecosystem, including rich riparian areas, including abundant shade trees, as well as a variety of old pioneer fruit trees, relying on deep watering, in the areas surrounding the long-established riparian areas.

The primary reason we have developed this property the way we have is because we sincerely believe that when push comes to shove, although this old pioneer irrigation system may not be the most efficient, or capable of maximum production, we didn't buy this place, and we don't operate it now, with maximum production in mind. We own other farms and interests in farms in other locations in systems that are designed for that purpose and objective. Instead, the reason we bought this place, and the reason we have hung onto it and developed it the way we have, is precisely because we wanted something that we hoped to be able to count on when the chips (of all kinds) were down. Although we have definitely upgraded the irrigation system, first building a

pond (in 2013), laser levelling the fields, and eventually installing a pressurized sprinkler system, in the end, we believe the old pioneer delivery and flood irrigation system may very well prove more reliable than all the fancy new improvements, and we have no intention of doing anything that would jeopardize our ability to continue to flood irrigate, just as we have for the past 20 years, and our predecessors for 120+ years before that. At this point, we have invested 20 years and hundreds of thousands of dollars in reliance on this long-established system, and in reliance on the property's unique location, and priority of our uses and places of use within that system.

Consequently, we would never be willing to accept any new technology, techniques or components, in this Corn Creek system, including electronically controlled valves or systems, that do not have fully redundant, fully functional, and highly reliable low-tech manual back-up, designed that way from the outset.

Although our family is not entirely on the same sheet of music when it comes to exact religious and spiritual paradigms, it is fair to say that as a general rule those paradigms consist of a unique blend of traditional Mormonism and Anabaptism (Amish/Mennonite - which have a much better track record for fundamental stewardship and productive sustainability than most Mormons do), which form a basis for our very sincere, and heart-felt beliefs. We mention this only to help clearly identify – for everyone – part of the fundamental constitutionally-protected First Amendment rights, expressly including freedom of religion, that we rely on, and that serves as a basis for our deeply-held positions.

Consequently, as opposed to the typical, superficial, single-dimensional approach that is often taken with such comments, based on our background and experience, it is our objective to provide a deeper, more multi-dimensional approach and perspective.

Although these initial, preliminary comments are being submitted in response to the USDA-NRCS request for comments, as part of the NEPA scoping process, we have put together two full sets of comments, including this short, abbreviated version, and a much longer version that focuses much more attention on the proposed system-wide gravity pressurized irrigation system. Although this short version is not limited to just NEPA-related comments, for reasons that will become more obvious below, we are holding back our full comments for now, while reserving the right to further supplement this version with our full comments at a future point, as appropriate.

General Issues/Comments

Applicable Utah Water Law

The basic fundamental concepts and principles of Utah water law are based on some of the very most basic and fundamental concepts and principles of the Laws of Nature and of Nature's God, as referred to in the Declaration of Independence. They are the fundamental principles upon which this state and country were founded, as reflected in

their constitutions, and upon which this very world and its inhabitants were divinely created. Under the fundamental laws of nature, there is an important concept called the natural law of “prior appropriation and beneficial use” – first in time, first in right. It is the fundamental basis for all western water law. It is based on the fundamental principles and concepts underlying creation of all property rights. In accordance with that natural law, when settlers and pioneers first ventured into the wilderness to put their time, energy, and resources at risk to claim and tame raw land, clearing it, planting it, diverting water to irrigate, and put it to beneficial use, it became theirs. Even prior to any man-made laws or government(s), the land and resources they put to beneficial use were theirs as long as they could defend and maintain possession of them.. Such property rights were not created by any law of man; they existed naturally from the outset. These rights were basic, fundamental, inalienable rights naturally endowed by our divine Creator as part of the fundamental the laws of nature, as referenced in the Declaration of Independence. And the principle of “prior appropriation” and “prior use” have always been a fundamental part of this whole equation.

These fundamental concepts are further discussed in the following articles, which are fully incorporated by reference.

<http://rangefire.us/2016/08/11/prior-appropriation-and-beneficial-use-realities-nobody-wants-to-talk-about-5-6/>

<http://rangefire.us/2018/02/20/a-realistic-assessment-of-utahs-role-in-the-public-lands-debate/>

The rights and priorities of Corn Creek water were adjudicated in 1936 under the Cox Decree. Among other things, the Cox Decree established 3550 acres of “adjudicated acreage” eligible for irrigation with senior priority rights from Corn Creek water sources. It also established municipal and stock water rights, but made no reference to water storage, recharge, recreational or other rights. Since that time, the Utah State Division of Water Rights has also established the irrigation “duty” at four (4) AF/acre.

When the Cox Decree and the applicable duty are applied to Corn Creek Irrigation Company (“CCIC”) what it means is that when recognized places of use have the same priority date, the water supply is spread as equitably as possible between all of them. The way that has typically been done, and is done in the CCIC is by “turns” which does its best to equitably allocate the flow of the stream in increments of time. When the system expands, however, to include lands that were not previously adjudicated, and did not receive senior priority status, they must be assigned junior priority status. While it may be possible to file change applications to add additional acreage as legitimate places of use, it is not legally possible to do so without abandoning an equal amount of previously adjudicated acreage, so that the total adjudicated acreage does not exceed a total of 3550 acres, as originally adjudicated. Moreover, any and all additional, expanded acreage outside the original adjudicated acreage must be assigned a different, junior priority date, based on when that acreage actually started being

irrigated. With a class of junior priority lands thus created, these junior priority lands are entitled to receive water only after the senior priority lands are assured delivery of the full adjudicated duty. If/when the system is not capable of delivering the full adjudicated duty to all applicable lands, delivery of water to junior priority lands must be curtailed unless/until the system is capable of first delivering the full adjudicated duty to senior priority lands. This is not rocket science. The basic principles and natural laws associated with prior appropriation and beneficial use essentially constitute Laws of Nature 101 – the basic principles underlying the creation of private property rights.

Sustainability

And the sustainability discussion could be Laws of Nature 102. Although this is actually real basic, straight-forward stuff, between manipulation and bastardization of the concept of sustainability through UN Agenda 21 and other propaganda, the whole concept of sustainability is now very confusing if not outright debatable. Although the promoters of this particular project have stated in their materials that a so-called “sustainable pressurized conveyance system” is one of the objectives, when they were subsequently questioned about their definition of sustainability, it became clear that they have no solid working definition, and candidly stated that they are open to the possibility that “sustainability” could actually mean a wide variety of things in this context. That, in and of itself, is a serious concern.

If the concept and term “sustainability” is going to be used in any way in connection with this project, exactly what it means for purposes of this project needs to be clearly defined and spelled out – because, among other things, the whole concept and practice of attempting to spread too little water too thin has nothing to do with sustainability.

Like many of the water users in Sanpete County, described above, the vast majority of farmers in this area and this whole valley are primarily interested in one thing: Maximum Temporary Production. They seemingly have little, if any, interest in genuine sustainability, which rarely seems to be a consideration. That is why they are so willing to strip mine the underground aquifer(s), and deplete the soils, and leave them completely empty, if necessary, as long as they can maximize their temporary, short-term financial benefit.

As opposed to farmers, the concept of sustainability seems to be something that some ranchers (who rely primarily on direct natural precipitation) seem to better understand and pay attention to. When faced with imminent drought, dwindling water sources/supplies and wilting, shriveling feed, what prudent rancher would expand his/her livestock numbers, and put even more pressure on already taxed resources? Yet that is exactly what farmers and shareholders in CCIC have repeatedly done and are continuing to do. Despite obviously dwindling irrigation water source/supply and associated issues, they have consciously chosen to expand and add vastly more acreage, in an attempt to spread too little water too thin. And the residents of Kanosh town (who are often the same CCIC shareholders), typically do the same thing. Rather

than consider embracing such concepts as xeroscaping and sustainable landscaping, many long-time Kanosh Town residents still worship their vast, expansive, consumptive green lawns, and the more they get, the more they seemingly want.

Those who really understand this stuff, however, know that true sustainability starts with the soil. As opposed to depleted, chemically dependent soils, deep, rich, spongy soils have the ability to utilize and hold water much more efficiently. Consequently, healthy soils can get by with much less water. But this requires taking proactive steps to build the soil. But instead of any kind of regenerative attitude or approach, however, the prevailing attitude and approach here seems to be to simply throw more chemicals and water at it, and extract as much as possible, as quickly as possible, with as little efforts and lasting inputs as possible.

If, as opposed to just spending tens of millions of dollars on new irrigation infrastructure, however, an equivalent amount were invested in long-term regenerative practices to build the soil, it would undoubtedly accomplish much better results long-term, than simply expending more money on short-term, band-aid approaches, attempting only to spread too little water too thin.

But, in this Telestial World, we know that you can (usually) buy anything for money, including engineering services and government water projects. In terms of other very basic, fundamental realities, however, the ultimate source of essentially all water in Corn Creek is very simple and straight-forward. It is snowpack. Ample snowpack is really the only thing that supplies seasonal spring-run off, and ample snowpack is likewise the only thing that really feeds and recharges the aquifer(s) that in turn feed the springs, including Big Spring, that feed the creek. It's really just that simple.

But no amount of money or government programs and/or engineering are going to change that reality. The applicable parties can throw tens of millions of dollars at the situation, building new dam(s), flood control structure(s), water storage reservoir(s), and even pressurized irrigation system(s), with all the latest technology, all seeking to spread too little water too thin, but none of that will change the ultimate realities of the fundamental water source/supply. Ultimately, God is in charge of that. And there is plenty of evidence that He is growing more and more weary of our failure to recognize that, as we increasingly worship at the altar of government programs and turn to government for so-called answers and solutions to all our perceived problems, as He scratches His head and wonders just exactly what it's really going to take to actually get our attention.

In our family, one of our favorite sayings, and one that helps guide our fundamental priorities is an old Chinese proverb, that is likewise based on the fundamental laws of nature and of nature's God. It goes like this: "Lots of food, lots of problems; No food, one problem." And the same can be said of water, both in its own right, and because food can't be grown without it. Our place in Kanosh is not, never was, and never will be, capable of maximum production. But it is a place where, when the chips (of every kind) are down, if managed correctly, hopefully it has sustainable potential to produce enough

food to sustain life. And when nature ultimately and inevitably takes its course, and other systems wear out, and the temporary, short-term technologies that are employed to fix them ultimately and inevitably fail, based on the natural law of gravity, water will still run downhill, and we want to be situated in such a way that we can always utilize such water as there is to still produce enough food to sustain ourselves. And for us, that is a big part of our working definition of sustainability: systems still have a reasonable chance of working when everything else fails, to sustain life, when the chips (of all kinds) are down.

The Pulitzer Prize-winning novel, *Angle of Repose*, by Wallace Stegner, is relevant to this whole discussion. Among many other even more important things, it discusses engineering, and water projects in the arid West. After reading and studying a number of books in an advanced American Literature course, including *Angle of Repose*, given the fact that Charlie Ward, the Eastern born, bred and educated civil engineer, protagonist in the book spent his entire adult life working on projects in the West, the entire course grade came down to one final question on the final exam. The question was, given his background, etc., on balance, was Charlie Ward, the Western civil engineer, and his ultimate character, shaped more by the West, its culture, and landscape, etc., or were those landscapes and ecosystems shaped more by him, and what was the resulting ultimate, long-term impact and effect both on him and on the landscape?

In our case, despite our feeble efforts to “improve” this place along Corn Creek that some of us call home, we would hope that ultimately, this place, and its landscape and ecosystem will have at least as much impact and effect on our family and its character, as we have on it.

But the bottom line is, the inescapable reality is, whether it be a farm, garden, lawn, irrigation company, ranching operation, or municipality, there is nothing sustainable about trying to spread too little water too thin.

Stewardship

And the stewardship discussion (taking care of what God has blessed us all with) could be Laws of Nature 103. Again, this is all real basic, straight-forward stuff. On the subject of stewardship, however, in a recent article, this is what we had to say about our own place:

Despite our frequent failures in this regard, we do recognize the blessings and responsibility of stewardship. We appreciate the unique biodynamic nature and situation of the property and place that help sustain us, and that we call home. In addition to our children, grandchildren, extended family, friends, and livestock, we share our small ranch, on a seasonal basis, with everything from elk, mule deer, coyotes, bobcats, and mountain lions, to a wide variety of birds, including everything from eagles, hawks, and Canadian geese, to hundreds of wild turkeys

(hence the name, Turkey Track Ranch). In this arid place, we do share the life-giving water in the creek that runs through our place with all of these, as well as with our neighbors, and the native trout that live in its waters, along with the riparian vegetation, including abundant shade trees and pioneer fruit trees that line its banks. We use water from the creek for irrigation and stockwater, and have a small solar system to pump culinary water for the house, and additional stock water, when necessary.

But, when it comes to all the waters of Corn Creek, CCIC has been assigned primary temporary stewardship. Unfortunately, when it comes to the whole concept of stewardship, however – at least for the past 20 years of our personal observation, and all the obvious signs of what had happened for 20 years before that -- CCIC has demonstrated a less than exemplary track record, and this applies to both the water resource itself (wet water), as well as the distribution infrastructure (ditches, channels, headgates, etc.), and perhaps most importantly, applicable water rights (paper water).

There is really not much actual need to try to fully explain this. The record, and physical system, speak for themselves. Just look at the system. Look at the debris and beaver dam-choked main channel. Look at the thistle and cocklebur infested debris basin. Look at the ditches. Many of the channels and ditches are woefully overgrown and choked with debris and noxious weeds, including cockleburs and thistle. Although some sporadic, half-hearted effort has been made to control willows, there has been no effort whatsoever to control noxious weeds. Consequently, CCIC has been actively spreading weed seed for years.

Some claim the current water delivery system is completely worn out, inefficient, and must be replaced in its entirety, but the main reason for any of that is that the system had been completely neglected for years. This seems consistent with an age-old adage to the effect of “that which is too easily obtained is too lightly esteemed.” The current system was completely bought and paid for by another government program almost 40 years ago, and it has been cared for accordingly. Based on the track record, there is little reason to believe that the same will not occur with any new system acquired under similar circumstances.

But the actual reality is, after neglecting the system for years, over the course of about the last 8 years, CCIC has finally started upgrading and replacing the worst stretches of the neglected cement ditches with pipe, along with many leaking headgates, on a pay-as-you-go basis, which has already vastly improved the existing delivery system, and at this point, the reality is, the basic distribution system may be in as good or better shape than it has been in many years.

But perhaps most importantly, CCIC has repeatedly neglected and failed to protect its water rights and paper water, and on that score has provided very poor stewardship for its shareholders.

Arguably the first serious instance of this occurred in 1978 when CCIC mistakenly deeded two (2) CFS from the flow of Corn Creek to Kanosh Town, and then after the issue was brought to the company's attention, it simply let it slide for years, doing nothing to correct the problem until both CCIC and Kanosh Town were essentially forced to do something about it. A research memorandum dated December 6, 2010, which outlines this issue, is submitted herewith and is fully incorporated by reference.

In addition, for years CCIC has operated completely outside the law in a variety of ways, typically and repeatedly including taking substantive action without any authority from a legal quorum of shareholders and/or directors. At one point, CCIC allowed its corporate status to completely lapse. Based on these and other substantial stewardship issues, a draft complaint was prepared and provided to CCIC in 2011. A copy of that draft Complaint is likewise submitted herewith and fully incorporated by reference.

Eventually, in 2013, however, based on threatened litigation and change of both CCIC and Kanosh Town leadership, CCIC and Kanosh Town finally did enter into a formal Settlement Agreement, which was ultimately recorded, along with a new Correction Water Deed. Copies of the draft Settlement Agreement and Correction Water Deed are likewise submitted herewith and fully incorporated by reference. One of the important points to be made here is that none of this happened without the parties, including CCIC, literally being forced to take action.

At this juncture, in 2021, CCIC is once again faced with a similar, but even more critical issue, based on its woeful stewardship and neglect of its underlying water rights and paper water. Over the course of the past 5-10 years, CCIC has repeatedly allowed certain shareholders to vastly expand beyond the applicable adjudicated acreage, attempting to spread less and less water thinner and thinner, as reflected in the partial map of CCIC adjudicated acreage submitted herewith and fully incorporated by reference. Not only has CCIC not insisted that these shareholders abandon other previously irrigated lands in favor of the new places of use, CCIC has likewise failed to acknowledge that these new places of use have junior priority. This expansion dilutes both the shares and value of shares within the system. Under the existing "turn system," this may not be quite as critical, but if there is any further effort or attempt to move forward with a system-wide gravity pressurized irrigation system, this is an issue that must be fully addressed and dealt with before proceeding any further.

Kanosh Town has an equally poor track record for responsible and exemplary stewardship of both its wet and paper water resources. On that score, Kanosh Town itself is by far the single biggest user (and waster) of culinary water in the community, because although there is a secondary pressurized irrigation system, rather than having planned and constructed the system to include the town park and cemetery, the town uses hundreds of thousands of gallons of culinary water each year to irrigate that highly consumptive acreage, and rarely undertakes other measures, such as aerating the turf, to help make irrigation more effective.

Likewise, instead of initially recognizing and filing legitimate diligence claims on Watercress Springs, instead Kanosh Town attempted to literally steal creek water from CCIC. When the town's new attorney(s) did recognize the previous oversight(s), they did seek to file duplicitous groundwater diligence claims, falsely asserting that the springs were actually horizontal wells. Because such claims completely overlapped the water they had originally asked CCIC to convey, they nevertheless attempted to retain the additional two (2) CFS out of the flow of the stream as well. In that sense, in addition to being a less than exemplary steward, Kanosh Town has also been downright duplicitous in managing its water rights and paper water.

Redundancy, Back-up Plans & Control

As previously stated, one of our major general concerns is that regardless of what the project ultimately entails, unlike many systems that are designed and constructed with little, if any redundancy capability or reliable back-up plan in mind, it is our position that any resulting irrigation water storage and delivery system of Corn Creek waters must be designed and built with full redundancy capability, and a reliable, simple, low-tech back-up plan, including ability to deliver at least a full single ditch or double ditch, on a timed, turn system, every 14 days, and that shareholders have full control of their applicable proportionate share of the water during their respective turns.

Conflicts of Interest

In terms of general issues and concerns, last but certainly not least is conflicts of interest. It is fair to say that there are multiple conflicts of interest involved in this proposed project. There have always been many conflicts of interest between CCIC and Kanosh Town, that have often resulted in detrimental impacts on CCIC and its shareholders. In many projects such as this, the engineers typically have a huge financial conflict of interests, based on long-standing business practices of selling unnecessary, oversized, and over-expensive projects, just so they can pad their own pockets. At this point, major conflicts of interest have now developed between CCIC and its shareholders, including the shareholders who serve as the board of directors, and control the company. All of those conflicts and more are fully present in this proposed project, and must be fully acknowledged, and clearly and transparently managed.

Having addressed some of our general concerns, we now turn to specific concerns, including the following:

Specific NEPA/Environmental-related Comments/Concerns

We have previously described some of our experience and observations with the unintended consequences of otherwise well-intended water projects, including complete destruction of the natural, sustainable ecosystem of thousands of acres of sub-irrigated meadows in Sanpete County.

While it is true that this area is different, and Corn Creek does not feed many natural, sub-irrigated meadows, the same sort of thing is going on in this valley. At this point, it should be crystal clear that the groundwater aquifer is being unsustainably mined. Clear Lake is almost completely dried up. And while the water supply (including both aquifer recharge and snow-melt run-off) is unquestionably dwindling, instead of scaling back based on current conditions, many of the biggest CCIC shareholders and water users are vastly expanding their irrigated acreage, and seeking to spread less and less water thinner and thinner.

By contrast, it is fair to say that over time, the main channel of Corn Creek, and even the “pioneer” portion of the Corn Creek distribution system have evolved into a unique ecosystem, with verdant riparian areas, including a wide variety of natural riparian vegetation, as well as shade trees and pioneer fruit trees. These riparian areas now comprise an established ecosystem that is unique in this area. Our place is part of that unique ecosystem, and, much as we have described our place, the rich riparian areas in the Corn Creek ecosystem are home to a wide variety of natural riparian vegetation, as well as a wide variety of wildlife, obviously including the trout that live in its waters, to everything from elk, mule deer, coyotes, bobcats, and mountain lions, to a wide variety of birds, including everything from eagles, hawks, and Canadian geese, to hundreds of wild turkeys.

While we are adamant proponents of holistic resource management and regenerative practices, depending on the design and approach that is taken, there is a good chance that with installation of a system-wide pressurized irrigation system, just like the sub-irrigated meadows in Sanpete County, the existing ecosystem, with all the existing riparian areas, natural riparian vegetation and wildlife habitat, especially between the current dam and Kanosh Town, could be completely destroyed, and completely change the character of the landscape above the town, specifically including the area where our place is located.

In fact, if one looks closely at the channels and riparian areas where CCIC has recently discontinued to run winter stock water, that damage is already occurring. The trees are dying, and the those entire riparian areas will be right behind them. Consequently, any project(s) that are undertaken must take all this into consideration and be designed and constructed so as to balance these interests, and minimize adverse impacts on these unique ecosystems.

Corn Creek Dam / Flood Control Structure

Given past history, etc., and the geography, proximity and location of Kanosh Town to Corn Creek, there is no question that there needs to be adequate flood control infrastructure to handle and manage realistically possible flood events, which, despite current drought conditions, will inevitably occur.

If the current infrastructure (as modified and upgraded within the past 10 years) is objectively inadequate, then it needs to be upgraded to satisfy objective needs. But from our perspective, the legitimate question of objective need is far from cut and dried at this point.

All of the current infrastructure was fully engineered, designed, planned and constructed less than 40 years ago, right on the heels of major flooding events. Although annual precipitation is obviously volatile, there is little question that the long-term trend seems to be downward. But despite this obvious reality, in addition to an obvious desire to attempt to spread a dwindling water supply thinner and thinner, we are also being told that we now need an even bigger dam and flood control structure. We don't know whether that is true or not, but we have been around the block enough to genuinely question the necessity of a new, bigger, "better" dam.

Among other things, we have additional information about the current structure that is only included in our full set of comments that are not being submitted at this point, but from our perspective, this is a sufficiently legitimate question that it merits an objective second opinion. To that end, Kanosh Town should commission a qualified, objective second opinion that has no financial connections or conflicts of interest with this current proposed project. And this second opinion should be fully paid for by Kanosh Town, out of its own resources, without any other governmental subsidy, so that Kanosh Town can have some actual, genuine skin in the game.

Irrigation Water Storage Reservoir

If there is one thing that the Corn Creek watershed clearly lacks, and could really use, it is a water storage reservoir. An appropriately located, and reasonably-sized storage reservoir could be a real asset, and could make a significant difference in the whole equation.

