

Lake Powell Pipeline Timeline and Procedural History

Lisa Rutherford – CSU Board Member

Introduction

Since 2008, when public involvement in the Lake Powell Pipeline Project (LPP) was possible, Conserve Southwest Utah (formerly Citizens for Dixie's Future) has been involved in this process. CSU and our supporters have provided comments to the Federal Energy Regulatory Commission (FERC) whenever the opportunity presented itself.

During the ten years during which this project has been under review by FERC, we have witnessed, with some frequency, the state's inability to provide FERC with necessary information and FERC's requests for supplementary, supporting information. Is the information that Utah's Water Resources Board (UWRB) and their representative the Division of Water Resources (DWR) reliable and sufficient? We do not think so. That has inspired CSU to seek more answers from the state – answers which have not been forthcoming.

In the midst of all this has been the continuing effort to fund a project which has not even been approved yet by FERC. We have witnessed efforts at all levels – local, county and state – to convince citizens that paying for this multi-billion dollar, risky project is in our best interest. We have watched state leaders with the help of the district and many water lobbyists convince other lawmakers to stash money away to pay for the project up to and including taking money from needed highway work for that end.

Only recently, through the governor's Executive Water Finance Board, has a serious discussion about the worth of committing our state and specifically our county's citizens to this project been held.

Where we are and what's next

On January 18, 2019¹ the UDWR and Washington County Water Conservancy District submitted their responses to public comments made to FERC that were due by November 19, 2018.

Within 180 days (6 months) FERC will issue a Draft Environmental Impact Statement (EIS).

The public will then have 60 days to comment on the draft EIS.

Following that, FERC responds to comments in 45 days and within 90 days FERC and all the Cooperating Agencies will make their final decisions on the EIS.

¹ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14737849

Utah’s “official” LPP information website provides the following information about the process² and “Permitting Steps & Milestones”³:

- [Utah Board of Water Resources](#) (UBWR) will construct, own, operate and maintain the project until transferred and consult with the Project Management Committee as outlined in the 2006 Lake Powell Pipeline Development Act.
- [Lake Powell Pipeline Project Management Committee](#) (PMC) consults with UBWR on the development and implementation of the project and approves all expenditures from the fund under the 2006 Lake Powell Pipeline Development Act.
- [Utah Division of Water Resources](#) (UDWR) is the state agency supporting UBWR in obtaining the relevant approvals from the Federal Energy Regulatory Commission and other agencies.
- [Washington County Water Conservancy District \(WCWCD\)](#) and [Kane County Water Conservancy District \(KCWCD\)](#) are the project proponents that will receive the water to supply 13 southern Utah communities. Each district has a representative that serves on the PMC.
- The [Federal Energy Regulatory Commission \(FERC\)](#) is the lead federal agency for developing an environmental impact statement (EIS) for the project in compliance with NEPA. A FERC license will be required for UBWR to construct and operate the hydropower stations.
- Rights of way from the [U.S. Bureau of Land Management](#), [U.S. Bureau of Reclamation](#), and [National Park Service](#) will be required for LPP to cross the federal lands they manage. A contract between the state of Utah and the U.S. Bureau of Reclamation will also be required. These agencies are cooperating agencies in preparing the EIS with FERC.
- The [Kaibab Band of Paiute Indians](#), as well as other Indian tribes, are providing guidance and consultation on tribal historical, cultural and archeological issues. The Kaibab Band of Paiute Indians is a cooperating agency with FERC for NEPA compliance.

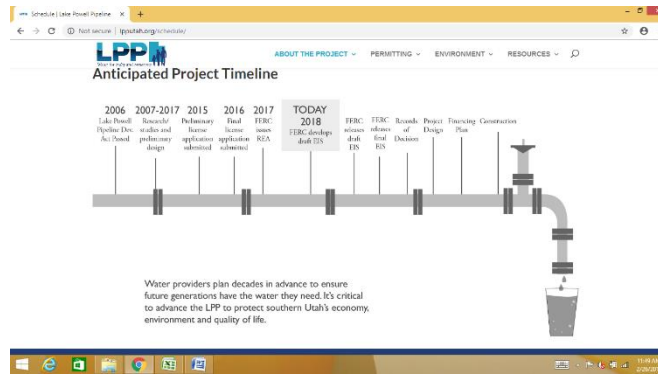
Action	Status
Filing of the preliminary license application	Completed 2015
Filing of the final license application	Completed 2018
Submit studies required for the Federal Energy Regulatory Commission (FERC) application	Completed 2016
FERC reviews the submitted application and supporting documents	Completed 2016
The U.S. Bureau of Reclamation negotiates an exchange contract with the state of Utah	Underway
FERC issues a Ready for Environmental Analysis (REA) notice	Completed 2016
FERC works with the cooperating agencies to prepare a Draft Environmental Impact Statement (Draft EIS)	Future activity
FERC seeks input on the Draft EIS from the public