But, for not only as long as we have owned property in this area (close to 20 years), but for as far back as we have been doing due diligence in this area, we have been told that the Corn Creek Watershed has been studied and examined over and over again, and there simply aren't any good, suitable reservoir sites in the entire watershed. Otherwise, as we have been told, something would have already been built by now. Obviously, that is anecdotal, but unfortunately seems to be fairly consistent with our own observations.

At this point, however, it appears that the current proposal is to construct a small, on-stream reservoir in the location of the current debris basin, utilizing the proposed new dam/flood control structure. On its face, that seems a reasonable approach for a small, reasonably-sized reservoir, recognizing that as an on-stream site, it will have a limited useful lifespan and will eventually fill with sediment.

Because there is already a long list of dams and reservoirs throughout the Intermountain West that were oversized and overbuilt from the outset, with little realistic chance of filling (especially now) there is no reason to repeat that mistake here, and overbuild something that has no reasonable chance of filling a regular basis. Consequently, at first blush, the proposed 500 AF reservoir would seem like a reasonable target.

Unfortunately, as far as we know, CCIC has never done a good, consistent job of measuring the flow in Corn Creek or keeping records, particularly including the base flow, which is essentially the only thing that would be hypothetically available to fill a storage reservoir during winter months. But because of our location near the head of the ditch, we have had a good opportunity to watch and observe the stream throughout the year, and for a period of almost 20 years. With the unquestionably dwindling source/supply, at this point during the winter months, it is highly questionable whether the average base flow over the course of the past 5+ years has exceeded 10-12 CFS from December through February each year. Of that amount, the Cox Decree mandates that at least six (6) CFS remain in the system from October 15th until at least April 1st each year for stock water. If water storage were approved, that might hypothetically leave 4-6+ CFS available for storage for approximately four (4) months of the year, which could generate up to about 1200 AF of irrigation water available for storage, and still leave some water in the natural channels. This seems like it would be a good idea. And on that basis, a 500 AF reservoir seems to be realistic.

Just to put everything in perspective for the sake of discussion and round figures, however, it is important to note that if the full adjudicated duty of four (4) AF/acre were delivered to all 3550 adjudicated acres, that would require a total of 14,200 AF/year. To accomplish this during the irrigation season from April through October (about 165 days) would require an average continuous daily flow of about 43 CFS. Among other things, one of the important things to note is that 500 AF is only 0.03% of that amount, which would last less than one (1) current 14.5 day water turn in July.

And, just to put everything in even further perspective, it should be noted that once new, junior priority dates are assigned to recently expanded acreage, if we assume, just for the sake of discussion and round numbers, that this will affect up to 1000 acres, that would leave approximately 2500 acres of the original priority adjudicated lands with senior priority. With a duty of 4 AF/acre, that would require delivery of 10,000 AF/year. To accomplish this during the 165 day irrigation season would require an average continuous daily flow of about 30.5 cfs. Either way, any storage at all is better than what currently exists.

Something else that should be taken into consideration, especially in the current environment of increased fire risk, and stretched resources, is the Settlement Agreement between CCIC and Kanosh Town, which expressly provides that:

In times of emergency, if Kanosh Town's culinary water system and storage are exhausted and/or inadequate to provide sufficient water or flows for fire protection within Kanosh Town and for private property in the surrounding area, CCIC shall make Corn Creek water available, on a secondary "as-needed" basis, for emergency fire protection. This provision does not include fire protection storage, and does not authorize Kanosh Town to attempt to sell water diverted from Corn Creek water to other governmental entities for wildlands fire protection on public lands. In such cases, any and all such entities will deal directly with the irrigation company on a case-by-case basis. Kanosh Town may include this right to divert from Corn Creek in its fire protection requirements both for compliance with Utah drinking water system regulations and for insurance ratings of the Kanosh Town water system.

Under current conditions, realistically, the risk of fire may very well be much greater than any serious risk of flooding. But either way, it would be prudent to be as well prepared as reasonably possible for both. To that end, as part of any new flood control structure and/or water storage reservoir, an appropriate and improved pressure pond should be constructed for the secondary pressurized irrigation system that already services residential shareholders in Kanosh Town. With both that, and additional fire protection in mind, it would probably be a good idea to design any such pressure pond to include additional storage capacity of up to say 1,000,000 gallons of base storage that is continually available for additional emergency fire protection. And it would probably also be a good idea to plumb fire hydrants into the secondary pressurized irrigation system, including additional hydrants from the pressure pond to town.

Finally, as stated in the background section, to be acceptable to us, any applicable water storage reservoir and irrigation water delivery system would need to include properly designed and located outflow gates and/or valves at equal elevation, **uphill from the existing channels**, together with fully redundant, low-tech, manual back-up valves and gates that are not dependent on any other source of power, electronic chips or devices, nor subject to control by anyone but CCIC and its shareholders.

Obviously, all this would require the filing of one or more Change Application(s) with the Division of Water Rights, requesting to add water storage, etc., as one of CCIC's uses of Corn Creek water. It is hard to say what the outcome of such application would be. Aside from municipal and stockwater uses, no one else has any adjudicated right to the winter water. But some may obviously claim that they are entitled to continue use such flows to naturally recharge deeper, Pahvant Valley Aquifers, which will be discussed more fully below. In the meantime, suffice it to say that although such claims may be asserted, these are completely unadjudicated uses, and should not be the tail that wags the dog.

By-pass Pipeline

In the kick-off scoping meeting, if we understood correctly, it was suggested that a big portion of the base net flow of Corn Creek (up to 50%) is lost through seepage between, say the Forest Service boundary and the current dam structure. Consequently, it was suggested that a low-flow, by-pass pipeline might be worth considering. If it is actually true that up to 50% of the natural flow of Corn Creek is lost due to seepage between say the Forest Service Boundary and the existing dam structure, then a low-flow by-pass pipeline might be the single thing in this whole project could do that that would make the most sense, and deliver the most bang for the buck in terms of water management, with the understanding it would be utilized only a seasonal basis, following high water, during the low-flow portion of the height of the annual irrigation season.. Any volume over and above that amount would/should remain in the existing natural channel to help protect the existing established ecosystem, including natural riparian area, fish and wildlife habitat. If what has been suggested is true, this one measure alone could possibly double the available volume of water during the height of the irrigation season. Coupled with any sized storage reservoir, this could be a genuine asset/benefit. But any such a system should be designed and managed in such a way that would not seriously negatively impact the existing ecosystem.

Ground Water Recharge

Groundwater recharge is likewise obviously needed, and is usually a good idea, but like most of this, is also a balancing act. Ground water recharge is not an adjudicated use of Corn Creek waters. Consequently, CCIC has no responsibility for, or stewardship of, ground waters. Moreover, very few CCIC shareholders even own any significant amount of groundwater rights. And of those who do own groundwater rights, most of those water rights are completely outside the area and scope of CCIC's legitimate adjudicated lands. Plus, this needs to be clearly identified as a conflict of interests between CCIC and its other shareholders, and those who have deep irrigation wells, and may assert a right to use winter water for recharge.

The other thing that must be acknowledged, particularly since properly-defined sustainability is and should be a factor in this whole equation, is the reality that current irrigation well pumpers in the Pahvant Valley are unquestionably already mining and depleting the aquifer. Once again, they are attempting to spread too little water too thin, with little thought or concern about the long-term impacts. Consequently, seeking to recharge the primary Pahvant aquifer for the benefit of farmers throughout the valley who are not CCIC shareholders, and who are already working hard to deplete and mine the aquifer, should not be a high priority consideration. If incidental recharge can occur and/or be enhanced without negatively affecting other pre-existing rights (such as other shallow wells in the area that may be dependent on Corn Creek water for recharge), then certainly there is nothing wrong with that, but as previously stated, should not be the tail that wags the dog.

Recreation Facilities

And speaking of tails that should **not** wag the dog, creating new recreational facilities should be at the very top of that list. Neither CCIC nor Kanosh Town have any responsibility to provide additional recreational opportunities, and neither of them have demonstrated any ability or track record for managing such facilities.

At one time, Kanosh Town owned Adelaide Campground, in the canyon, but the town did not want to be burdened with the responsibility of maintaining and taking care of the campground, so it donated the campground to the Forest Service. In just the past year, rather than spend available resources on substantive infrastructure improvements, like more water storage, etc., Kanosh Town allowed \$1MM to be dumped into town “park Improvements,” in a park that really was not in any genuine need of much improvement. Now, less than a year later, Kanosh Town is whining about its water system and the inadequate water supply. At the same time, Kanosh Town is watering the expansive lawns in the upgraded park every single day, and intrusively monitoring any and all activity in the park with 15+ new surveillance cameras. Based on its current track record, Kanosh Town should not be trusted with any further responsibility for stewardship and management of recreational infrastructure.

Although it is true that there may not be any abundant water-related recreational opportunities or facilities in East Millard County, the biggest reason for that is the fact that we live in a desert, with limited resources, including water resources. With our already dwindling water supply, and other fully adjudicated water use(s), it is completely unrealistic to attempt to do much by way of water-related recreation here. The reality is, Millard County already has a huge, expensive recreation program in East Millard County, that has become a huge albatross because of the expense and lack of value in the cost/benefit analysis. Not only does recreation not pay any bills, it does not fall within the legitimate scope of the proper role of local government – especially recreation opportunities outside the municipal boundaries. Just because it can be a lucrative target for grant money is not legitimate justification.

The reality is, people are naturally drawn to bodies of water. There is no need for any recreation infrastructure for this to happen. If there is a body of water, people will find ways to recreate there. Realistically, the most reasonable recreational option might be minor, un-motorized boating and fishing, recognizing, however, that a water storage reservoir intended for irrigation will probably completely empty out each summer, and should be planned and designed accordingly. In that sense, it would probably be much like Nine Mile Reservoir in Sanpete County. At one time Nine Mile did provide some legitimate fishing and recreational opportunities, but virtually none over the course of the past few years, because of how the reservoir now empties. And realistically the same will be true here.

Those for whom water-related recreation is a high priority can travel to other areas where it is a more realistic option (many of which are experiencing the same source/supply issues). Welcome to the realities of living in a desert.

System-wide Gravity Pressurized Irrigation Water Delivery System

Although the subject of a system-wide gravity pressurized irrigation water delivery system may be the single thorniest issue in the whole equation, at this point the discussion can be pretty short, because, based on what is happening, and what CCIC has allowed to happen over the course of the past 5-10 years, before proceeding a single inch further towards consideration or planning of a system-wide gravity pressurized delivery system, in order to avoid referral for an administrative enforcement action, CCIC must file one or more Change Application(s) seeking to update the new places of use within its system to show all the expansions that have occurred beyond the originally adjudicated acreage, as well as all such originally adjudicated acreage that will now be abandoned and no longer irrigated, in order to accommodate the new expansions within CCIC's 3550 acre total adjudicated acreage. Each and every shareholder should receive notice and an opportunity to participate in this process, and identify adjustments in their places of use. As part of that process all expanded acreage must likewise be assigned junior priority dates based on when their use went into effect.

The outcome of such change application(s) should be: (1) clear identification of all new places of use; (2) clear identification of any and all property that will no longer be irrigated so as not to exceed the total adjudicated acreage, and; (3) assignment of new priority dates to any and all subsequent places of use, based on when their use went into effect.

In our own case, after reviewing the CCIC adjudicated acreage map, and realizing that none of the main ditches and channels appear to be included within the previously adjudicated acreage, because we run sheep and goats that graze and rely on the natural forage irrigated by the water in the existing delivery systems, we will probably take action to identify any and all existing channels on our property, and identify a corresponding amount of acreage that will be abandoned, in order to fully protect the right to continue to irrigate such acreage, which has obviously been irrigated for well over 100 years.

It would be completely inappropriate to do any further planning regarding a pressurized irrigation system until this issue is completely straightened out. With one or more change application(s) and/or full administrative enforcement action through the division of water rights, and possible resulting litigation, that could easily take 5-10 years. But not another thing should be done with respect to any possible system-wide pressurized water delivery system until these fundamental issues are sorted out.

We realize that there will be those who will attempt to claim that there is no way they could have seen this coming, or have known that this is where this would lead, and that the only reason we could know and understand that is because of having some legal background. But that is not true. Having spent most of a lifetime in the Sevier River Drainage, the issues here are based on very basic fundamental principles that we and our children had a solid grasp of by the time we/they reached adulthood.

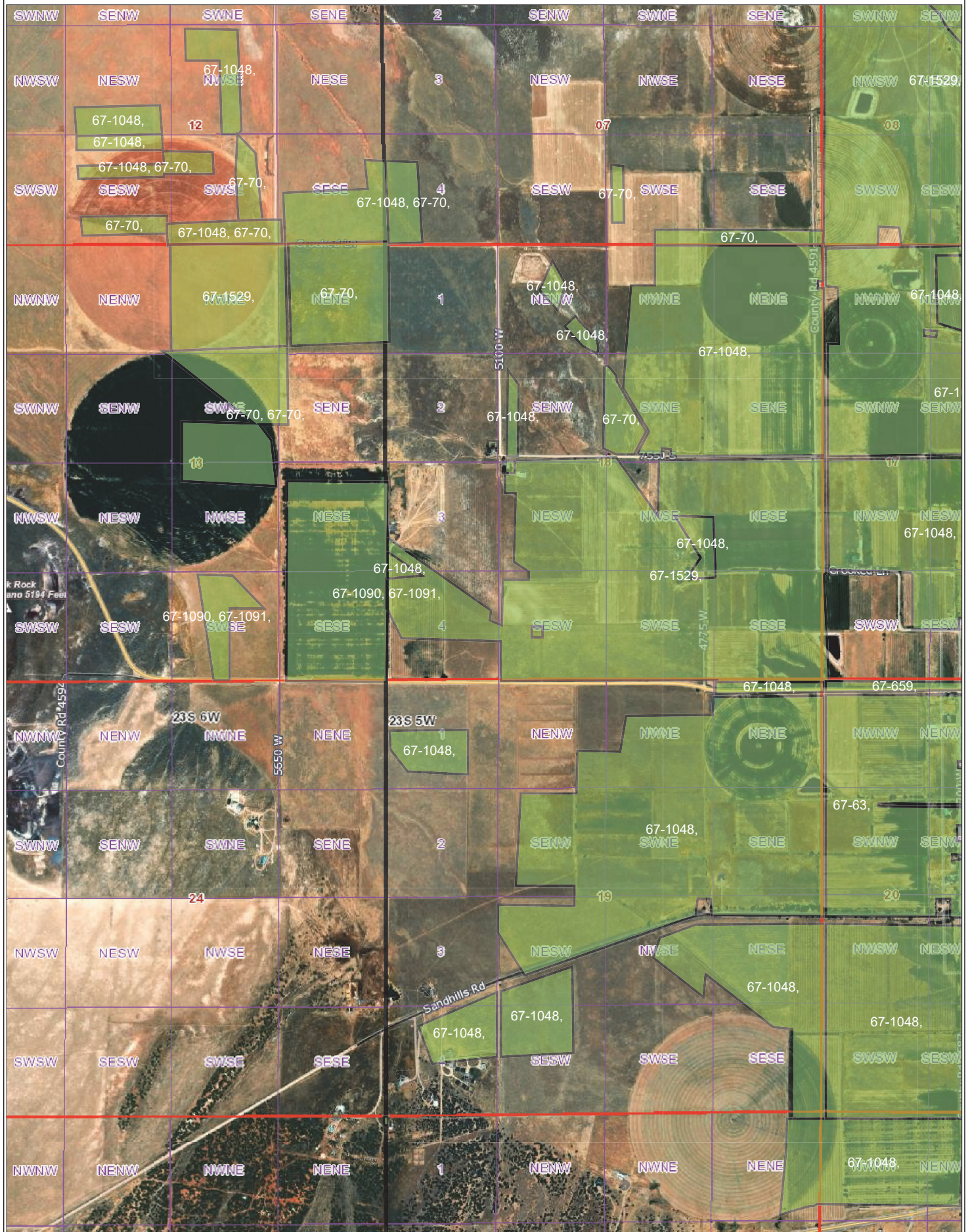
Once again, this is not rocket science. Basic Utah water law is based on Laws of Nature 101. The only reason anyone may attempt to claim that they somehow didn't understand and didn't see it coming is because they have allowed themselves to become products of a modern culture and society that are increasingly disconnected from the fundamental realities of the laws of nature and of nature's God, that both this country and this state were expressly founded upon, as expressly stated in their respective constitutions.

While it is true that with each passing generation there seems to be a growing disconnect with the fundamental laws of nature that serve as a foundation for our very existence, no one in this generation (all now grandparents), born and raised in an agricultural family in South/Central Utah can legitimately claim/plead ignorance of these basic concepts. Consequently, the only reasonable explanation for what has happened is Deliberate Indifference.

At this point, however, just as at every other such juncture in history, the question is whether the senior priority users will stand up and fight to defend and protect their interests, against such encroachments. On that score, we can't speak for anyone else, but as for our family, our fundamental priorities are pretty straight-forward, in the following order: God, family, country, property. We will do whatever is necessary to defend and protect our inalienable, fundamental rights of life, liberty and property – because we know that no one else will do it for us.

In conclusion, we reserve the right to further supplement these comments as necessary.

Water Rights Map



CORRECTION WATER DEED

THE PURPOSE OF THIS CORRECTION WATER DEED is to correct that certain Warranty Deed dated July 20, 1978, and recorded on July 21, 1978, in Book 128, Page 923 of the official records of Millard County Recorder, and to further correct, reform and clarify the Corrective Deed dated September 21st, 2007, and recorded on September 21, 2007, as Entry No. 00162919, in Water Deed Book 472, at pages 739-744, as follows:

Corn Creek Irrigation Company and Kanosh Town have now entered into a Settlement Agreement, dated _____, a true and correct copy of which is attached hereto as EXHIBIT A.

Based on the express terms and conditions of such Agreement and Resolution, Corn Creek Irrigation Company, as grantor hereby both grants, transfers and conveys, and further corrects, reforms, clarifies and limits any previous transfer(s) and conveyance(s) of water rights to Kanosh Town, as grantee, without warranty, as follows:

Two (2) second feet (cfs) of water from the springs located in NE 1/4 of SW1/4 of Sec. 27, T. 23 S., R.5 W, SLB&M, for the express and limited purpose(s) of culinary water for the residents of Kanosh Town.

Execution and recordation of this Correction Water Deed, as well as the underlying Settlement Agreement were duly authorized by Resolution _____ adopted by the Corn Creek Irrigation Company Board of Directors on _____, which resolution is attached hereto as EXHIBIT B, and fully incorporated herein by this reference.

DATED this _____ day of _____, _____.

CORN CREEK IRRIGATION COMPANY

By: _____
Chad Whitaker, President

Attest: _____
Secretary

STATE OF UTAH)
 : SS
COUNTY OF MILLARD)

SUBSCRIBED AND SWORN before me by Chad ____ Whitaker, President of Corn Creek Irrigation Company, on this _____ day of _____, _____.

Notary Public

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Kanosh Town Corporation ("Kanosh Town") and Corn Creek Irrigation Company ("CCIC"), as follows:

RECITALS:

The parties make the following acknowledgments and mutually acknowledge the following stipulated facts and associated conditions and circumstances which give rise to this Agreement and the need for it:

A. Over the course of time, Kanosh Town has developed a municipal water supply system, beginning in 1914, at a location approximately 2 miles Southeast of Kanosh Town known as Watercress Springs. Watercress Springs (and what are referred to in the Town's water filings as "wells") are located in close proximity to the stream bed of Corn Creek, the stream from which CCIC diverts its water right. The Kanosh Town water collection system at Watercress Springs has been replaced and improved, but has remained in constant use since 1915.

B. CCIC was awarded a water right in the decree adjudicating the rights to water in the Sevier River Basin as entered November 30, 1936 in Case No. 843, entitled "*Richlands Irrigation Company, a corporation, Plaintiff, -vs- West View Irrigation Company, et al, Defendant*" in the Fifth Judicial District Court of the State of Utah in and for the County of Millard. This decree is commonly known and referred to as the "Cox Decree." The Cox Decree provides on pages 221-2 for an award to CCIC of 89 cfs of water to be diverted from the flows of Corn Creek. Part of the award to CCIC reads as follows:

[Corn Creek Irrigation Company is] also entitled to the use of 6.0 c.f.s. during the nonirrigation season, with priority date as of 1880, for stock watering and municipal purposes. Said water to be diverted as described above and used for domestic purposes of 700 persons, for stock watering purposes of 1200 head of horses and cattle, and for municipal purposes at the town of Kanosh. *Id.* at 222.

B. Except for Spring snow melt and run-off, essentially the entire base flow of Corn Creek comes from springs in the Corn Creek Drainage, including the springs in the mouth of Corn Creek Canyon, that Kanosh Town ultimately put to municipal use, and had been using for some time in its culinary water system. Although there are different interpretations of the exact description of the municipal water right awarded to Corn Creek Irrigation Company, the decree clearly awarded to the irrigation company water rights for municipal purposes at Kanosh Town. Kanosh Town was awarded no water rights in the decree, but the Cox Decree adjudicated rights to surface waters in the Sevier Basin, but did not adjudicate ground water.

C. In 1978, Kanosh Town sought to upgrade its culinary water system. When the town applied for financial assistance from the Utah State Division of Water Resources, the town learned that although it had been using water from Watercress Springs in the mouth of Kanosh Canyon for many years, it did not own any certificated water rights, including rights to such springs.

D. Both Kanosh Town, Corn Creek Irrigation Company and their attorney(s) apparently failed to recognize the Town's arguable ownership of the

springs, via possible diligence claim(s). If they had understood the Town's claim, a diligence claim might have been filed in 1978, making the subsequent Warranty Deed given by the irrigation company to the town, as more fully described below, completely unnecessary. But for whatever reason, it was not done that way.

E. Instead, because the Town and its attorney apparently failed to recognize other/better options, in 1978 Kanosh Town approached the irrigation company, and asked the company to deed the water from Watercress Springs to the town so that such rights could be used as collateral to secure the necessary funding from the Division of Water Resources for upgrades to the town's culinary water system.

F. To that end, on or about February 10, 1978, at the town's request, the irrigation company adopted a resolution prepared by Kanosh Town and its attorney, which resolution was signed and attested by the company president and secretary, specifically and expressly authorizing the irrigation company to "execute a Water Deed and transfer to Kanosh Town two second feet of water from the springs located in NE 1/4 of SW1/4 of Sec. 27, T. 23 S., R.5 W., SLM, for the purposes of culinary water to the residents of Kanosh Town." A true and correct copy of such resolution is attached hereto as Exhibit A, and fully incorporated herein by this reference.

G. Kanosh Town and its attorney subsequently prepared the Deed referenced in the resolution, which was mistakenly characterized as a Warranty Deed, with a mistaken description which was signed by the Irrigation Company, on July 20, 1978, pursuant to the Resolution. A true and correct copy of such deed is attached hereto as Exhibit B, and fully incorporated herein by this reference. The subject deed makes specific reference to the authorizing resolution and states that "the officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly

authorized under a resolution adopted by the Board of Directors of said Corn Creek Irrigation Company at a lawful meeting duly held and attended."

H. But, the description of the water right(s) described in the deed did not match the water right(s) described in the resolution, and the deed described an entirely different water right. Contrary to the express terms and limitations of the above-referenced authorizing resolution, and the express intentions of the parties as clearly reflected in the authorizing resolution, the subsequent Warranty Deed prepared by Kanosh Town and its attorney described the conveyed water right as "[T]wo (2) second feet of flow of the waters of Corn Creek."

I. Consequently, the effect of such erroneous language and transfer was a mutual mistake between the parties, and clearly contrary to the express terms, conditions and limitations of the authorizing resolution, and the clearly stated intentions of the parties as further reflected in applicable minutes of their respective meetings.

J. In most years, CCIC uses all of the surface flow of Corn Creek to satisfy its water rights.

K. Neither before nor since receipt of the water deed from the irrigation company has Kanosh Town ever used any waters from the flow of Corn Creek itself, but has only used water from the Town's culinary water system and sources at the location of Watercress Springs.

L. Only Corn Creek Irrigation Company and its shareholders have legally used water from the surface flows of Corn Creek, and at all times prior to the date of this Agreement CCIC and its shareholders have used all water flows of Corn Creek, and put such water to full beneficial use, in addition to overflows from Kanosh Town's municipal water system, which have likewise flowed into the stream.

M. The parties acknowledge that Kanosh Town is subject to Utah Constitution Art. XI, Section 6, which reads:

Sec. 6. [Municipalities forbidden to sell waterworks or rights.]
No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges:
Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

N. The parties acknowledge, however, that any right acquired by Kanosh Town to any surface flows of Corn Creek is a result of mutual mistake between the parties, and was specifically caused by the actions and document drafting of Kanosh Town and its attorney, and that such conveyance is subject to reformation and correction to conform to the original intention of the parties.

O. On or about September 21, 2007, in order to protect its interests, CCIC recorded a "Corrective Deed" dated September 20, 2007 and recorded September 21, 2007 as Entry No. 00162919 in Book 472 at pages 739-744, of records in the office of the Millard County Recorder, seeking to correct the original conveyance is not a conveyance of water rights by Kanosh Town, but rather a correction, clarification and reformation of the water rights originally conveyed by CCIC.

TERMS & CONDITIONS

NOW THEREFORE, based on the foregoing facts, conditions and circumstances, and basked on further negotiations between the Parties, they have entered into this Settlement Agreement,, and do hereby agree to settle and resolve any and all existing and pending issues and disputes between them arising from the above-stated history, based on the following terms and conditions:

1. This agreement replaces and supersedes any and all prior agreements, understandings, or negotiations between the parties regarding the subject matter of the relative rights of CCIC and Kanosh Town with respect to the subject matter of this agreement and the use of water from the Corn Creek watershed.

2. As part of this resolution, CCIC will not contest or dispute Kanosh Town's underground water claim, known on the records of the State Engineer as Water Right No. 67-1182, and hereby disclaims any interest in the water right diverted from the four (4) numbered sources described as “underground wells” in the Town’s underground water claim. The points of diversion for such sources are described on the State Engineer’s water rights database under WRN 67-1182 as follows:

Spring #1 -- S 3590 ft E 2532 ft from NW cor, Sec 27, T 23S, R 5W, SLBM
GPS Bearings: Elevation 5237 ft / 12 S / 03278134 / 4293217

Spring #2 -- S 3841 ft E 2719 ft from NW cor, Sec 27, T 23S, R 5W, SLBM
GPS Bearings: Elevation 5248 ft / 12 S / 0378226 / 4293066

Spring #3 -- S 4179 ft E 2814 ft from NW cor, Sec 27, T 23S, R 5W, SLBM
GPS Bearings: Elevation 5245 ft / 12 S / 0378239 / 4293003

Spring #4 -- S 4521 ft E 2960 ft from NW cor, Sec 27, T 23S, R 5W, SLBM
GPS Bearings: Elevation 5262 / 12 S / 0378247 / 4292930

3. The 1978 Warranty Deed and the 2007 Corrective Deed shall be further corrected and reformed by new "Correction Water Deed," the form of which is attached hereto as Exhibit C. To that end, the water rights conveyed shall be corrected, reformed and construed to convey to Kanosh Town water rights, as specifically described in the original resolution authorizing the conveyance, to wit: "two second feet of water from the springs located in NE 1/4 of SW1/4 of Sec. 27, T. 23 S., R.5 W., SLM, for the purposes of culinary water to the residents of Kanosh Town."

4. Although CCIC in no way guarantees the capacity of such source(s), or the ability of Kanosh Town to develop the flow rate and capacity of such source(s), but CCIC expressly agrees that such specifically numbered and developed source(s) as described above, along with any supplemental source(s) that Kanosh Town may need or seek authorization and ability to develop (including supplemental well(s), etc., may be develop (or further developed) by the Town, up to a maximum flow of 2.0 cfs. Any change application(s) required to implement this aspect of this agreement shall be the full responsibility of the town, but the irrigation company will cooperate with the town in obtaining approval(s) of such change application(s), as necessary, but no such change application(s) shall reduce or limit in any manner the right of CCIC to divert water from Corn Creek as awarded under the Cox Decree.

5. To that end, Kanosh Town hereby expressly disclaims, and shall have no right, title, claim or interest in or to any of the surface water flows of Corn Creek except as specifically defined in this Agreement.

6. In order to protect Kanosh Town against any possible claims of forfeiture or non-use of the full 2.0 cfs of water rights, CCIC agrees to put any and all surplus or overflow water to full beneficial use for irrigation purposes.

7. In times of emergency, however, if Kanosh Town's culinary water system and storage are exhausted and/or inadequate to provide sufficient water or flows for fire protection within Kanosh Town and for private property in the surrounding area, CCIC shall make Corn Creek water available, on a secondary "as-needed" basis, for emergency fire protection. This provision does not include fire protection storage, and does not authorize Kanosh Town to attempt to sell water diverted from Corn Creek water to other governmental entities for wildlands fire protection on public lands. In such cases, any and all such entities will deal directly with the irrigation company on a case-by-case basis. Kanosh Town may include this right to divert from Corn Creek in its fire protection requirements both for compliance with Utah drinking water system regulations and for insurance ratings of the Kanosh Town water system.

8. The "Corrective Deed" previously recorded by CCIC, as described above will be superseded by this Agreement, and a new "Correction Water Deed" reforming the original conveyance to conform to the original intention(s) of the parties, as stated in the authorizing resolution, and such superseding Correction Water Deed will be fully accepted by Kanosh Town, recorded by the parties, and submitted with an appropriate transfer report to the Utah State Engineer's office.

9. Both Kanosh Town Council and CCIC governing board will enter into separate resolutions approving this Agreement.

10. This Agreement is intended to fully compromise and resolve all existing issues, claims, disputes and causes of action between the parties with respect to the subject matter of this Agreement. Upon execution of this Agreement and performance and satisfaction of the terms and provisions set forth herein, the parties shall be deemed to waive, release, relinquish, disclaim, and hold each other harmless from any

and all other claims associated with this matter, which are subject of this action, with prejudice and upon the merits.

11. In the event of any future dispute or disagreement between the parties regarding the subject matter of this Agreement, the parties mutually stipulate and agree to communicate and exercise reasonable efforts to resolve the dispute between themselves. If such efforts do not succeed, the parties shall use alternative means of dispute resolution, including submission of any such disputes to non-binding mediation, prior to initiating any further litigation concerning this matter.

12. If legal action is required to enforce the terms and conditions of this Agreement and/or to resolve any disputes concerning it, the prevailing party shall be entitled to recover attorneys fees and costs associated with such action.

13. The parties each represent that this stipulation has been specifically approved by resolution of their respective governing parties.

14. This Stipulation and Settlement Agreement may be executed in any number of counterparts; and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties hereto, notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, _____.

KANOSH TOWN

CORN CREEK IRRIGATION CO.

By _____
Ray W. Whitaker, Mayor

By _____
Chad Whitaker, President

Attest:

Attest:

Cindy Turner, Town Clerk/Recorder

Kyle Stott, Secretary

December 6, 2010

MEMORANDUM

This Memorandum is intended to address the unresolved issue between Kanosh Town and Corn Creek Irrigation Company ("CCIC") regarding the water rights mistakenly transferred to the town in 1978.

Background

Kanosh Town developed a municipal water supply system, beginning in 1914, at a location approximately two miles Southeast of Kanosh Town known as Watercress Springs. Watercress Springs and associated collection boxes are located in close proximity to the stream bed of Corn Creek, the stream from which CCIC diverts its water right. The Kanosh Town water collection system at Watercress Springs has been replaced and improved, but has remained in constant use since 1915.

In 1936, the *Cox Decree*, awarded CCIC 89 cfs of the flow from Corn Creek and its tributaries. The *Cox Decree (Richlands Irrigation Company, a corporation, Plaintiff, - vs- West View Irrigation Company, et al, Defendant)*, entered in the district court on November 30, 1936, adjudicated all surface water rights in the Sevier River Basin. On pages 221-2 of the decree, it specifically awarded CCIC 89 cfs (cubic feet per second) of water to be diverted from the flows of Corn Creek. Part of the award to CCIC also reads:

[Corn Creek Irrigation Company is] also entitled to the use of 6.0 c.f.s. during the nonirrigation season, with priority date as of 1880, for stock watering and municipal purposes. Said water to be diverted as described above and used for domestic purposes of 700 persons, for stock watering purposes of 1200 head of horses and cattle, and for municipal purposes at the town of Kanosh. *Id.* at 222.

Except for Spring snow melt and run-off, essentially the entire base flow of Corn Creek comes from springs in the Corn Creek Drainage, including the springs in the mouth of Corn Creek Canyon, that Kanosh Town ultimately put to municipal use, and had been using for some time in its culinary water system, even prior to the *Cox Decree* in 1936. Although there are different interpretations of the exact description of the municipal water right awarded to Corn Creek Irrigation Company, the decree clearly awarded to the irrigation company water rights for municipal purposes at Kanosh Town. Kanosh Town was awarded no water rights in the decree, but the *Cox Decree* adjudicated rights only to surface waters in the Sevier Basin. It did not adjudicate ground water rights.

Facts & Circumstances in Question

In 1978, Kanosh Town sought to upgrade its culinary water system. When the town applied for financial assistance from the Utah State Division of Water Resources, the town learned that although it had been using water from Watercress Springs in the mouth of Corn Creek Canyon for many years, it did not own any certificated water rights, including rights to the water from Watercress Springs.

Both Kanosh Town, CCIC and their attorney(s) apparently failed to recognize the Town's arguable ownership of the springs, via possible diligence claim(s). If they had understood the Town's claim, a diligence claim might have been filed in 1978, making the subsequent Warranty Deed given by the irrigation company to the town, as more fully described below, completely unnecessary. But for whatever reason, it was not done that way.

Instead, because the Town and its attorney apparently failed to recognize other/better options, in 1978 Kanosh Town approached CCIC, and asked the company to deed the water from Watercress Springs to the town so that such rights could be used as collateral to secure the necessary funding from the Division of Water Resources for upgrades to the town's culinary water system.

To that end, on or about February 10, 1978, at the town's request, the irrigation company adopted a resolution prepared by Kanosh Town and its attorney, which resolution was signed and attested by the company president and secretary, specifically and expressly authorizing the irrigation company to "execute a Water Deed and transfer to Kanosh Town two second feet of water from the springs located in NE 1/4 of SW1/4 of Sec. 27, T. 23 S., R.5 W., SLM, for the purposes of culinary water to the residents of Kanosh Town."

Kanosh Town and its attorney subsequently prepared the deed referenced in the resolution. Instead of a Water Deed, however, as specifically referenced in the Resolution, the deed prepared and signed by the Irrigation Company on July 20, 1978 was designated as a Warranty Deed. Moreover, the description of the water rights conveyed in the deed did not match the description of water rights described in the resolution and authorized by the irrigation board for transfer to the town. The subject deed makes specific reference to the authorizing resolution, however, and states that "the officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution adopted by the Board of Directors of said Corn Creek Irrigation Company at a lawful meeting duly held and attended."

The description of the water right(s) in the Warranty Deed described entirely different water rights than the water rights described in the authorizing resolution. Contrary to the express terms and limitations of the above-referenced authorizing resolution, and the express intentions of the parties as clearly reflected in the authorizing resolution, the subsequent Warranty Deed prepared by Kanosh Town and

its attorney described the conveyed water right as "[T]wo (2) second feet of flow of the waters of Corn Creek."

Consequently, the effect of such erroneous language and transfer was a mutual mistake between the parties, and clearly contrary to the express terms, conditions and limitations of the authorizing resolution, and the clearly stated intentions of the parties as further reflected in applicable minutes of their respective meetings.

In most years, CCIC uses all of the surface flow of Corn Creek to satisfy its water rights. Neither before nor since receipt of the water deed from the irrigation company has Kanosh Town ever used any waters from the flow of Corn Creek itself, but has only used water from the Town's culinary water system at the location of Watercress Springs. Only CCIC and its shareholders have legally used water from the surface flows of Corn Creek.

Subsequent Developments

Without any apparent acknowledgment of or reference to the issues created by the facts and circumstances outlined above, for approximately 10-15 years CCIC and Kanosh Town have by agreement provided for CCIC to purchase and beneficially use all excess water from Kanosh Town water rights (excess spring flows, etc.) that are surplus to the needs of Kanosh Town. CCIC used the water for additional supply to CCIC shareholders. The shareholders have in turn made beneficial use of the water. The water has been delivered by Kanosh Town to CCIC by two means: (a) the water is either collected through the Kanosh Town culinary system and then allowed to overflow into Corn Creek from an outlet at a junction box, or (b) the water from the Watercress springs area is allowed to flow into Corn Creek as part of the flow from the watershed and is diverted by CCIC. At times, CCIC has paid a nominal rent of \$1.00 per year for the use of the excess Kanosh Town water. Kanosh Town has accepted this nominal amount because it was a cost-effective way to protect the Kanosh Town water rights against partial forfeiture.

On or about May 1, 1997, Kanosh Town, by and through its attorney, filed a Diligence Claim (Water Right No. 67-1182) with the Division of Water Rights asserting a claim that since 1915 the Town has owned municipal water rights to underground water wells in the same location as the springs. This filing was essentially duplicative of the water right(s) Corn Creek Irrigation Company had resolved to convey to the town.

CCIC has since asserted that: (a) the 1978 Warranty Deed was intended to convey the right to divert water from Watercress Springs, as expressly stated in the resolution authorizing such conveyance, and not a separate water right, and; (b) that the sole purpose of the 1978 Warranty Deed was to establish a separate water right in the name of Kanosh Town for use in connection with funding for improvement of the Kanosh Town water system.

Because of the previous mayor and council's failure and apparent intentional refusal to acknowledge and address the above-described issues and mistakes regarding the two (2) cfs of water rights resulting from mistakes and inconsistencies between the applicable authorizing resolution and the resulting warranty deed, in an apparent attempt to unilaterally protect its interests, on or about September 21, 2007, unilaterally and without prior notice to Kanosh Town, CCIC exercised its prerogative to record a "Corrective Deed" dated September 20, 2007 and recorded September 21, 2007 as Entry No. 00162919 in Book 472 at pages 739-744, of records in the office of the Millard County Recorder. Although apparently neither Kanosh Town, nor its attorney(s) had even bothered to review the recorded Corrective Deed, as a matter of principle they objected to the same, and claimed that it misstated the history and intent of the original interaction(s) and transaction between the parties, and of Kanosh Town's claim to Water Right Number 67-1182. The previous mayor, council and their attorney also asserted that if effective, the Corrective Deed could possibly impair the water rights of Kanosh Town.

Other Legal Considerations

All parties acknowledge that Kanosh Town is subject to Utah Constitution Art. XI, Section 6, which reads:

Sec. 6. [Municipalities forbidden to sell waterworks or rights.]

No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

The parties have also acknowledged, however, that any right acquired by Kanosh Town to any surface flows of Corn Creek is a result of mutual mistake between the parties, and that such conveyance is subject to reformation and correction to conform to the original intention of the parties. Consequently, correction of the original conveyance is arguably not a conveyance of water rights by Kanosh Town, but rather a correction, clarification and reformation of the water rights originally conveyed by CCIC.

Draft Settlement Stipulations were circulated and reviewed by the respective parties, including the previous town council, but the matter has never been finalized.

Opinion / Conclusion

Based on my review of the documents and extensive research of the underlying issues and applicable law (which is fairly sparse), it is my professional opinion that the Corrective Deed prepared and recorded by CCIC does accurately state the history of the subject water rights, and is an appropriate means of correcting the mutual mistake between the parties, particularly without the necessity of expensive litigation. It is my further opinion that the matter can be satisfactorily resolved by executing the draft settlement stipulations with minor revisions, and having the town engineer and/or attorney sign a transfer report authorizing the State Engineer to record the applicable Corrective Deed and amend state water rights records accordingly.

Todd Macfarlane (5995)
295 South 100 East
P.O. Box 357
Kanosh, UT 84637
Telephone: (435) 340-0545
toddmacfarlane@gmail.com
Representing Plaintiffs Pro Se

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR MILLARD COUNTY, STATE OF UTAH

TODD MACFARLANE, HEIDI
MACFARLANE, HEIDI MACFARLANE
REVOCABLE LIVING TRUST, &
RICHARD Q. MACFARLANE FAMILY
LIVING TRUST,

Plaintiff(s),

v.

LYNN WHITAKER, A. DEAN PERKINS,
KYLE STOTT, A. DOUG PERKINS,
BRANDON GEORGE, TRAVIS KESLER,
MONT KIMBALL, CHAD WHITAKER,
CORN CREEK IRRIGATION COMPANY,
and JOHN DOES 1-20

Defendants(s).

COMPLAINT

Case No. _____

Judge James Brady

Come now Plaintiff(s) above named, and for cause(s) of action against
Defendant(s), hereby complain and allege as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiffs Todd Macfarlane, Heidi Macfarlane, Heidi Macfarlane Revocable Living Trust and the Richard Q. Macfarlane Family Living Trust are all property owners, who own property in and around Kanosh, Millard County, Utah, serviced by Corn Creek Irrigation Company and/or are or have been shareholders of Corn Creek Irrigation Company during the time period(s) at issue in this matter.

2. Defendants Lynn Whitaker, A. Dean Perkins, Brandon George, Kyle Stott, A. Doug Perkins, Travis Kesler, Mont Kimball, and Chad Whitaker are all individuals who live in or around Kanosh, Millard County, Utah, and who purport to be directors, officers, agents, employee(s) and/or contractor(s) of Corn Creek Irrigation Company during the time period(s) at issue.

3. Defendants John Does 1-20 are individuals and/or entities whose identity is currently unknown, but who may be more fully identified and specifically named as defendants in this matter.

4. Jurisdiction and venue are proper in this court pursuant to Utah Code Ann. § 78-13-1 (1953, as amended), because the action(s), transaction(s), and/or occurrence(s) giving rise to this action arose in Millard County, Utah.

GENERAL ALLEGATIONS

5. Plaintiff(s) re-allege and incorporate the allegations set forth above by reference as if fully set forth herein. The factual and legal allegations set forth herein are alleged based on personal knowledge and/or information and belief.

6. Upon information and belief, Plaintiff(s) allege that Corn Creek Irrigation Company ("CCIC") was duly organized and operated as a legally established mutual irrigation company, and duly registered and recognized corporate entity within the State

of Utah, since at least the 1930s. Plaintiff(s)' objective in spelling out the allegations against CCIC will be to proceed chronologically.

7. In 1936, the *Cox Decree*, awarded 89 cfs of the flow of Corn Creek and its tributaries to CCIC. The *Cox Decree (Richlands Irrigation Company, a corporation, Plaintiff, -vs- West View Irrigation Company, et al, Defendant)*, entered in the district court on November 30, 1936, adjudicated all surface water rights in the Sevier River Basin. On pages 221-2 of the decree, it specifically awarded CCIC 89 cfs (cubic feet per second) of water to be diverted from the flows of Corn Creek. Part of the award to CCIC also reads:

[Corn Creek Irrigation Company is] also entitled to the use of 6.0 c.f.s. during the nonirrigation season, with priority date as of 1880, for stock watering and municipal purposes. Said water to be diverted as described above and used for domestic purposes of 700 persons, for stock watering purposes of 1200 head of horses and cattle, and for municipal purposes at the town of Kanosh. *Id.* at 222.

8. Based on information and belief, Plaintiff(s) allege that except for Spring snow melt and run-off, essentially the entire base flow of Corn Creek comes from springs in the Corn Creek Drainage, including the springs in the mouth of Corn Creek Canyon, that Kanosh Town ultimately put to municipal use, and had been using for some time in its culinary water system, even prior to the *Cox Decree* in 1936. Although there are different interpretations of the exact description of the municipal water right awarded to Corn Creek Irrigation Company, the decree clearly awarded to the irrigation company water rights for municipal purposes at Kanosh Town. Kanosh Town was awarded no water rights in the decree, but the *Cox Decree* adjudicated rights only to surface waters in the Sevier Basin. It did not adjudicate ground water rights.

9. Plaintiff(s) allege, based on information and belief, that in 1978, when Kanosh Town sought to upgrade its culinary water system, it applied for financial assistance from the Utah State Division of Water Resources, at which time the town learned that

although it had been using water from Watercress Springs in the mouth of Corn Creek Canyon for many years, it did not own any certificated water rights, including rights to the water from Watercress Springs.

10 Plaintiff(s) allege, based on information and belief, that both Kanosh Town, CCIC and their attorney(s) apparently failed to recognize the Town's arguable ownership of the springs, via possible diligence claim(s). If they had understood the Town's claim, a diligence claim might have been filed in 1978, making the subsequent Warranty Deed given by CCIC to the town, as more fully described below, completely unnecessary. But for whatever reason, it was not done that way.

11. Plaintiff(s) allege, based on information and belief, that because the Town and its attorney apparently failed to recognize other/better options, in 1978 Kanosh Town approached CCIC, and asked the company to deed the water from Watercress Springs to the town so that such rights could be used as collateral to secure the necessary funding from the Division of Water Resources for upgrades to the town's culinary water system.

12. To that end, on or about February 10, 1978, at the town's request, the irrigation company adopted a resolution prepared by Kanosh Town and its attorney, which resolution was signed and attested by the company president, Defendant A. Dean Perkins, and secretary, specifically and expressly authorizing the irrigation company to "execute a Water Deed and transfer to Kanosh Town two second feet of water from the springs located in NE 1/4 of SW1/4 of Sec. 27, T. 23 S., R.5 W., SLM, for the purposes of culinary water to the residents of Kanosh Town."

13. Kanosh Town and its attorney subsequently prepared the deed referenced in the resolution. Instead of a Water Deed, however, as specifically referenced in the Resolution, the deed prepared and signed by the Irrigation Company on July 20, 1978 was designated as a Warranty Deed. Moreover, the description of the water rights

conveyed in the deed did not match the description of water rights described in the resolution and authorized by the irrigation board for transfer to the town. The subject deed makes specific reference to the authorizing resolution, however, and states that "the officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution adopted by the Board of Directors of said Corn Creek Irrigation Company at a lawful meeting duly held and attended."

14. Plaintiff(s) allege, based on information and belief, that the description of the water right(s) in the Warranty Deed described entirely different water rights than the water rights described in the authorizing resolution. Contrary to the express terms and limitations of the above-referenced authorizing resolution, and the express intentions of the parties as clearly reflected in the authorizing resolution, the subsequent Warranty Deed prepared by Kanosh Town and its attorney described the conveyed water right as "[T]wo (2) second feet (cfs) of flow of the waters of Corn Creek."

15. Plaintiff(s) allege, based on information and belief, that CCIC and the individuals who purported to be its directors and officers did not exercise reasonable care in reviewing such document(s) before signing them, and did not consult or have independent legal counsel review such documents.

16. Consequently, Plaintiff(s) allege, based on information and belief, that the net effect of Defendant(s)' negligence was to mistakenly convey water rights to Kanosh Town other than those intended, and clearly contrary to the express terms, conditions and limitations of the authorizing resolution.

17. Plaintiffs allege, based on information and belief, that despite such erroneous conveyance, however, CCIC and its shareholders continued to use and utilize all water from the flows of Corn Creek. Without any apparent acknowledgment of or reference to the issues created by the facts and circumstances outlined above, for

approximately 10-15 years CCIC and Kanosh Town provided by agreement for CCIC to purchase and beneficially use all excess water from Kanosh Town water rights (excess spring flows, etc.) that are surplus to the needs of Kanosh Town. CCIC used the water for additional supply to CCIC shareholders. The shareholders in turn made beneficial use of the water. Only CCIC and/or its shareholders have legally used water from the surface flows of Corn Creek.

18. Plaintiffs allege, based on information and belief, that on or about May 1, 1997, Kanosh Town, by and through its new town attorney(s), Waddingham & Peterson, filed a Diligence Claim (Water Right No. 67-1182) with the Division of Water Rights asserting a claim that since 1915 the Town has owned municipal water rights to underground water wells in the same location as the springs. This filing was essentially duplicative of the water right(s) Corn Creek Irrigation Company had resolved to convey to the town.

19. Plaintiffs allege, based on information and belief, that since that time CCIC discovered the mistake resulting from its negligence, and has since then acknowledged and asserted that: (a) the 1978 Warranty Deed was intended to convey the right to divert water from Watercress Springs, as expressly stated in the resolution authorizing such conveyance, and not a separate water right; (b) that the sole purpose of the 1978 Warranty Deed was to establish a separate water right in the name of Kanosh Town for use in connection with funding for improvement of the Kanosh Town water system; and (c) that the erroneous language conveying two (2) cfs of water from the flow of Corn Creek was a mistake that must be rectified and resolved.

20. Plaintiffs allege, based on information and belief, that despite making such acknowledgements and assertions, defendants, including both CCIC and the individuals who purport to be its directors and officers have failed and refused to fulfill their duties to the company and its shareholders, and have failed to exercise reasonable care with respect to recovery of the water rights, and to take and complete such actions and steps

as are necessary to recover such water rights and to protect the assets of the company and the interests of its shareholders, all to Plaintiff(s)' damage and detriment, and to the damage and detriment of all CCIC shareholders.

21. Plaintiffs further allege, based on information and belief, that because CCIC and defendants, including individuals who purport to act as directors, officers, agents, employees and contractors of the company have failed to make the requisite filings with the State of Utah, and the individuals who purport to act as directors and officers of the company have not been duly elected by a properly convened quorum of the shareholders of the company in a number of years, CCIC has not operated as a legal entity with legal authority for a number of years. Consequently, CCIC is essentially a defunct entity, whose legal status and authority have lapsed, and the company no longer operates with legal authority. Moreover, Defendants, including the individuals who purport to act as its directors and officers do not act with mandate or authority from either the shareholders of the company or the State of Utah, all to Plaintiff(s)' damage and detriment, and to the damage and detriment of all CCIC shareholders.

22. Plaintiff(s) further allege, based on information and belief, that although the individuals who purport to act as directors, officers, agents, employees and contractors of CCIC continue to levy and collect assessments from the company's shareholders, they do so without legal authority. Moreover, although such defendants levy and collect assessments, they do not operate in a businesslike manner, and have no operating budget(s), management plan(s) or operating agreement(s), and do not exercise reasonable care in the allocation and expenditure of such funds. Furthermore, they do not exercise reasonable care to manage and operate the company and/or its water system and assets in a businesslike or reasonably prudent manner, by maintaining the company's ditches and waterworks, particularly including cement ditch system, in reasonably good working condition. In failing to exercise reasonable care as to management, operation and maintenance of the company's assets and system, they

have failed to protect the assets of the company, and have failed to act in the best interests of its shareholders, all to Plaintiff(s)' damage and detriment, and to the damage and detriment of all CCIC shareholders.

23. Plaintiff(s) further allege, based on information and belief, that defendants, who include individuals who purport to act as directors, officers, employees and contractors of the defunct company do not understand the nature and scope of CCIC's prescriptive easements for water channels and ditches. Moreover, these prescriptive easements do not run in favor of such individuals, but only in favor of the company. Furthermore, these individuals, including defendants, have repeatedly trespassed on private property and exceeded the scope of the company's easements, often causing property damage and financial damage to subject property, without any acknowledgement, accountability or reclamation whatsoever, all to Plaintiff(s)' damage and detriment, and to the damage and detriment of various CCIC shareholders, and/or other property owners.

24. Plaintiff(s) further allege that when it comes to seeking legal advice on a variety of issues, including attempting to gain a better understanding of the nature and scope of CCIC's prescriptive rights, in some cases, instead of consulting with competent, independent legal counsel, defendants, as individuals purporting to act as directors, officers, agents employees and/or contractors of the company have failed to exercise reasonable care, and have repeatedly and specifically consulted with and sought advice from opposing legal counsel who have obvious conflicts of interest, and who have repeatedly acted to the detriment of the company, its assets and shareholders. In the process, defendants have acted to Plaintiff(s)' damage and detriment and to the damage and detriment of all CCIC shareholders.

25. Plaintiff(s) further allege that Defendant(s) have repeatedly engaged in ultra virus activities, in that they have purported to act as directors, officers, agents,

employees and contractors of the company, without any authorization or mandate from CCIC shareholders, via majority vote of a duly convened quorum of the shares and shareholders of the company. Moreover, certain Defendants(s), particularly including Defendants Lynn Whitaker, Dean Perkins, and others have repeatedly engaged in ultra virus activities, without any authority from company shareholders, or the other individuals who purport to be CCIC directors and officers, to Plaintiff(s)' damage and detriment, and the damage and detriment of all CCIC shareholders. .

26. Plaintiffs further allege, based on information and belief, that over the course of the past year, despite both written and verbal discussions and warnings, individuals who purport to be directors, officers, employees and/or contractors of the defunct company, particularly including Defendant Lynn Whitaker and other contractors, have violated Plaintiff(s)' private property rights and repeatedly trespassed on Plaintiff(s)' property, vastly exceeding the scope of the company's easements, and physically damaging Plaintiff(s)' property by, among other things, repeatedly, and despite repeated warnings, requests and notices from Plaintiff(s), removing a number of Plaintiff(s)' mature trees that have been both outside the scope of any arguable prescriptive rights the company may claim, and that have not unreasonably interfered with the flow of water across Plaintiff(s)' property, to Plaintiffs' damage and detriment.

27. Plaintiffs further allege, based on information and belief that in addition to causing physical damage, Defendant(s) have also negligently and/or intentionally engaged in tortuous interference with Plaintiff(s) private property and economic and contractual relationships regarding such property, and have damaged the value and marketability of Plaintiff(s)' property generally, as well as disrupted and interfered with specific property transactions, to Plaintiff(s)' damage and detriment.

SPECIFIC ALLEGATIONS

First Cause of Action (Negligence)

28. Plaintiff(s) hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

29. As a direct and proximate result of Defendant(s) negligence as set forth above, valuable company assets have mistakenly been alienated and conveyed to other entities, including Kanosh Town, and Defendant(s), including individuals who purport to act as directors, officers, agents, employees and contractors of the company have failed and refused to take and complete the steps necessary to recover such assets; the company and its assets have not been operated, managed and maintained in a businesslike manner; the company water system has not been properly maintained, managed and operated, and; CCIC has lapsed and become defunct as a company, all to Plaintiffs' damage and detriment, and to the damage and detriment of all CCIC shareholders.

Second Cause of Action (Accounting)

30. Plaintiff(s) hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

31. Based on the facts and allegations set forth above, Plaintiff(s) and all shareholders of CCIC are entitled to an accounting, not only of the funds, resources and monies the company and the individuals who purport to act as directors, officers, agents, employees and contractors of the company have managed and controlled, including all assessments that have been levied and collected, but also of all assets of the company, including water rights, and the status thereof.

Third Cause of Action (Declaratory Judgment)

32. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

33. Based on the facts and allegations set forth above, Plaintiff(s) and all shareholders of the company are entitled to declaratory relief, including declaratory judgment regarding CCIC's legal status and ability to operate, and determine what, if any, actions are proper and appropriate for the defunct company and/or the individuals who purport to act as directors, officers, agents, employees and/or contractors of the company to undertake under the circumstances to protect the assets of the company and the interests of its shareholders.

Fourth Cause of Action (Mandamus)

34. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

35. Depending on the outcome of the declaratory determination, this Court should issue a Writ of Mandamus directing the company and/or the individuals who purport to act as directors, officers, agents, employees and/or contractors of the company to take all actions that may be necessary to protect the assets of the company and the interests of its shareholders under the circumstances, including recovery of water rights negligently conveyed, clean-up of messes and other property damage caused, and other actions to limit and/or prevent further liability.

**Fifth Cause of Action
(Appointment of Receiver)**

36. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

37. Alternatively, depending on the outcome of other determinations, Plaintiff(s) and all shareholders of the company are entitled to appointment of a receiver, and a receiver should be appointed, to account for company assets and resources, and take such actions as are necessary to protect company assets and shareholder interests, and prevent further liability.

**Sixth Cause of Action
(Injunction)**

38. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

39. Based on the facts and allegations set forth above, Plaintiff(s) and all CCIC shareholders are entitled to an injunction against Defendant(s), and Defendant(s) should be specifically enjoined from a number of such future activities, including any further trespass or damage to private property and private property rights, as well as from seeking counsel and advice from attorneys and legal counsel who have a direct conflict of interests with those of CCIC.

**Seventh Cause of Action
(Trespass / Property Damage)**

40. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

41. Based on facts and allegations set forth above, Plaintiff(s) are entitled to judgment, including damages, against Defendant(s), based on Defendant(s)' repeated trespass and damage to Plaintiff(s)' property and property rights, in an amount to be determined at trial.

Eighth Cause of Action (Tortious Interference)

42. Plaintiff(s)s hereby re-allege and incorporate by this reference all allegations set forth above, as if fully set forth herein.

43. Based on facts and allegations set forth above, Plaintiff(s) are entitled to judgment, including damages, against Defendant(s), based on Defendant(s)' tortious interference with Plaintiff(s)' prospective economic advantage(s), relationships, and contracts, in an amount to be determined at trial.

/

PRAYER / REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff(s) request and pray for relief against Defendant(s) as follows:

1. For judgment against Defendants, including relief as follows:
 - A. Declaratory judgment, determining the legal status of CCIC, and what actions, steps must be taken to re-organize the company and protect its assets and the interests of its shareholders.
 - B. An order requiring and directing an accounting of all assets (including water rights), resources, and monies of CCIC, as well as liabilities, including contingent liabilities, and all company records, and all actions of the company and the individuals who purport to act as its directors, officers, agents, employees and/or contractors, including all assessments that have been levied and collected.

- C. An order appointing a receiver to take control of the assets of CCIC and operate, manage and maintain the same until further determinations can be made, based on the facts and circumstances.
- D. A Writ of Mandamus directing Defendant(s), including CCIC, and/or the individuals who purport to act as directors, officers, agents, employees and/or contractors of the company, and/or an appointed receiver, as may be the case, to take all actions that may be necessary to protect the assets of the company and the interests of its shareholders under the circumstances, including recovery of water rights negligently conveyed to other entities, and to clean-up of messes and other property damage caused, resolve existing and pending liabilities, and take such actions as are necessary to limit and/or prevent further liability.
- E. An injunction, enjoining Defendant(s), including CCIC and the individuals who purport to act as its directors, officers, agents, employees and/or contractor(s), from engaging in a number of future activities, including any further trespass or damage to private property and private property rights, as well as from seeking counsel and advice from attorneys and legal counsel who have a direct conflict of interests with those of CCIC.
- F. Judgment against Defendant(s), including damages, as may be determined at trial, based on Defendant(s)' negligence, and failure to operate, manage and maintain CCIC in a businesslike manner, including negligent, mistaken, and wrongful conveyance of valuable water rights, and failure to take and complete the steps necessary to recover such water rights, and other negligence and general failure to operate, manage and maintain the company, and its system(s) and assets in a prudent and business-like manner, for the benefit of its shareholders.
- G. Judgment against Defendant(s), including damages, as may be determined at trial, based on Defendant(s) repeated trespasses on Plaintiff(s)' property, including physical and financial damage to Plaintiff(s) property and property rights.

- H. Judgment against Defendant(s), including damages, as may be determined at trial, based on Defendant(s)' tortuous interference with Plaintiff(s)' prospective economic advantage(s), including property transaction(s), relationships, and contract(s).
- I. For attorneys fees and costs under any and all applicable provisions, including, but not limited to Utah Code Section 78-27-56.
- J. Such other and further relief as the court deems just and proper under the circumstances.

DATED this _____ day of _____, 2011.

FOR PLAINTIFF(S):

TODD MACFARLANE

Monique Robbins

From: Todd Macfarlane <toddmacfarlane@gmail.com>
Sent: Thursday, May 27, 2021 5:37 PM
To: Monique Robbins
Cc: Layne Jensen; Urie, Wayne - NRCS, Castle Dale, UT
Subject: Re: Preliminary Comments re: Proposed Corn Creek Project(s)
Attachments: 647f6f0f-fc24-42f3-a7fd-079359031586.png

Sorry, but we're going to hold on to our information to use as a measuring stick against which to evaluate what you guys end up becoming up with. It's not our job to do your job. Depending on what you come up with, it may not even be necessary to mention it. It will be interesting to see.

On Thu, May 27, 2021, 1:20 PM Monique Robbins <mrobbins@fransoncivil.com> wrote:

Todd,

On page 5 of your comments, you indicate that you have additional comments that you are holding back for now. Please recognize that the comments received during this scoping period will be used to develop the alternatives evaluated during the planning process. The next public comment period will be when a draft environmental document has been prepared, which will be after considerable time and effort has been expended to identify the proposed action alternative. As a result, we would appreciate all of your comments and thoughts now when they can most effectively be incorporated into the development of the project. Please provide your full set of comments by May 28th.

Sincerely,

Monique Robbins, P.E.

Franson Civil Engineers

mrobbins@fransoncivil.com

T: 801.756.0309

From: Todd Macfarlane <toddmacfarlane@gmail.com>
Sent: Wednesday, May 26, 2021 8:14 AM
To: Monique Robbins <mrobbins@fransoncivil.com>
Subject: Preliminary Comments re: Proposed Corn Creek Project(s)

Please see attached comments and other supporting materials, including the following links:.

<http://rangefire.us/2018/07/10/unfinished-business-constitutional-loose-ends/>

<http://rangefire.us/2016/08/11/prior-appropriation-and-beneficial-use-realities-nobody-wants-to-talk-about-5-6/>

<http://rangefire.us/2018/02/20/a-realistic-assessment-of-utahs-role-in-the-public-lands-debate/>

<http://rangefire.us/2018/04/10/water-lawyer-whiskeys-for-drinkin-waters-for-fightin-by-mancos-macleod/>

<http://rangefire.us/2018/04/08/johnson-canyon-water-prophet-by-mancos-macleod/>

Monique Robbins

From: Todd Macfarlane <toddmacfarlane@gmail.com>
Sent: Monday, May 31, 2021 1:12 PM
To: Monique Robbins
Subject: Supplemental Preliminary Comments re: Recreation Component(s) of any Proposed Corn Creek Project(s)
Attachments: Mac Corn Creek Project Supp Comments re Recreation 6.1.2021.b.pdf

Attached, please find our Supplemental Preliminary Comments re: any proposed recreation component(s) of any proposed project(s).

Please acknowledge receipt.

Thanks.

On Wed, May 26, 2021 at 8:13 AM Todd Macfarlane <toddmacfarlane@gmail.com> wrote:
Please see attached comments and other supporting materials, including the following links:.

<http://rangefire.us/2018/07/10/unfinished-business-constitutional-loose-ends/>

<http://rangefire.us/2016/08/11/prior-appropriation-and-beneficial-use-realities-nobody-wants-to-talk-about-5-6/>

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<http://rangefire.us/2018/04/08/johnson-canyon-water-prophet-by-mancos-macleod/>

SUPPLEMENTAL PRELIMINARY COMMENTS

Regarding the Proposed Corn Creek Project, including: Recreation Infrastructure associated with Proposed Storage Reservoir

Date: June 1, 2021

From: Todd & Heidi Macfarlane Family
Richard Q. Macfarlane Family Trust
Richard Q. Macfarlane Family
Turkey Track Ranch
Kanosh, UT

To: USDA-NRCS
Franson Civil Engineers
Corn Creek Irrigation Company
Utah State Division of Water Rights
Kanosh Town

Re: Proposed New Corn Creek Project, specifically including any
Proposed Recreation Infrastructure in Connection with any
Proposed Water Storage Reservoir

We have previously submitted initial, preliminary comments, and expressly reserved the right to supplement our initial, preliminary comments, as necessary. Having now just experienced the 2021 Memorial Day Weekend rush in Kanosh and Corn Creek Canyon, it is necessary to now supplement previous comments about the issue of recreation and recreation facilities, because our previous comments did not do sufficient justice to this issue. These supplemental comments are intended to supplement, and not replace our previous comments on this issue, which are fully incorporated by reference. We fully acknowledge our biases. Our supplemental comments on this issue are as follows:

Proposed Recreation Facility Component(s)

In a nutshell, recreation, and outside recreationists and recreation traffic are already starting to have a huge, negative impact on Kanosh and Corn Creek Canyon, and local quality of life, and there is absolutely no reason to further encourage or enhance this. This area is completely surrounded by public lands, with almost limitless recreational opportunities. There is no good reason to attempt to attract any additional recreational interest to this area.

In recent years the amount of outside recreation traffic and impact in Kanosh and Corn Creek Canyon has been steadily increasing, and has exploded within the last year, and particularly over the 2021 Memorial Day Weekend.

The bottom line is (recognizing that there are exceptions to every rule), as a general rule, outside recreationists often come and go, big, loud and obnoxious, like a horde of locusts. They trample and negatively impact everything in their path, from roads and trails to vegetation, water resources, and private property rights and interests. As a general rule, they have little respect, care or concern for the local community, or local interests. They seem to only care about themselves. As a general rule, they take, take, take, give nothing back, and have a huge negative impact on the quality of life in Kanosh and Corn Creek Canyon.

We noticed this same trend when we lived in Kanab and Kane County 20-30 years ago. Kanab/Kane County are obviously situated differently, and have some legitimate tourist destination characteristics. But while legitimate tourism is one thing, motorized outdoor recreation is another. In contrast to the many tourists who visit Kanab each year, bringing a lot of money into the local economy, etc., buying rooms, meals, and stuff at local shops, there are also the recreationists – primarily “boat people” headed for Lake Powell, who make very little, if any, positive net contribution to the economy of Kanab. They pass through as quickly as possible, maybe stopping to buy a tank of gas and a pack of beer or cigarettes, while creating major traffic issues of all kinds, and demonstrating little, if any, care or concern about the local community. Inevitably, one of the things they essentially all seem to share is a complete obliviousness to their most defining common characteristics.

A growing number of the increasing recreationists we already now see in Kanosh and Corn Creek Canyon seem to be cut from essentially the same cloth. They spend very little money locally. They use and consume, but generate/produce nothing of value for the local community. They come and go in big, loud, obnoxious hordes. They often drive too fast and too loud, including through residential neighborhoods, clogging our roadways, and creating a number of annoying and unsafe conditions. Overall, they generally have a negative impact on the overall quality of life in the local area, without doing almost anything to mitigate these impacts. And Kanosh Town government, in its perpetually dazed stupor, seems to share the same obliviousness.

Consequently, on balance, in any serious cost-impact/benefit analysis of this issue, there does not seem to be any good, legitimate reason to do anything to further encourage this, or to attempt to attract any additional recreational traffic and impact.

Now that it's way too late, you can hear many of the same comments and concerns from communities from Moab to Kanab and St. George, that supposedly couldn't see it coming, and are now completely overrun with recreationists, who are essentially “loving to death” those areas.

The bottom line is any arguable benefit(s) are not worth the cost/impact(s). Seeking to attract any more recreationists would be a big mistake.

Just don't do it.

Monique Robbins

From: Monique Robbins
Sent: Wednesday, June 2, 2021 3:40 PM
To: Todd Macfarlane
Cc: Urie, Wayne - NRCS, Castle Dale, UT; Dodds, Jason - NRCS, Cedar City, UT
Subject: RE: Supplemental Preliminary Comments re: Recreation Component(s) of any Proposed Corn Creek Project(s)

originalItemMapiKe000000001B34CF8361082E4CBA4F53EB8E4D293B07002F1D10B986819E4BA5F62356D0AB11300003054C9B3000002F1D10B986819E4BA5F62356D0AB11300003054D4EDD0000:0000000038A1BB1005E5101AA1BB08002B2A56C20000454D534D44422E444C4C00000000000000001B55FA20AA6611CD9BC800AA002FC45A0C0000006D726F6262696E73406672616E736F6E636976696C2E636F6D002F6F3D45786368616E67654C6162732F6F753D45786368616E67652041646D696E6973747261746976652047726F7570202846594449424F484632335350444C54292F636E3D526563697069656E74732F636E3D38376233613838306231636134363164383565633064376537333136346531392D6D726F6262696E7300E94632F44600000002000000100000006D0072006F006200620069006E00730040006600720061006E0073006F006E0063006900760069006C002E0063006F006D0000000000

Good afternoon Todd,

Thank you for your supplementary comments. They will be added to your original comments and captured in the Scoping Summary Report, as part of the Plan-EA process. The report will be available in the future on NRCS's website. The next opportunity to provide official comments will be associated with a public meeting during the public's review of the Draft Plan-EA.

Have a great day,

Monique Robbins, P.E.

Franson Civil Engineers
mrobbins@fransoncivil.com
T: 801.756.0309

From: Todd Macfarlane <toddmacfarlane@gmail.com>
Sent: Monday, May 31, 2021 1:12 PM
To: Monique Robbins <mrobbins@fransoncivil.com>
Subject: Supplemental Preliminary Comments re: Recreation Component(s) of any Proposed Corn Creek Project(s)

Attached, please find our Supplemental Preliminary Comments re: any proposed recreation component(s) of any proposed project(s).

Please acknowledge receipt.

Thanks.

On Wed, May 26, 2021 at 8:13 AM Todd Macfarlane <toddmacfarlane@gmail.com> wrote:

Please see attached comments and other supporting materials, including the following links:.

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<http://rangefire.us/2016/08/11/prior-appropriation-and-beneficial-use-realities-nobody-wants-to-talk-about-5-6/>

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<http://rangefire.us/2018/04/10/water-lawyer-whiskeys-for-drinkin-waters-for-fightin-by-mancos-macleod/>

<http://rangefire.us/2018/04/08/johnson-canyon-water-prophet-by-mancos-macleod/>



**Corn Creek Watershed Plan-
Environmental Assessment**
Public Scoping Meeting
May 12, 2021
Comment Form



Name: Jeffery Stephenson
Organization: Kennosh town member
Physical Address: 138 w 1005 City: Kennosh Zip: 84637
E-mail Address: JeffKStephenson@gmail.com
Phone: 435 287 9907

Comments:

I fully support the dam project. I feel like this would benefit the town and its members.

Written comments can be sent to: mrobbins@fransoncivil.com or
Franson Civil Engineers, 1276 South 820 East, Suite 100, American Fork, UT 84043 ATTN: Corn Creek Watershed Plan-EA

Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that their home address be withheld from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses will be available for public disclosure in their entirety. We also will make public all submissions from individuals identifying themselves as representing an organization or business.

Tribal Scoping Letters



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Ms. Cassandra Atencio
NAGPRA Coordinator
Southern Ute Indian Tribe
P.O. Box 737 MS#88
Ignacio, Colorado 81137

Reference: Corn Creek Watershed Plan-EA

Dear Ms. Atencio:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

Per the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations at 40 CFR Parts 1500-1508, an evaluation of potential alternatives and associated environmental impacts is required. Environmental impacts will be documented in the form of a Watershed Plan and Environmental Assessment (Plan-EA). For the purposes of compliance with NEPA and Section 106 of the National Historic Preservation Act (NHPA), the NRCS is the designated lead agency. Pursuant to Section 106 of the NHPA, Executive Order 13007, the American Indian Religious Freedom Act, we write to you at this time regarding the project and we welcome any information you would like to share with us regarding historic properties or places of traditional religious and cultural importance near the proposed project area that we should consider as part of our analysis. We would also appreciate your assistance in identifying any other Tribes with whom we should consult on this project.

We are inviting agency, organization, Tribal, and public input on the project during the scoping phase. Participation is a vital component of the project providing those who are interested in or potentially affected by the proposed project an opportunity to share their comments, ideas, and concerns regarding actions during the initial scoping stage of the NEPA process. You are encouraged to attend the public scoping meeting where the project will be presented and the attendees will have the opportunity to ask questions, express ideas and concerns.

Public Scoping Meeting

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

Written comments may be submitted anytime during the open comment period from April 28, 2021, to May 28, 2021, via email, mail, or using the online comment submission form. To be considered and become part of the public record for the project, they must be received or post-marked by **May 28, 2021**.

- The comment submission form and additional information may be found at:
<https://www.fransoncivil.com/corn-creek-plan-EA/>
- Comments may be emailed or mailed to the following address:

Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

We look forward to hearing from and working with you on this important project. We welcome your call if you have questions on the proposed project or if you wish to arrange a meeting or initiate government-to-government consultation regarding this project.

If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,



EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

Norm Evenstad, NRCS, Water Resources Coordinator, Salt Lake City, UT
Alan Atkins, NRCS, Assistant State Conservationist for Field Operations, Richfield, UT
Jason Dodds, NRCS, Civil Engineer, Cedar City, UT
Mike Marshall, NRCS, District Conservationist, Fillmore, UT
Leslie Warta, NRCS, Environmental Coordinator, Salt Lake City, UT
Tara Hoffmann, NRCS, State Cultural Resources Specialist, Salt Lake City, UT
Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT
Richard M. Begay, THPO and Department Manager, Navajo Nation Historic Preservation
Department, P.O. Box 4950, Window Rock, Arizona 86515



United States Department of Agriculture

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

April 26, 2021

Mr. Melvin Baker
Chairperson
Southern Ute
PO Box 737 Mail Stop #73
116 Capote Drive
Ignacio, Colorado 81137

Reference: Corn Creek Watershed Plan-EA

Dear Chairperson Baker:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

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Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

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If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,



EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

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Monique Robbins, Franson Civil Engineers, Logan, UT
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Department, P.O. Box 4950, Window Rock, Arizona 86515



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Ms. Candace Bear
Chairwoman
Skull Valley Band of Goshute Indians
Skull Valley Goshute General Council
407 Skull Valley Road
Skull Valley Reservation, Utah 84029

Reference: Corn Creek Watershed Plan-EA

Dear Chairwoman Bear:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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mrobbins@fransoncivil.com
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Tara Hoffmann, NRCS, State Cultural Resources Specialist, Salt Lake City, UT
Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Mr. Jeanine Borchardt
Chairperson
Indian Peaks Band of Paiutes
P.O. Box 2062
Cedar City, Utah 84721

Reference: Corn Creek Watershed Plan-EA

Dear Chairperson Borchardt:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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mrobbins@fransoncivil.com
Phone (801) 756-0309

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If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,



EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

Norm Evenstad, NRCS, Water Resources Coordinator, Salt Lake City, UT
Alan Atkins, NRCS, Assistant State Conservationist for Field Operations, Richfield, UT
Jason Dodds, NRCS, Civil Engineer, Cedar City, UT
Mike Marshall, NRCS, District Conservationist, Fillmore, UT
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United States Department of Agriculture

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

April 26, 2021

Ms. Corrina Bow
Chairwoman
Kanosh Band of Paiutes
PO Box 116
Kanosh, Utah 84637

Reference: Corn Creek Watershed Plan-EA

Dear Chairwoman Bow:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

Per the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations at 40 CFR Parts 1500-1508, an evaluation of potential alternatives and associated environmental impacts is required. Environmental impacts will be documented in the form of a Watershed Plan and Environmental Assessment (Plan-EA). For the purposes of compliance with NEPA and Section 106 of the National Historic Preservation Act (NHPA), the NRCS is the designated lead agency. Pursuant to Section 106 of the NHPA, Executive Order 13007, the American Indian Religious Freedom Act, we write to you at this time regarding the project and we welcome any information you would like to share with us regarding historic properties or places of traditional religious and cultural importance near the proposed project area that we should consider as part of our analysis. We would also appreciate your assistance in identifying any other Tribes with whom we should consult on this project.

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Public Scoping Meeting

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

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Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

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United States Department of Agriculture

April 26, 2021

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Ms. Betsy Chapoose
Director
Cultural Rights Protection Department
Ute Indian Tribe of the Uintah & Ouray Reservation
P.O. Box 190
Fort Duchesne, Utah 84026

Reference: Corn Creek Watershed Plan-EA

Dear Ms. Chapoose:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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United States Department of Agriculture

April 26, 2021

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Ms. Carmen Clark
Chairwoman
Shivwits Band of Paiute Indians
Paiute Indian Tribe of Utah
6060 West 3650 North
Ivins, Utah 84738
Reference: Corn Creek Watershed Plan-EA

Dear Chairwoman Clark:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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mrobbins@fransoncivil.com
Phone (801) 756-0309

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April 26, 2021

Mr. Luke Duncan
Chairman
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
P.O. Box 190
Fort Duchesne, Utah 84026

Reference: Corn Creek Watershed Plan-EA

Dear Chairman Duncan:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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United States Department of Agriculture

April 26, 2021

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Utah State Office

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Fax: 844-715-4928
www.ut.nrcs.usda.gov

Mr. Dustin Jansen
Director
Utah Division of Indian Affairs
250 N 1950 W Suite A
Salt Lake City, Utah 84116

Reference: Corn Creek Watershed Plan-EA

Dear Mr. Jansen:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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April 26, 2021

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Mr. Stewart B. Koyiyumptewa
THPO
Hopi Tribe of Arizona
Hopi Cultural Preservation Office
P.O Box 123
Kykotsmovi, Arizona 86039

Reference: Corn Creek Watershed Plan-EA

Dear Mr. Koyiyumptewa:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT
Richard M. Begay, THPO and Department Manager, Navajo Nation Historic Preservation
Department, P.O. Box 4950, Window Rock, Arizona 86515



United States Department of Agriculture

April 26, 2021

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Ms. Dorena Martineau
Cultural Resource Director
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721

Reference: Corn Creek Watershed Plan-EA

Dear Ms. Martineau:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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April 26, 2021

Mr. Jonathan Nez
President
Navajo Nation Office of the President
P.O. Box 7440
Window Rock, Arizona 86515

Reference: Corn Creek Watershed Plan-EA

Dear President Nez:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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Public Scoping Meeting

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

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Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

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If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,



EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

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Richard M. Begay, THPO and Department Manager, Navajo Nation Historic Preservation
Department, P.O. Box 4950, Window Rock, Arizona 86515



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Mr. Timothy L. Nuvangyaoma
Chairman
Hopi Tribe Chairman's Office
P.O. Box 123
Kykotsmovi, Arizona 86039

Reference: Corn Creek Watershed Plan-EA

Dear Chairman Nuvangyaoma:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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Mr. Travis Parashonts
Chairperson
Cedar Band of Paiutes
600 North 100 East
Cedar City, Utah 84721

Reference: Corn Creek Watershed Plan-EA

Dear Chairperson Parashonts:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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April 26, 2021

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Utah State Office

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Ph: 801-524-4550
Fax: 844-715-4928
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Mr. Clell Pete
Environmental Protection Department
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

Reference: Corn Creek Watershed Plan-EA

Dear Mr. Pete:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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www.ut.nrcs.usda.gov

Mr. Rick Pikyavit
Southern Paiute
715 South 960 West
Richfield, Utah 84701

Reference: Corn Creek Watershed Plan-EA

Dear Mr. Pikyavit:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

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Ph: 801-524-4550
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Mr. Rupert Steele
Chairman
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

Reference: Corn Creek Watershed Plan-EA

Dear Chairman Steele:

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Ms. Patti Timbimboo-Madsen
Cultural Resources
Northwest Band of the Shoshone Nation
707 North Main Street
Brigham City, Utah 84302

Reference: Corn Creek Watershed Plan-EA

Dear Ms. Timbimboo-Madsen:

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April 26, 2021

Mr. Shane Warner
Chairman
Northwest Band of the Shoshone Nation
707 North Main Street
Brigham City, Utah 84302

Reference: Corn Creek Watershed Plan-EA

Dear Chairman Warner:

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Sincerely,



EMILY FIFE
State Conservationist

Enclosure: Scoping Notice

cc:

Norm Evenstad, NRCS, Water Resources Coordinator, Salt Lake City, UT
Alan Atkins, NRCS, Assistant State Conservationist for Field Operations, Richfield, UT
Jason Dodds, NRCS, Civil Engineer, Cedar City, UT
Mike Marshall, NRCS, District Conservationist, Fillmore, UT
Leslie Warta, NRCS, Environmental Coordinator, Salt Lake City, UT
Tara Hoffmann, NRCS, State Cultural Resources Specialist, Salt Lake City, UT
Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT
Richard M. Begay, THPO and Department Manager, Navajo Nation Historic Preservation
Department, P.O. Box 4950, Window Rock, Arizona 86515



United States Department of Agriculture

April 26, 2021

Natural Resources
Conservation Service

Utah State Office

125 South State Street
Room 4010
Salt Lake City, UT 84138

Ph: 801-524-4550
Fax: 844-715-4928
www.ut.nrcs.usda.gov

Ms. Carlene Yellowhair
President
San Juan Southern Paiute Tribe of Arizona
50 South Main Street, Suite 201
P.O. Box 2950
Tuba City, Arizona 86045

Reference: Corn Creek Watershed Plan-EA

Dear President Yellowhair:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS), with Kanosh Town as the project sponsor and and Corn Creek Irrigation Company, as project co-sponsors, is proposing to fund through the Watershed Protection and Flood Prevention Act (Public Law [PL] 83-566) improvements within the Corn Creek Watershed, Millard County, Utah. Improvements are being proposed to improve flood prevention, watershed protection, wildlife habitat enhancement, agricultural water management, and recreation.

Per the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations at 40 CFR Parts 1500-1508, an evaluation of potential alternatives and associated environmental impacts is required. Environmental impacts will be documented in the form of a Watershed Plan and Environmental Assessment (Plan-EA). For the purposes of compliance with NEPA and Section 106 of the National Historic Preservation Act (NHPA), the NRCS is the designated lead agency. Pursuant to Section 106 of the NHPA, Executive Order 13007, the American Indian Religious Freedom Act, we write to you at this time regarding the project and we welcome any information you would like to share with us regarding historic properties or places of traditional religious and cultural importance near the proposed project area that we should consider as part of our analysis. We would also appreciate your assistance in identifying any other Tribes with whom we should consult on this project.

We are inviting agency, organization, Tribal, and public input on the project during the scoping phase. Participation is a vital component of the project providing those who are interested in or potentially affected by the proposed project an opportunity to share their comments, ideas, and concerns regarding actions during the initial scoping stage of the NEPA process. You are encouraged to attend the public scoping meeting where the project will be presented and the attendees will have the opportunity to ask questions, express ideas and concerns.

Public Scoping Meeting

Date: Wednesday, May 12, 2021

Time: 6:00 p.m.

Virtual meeting link: <https://www.fransoncivil.com/corn-creek-plan-EA>

Written comments may be submitted anytime during the open comment period from April 28, 2021, to May 28, 2021, via email, mail, or using the online comment submission form. To be considered and become part of the public record for the project, they must be received or post-marked by **May 28, 2021**.

- The comment submission form and additional information may be found at:
<https://www.fransoncivil.com/corn-creek-plan-EA/>
- Comments may be emailed or mailed to the following address:

Franson Civil Engineers
Attn: Corn Creek Watershed Plan-EA
1276 South 820 East, Suite 100
American Fork, Utah 84003

mrobbins@fransoncivil.com
Phone (801) 756-0309

We look forward to hearing from and working with you on this important project. We welcome your call if you have questions on the proposed project or if you wish to arrange a meeting or initiate government-to-government consultation regarding this project.

If you have any questions, comments, or concerns please contact Tara S. Hoffmann, State Cultural Resources Specialist, at 385-258-1266 or email at tara.hoffmann@usda.gov. We look forward to receiving your comments and discussing this project further.

Sincerely,



EMILY FIFE
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Chad Brown, Franson Civil Engineers, Logan, UT
Monique Robbins, Franson Civil Engineers, Logan, UT

NHPA Section 106 Initiation Letters



April 9, 2024

Christopher Merritt, PhD
State Historic Preservation Officer
Utah Department of Cultural & Community Engagement
3760 S. Highland Drive
Millcreek, Utah 84106

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Dr. Merritt:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*, and associated data. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 2. Documented sites in the survey area and National Register eligibility

Site Number	Description	National Register Recommendation
42MD2016	Historical concrete water pipeline	Not Eligible
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Site Number	Description	National Register Recommendation
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42MD4700	Prehistoric temporary camp	Not Eligible
42MD4701	Historical structure/pump house	Not Eligible
42MD4702	Prehistoric rock art on a relocated boulder	Not Eligible
42MD4703	South & West Field Ditches system	Eligible
42MD4704	Middle Ditch system	Eligible
42MD4705	East Field Ditch system	Eligible
42MD4706	Hatton Ditch system	Eligible
42MD4707	East Middle Hatton Ditch system	Eligible
42MD4708	West Ditch system	Eligible
42MD4713	City Ditch	Not Eligible

A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

Site Number or Address	Description	National Register Determination
42MD996	Multi-component site	Eligible
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4909 W Hatton Ln	Single-family dwelling	Eligible
10 N Main St	Single-family dwelling	Eligible/Listed on NRHP
60 N Main St	Single-family dwelling	Eligible
35 W Center St	Single-family dwelling	Eligible
60/70 W Center St	Single-family dwelling	Eligible

Table 3 summarize the NRHP-eligible sites within the Direct APE, proposed impacts and NRCS' determinations of effect based on the project impacts.

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Site Number	Description of Impact	Finding of Effect
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Site Number	Description of Impact	Finding of Effect
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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

Tara S. Hoffmann, State Watershed Cultural Resources Specialist, NRCS, Salt Lake City, UT

Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeflang, Archaeologist, UDWR, Salt



April 9, 2024

Dennis Alex
Chairman
Northwest Band of the Shoshone Nation
2575 Commerce Way
Ogden, Utah 84401

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Alex:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Cassandra Atencio, NAGPRA Coordinator
Southern Ute Indian Tribe
P.O. Box 737 MS#88
Ignacio, Colorado 81137

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Ms. Atencio:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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TRAVIS MOTE
Acting State Conservationist

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Melvin Baker, Chairperson
Southern Ute
PO Box 737 Mail Stop #73
116 Capote Drive
Ignacio, Colorado 81137

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Baker:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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42MD4708	West Ditch system	Eligible
42MD4713	City Ditch	Not Eligible

A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

Site Number or Address	Description	National Register Determination
42MD996	Multi-component site	Eligible
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60/70 W Center St	Single-family dwelling	Eligible

Table 3 summarize the NRHP-eligible sites within the Direct APE, proposed impacts and NRCS' determinations of effect based on the project impacts.

Table 3. Anticipated impacts and findings of effect for eligible sites under the Preferred Alternative

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42MD4708	A 1-block long segment of the main ditch along 300 South west of Main Street, which is currently unlined, would be enlarged and lined with concrete to match the segment of the ditch east of Main Street. Much of the rest of the system would be replaced with buried pipelines.	Adverse Effect

Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

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Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Richard M. Begay
THPO and Department Manager
Navajo Nation Historic Preservation Department
P.O. Box 4950

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Begay:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 2. Documented sites in the survey area and National Register eligibility

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Tamra Borchardt-Slayton
Vice-Chairperson
440 North Paiute Drive
Cedar City, Utah 84720

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Ms. Borchardt-Slayton:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Corrina Bow
Chairperson
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84720-2613

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Bow:

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April 9, 2024

Ms. Betsy Chapoose
Director
Cultural Rights Protection Department
Ute Indian Tribe of the Uintah & Ouray Reservation
P.O. Box 190
Fort Duchesne, Utah 84026

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Chapoose:

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~4675 W Hatton Ln	Single-family dwelling	Eligible
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4909 W Hatton Ln	Single-family dwelling	Eligible
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Table 3 summarize the NRHP-eligible sites within the Direct APE, proposed impacts and NRCS' determinations of effect based on the project impacts.

Table 3. Anticipated impacts and findings of effect for eligible sites under the Preferred Alternative

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42MD4708	A 1-block long segment of the main ditch along 300 South west of Main Street, which is currently unlined, would be enlarged and lined with concrete to match the segment of the ditch east of Main Street. Much of the rest of the system would be replaced with buried pipelines.	Adverse Effect

Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

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Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Carmen Clark
Cultural Resources
Shivwits Band of Paiute Indians
Paiute Indian Tribe of Utah
6060 West 3650 North
Ivins, Utah 84738

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Clark:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 2. Documented sites in the survey area and National Register eligibility

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Autumn Gillard
Cultural Resource Director
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Gillard:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Stephanie Holly, Administration
Navajo Utah Commission
50 Center St. Hwy 262
PO Box 570 435.651.3508
Montezuma Creek, Utah 84534

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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April 9, 2024

Stewart B. Koyiyumtewa, THPO
Hopi Tribe of Arizona
Hopi Cultural Preservation Office
P.O Box 123
Kykotsmovi, Arizona 86039

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Mr. Koyiyumtewa:

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Table 3. Anticipated impacts and findings of effect for eligible sites under the Preferred Alternative

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42MD4704	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4705	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4706	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4707	The concrete-lined ditch would be piped underground, and the ditch would effectively be destroyed.	Adverse Effect
42MD4708	A 1-block long segment of the main ditch along 300 South west of Main Street, which is currently unlined, would be enlarged and lined with concrete to match the segment of the ditch east of Main Street. Much of the rest of the system would be replaced with buried pipelines.	Adverse Effect

Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Daniel Moon
Chairman
Skull Valley Band of Goshute Indians
407 Skull Valley Road
Skull Valley, Utah, 84029

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Moon:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 2. Documented sites in the survey area and National Register eligibility

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

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TRAVIS MOTE
Acting State Conservationist

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Amos Murphy
Chairman
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Murphy:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Julius Murray
Chairman
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
P.O. Box 190
Fort Duchesne, Utah 84026

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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April 9, 2024

Mr. Timothy L. Nuvangyaoma
Chairman
Hopi Tribe Chairman's Office
P.O. Box 123
Kykotsmovi, Arizona 86039

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
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Arie Leeftang, Archaeologist,



April 9, 2024

President Buu Nygren
President
Navajo Nation Office of the President
P.O. Box 7440
Window Rock, Arizona 86515

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear President Nygren:

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Clell Pete
Environmental Protection Department
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

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Arie Leeftang, Archaeologist,



April 9, 2024

Simon Pikyavit
Chairman
PO Box 116
Kanosh, Utah 84637

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President
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50 South Main Street, Suite 201
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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Arie Leeftang, Archaeologist,



April 9, 2024

Rick Pikyavit
Southern Paiute
715 South 960 West
Richfield, Utah 84701

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Pikyavit:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Clarence Rockwell, Executive Director
Navajo Utah Commission
50 Center St. Hwy 262
PO Box 570
Montezuma Creek, Utah 84534

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Mr. Rockwell:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Hope Silvas
Chairwoman
Shivwits Band of Paiute Indians
Paiute Indian Tribe of Utah
6060 West 3650 North
Ivins, Utah 84738

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Silvas:

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April 9, 2024

Ms. Patti Timbimboo-Madsen
Cultural Resources
Northwest Band of the Shoshone Nation
2575 Commerce Way
Ogden, Utah 84401

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Delice Tom
Chairperson
600 North 100 East
Cedar City, Utah 84721

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Tom:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Christopher Merritt, PhD
State Historic Preservation Officer
Utah Department of Cultural & Community Engagement
3760 S. Highland Drive
Millcreek, Utah 84106

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Dr. Merritt:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*, and associated data. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeflang, Archaeologist, UDWR, Salt



April 9, 2024

Dennis Alex
Chairman
Northwest Band of the Shoshone Nation
2575 Commerce Way
Ogden, Utah 84401

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Alex:

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April 9, 2024

Cassandra Atencio, NAGPRA Coordinator
Southern Ute Indian Tribe
P.O. Box 737 MS#88
Ignacio, Colorado 81137

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.

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Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Melvin Baker, Chairperson
Southern Ute
PO Box 737 Mail Stop #73
116 Capote Drive
Ignacio, Colorado 81137

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Baker:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

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Enclosure

cc: (w/o encl)

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Richard M. Begay
THPO and Department Manager
Navajo Nation Historic Preservation Department
P.O. Box 4950

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Begay:

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Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Tamra Borchardt-Slayton
Vice-Chairperson
440 North Paiute Drive
Cedar City, Utah 84720

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Ms. Borchardt-Slayton:

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April 9, 2024

Ms. Corrina Bow
Chairperson
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84720-2613

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Bow:

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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of **adverse effect** to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



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Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

Tara S. Hoffmann, State Watershed Cultural Resources Specialist, NRCS, Salt Lake City, UT

Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Betsy Chapoose
Director
Cultural Rights Protection Department
Ute Indian Tribe of the Uintah & Ouray Reservation
P.O. Box 190
Fort Duchesne, Utah 84026

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Chapoose:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

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A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

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Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Carmen Clark
Cultural Resources
Shivwits Band of Paiute Indians
Paiute Indian Tribe of Utah
6060 West 3650 North
Ivins, Utah 84738

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Clark:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Autumn Gillard
Cultural Resource Director
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Gillard:

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April 9, 2024

Stephanie Holly, Administration
Navajo Utah Commission
50 Center St. Hwy 262
PO Box 570 435.651.3508
Montezuma Creek, Utah 84534

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TRAVIS MOTE
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Enclosure

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Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Stewart B. Koyiyumtewa, THPO
Hopi Tribe of Arizona
Hopi Cultural Preservation Office
P.O Box 123
Kykotsmovi, Arizona 86039

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Mr. Koyiyumtewa:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

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Enclosure

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Daniel Moon
Chairman
Skull Valley Band of Goshute Indians
407 Skull Valley Road
Skull Valley, Utah, 84029

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Moon:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Amos Murphy
Chairman
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

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April 9, 2024

Mr. Julius Murray
Chairman
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
P.O. Box 190
Fort Duchesne, Utah 84026

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TRAVIS MOTE
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Enclosure

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April 9, 2024

Mr. Timothy L. Nuvangyaoma
Chairman
Hopi Tribe Chairman's Office
P.O. Box 123
Kykotsmovi, Arizona 86039

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear Mr. Nuvangyaoma:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Arie Leeftang, Archaeologist,



April 9, 2024

President Buu Nygren
President
Navajo Nation Office of the President
P.O. Box 7440
Window Rock, Arizona 86515

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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Arie Leeftang, Archaeologist,



April 9, 2024

Mr. Clell Pete
Environmental Protection Department
Confederated Tribes of the Goshute Reservation
HC61 Box 6104
195 Tribal Center Road
Ibapah, Utah 84034

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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Simon Pikyavit
Chairman
PO Box 116
Kanosh, Utah 84637

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TRAVIS MOTE
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Enclosure

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Arie Leeftang, Archaeologist,



April 9, 2024

Robert Preston, Jr.
President
San Juan Southern Paiute Tribe of Arizona
50 South Main Street, Suite 201
P.O. Box 2950
Tuba City, Arizona 86045

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh,
Millard County, Utah (U23HY0520)

Dear President Preston Jr.:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Arie Leeftang, Archaeologist,



April 9, 2024

Rick Pikyavit
Southern Paiute
715 South 960 West
Richfield, Utah 84701

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Mr. Pikyavit:

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April 9, 2024

Clarence Rockwell, Executive Director
Navajo Utah Commission
50 Center St. Hwy 262
PO Box 570
Montezuma Creek, Utah 84534

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

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April 9, 2024

Ms. Hope Silvas
Chairwoman
Shivwits Band of Paiute Indians
Paiute Indian Tribe of Utah
6060 West 3650 North
Ivins, Utah 84738

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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



For those historic properties located within the No Action breach inundation zone, they would be subject to the same flooding effects under the Preferred Alternative in the event of a dam breach. In the event that cultural materials, human remains/funerary objects are discovered during construction, procedures outlined in the Prototype Programmatic Agreement between the NRCS, and the Utah SHPO will be followed. Per 36 CFR 800.3 through 800.5, the NRCS requests your concurrence for the delineation of the APE, site eligibility, and determination of project effects. If you have any questions, comments, or concerns, please contact Tara S. Hoffmann, State Watershed Cultural Resources Specialist, at 801-524-4556, or tara.hoffmann@usda.gov, at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Mote", written over a horizontal line.

TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

Tara S. Hoffmann, State Watershed Cultural Resources Specialist, NRCS, Salt Lake City, UT

Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Patti Timbimboo-Madsen
Cultural Resources
Northwest Band of the Shoshone Nation
2575 Commerce Way
Ogden, Utah 84401

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Timbimboo-Madsen:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the Utah Division of Wildlife Resources, and 8.4 acres of Kanosh Band tribal land.

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 2. Documented sites in the survey area and National Register eligibility

Site Number	Description	National Register Recommendation
42MD2016	Historical concrete water pipeline	Not Eligible
42MD2017	Historical ditch (the Indian Ditch)	Eligible
42MD4696	Corn Creek Dam & Debris Basin	Not Eligible
42MD4697	Prehistoric temporary camp	Not Eligible
42MD4698	Prehistoric temporary camp	Not Eligible
Site Number	Description	National Register Recommendation
42MD4699	Prehistoric temporary camp	Not Eligible
42MD4700	Prehistoric temporary camp	Not Eligible
42MD4701	Historical structure/pump house	Not Eligible
42MD4702	Prehistoric rock art on a relocated boulder	Not Eligible
42MD4703	South & West Field Ditches system	Eligible
42MD4704	Middle Ditch system	Eligible
42MD4705	East Field Ditch system	Eligible
42MD4706	Hatton Ditch system	Eligible
42MD4707	East Middle Hatton Ditch system	Eligible
42MD4708	West Ditch system	Eligible
42MD4713	City Ditch	Not Eligible

A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 3 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

Site Number or Address	Description	National Register Determination
42MD996	Multi-component site	Eligible
42MD997	Prehistoric camp	Eligible
~4675 W Hatton Ln	Single-family dwelling	Eligible
~4750 W Hatton Ln	Single-family dwelling	Eligible
4909 W Hatton Ln	Single-family dwelling	Eligible
10 N Main St	Single-family dwelling	Eligible/Listed on NRHP
60 N Main St	Single-family dwelling	Eligible
35 W Center St	Single-family dwelling	Eligible
60/70 W Center St	Single-family dwelling	Eligible

Table 3 summarize the NRHP-eligible sites within the Direct APE, proposed impacts and NRCS' determinations of effect based on the project impacts.

Table 3. Anticipated impacts and findings of effect for eligible sites under the Preferred Alternative

Site Number	Description of Impact	Finding of Effect
42MD2017	New pipeline buried adjacent to ditch with minor changes to the pond/impoundment to connect the new pipe to the water system in the Kanosh Indian Village	No Adverse Effect
42MD4703	Approximately half of the concrete-lined ditch would be piped and half would have a pipe buried adjacent to it. The earthen ditches associated with the system would remain unaltered.	Adverse Effect
Site Number	Description of Impact	Finding of Effect
42MD4704	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4705	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4706	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4707	The concrete-lined ditch would be piped underground, and the ditch would effectively be destroyed.	Adverse Effect
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Applying the Criteria of Adverse Effect, per 36 CFR 800.5, the NRCS has determined that the proposed partial piping of 42MD4703, the piping of 42MD4707 and the enlargement and lining of 42MD4708, constitute adverse effects. The NRCS recommends that the proposed project proceed as planned with an overall finding of *adverse effect* to historic properties (per 36 CFR800.5(d)(2)). Per 36 CFR 800.6, these adverse effects will be mitigated through continuing consultation, notifying the Advisory Council on Historic Preservation, and the execution of a Memorandum of Agreement between the NRCS, Utah SHPO, Project Sponsors, tribes, and other consulting parties.



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Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

Tara S. Hoffmann, State Watershed Cultural Resources Specialist, NRCS, Salt Lake City, UT

Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,



April 9, 2024

Ms. Delice Tom
Chairperson
600 North 100 East
Cedar City, Utah 84721

Reference: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah (U23HY0520)

Dear Ms. Tom:

Per 36 CFR 800.3, the NRCS is formally initiating Section 106 consultation for the Corn Creek Watershed-Plan Environmental Assessment in Millard County. Enclosed are a cultural resources report titled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA (EA), Kanosh, Millard County, Utah*. The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the Utah Division of Wildlife Resources requirements under U.C.A. 9-8-404.

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Sincerely,

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TRAVIS MOTE
Acting State Conservationist

Enclosure

cc: (w/o encl)

Todd Allai, Acting ASTC-Water Resources, NRCS, Minden, NV

Tara S. Hoffmann, State Watershed Cultural Resources Specialist, NRCS, Salt Lake City, UT

Brandon Todd, ASTC-Field Operations, NRCS, Richfield, UT

Tyrell Belnap, District Conservationist, NRCS, Fillmore, UT

Layne Jensen, Principal, Franson Civil Engineers, Salt Lake City, UT

Arie Leeftang, Archaeologist,

From: [Hoffmann, Tara - FPAC-NRCS, UT](#)
To: [danielm@svgoshutes.com](#); [lillithc@svgoshutes.com](#); [amos.murphy@ctgr.us](#); [Clell Pete](#); [juliusm@utetribes.com](#); [betsyc@uteTribe.com](#); [Luana Thompson](#); [pikyavitsimon@gmail.com](#); [Jill Haslam](#); [Autumn Gillard](#); [cbow@utahpaiutes.org](#)
Subject: NRCS Corn Creek Watershed consultation- Kanosh, UT
Date: Tuesday, June 18, 2024 11:29:00 AM
Attachments: [CornCreek_ConsultationLtr.pdf](#)
[CornCreek_SHPOConcur060424.pdf](#)
[U23HY0520.pdf](#)
Importance: High

I hope this email finds you well. I'm following up regarding NHPA Section 106 consultation for the NRCS' Corn Creek Plan-Environmental Assessment (EA), located near Kanosh, Utah.

Per 36 CFR 800.3, the NRCS initiated Section 106 in letters dated April 9, 2024. The Plan-EA is proposing rehabilitation of the Corn Creek Dam and lining/piping of historic canals, including an irrigation pipeline on Kanosh Band of Paiute land. The APE for this project includes all proposed ground disturbance areas, including staging areas and access roads (per 36 CFR 800.16(d)). A cultural resources inventory was completed in 2023. The table below summarizes the cultural resources sites within the APE:

Table 2. Documented sites in the survey area and National Register eligibility

Site Number	Description	National Register Recommendation
42MD2016	Historical concrete water pipeline	Not Eligible
42MD2017	Historical ditch (the Indian Ditch)	Eligible
42MD4696	Corn Creek Dam & Debris Basin	Not Eligible
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42MD4706	Hatton Ditch system	Eligible
42MD4707	East Middle Hatton Ditch system	Eligible
42MD4708	West Ditch system	Eligible
42MD4713	City Ditch	Not Eligible

Of these sites, the proposes project measures will convert segments of 3 historic ditches to pressurized pipe or line with concrete (Sites 42MD4703, 4707 and 4708). The NRCS has determined that this will result in **adverse effect to historic properties** (per 36 CFR800.5(d)(2)). These adverse effects will be resolved through the development and execution of a Memorandum of Agreement (MOA) (per 36 CFR 800.6). If you would like to participate in the development of the MOA, please let us know. Please refer to the attached consultation letter from April and the cultural

resources report for additional project information. The NRCS is requesting concurrence on the APE, determinations of site eligibility, and project effects. **Please respond by June 28th** with comments, questions, or concerns. Thank you again you for your continued involvement and support of our projects.

All the best,

Tara

Tara S. Hoffmann, MA
State Watershed Cultural Resources Specialist/Tribal Liaison
Natural Resources Conservation Service
Salt Lake City, UT
O: 801-524-4556 C: 385-258-1266

NHPA Section 106 Consultation Documentation

NRCS RECORD OF TRIBAL CONSULTATIONS

Project/Reason for Initiating Consultation: Corn Creek Flood Control and Agricultural Water Management Project Watershed Plan-EA (NEPA)

Program: NRCS Watershed and Flood Prevention Operations Program

Tribe Information			Outreach Initiated ¹	1 Cultural Resource Report Consultation Package ²			Consultation Follow Up ²				Tribe Cons Results (Date)
Federally Recognized Tribe	Contact Name	Address		NRCS Mailed to Tribe ³	Received by Tribe ^{3,4}	Tribe Response	Follow Up #1 Type (Date)	Response #1 Type (Date); Response	Follow Up #2 Type (Date)	Response #2 Type (Date)	
Kanosh Band of the Paiute Indians	Simon Pikyavit (Chairman)	P.O. Box 116 Kanosh, Utah 84637	NA	4/9/2024	4/19/2024	None	06/18/2024 (Email)	Email correspondence between PITU/NRCS/Kanosh Band in Appendix A	Emails and Site Visit (refer to Appendix A)	Email: annotate designs to avoid site	Annotate designs to avoid site.
	Corrina Bow (Former Chairwoman)		4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA
Northwest Band of the Shoshone Nation	Dennis Alex (Current Chairman)	2575 Commerce Way Ogden, Utah 84401	NA	4/9/2024	4/2024	None	06/18/2024 (Email)	None	Phone 435-651-3508 08/20/2024	Left message with secretary.	No response.
	Shane Warner (Former Chairman)	707 North Main Street, Brigham City, Utah 84302	4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA
	Patti Timbimbo-Madsen (Cultural Resources)	2575 Commerce Way Ogden, Utah 84401	4/26/2021	4/9/2024	4/2024	None	06/18/2024 (Email)	None	None	NA	NA
Southern Paiute Tribe	Rick Pikyavit (Chairman)	715 S 960 W Richfield, Utah 84701	4/26/2021	4/9/2024	4/16/2024	None	06/18/2024 (Email)	None	435-896-7458 left message 08/20/2024	No response	No response
Cedar Band of Paiute Indians	Delice Tom (Current Chairperson)	600 N 100 E, Cedar City, Utah 84721	NA	4/9/2024	4/2024	None	06/18/2024 (Email)	None	Phone 435-586-9433 08/20/2024	Defer to PITU and Kanosh Band.	Defer to PITU and Kanosh Band.
	Travis Parashonts (Former Chairperson)		4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA
Navajo Utah Commission	Stephanie Holly (Administration)	50 Center Street Highway 262 P.O. Box 570, Montezuma Creek, Utah 84534	N/A	4/9/2024	4/19/2024	None	06/18/2024 (Email)	None	None	NA	NA
	Clarence Rockwell (Executive Director)					None		None			
Shiwits Band of Paiute Indians	Hope Silvas (Current Chairwoman)		NA	4/9/2024	5/2/2024	None		None	Left message	NA	No response.
	Carmen Clark (Former Chairwoman/Current Cultural Resources)	6060 W 3650 N, Ivins, Utah 84738	4/26/2021	4/9/2024	5/2/2024	None	06/18/2024 (Email)	None	NA	NA	NA

¹ Section 106 Tribal Consultation was formally initiated upon transmittal of the cultural resources report package.

Navajo Nation Office of the President	Buu Nygren (Current President)	P.O. Box 7440 Window Rock, Arizona 86515	NA	4/9/2024	4/2024	None	06/18/2024 (Email)	None	NA	NA	NA
	Jonathan Nez (Former President)	4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Richard Begay (THPO)	P.O. Box 4950 Window Rock, Arizona 86515	4/26/2021	4/11/2024	4/2024	None	No Email Address	None	Phone 928-871-7139 Left message with secretary 08/20/2024	None	No response.
San Juan Southern Paiute Tribe of Arizona	Robert Preston, Jr. (Current President)	50 S Main Street, Suite 201 P.O. Box 2950, Tuba City, Arizona 86045	NA	4/9/2024	4/18/2024	None	06/18/2024 (Email)	None	Phone 928-212-9794 Left message 08/20/2024	None	No response.
	Carlene Yellowhair (Former President)	4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA
Hopi Tribe of Arizona	Stewart B. Koyiyumplewa (THPO)	P.O. Box 123 Kykotsmovi, Arizona 86039	4/26/2021	4/9/2024	4/22/2024	None	06/18/2024 (Email)	None	Phone 928-734-3615 08/20/2024	Defer to PITU	Defer to PITU and Kanosh Band.
	Timothy L. Nuvangyaoma (Chairman)						NA		NA		
Southern Ute Indian Tribe	Cassandra Atencio (Current THPO/Former NAGPRA Coordinator)	P.O. Box 737 MS#88 Ignacio, Colorado 81137	4/26/2021	4/9/2024	4/19/2024	None	6/18/2024 (Email)	None	Phone 970-563-2988 No answer 08/20/2024	None	No Response
	Melvin Baker (Chairperson)	P.O. Box 737 MS#73 116 Capote Drive Ignacio, Colorado 81137	4/26/2021	4/9/2024	4/19/2024	None	6/18/2024 (Email)	None	NA	NA	NA
Indian Peaks Band of Paiutes	Tamra Borchardt- Slayton (Current Chairperson/ Former Vice- Chairperson)	440 North Paiute Drive, Cedar City Utah, 84721	NA	4/9/2024	4/15/2024	None	06/18/2024 (Email)	None	No phone number.	NA	No response.
	Jeanine Borchardt (Former Chairperson – Indian Peaks Band)	P.O. Box 2062, Cedar City, Utah 84721	4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA
Paiute Indian Tribe of Utah	Corrina Bow (Tribal Chairwoman)	440 North Paiute Drive, Cedar City, Utah 84721	NA	4/9/2024	4/15/2024	None	06/18/2024 (Email)	NA	NA	NA	NA
	Autumn Gillard (Cultural Resource Director)							Virtual meeting (see email correspondence Appendix A) regarding rock art boulder.	Phone 435-586-1112	Will respond to email.	Awaiting formal email response.

	Dorena Martineau (Cultural Resources – Former)	440 North Paiute Drive, Cedar City, Utah 84721	4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA			
Confederated Tribes of the Goshute Reservation	Clell Pete (Environmental Protection Department)	HC61 Box 6104, 195 Tribal Center Road, Ibapah, Utah 84304	4/26/2021	4/9/2024	4/19/2024	None	6/18/2024 (Email)	None	NA	NA	NA	NA	NA	NA
	Amos Murphy (Current Chairman)		NA	4/9/2024	4/19/2024	None	6/18/2024 (Email)	None	Phone 435-234- 1138 Left message 08/20/2024	NA	No response	No response	NA	No response.
	Rupert Steele (Former Chairman)		4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Julius Murray (Chairman)	P.O. Box 190 Fort Duchesne, Utah 84026	NA	4/9/2024	04/15/2024	None	06/18/2024 (Email)	None	NA	NA	NA	NA	NA	NA
	Luke Duncan (Former Chairman)		4/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Betsy Chapoose (Current THPO/Former Cultural Resources Director)		4/26/2021	4/9/2024	4/15/2024	None	06/18/2024 (Email)	None	435-725-4826	NA	Defer to PITU and Kanosh Band.	Defer to PITU and Kanosh Band.	Defer to PITU and Kanosh Band.	Defer to PITU and Kanosh Band.
Skull Valley Band of Goshute Indians	Daniel Moon (Current Chairman)	407 Skull Valley Road, Skull Valley Reservation, Utah 84029	NA	5/8/2024	4/2024	None	06/18/2024 (Email)	None	435-831-4079 Left message 08/20/2024	NA	No response	No response	NA	No response.
	Candace Bear (Former Chairwoman)		04/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Utah Division of Indian Affairs	Dustin Jansen (Director)	250 N 1950 W Suite A, Salt Lake City, Utah 84116	04/26/2021	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: Cons = Consultation, THPO = Tribal Historic Preservation Officer

1 – Tribe consultation was initiated as part of the Scoping process and is documented in the Scoping Report included in Appendix A.

2 – Documentation is included below the Table.

3 – An addendum to the Cultural Resource Survey was made after it was provided to the Tribes and a second letter was sent to all Tribes with the updated Cultural Resource Survey. The first letter and second letter mailed and received dates are included.

4 – Date of receipt of mail delivery to Tribe.



Advisory Council on Historic Preservation
Electronic Section 106 Documentation Submittal System (e106) Form
MS Word format

Send to: e106@achp.gov

Please review the instructions at www.achp.gov/e106-email-form prior to completing this form. Questions about whether to use the e106 form should be directed to the assigned ACHP staff member in the Office of Federal Agency Programs.

I. Basic information

1. Purpose of notification. Indicate whether this documentation is to:

- ☒ Notify the ACHP of a finding that an undertaking may adversely affect historic properties
- ☐ Invite the ACHP to participate in a Section 106 consultation
- ☐ Propose to develop a project Programmatic Agreement (project PA) for complex or multiple undertakings in accordance with 36 C.F.R. 800.14(b)(3)
- ☐ Supply additional documentation for a case already entered into the ACHP record system
- ☐ File an executed MOA or PA with the ACHP in accordance with 800.6(b)(iv) (where the ACHP did not participate in consultation)
- ☐ Other, please describe
[Click here to enter text.](#)

2. ACHP Project Number (If the ACHP was previously notified of the undertaking and an ACHP Project Number has been provided, enter project number here and skip to Item 7 below): [Click here to enter text.](#)

3. Name of federal agency (If multiple agencies, list them all and indicate whether one is the lead agency):

Natural Resources Conservation Service (NRCS) is the lead agency. The U.S. Army Corps of Engineers (Corps) and the Utah Division of Wildlife Resources (UDWR) are cooperating agencies.

4. Name of undertaking/project (Include project/permit/application number if applicable):

Corn Creek Watershed Plan-Environmental Assessment, Kanosh, Millard County, Utah

5. Location of undertaking (Indicate city(s), county(s), state(s), land ownership, and whether it would occur on or affect historic properties located on tribal lands):

Near Kanosh in Millard County, Utah. The majority of the undertaking is located on private and municipal land, with 3.4 acres of UDWR-managed lands. The undertaking is also located on 8.4 acres of Tribal lands of the Kanosh Band of Paiute Indians (Kanosh Band).

6. Name and title of federal agency official and contact person for this undertaking, including email address and phone number:

Tara Hoffmann, MA
 State Watershed Cultural Resources Specialist
 Salt Lake City, Utah
Tara.hoffmann@usda.gov
 385-258-1266

II. Information on the Undertaking*

7. Describe the undertaking and nature of federal involvement (if multiple federal agencies are involved, specify involvement of each):

The NRCS is providing technical and financial assistance to Kanosh City and the Kanosh Band of Paiute Indians (Kanosh Band) (Project Sponsors) through the PL-83-566 Watershed Protection and Flood Prevention Program to provide flood reduction or prevention and protection for residents, homes, properties, and public and other infrastructure within and near Kanosh City and the Kanosh Band village during a flood event in the Corn Creek Watershed. Based on the draft Plan-EA, the preferred alternative proposes installing new flood control features, improving existing flood control systems, replacing inadequate and failing water conveyance pipes, and piping open canal systems to reduce water loss from seepage and evaporation, among other things. The NRCS is serving as the lead federal agency for purposes of Section 106 consultation, which will also meet the UDWR requirements under U.C.A. 9-8-404. The Corps has been invited to be a cooperating agency, as 404 and 401 permit may be required.

To evaluate the potential project alternatives and assess the environmental impacts of the project, a Watershed Plan and Environmental Assessment is being prepared by Franson Civil Engineers, on behalf of the NRCS, in cooperation with the Town of Kanosh, the Corn Creek Irrigation Company, and the Kanosh Band.

8. Describe the Area of Potential Effects (APE):

Per 36 CFR 800.16 (d), the NRCS has defined the Area of Potential Effects (APE) as encompassing all locations of anticipated ground disturbance, including staging areas and access roads, for the Preferred Alternative (Direct APE) as well as all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative. Collectively, the APE contains 17,864 acres. The Direct APE totals approximately 400 acres and is located for the majority on private and municipal land, with 3.4 acres on lands owned by the UDWR, and 8.4 acres of Kanosh Band tribal land.

9. Describe steps taken to identify historic properties:

To identify historic properties within the Direct APE (per 36 CFR 800.4), a literature review and pedestrian inventory of the APE was conducted by Certus Environmental. Fieldwork was conducted between August 16-19 and September 19, 2023. A total of 375.4 acres were intensively surveyed and 24.6 acres were surveyed to the reconnaissance level.

Please refer to the attached cultural resource report for additional information.

10. Describe the historic property (or properties) and any National Historic Landmarks within the APE

(or attach documentation or provide specific link to this information):

Table 1 summarizes the sites identified because of the cultural resources inventory and NRCS eligibility determinations.

Table 1. Documented sites in the survey area and National Register eligibility

Site Number	Description	National Register Recommendation
42MD2016	Historical concrete water pipeline	Not Eligible
42MD2017	Historical ditch (the Indian Ditch)	Eligible
42MD4696	Corn Creek Dam & Debris Basin	Not Eligible
42MD4697	Prehistoric temporary camp	Not Eligible
42MD4698	Prehistoric temporary camp	Not Eligible
Site Number	Description	National Register Recommendation
42MD4699	Prehistoric temporary camp	Not Eligible
42MD4700	Prehistoric temporary camp	Not Eligible
42MD4701	Historical structure/pump house	Not Eligible
42MD4702	Prehistoric rock art on a relocated boulder	Not Eligible
42MD4703	South & West Field Ditches system	Eligible
42MD4704	Middle Ditch system	Eligible
42MD4705	East Field Ditch system	Eligible
42MD4706	Hatton Ditch system	Eligible
42MD4707	East Middle Hatton Ditch system	Eligible
42MD4708	West Ditch system	Eligible
42MD4713	City Ditch	Not Eligible

A literature review of the No Action and Preferred Alternative breach inundation area was also performed to identify historic properties that would be subject to flooding in the unlikely event of a dam breach. Table 2 summarizes the eligible sites within this broader APE.

Table 2. Known National Register-eligible sites & buildings in the No Action/Dam Breach APE

Site Number or Address	Description	National Register Determination
42MD996	Multi-component site	Eligible
42MD997	Prehistoric camp	Eligible
~4675 W Hatton Ln	Single-family dwelling	Eligible
~4750 W Hatton Ln	Single-family dwelling	Eligible
4909 W Hatton Ln	Single-family dwelling	Eligible
10 N Main St	Single-family dwelling	Eligible/Listed on NRHP
60 N Main St	Single-family dwelling	Eligible
35 W Center St	Single-family dwelling	Eligible
60/70 W Center St	Single-family dwelling	Eligible

11. Describe the undertaking's effects on historic properties:

Table 3 summarize the NRHP-eligible sites within the Direct APE, proposed impacts and NRCS' determinations of effect based on the project impacts.

Table 3. Anticipated impacts and findings of effect for eligible sites under the Preferred Alternative

Site Number	Description of Impact	Finding of Effect
42MD2017	New pipeline buried adjacent to ditch with minor changes to the pond/impoundment to connect the new pipe to the water system in the Kanosh Indian Village	No Adverse Effect
42MD4703	Approximately half of the concrete-lined ditch would be piped and half would have a pipe buried adjacent to it. The earthen ditches associated with the system would remain unaltered.	Adverse Effect
42MD4704	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4705	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4706	A buried pipeline system would be placed adjacent to the existing ditches, which would remain unaltered.	No Adverse Effect
42MD4707	The concrete-lined ditch would be piped underground, and the ditch would effectively be destroyed.	Adverse Effect
42MD4708	A 1-block long segment of the main ditch along 300 South west of Main Street, which is currently unlined, would be enlarged and lined with concrete to match the segment of the ditch east of Main Street. Much of the rest of the system would be replaced with buried pipelines.	Adverse Effect

12. Explain how this undertaking would adversely affect historic properties (include information on any conditions or future actions known to date to avoid, minimize, or mitigate adverse effects):

Based on the project component effects to the three aforementioned historic properties (42MD4703, 42MD4707 and 42MD4708) in Table 3, which would result in direct damage to those aspects of integrity that contribute to each site's NRHP eligibility, the NRCS has determined that the proposed project would result in *Adverse Effects to Historic Properties* per 36 CFR 800.5(d)(2). The three historic properties are all located on Private or Municipal land.

The NRCS is currently in consultation with the Utah SHPO, the Project Sponsors, and other consulting parties in drafting mitigation strategies and developing a Memorandum of Agreement (MOA). The Corps has been invited to participate in the development of the MOA, in an email dated May 21, 2024, and NRCS is currently awaiting their response.

13. Provide copies or summaries of the views provided to date by any consulting parties, Indian tribes or Native Hawai'ian organizations, or the public, including any correspondence from the SHPO and/or THPO.

See attached SHPO and Tribal consultation letters/emails, documenting all tribal consultation to date. No tribal responses have been received. SHPO concurred with site eligibility and effects in a letter dated June 4, 2024. The Kanosh Band attorney is attending regular bi-weekly project meeting between the NRCS and other Project Sponsors.

III. Additional Information

- 14. Please indicate the status of any consultation that has occurred to date, including whether there are any unresolved concerns or issues the ACHP should know about in deciding whether to participate in consultation.** Providing a list of consulting parties, including email addresses and phone numbers if known, can facilitate the ACHP's review response.

Concurrent with the National Environmental Policy Act scoping period, and as part of Section 106 of the NHPA, Executive Order 13007, 13175, and the AIRFA, the NRCS reached out to tribes with ancestral land ties to Millard County. The following Tribes were sent scoping letters:

- Southern Ute Indian Tribe
- Skull Valley Band of Goshute Indians
- Indian Peaks Band of Paiutes
- Kanosh Band of Paiutes
- Ute Indian Tribe of the Uintah & Ouray Reservation
- Shivwits Band of Paiute Indians
- Paiute Indian Tribe of Utah
- Navajo Nation
- Hopi Tribe
- Cedar Band of Paiutes
- Confederated Tribes of the Goshute Reservation
- Southern Paiute
- Northwest Band of the Shoshone Nation
- San Juan Southern Paiute Tribe of Arizona

No responses were received. Three coordination meetings were held with the Kanosh Band on September 29, 2021, November 3, 2021, and April 12, 2023. The Kanosh Band attorney began attending regular biweekly virtual project meetings on May 16, 2024.

The NRCS submitted cultural resources report U23HY0520 to the Utah SHPO and the aforementioned tribes on April 11, 2024. The report was also emailed to the Skull Valley Band of Goshute's Chairman and the Corps on May 8 and May 21, 2024, respectively. In that transmission, the NRCS also invited the Corps to participate in the development of the MOA. Their response is pending. The Utah SHPO concurred with the determination of project effects and site eligibility in a letter dated June 4, 2024.

To resolve the adverse effects to the three historic properties within the APE, the NRCS is currently drafting an MOA and is in active consultation with the Utah SHPO, the Project Sponsors, and other consulting parties. Draft mitigation stipulations proposed include drone flyovers of the historic canals, an ArcGIS Story Map posted to the Utah SHPO YouTube Channel, aerial photos of contributing features, and a historic context.

- 15. Does your agency have a website or website link where the interested public can find out about this project and/or provide comments? Please provide relevant links:**

This is the general project information website. We are currently not in a public comment period. The draft Plan-EA will be available for public comment in fall 2024.

[Corn Creek Watershed](#)

- 16. Is this undertaking considered a "major" or "covered" project listed on the Federal Infrastructure Projects Permitting Dashboard? If so, please provide the link:**

No.

The following are attached to this form (check all that apply):

- ☒ Section 106 consultation correspondence
- ☐ Maps, photographs, drawings, and/or plans
- ☐ Additional historic property information
- ☐ Consulting party list with known contact information
- ☒ Other: Cultural Resources Reports with maps

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Mr. Amos Murphy, Chairman
Confederated Tribes, Goshute Res.
HC61, Box 6104
195 Tribal Center Road
City, St. Ibapah, Utah 84034

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Robert Preston, Jr., President
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☒ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com[®]

OFFICIAL USE
Certified Mail Fee \$10.40
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$
Postage \$
Postmark Here
APR 11 2024

Ms. Betsy Chapoose, THPO
Ute Indian Tribe of the Uintah
P.O. Box 190
Fort Duchesne, Utah 84026

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions (over \$500)

SECTION ON DELIVERY

is Agent
C. Date of Delivery
APR 18 2024
Yes
No
Delivery address below: No

☐ Priority Mail Express[®]
☐ Registered MailTM
☐ Registered Mail Restricted Delivery
☒ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

7021 0350 0002 0696 8986

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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SECTION ON DELIVERY

☒ Agent
☐ Addressee

Printed Name) Ms. Hope Silvas C. Date of Delivery 5/1/24

Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Certified Mail Fee \$ 10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$
 Total \$

Sent to Ms. Hope Silvas, Chairwoman
Paiute Indian Tribe of Utah
6060 West 3650 North
Invins, Utah 84738

Postmark Here **SHPO APR 11 2024**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions (over 3500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

9589 0710 5270 0751 4960 36

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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SECTION ON DELIVERY

☐ Agent
☐ Addressee

Printed Name) Cassandra Atencio C. Date of Delivery 4-19-24

Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Certified Mail Fee \$ 10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$
 Total \$

Sent to Cassandra Atencio, NAGPRA Coordinator
Southern Ute Indian Tribe
P.O. Box 737 MS#88
Ignacio, CO 81137

Postmark Here **SHPO APR 11 2024**

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions (over 3500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

7021 0350 0002 0696 8993

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

SECTION ON DELIVERY

☐ Agent
☐ Addressee

Printed Name) Rick Pikyavit C. Date of Delivery 4/16

Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Certified Mail Fee \$ 10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$
 Total \$

Sent to Rick Pikyavit
Southern Paiute
715 South 960 West
Richfield, UT 84701

Postmark Here **SHPO APR 11 2024**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions (over 3500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Ms. Betsy Chapoose, THPO Ute Indian Tribe of the Uintah P.O. Box 190 Fort Duchesne, Utah 84026</p> <p>7021 0350 0002 0696 9037</p>		<p>A. Signature X <i>Betsy Chapoose</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>	

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
<p>7021 0350 0002 0696 9037</p> <p>Official Use</p> <p>Certified Mail Fee \$10.40</p> <p>Extra Services & Fees (check box, add fee as appropriate)</p> <p><input type="checkbox"/> Return Receipt (hardcopy) \$</p> <p><input type="checkbox"/> Return Receipt (electronic) \$</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery \$</p> <p><input type="checkbox"/> Adult Signature Required \$</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery \$</p> <p>Postage \$</p> <p>Total \$</p> <p>Sent \$</p> <p>Street</p> <p>City</p> <p>Postmark Here SWPD APR 1 1 2024</p> <p>Ms. Betsy Chapoose, THPO Ute Indian Tribe of the Uintah P.O. Box 190 Fort Duchesne, Utah 84026</p>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Ms. Carmen Clark Paiute Indian Tribe of Utah 6060 West 3650 North Ivins, Utah 84738</p> <p>7021 0350 0002 0696 9020</p>		<p>A. Signature X <i>Carmen Clark</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery <i>Hope Silvas</i> <i>5/2/24</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>	

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
<p>7021 0350 0002 0696 9020</p> <p>Official Use</p> <p>Certified Mail Fee \$10.40</p> <p>Extra Services & Fees (check box, add fee as appropriate)</p> <p><input type="checkbox"/> Return Receipt (hardcopy) \$</p> <p><input type="checkbox"/> Return Receipt (electronic) \$</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery \$</p> <p><input type="checkbox"/> Adult Signature Required \$</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery \$</p> <p>Postage \$</p> <p>Total \$</p> <p>Sent \$</p> <p>Street</p> <p>City</p> <p>Postmark Here SWPD APR 1 1 2024</p> <p>Ms. Carmen Clark Paiute Indian Tribe of Utah 6060 West 3650 North Ivins, Utah 84738</p>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Simon Pikyavit Chairman PO Box 116 Kanosh, UT 84637</p> <p>7021 0350 0002 0696 9006</p>		<p>A. Signature X <i>Lonnie Redfoot</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery <i>Lonnie Redfoot</i> <i>4/1/24</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>	

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
<p>7021 0350 0002 0696 9006</p> <p>Official Use</p> <p>Certified Mail Fee \$10.40</p> <p>Extra Services & Fees (check box, add fee as appropriate)</p> <p><input type="checkbox"/> Return Receipt (hardcopy) \$</p> <p><input type="checkbox"/> Return Receipt (electronic) \$</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery \$</p> <p><input type="checkbox"/> Adult Signature Required \$</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery \$</p> <p>Postage \$</p> <p>Total \$</p> <p>Sent \$</p> <p>Street</p> <p>City</p> <p>Postmark Here SWPD APR 1 1 2024</p> <p>Simon Pikyavit Chairman PO Box 116 Kanosh, UT 84637</p>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stephanie Holly, Administration
Navajo Utah Commission
PO Box 570
Montezuma Creek, UT 84534

9590 9402 6818 1074 7902 32

2. Article Number (Transfer from service label)
7021 0350 0002 0696 9099

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Stephanie Holly* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Stephanie Holly

C. Date of Delivery
4-19-24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☒ Signature Confirmation™
☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery ☐ Mail Restricted Delivery (over \$500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Richard M. Begay
Navajo Nation Historic Preservation
P.O. Box 4950
Window Rock, Arizona 86515

9590 9402 6818 1074 7901 88

2. Article Number (Transfer from service label)
7021 0350 0002 0696 9082

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Michael Slim* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Michael Slim

C. Date of Delivery
4-19-24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☒ Signature Confirmation™
☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery ☐ Mail Restricted Delivery (over \$500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Melvin Baker, Chairperson
Southern Ute
P.O. Box 737 Mail Stop #73
Ignacio, CO 81137

9590 9402 6818 1074 7901 64

2. Article Number (Transfer from service label)
7021 0350 0002 0696 9075

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Melvin Baker* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Melvin Baker

C. Date of Delivery
4-19-24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☒ Signature Confirmation™
☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery ☐ Mail Restricted Delivery (over \$500)

Domestic Return Receipt

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0 FELICIA WISE

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$

Postmark Here
SHR 11 2024

Stephanie Holly, Administration
Navajo Utah Commission
PO Box 570
Montezuma Creek, UT 84534

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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0 FELICIA WISE

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$

Postmark Here
SHR 11 2024

Mr. Richard M. Begay
Navajo Nation Historic Preservation
P.O. Box 4950
Window Rock, Arizona 86515

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**U.S. Postal Service™
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0 FELICIA WISE

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$

Postmark Here
SHR 11 2024

Melvin Baker, Chairperson
Southern Ute
P.O. Box 737 Mail Stop #73
Ignacio, CO 81137

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

THIS SECTION

13. Press on the reverse side of the card to you. Back of the mailpiece, permits.

ident of the President

a 86515

1074 7902 94

0002 0696 9136

PSN 7530-02-000-9053 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

3. Service Type ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Adult Signature ☐ Registered Mail Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

THIS SECTION

13. Press on the reverse side of the card to you. Back of the mailpiece, permits.

aptewa, THPO

ona

na 86039

1074 7902 49

0002 0696 9129

PSN 7530-02-000-9053 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

3. Service Type ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Adult Signature ☐ Registered Mail Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

THIS SECTION

13. Press on the reverse side of the card to you. Back of the mailpiece, permits.

, Executive Director

mission

UT 84534

1074 7903 31

0002 0696 9112

PSN 7530-02-000-9053 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

3. Service Type ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Adult Signature ☐ Registered Mail Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

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Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Official Use

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

Postmark Here

Mr. Buu Nygren, President
Navajo Nation Office of the President
P.O. Box 7440
Window Rock, Arizona 86515

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Official Use

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

Postmark Here

Stewart B. Koyiyumptewa, THPO
Hopi Tribe of Arizona
P.O. Box 123
Kykotsmovi, Arizona 86039

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Official Use

Certified Mail Fee \$10.40

Extra Services & Fees (check box, add fee as appropriate)

Postmark Here

Clarence Rockwell, Executive Director
Navajo Utah Commission
PO Box 570
Montezuma Creek, UT 84534

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Dennis Alex Chairman 2575 Commerce Way Ogden, Utah 84401</p>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label) 7021 0350 0002 0696 9174</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>			

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$10.40	Postmark Here APR 11 2024
<p>Extra Services & Fees (check box, add fee as appropriate)</p> <p><input type="checkbox"/> Return Receipt (hardcopy) \$ <input type="checkbox"/> Return Receipt (electronic) \$ <input type="checkbox"/> Certified Mail Restricted Delivery \$ <input type="checkbox"/> Adult Signature Required \$ <input type="checkbox"/> Adult Signature Restricted Delivery \$</p>	
<p>Postage \$ Total \$ Sent to Street City, State</p>	
<p>Dennis Alex Chairman 2575 Commerce Way Ogden, Utah 84401</p>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Mr. Julius Murray, Chairman PO Box 190 Fort Duchesne, Utah 84026</p>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label) 7021 0350 0002 0696 9167</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>			

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$10.40	Postmark Here APR 11 2024
<p>Extra Services & Fees (check box, add fee as appropriate)</p> <p><input type="checkbox"/> Return Receipt (hardcopy) \$ <input type="checkbox"/> Return Receipt (electronic) \$ <input type="checkbox"/> Certified Mail Restricted Delivery \$ <input type="checkbox"/> Adult Signature Required \$ <input type="checkbox"/> Adult Signature Restricted Delivery \$</p>	
<p>Postage \$ Total \$ Sent to Street City, State</p>	
<p>Mr. Julius Murray, Chairman PO Box 190 Fort Duchesne, Utah 84026</p>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Mr. Timothy L. Nuvangyaoma Hopi Tribe of Arizona P.O. Box 123 Kykotsmovi, Arizona 86039</p>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label) 7021 0350 0002 0696 9150</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>			

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<p>Mr. Timothy L. Nuvangyaoma Hopi Tribe of Arizona P.O. Box 123 Kykotsmovi, Arizona 86039</p>	
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Ms. Corrina Bow, Chairperson
Paute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84720-2613

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Ms. Tamra Borchardt-Slayton
Vice-Chairperson
440 North Paiute Drive
Cedar City, UT 84720

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Ms. Patti Timbimboo-Madsen
NW Band Shoshone Nation
2575 Commerce Way
Ogden, Utah 84401

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Mr. Daniel Moon, Chairman
Skull Valley Band of Goshute Indians
407 Skull Valley Road
Skull Valley, UT, 84029

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Ms. Delice Tom
Chairperson
600 North 100 East
Cedar City, UT 84721

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Ms. Autumn Gillard
Paute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84721

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



Spencer J. Cox
Governor

Deidre M. Henderson
Lieutenant Governor

Donna Law
Interim Executive Director



Christopher Merritt
State Historic Preservation Officer
Utah State Historic Preservation Office

June 4, 2024

Travis Mote
Acting State Conservationist
Natural Resources Conservation Service
125 South State Street, Room 4010
Salt Lake City, Utah 84138-1100

RE: A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA

For future correspondence, please reference Case No. 24-0960

Dear Travis Mote,

The Utah State Historic Preservation Office received your submission and request for our comment on the above-referenced undertaking on May 21, 2024.

We concur with your determinations of eligibility and effect for this undertaking.

This letter serves as our comment on the determinations you have made within the consultation process specified in §36CFR800.4. If you have questions, please contact me at (801) 535-2502 or by email at rmcgrath@utah.gov.

Sincerely,

Ryan McGrath
Compliance Archaeologist

From: Hoffmann, Tara - FPAC-NRCS, UT
To: [e106](#)
Cc: [Seibert, Erika - FPAC-NRCS, DC](#); [Carrig, Charles - FPAC-NRCS, AR](#); [Pappas, Christina - FPAC-NRCS, AR](#); [Alexis Clark](#)
Subject: Utah NRCS Notification of Adverse Effects- Corn Creek Watershed
Date: Tuesday, June 4, 2024 11:52:00 AM
Attachments: [U23HY0520.pdf](#)
[e106_CornCreek_Utah.docx](#)
[U23HY0520_Consultation.pdf](#)

Good Afternoon,

Per 36 CFR 800.6(a)(1), attached is notification of adverse effects to three historic properties as a result of the proposed Corn Creek Watershed Plan and Environmental Assessment, Kanosh, Millard County, Utah. Also included is current Section 106 consultation between NRCS, SHPO, and applicable tribes, and the cultural resource report (U23HY0520).

Thank you,

Tara

Tara S. Hoffmann, MA
State Watershed Cultural Resources Specialist/Tribal Liaison
Natural Resources Conservation Service
Salt Lake City, UT
O: 801-524-4556 C: 385-258-1266



June 27, 2024

Tara S. Hoffmann
State Cultural Resources Specialist
Natural Resources Conservation Service
125 South State Street, room 4010
Salt Lake City, UT 84138-1100

Ref: *Corn Creek Watershed Plan Environmental Assessment*
Kanosh, Millard County, Utah
ACHP Project Number: 021041

Dear Ms. Hoffmann:

On June 4, 2024, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the potential adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Because the ACHP did not respond within 15 days with a decision regarding our nonparticipation, the ACHP assumes that the Natural Resources Conservation Service continued the consultation to resolve adverse effects.

However, if we receive a request for participation from the Utah State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Should the undertaking's circumstances change, consulting parties cannot come to consensus, or you need further advisory assistance to conclude the consultation process, please contact us.

Pursuant to 36 CFR § 800.6(b)(1)(iv), you will need to file the final Section 106 agreement document (Agreement), developed in consultation with the Utah SHPO and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the Agreement and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

If you have any questions or require our further assistance, please contact Max Sickler at (202) 517-0220

or by e-mail at msickler@achp.gov and reference the ACHP Project Number above.

Sincerely,

A handwritten signature in black ink that reads "Dana Daniels". The signature is written in a cursive, flowing style.

Dana Daniels
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

DRAFT
MEMORANDUM OF AGREEMENT
AMONG
THE NATURAL RESOURCES CONSERVATION SERVICE,
KANOSH TOWN,
CORN CREEK IRRIGATION COMPANY,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42MD4703, 4707 AND 4708
MILLARD COUNTY, UTAH

WHEREAS, the Natural Resources Conservation Service (NRCS) is providing technical and financial assistance to the Town of Kanosh, the Corn Creek Irrigation Company, and the Kanosh Band of Paiute Indians (Kanosh Band) (Sponsors) to provide flood protection and agriculture water management for the Town of Kanosh and the Kanosh Band village. Project components are located predominantly on private and municipal land, tribal trust land, and Utah Division of Wildlife Resources-administered land (hereafter referred to as the “Project”); and

WHEREAS, the NRCS has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108, and its implementing regulations, 36 C.F.R. 800; and

WHEREAS, the NRCS, has been designated the lead Federal agency under Section 106 of the national Historic Preservation Act (NHPA), 54 U.S.C. §306108, and its implementing regulations, 36 C.F.R. 800; and

WHEREAS, the NRCS has defined the Project’s Area of Potential Effects (APE), as defined at 36 C.F.R. 800.16(d), as a 400-acre area, that encompasses all locations of anticipated ground disturbance, including staging areas and access roads. The APE also includes an additional 17,464 acres consisting of all lands that could be affected by flood waters under the No Action alternative and via a breach of the dam under the Preferred Alternative; and

WHEREAS, a cultural resources inventory of the APE has been completed, as required by 36 C.F.R. 800, and described in the report entitled *A Cultural Resource Assessment for the Corn Creek Watershed Plan-EA, Kanosh, Millard County, Utah*, prepared by Certus Environmental Solutions and dated March 26, 2024, which the NRCS and the Utah State Historic Preservation Office (Utah SHPO) agree that historic canal Sites 42MD4703, 4707, and 4708 are eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion A; and

WHEREAS, the NRCS has determined that the Project will result in an adverse effect to Sites 42MD4703, 4707, and 4708 due to conversion of Sites 42MD4703 and 4707 from open ditches to pressurized pipe and the lining of Site 42MD4708; and

WHEREAS, the NRCS has consulted with the Utah SHPO, the UDWR, the Southern Ute Indian Tribe, Skull Valley Band of Goshute Indians, Indian Peaks Band of Paiutes, Kanosh Band of Paiutes, Ute Indian Tribe of the Uintah & Ouray Reservation, Shivwits Band of Paiute Indians,

Paiute Indian Tribe of Utah, Navajo Nation, Hopi Tribe, Cedar Band of Paiutes, Confederated Tribes of the Goshute Reservation, Southern Paiute, Northwest Band of the Shoshone Nation, San Juan Southern Paiute Tribe of Arizona; and

WHEREAS, the UDWR, the Southern Ute Indian Tribe, Skull Valley Band of Goshute Indians, Indian Peaks Band of Paiutes, Kanosh Band of Paiutes, Ute Indian Tribe of the Uintah & Ouray Reservation, Shivwits Band of Paiute Indians, Paiute Indian Tribe of Utah, Navajo Nation, Hopi Tribe, Cedar Band of Paiutes, Confederated Tribes of the Goshute Reservation, Southern Paiute, Northwest Band of the Shoshone Nation, San Juan Southern Paiute Tribe of Arizona decline further participation in the development of this MOA; and

WHEREAS, the Utah SHPO, Kanosh Town, and the Corn Creek Irrigation Company have requested to participate in the development of this MOA; and

WHEREAS, the NRCS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects to Sites 42MD4703, 4707, and 4708, and has invited the ACHP's participation in the Project, pursuant to 36 C.F.R. 800.6(a)(1), in a letter dated June 4, 2024; and

WHEREAS, the ACHP, in a letter dated June 27, 2024, declined to participate in consultation; and

WHEREAS, "Signatories" hereafter collectively refers to the Signatories (NRCS, Utah SHPO, Kanosh Town, the Corn Creek Irrigation Company); and

WHEREAS, other parties may be invited to become signatories to this MOA if such a party agrees to these terms; and

WHEREAS, the NRCS will file a copy of this executed MOA to the ACHP; and

NOW, THEREFORE, the Signatories agree that upon the decision of the NRCS to proceed with the Project, the NRCS shall ensure that the following stipulations are implemented in order to resolve the adverse effect of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The NRCS shall ensure that the following stipulations are implemented:

I. PROFESSIONAL QUALIFICATIONS

- A.** All tasks will be completed by personnel meeting the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* as stated in 36 C.F.R. 61.

- B.** All tasks will be completed according to specifications consistent with the Secretary of Interior's *Standards and Guidelines for Archeological Documentation and Historical Documentation* and, where appropriate, guidelines required by the Utah SHPO.

II. MITIGATION OF ARCHAEOLOGICAL RESOURCES

- A.** The NRCS, in consultation with the Signatories, shall complete the following mitigation measures:
1. Aerial video flyovers to fully document Sites 42MD4703, 4707, and 4708; and
 2. Creation of a Story Map of the ditches to be made available to the public online; and
 3. Historic context of Sites 4703, 4707, and 4708, as applicable given available data; and
 4. Post-construction updated Utah Archaeology Site Forms for each site, to be submitted to SHPO upon review and approval by NRCS.

III. IV. UNANTICIPATED DISCOVERIES

- A.** In the event of an unanticipated archaeological discovery during mitigation work or during construction, the NRCS will document and/or treat the discovery based on the criteria and methods described in the Treatment Plan contained in Appendix A. If significant discoveries requiring longer-term work stoppage for consultation and mitigation are encountered, the NRCS will consult per 36 C.F.R. 800.6 to develop a plan to further mitigate the adverse effect.
- B.** If human remains/funerary objects are discovered under any circumstance, the remains will be treated in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) and its implementing regulations (43 C.F.R. 10). All construction activities within 100 feet of the remains shall cease immediately and the NRCS shall consult pursuant to 43 C.F.R. 10.5, to develop a written plan of action to manage the discovery. Construction in the area of the remains may need to be halted throughout the review process. Continuation of work following a discovery will be contingent upon approval by the NRCS Area Cultural Resource Specialist in consultation with the Utah SHPO, tribes, and other consulting parties that the approved plan has been satisfactorily completed.

IV. DISPUTE RESOLUTION

Should any Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the NRCS shall consult with such party to resolve the objection. If the NRCS determines that such objection cannot be resolved, the NRCS will:

- A. Forward all documentation relevant to the dispute, including the NRCS's proposed resolution, to the ACHP. The ACHP shall provide the NRCS with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Signatories, and provide them with a copy of this written response. The NRCS will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the NRCS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- C. It will be the responsibility of the NRCS to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

VI. COORDINATION WITH OTHER ACTIONS

Other state or federal agencies that provide permitting or financial assistance to an undertaking covered by this MOA may satisfy their own compliance responsibilities under Section 106 of the NHPA by accepting and complying with the terms of this MOA. Other parties may have their actions covered by this MOA if they agree to its terms. Agencies shall notify the NRCS and the Utah SHPO in writing of the intent to adhere to this MOA.

VII. TERMINATION

- A. If the terms of this MOA have not been implemented by October 15, 2029, then this MOA shall be considered null and void. In such an event, the NRCS shall so notify the Signatories and, if it chooses to continue with the Project, then it shall

reinitiate review of and consultation on the Project in accordance with 36 C.F.R. 800.3 through 800.7.

- B.** In the event that the NRCS does not carry out the terms of this MOA, the Signatories shall consult to seek amendment to the MOA and proceed in accordance with 36 C.F.R. 800.6(c)(8).
- C.** Any signatory to the MOA may terminate this MOA by providing thirty (30) days' notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the NRCS shall proceed in accordance with 36 C.F.R. 800.6(c)(8), execute a new agreement in accordance with 800.6(c)(1) or request comments of the ACHP under 800.7(a).

VIII. USDA STIPULATIONS

- A.** The signatories to this agreement and their respective agencies will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- B.** Any transfer of funds from one party to another shall be done via a separate instrument as appropriate. Specific work projects or activities that involve the transfer of funds, services, or property among the signatories, and their respective agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

Execution of this MOA by the NRCS and Signatories, and its submission to the ACHP in accordance with 36 C.F.R. 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(l) of the NHPA. Execution and submission of this MOA, and implementation of its terms, evidence that the NRCS has afforded the ACHP an opportunity to comment on the Project and its effects on historic properties, and that the NRCS has taken into account the effects of the Project on historic properties.

**MEMORANDUM OF AGREEMENT
AMONG
THE NATURAL RESOURCES CONSERVATION SERVICE,
KANOSH TOWN,
CORN CREEK IRRIGATION COMPANY,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42MD4703, 4707 AND 4708
MILLARD COUNTY, UTAH**

SIGNATORY PAGE

NATURAL RESOURCES CONSERVATION SERVICE

Emily Fife, Utah State Conservationist

Date: _____

**MEMORANDUM OF AGREEMENT
AMONG**

**THE NATURAL RESOURCES CONSERVATION SERVICE,
KANOSH TOWN,
CORN CREEK IRRIGATION COMPANY,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICE
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MILLARD COUNTY, UTAH**

SIGNATORY PAGE

UTAH STATE HISTORIC PRESERVATION OFFICER

Date: _____

Dr. Christopher Merritt, Utah State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT
AMONG
THE NATURAL RESOURCES CONSERVATION SERVICE,
KANOSH TOWN,**

**CORN CREEK IRRIGATION COMPANY,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42MD4703, 4707 AND 4708
MILLARD COUNTY, UTAH**

SIGNATORY PAGE

KANOSH TOWN

Scott McDonald, Mayor

Date: _____

**MEMORANDUM OF AGREEMENT
AMONG
THE NATURAL RESOURCES CONSERVATION SERVICE,
KANOSH TOWN,
CORN CREEK IRRIGATION COMPANY,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICE**

**REGARDING
THE MITIGATION OF ADVERSE EFFECTS
TO SITES 42MD4703, 4707 AND 4708
MILLARD COUNTY, UTAH**

SIGNATORY PAGE

CORN CREEK IRRIGATION COMPANY

Brandon George, President

Date: _____

DRAFT

Kanosh Band Rock Art Boulder Emails

From: [Hoffmann, Tara - FPAC-NRCS, UT](#)
To: [Simon Pikyavit](#)
Subject: RE: [External Email]Re: Site Visit re: Boulder near Corn Creek Dam
Date: Monday, July 29, 2024 4:12:00 PM

I agree. Thanks again. I will pass this onto our consultants and engineers.

Tara

From: Simon Pikyavit <pikyavitsimon@gmail.com>
Sent: Monday, July 29, 2024 4:10 PM
To: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>
Subject: Re: [External Email]Re: Site Visit re: Boulder near Corn Creek Dam

Mark the area on the design drawings would be better. I think a fence would draw attention to it.

On Mon, Jul 29, 2024 at 4:10 PM Hoffmann, Tara - FPAC-NRCS, UT
<tara.hoffmann@usda.gov> wrote:

Thank you, Simon. Would you like it fenced off at all during construction, on the side facing the dam, we could also mark that area on the design drawings as an 'avoidance area' to not draw attention to it on the ground? No construction will occur on that property, all will be near the dam.

Tara

Tara S. Hoffmann, MA
State Watershed Cultural Resources Specialist/Tribal Liaison
Natural Resources Conservation Service
Salt Lake City, UT
O: 801-524-4556 C: 385-258-1266

From: Simon Pikyavit <pikyavitsimon@gmail.com>
Sent: Monday, July 29, 2024 4:06 PM
To: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>
Subject: Re: [External Email]Re: Site Visit re: Boulder near Corn Creek Dam

We have all agreed as a council to leave the boulder where it is.

On Mon, Jul 29, 2024 at 1:11 PM Hoffmann, Tara - FPAC-NRCS, UT
<tara.hoffmann@usda.gov> wrote:

|

I want to thank you all for a wonderful visit last Thursday. Let me know what the Council decides on the boulder.

Cheers,
Tara

Tara S. Hoffmann, MA
State Watershed Cultural Resources Specialist/Tribal Liaison
Natural Resources Conservation Service
Salt Lake City, UT
O: 801-524-4556 C: 385-258-1266

From: Floraine Pikyavit <florainepikyavit@gmail.com>
Sent: Monday, July 22, 2024 7:14 PM
To: Jill Haslam <jill@echohawk.com>
Cc: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>; pikyavitsimon@gmail.com; Edricko5182012@gmail.com; ericpikyavit@gmail.com; petepikyavit@gmail.com; stephaniebabbitt78@gmail.com; Emily Ferrell <emily@echohawk.com>
Subject: [External Email]Re: Site Visit re: Boulder near Corn Creek Dam

You don't often get email from florainepikyavit@gmail.com. [Learn why this is important](#)

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to Spam.Abuse@usda.gov

See you Thursday. Thank you

On Mon, Jul 22, 2024, 11:39 AM Jill Haslam <jill@echohawk.com> wrote:

Todd Macfarlane, the neighbor of property owner Cass Olmstead, will meet the site-visit party at 9:00 am on Turkey Track Lane near the gate to the Olmstead property. More details regarding meeting place will be forthcoming.

Instructions from Tara Hoffman (NRCS):

Attached is a PDF with directions to the meeting location at the gate on County Road 4758 and Turkey Track Lane. If you have Google Maps, follow this link to get directions to the gate from your location:

<https://maps.app.goo.gl/8PQbS11wF1dpeN6KFA> If you have any issues on Thursday

morning, I will have my cell phone so please call or text me at 385-258-1266. Look forward to seeing everyone later this week!

Thanks,
Tara

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From: [Autumn Gillard](#)
To: [Hoffmann, Tara - FPAC-NRCS, UT](#)
Subject: Re: [External] Re: [External] NRCS Corn Creek Watershed consultation- Kanosh, UT
Date: Tuesday, June 25, 2024 9:08:05 AM

Hi Tara,

The Friday time frame would work best for me. Please do invite the Kanosh Band.

Get [Outlook for iOS](#)

From: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>
Sent: Tuesday, June 25, 2024 8:38:48 AM
To: Autumn Gillard <agillard@pitu.gov>
Subject: [External] Re: [External] NRCS Corn Creek Watershed consultation- Kanosh, UT

Hi Autumn,

Yes, we can definitely have a virtual meeting to discuss. I also sent the initial email to Simon Pikyavit and Jill Haslam, their attorney. I've attached the site form for 4702 and GIS data (for all sites) in case you would like to look at exact locations. Please forward to others as needed.

I'm available this week:

Wednesday: 10am-12pm

Thursday: 9am-11am; 12:30pm-3:30pm

Friday: 3:30pm-4:30pm

Let me know when you'd like to meet. Would you like me to contact the Kanosh Band or will you be inviting them?

Thanks,

Tara

Tara S. Hoffmann, MA
State Watershed Cultural Resources Specialist/Tribal Liaison
Natural Resources Conservation Service
Salt Lake City, UT
O: 801-524-4556 C: 385-258-1266

From: Autumn Gillard <agillard@pitu.gov>
Sent: Monday, June 24, 2024 5:16:51 PM
To: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>

Subject: Re: [External] NRCS Corn Creek Watershed consultation- Kanosh, UT

Hi Tara,

I am going to be forwarding this email to the Kanosh council as well as our environmental management department.

I do have some questions on the following site:

42MD4702

Prehistoric rock art on a relocated boulder

Can we have a virtual meeting to discuss?

Autumn Gillard

Cultural Resource Manager

A 440 N Paiute Drive, Cedar City UT, 84721

P 435.586.1112 ext 3107 **C** 435.704.4054

W www.pitu.gov **E** agillard@pitu.gov

From: Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>

Sent: Tuesday, June 18, 2024 11:29 AM

To: danielm@svgoshutes.com <danielm@svgoshutes.com>; lillithc@svgoshutes.com <lillithc@svgoshutes.com>; amos.murphy@ctgr.us <amos.murphy@ctgr.us>; Clell Pete <clell.pete@ctgr.us>; juliusm@utetribe.com <juliusm@utetribe.com>; betsysc@uteTribe.com <betsyc@uteTribe.com>; Luana Thompson <luanat@utetribe.com>; pikyavitsimon@gmail.com <pikyavitsimon@gmail.com>; Jill Haslam <jill@echohawk.com>; Autumn Gillard <agillard@pitu.gov>; Corrina Bow <cbow@utahpaiutes.org>

Subject: [External] NRCS Corn Creek Watershed consultation- Kanosh, UT

I hope this email finds you well. I'm following up regarding NHPA Section 106 consultation for the NRCS' Corn Creek Plan-Environmental Assessment (EA), located near Kanosh, Utah.

Per 36 CFR 800.3, the NRCS initiated Section 106 in letters dated April 9, 2024. The Plan-EA is proposing rehabilitation of the Corn Creek Dam and lining/piping of historic canals, including an irrigation pipeline on Kanosh Band of Paiute land. The APE for this project includes all proposed ground disturbance areas, including staging areas and access roads (per 36 CFR 800.16(d)). A cultural resources inventory was completed in 2023. The table below summarizes the cultural resources sites within the APE:

Table 2. Documented sites in the survey area and National Register eligibility

PL 83-566 Section 12 Consultation Letter



May 14, 2024

George Weekley
Field Supervisor, Utah Field Office
U.S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

RE: Corn Creek Watershed Plan-Environmental Assessment (Plan-EA)
Section 12 Notification--Public Law 83-566

Dear George Weekley:

The Natural Resources Conservation Service (NRCS) is currently preparing the Corn Creek Watershed Plan-EA for flood protection and agricultural water management measures in Millard County, Utah. In accordance with Section 12 of the Watershed Protection and Flood Prevention Act, Public Law 83-566 (U.S.C. Section 1008), this letter serves to notify the U.S. Fish and Wildlife Service (USFWS) that NRCS invites the USFWS to submit survey reports or investigations regarding wildlife resources that will be considered in development of the Corn Creek Watershed Plan-EA. Additionally, the NRCS welcomes USFWS participation in the preparation of the Plan-EA in accordance with Section 12 of Public Law 83-566.

Thank you for your assistance. If you have any questions, please contact Kyle Wheeler, Watershed Coordinator, at kyle.wheeler@usda.gov or 435-253-2147.

Sincerely,

Travis Mote
Acting State Conservationist

cc:

Anders Fillerup, Acting Assistant State Conservationist—Water Resources, NRCS, Salt Lake City, UT
Kyle Wheeler, Watershed Coordinator, NRCS, Richfield, UT

**Utah Geological Survey (UGS)
Paleontological/Scientific Resources
Consultation/Records Search
Documentation**

From: [Martha Hayden](#)
To: [Landon Richins](#)
Cc: [Layne Jensen](#); [Hoffmann, Tara - FPAC-NRCS, UT](#)
Subject: Re: Corn Creek Watershed Plan-EA Paleontological Resource Search
Date: Thursday, December 12, 2024 3:26:15 PM
Attachments: [a909fbb4-4e10-4d7a-bc5f-4e0c36b01031.png](#)

Hi Landon,

The KMZ file worked, but for some reason the extracted zipped folder was empty (before I hit extract all, it showed the shape files, but they were all only 1 KB in size). Maybe there is a problem on my end? But I was able to use the KMZ file anyway.

There are no paleontological localities recorded in the Corn Creek Watershed project area. Surficial deposits consist of Quaternary and Recent alluvial, lacustrine, and volcanic deposits that have low potential for yielding fossil localities (PFYC 1 - 2). Let me know if that is all the information you need, or if you will need a formal letter. Thanks, Martha

On Thu, Dec 12, 2024 at 2:58 PM Landon Richins <lrichins@fransoncivil.com> wrote:

If you still have issues with that shapefile, I have attached a KML here...

Landon Richins

Franson Civil Engineers

Office: 801.756.0309 | Direct: 801.938.7585

From: Landon Richins
Sent: Thursday, December 12, 2024 2:46 PM
To: Martha Hayden <marthahayden@utah.gov>
Cc: Layne Jensen <ljensen@fransoncivil.com>; Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>
Subject: RE: Corn Creek Watershed Plan-EA Paleontological Resource Search

My apologies, how does this work?

Landon Richins

Franson Civil Engineers

Office: 801.756.0309 | Direct: 801.938.7585

From: Martha Hayden <marthahayden@utah.gov>

Sent: Thursday, December 12, 2024 2:44 PM

To: Landon Richins <lrichins@fransoncivil.com>

Cc: Layne Jensen <ljensen@fransoncivil.com>; Hoffmann, Tara - FPAC-NRCS, UT <tara.hoffmann@usda.gov>

Subject: Re: Corn Creek Watershed Plan-EA Paleontological Resource Search

Hi Landon,

Something seems to be wrong with the zipped file. When I tried to extract the files, the folder was empty. Let me know if you can check it and resend. You could also send me a pdf map of the project area. Thanks, Martha

On Thu, Dec 12, 2024 at 9:58 AM Landon Richins <lrichins@fransoncivil.com> wrote:

Good Morning, Martha,

Our firm is working on the Corn Creek Watershed Plan-Environmental Assessment in Millard County in coordination with NRCS, the lead agency. We need documentation that there are no paleontological resources in the specified project area (at least, we do not anticipate there being any paleontological resources in the project area).

Would you be able to perform an area search for the attached shapefile (zip folder) and provide a letter identifying anything you find or your lack of concern for us to include in an Appendix to the EA? We are closing in on the last steps to get this document off for finalization and national review, so we would need this verification as soon as you could provide it. We certainly understand that it is a busy time of year and would appreciate any time you could find to do this for us.

Please let me know if you need any additional information. I certainly appreciate your help!

Sincerely,

Landon Richins

Landon Richins | lrichins@fransoncivil.com

Franson Civil Engineers

1276 South 820 East, Suite 100, American Fork, Utah 84003

Office: 801.756.0309 | Direct: 801.938.7585

Any use or reuse of original or altered files by the owner or others without the express written verification of Franson Civil Engineers or any CADD adaptation from the specific purpose originally intended shall be at the owner's risk and full legal responsibility.



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Photo



Martha Hayden (she/her)

Paleontological Assistant

O: (801) 537-3311

M: (801) 718-4443

E: marthahayden@utah.gov

Utah Department of Natural Resources
Utah Geological Survey



geology.utah.gov

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Photo



Martha Hayden (she/her)
Paleontological Assistant

O: (801) 537-3311

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Utah Department of Natural Resources
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geology.utah.gov

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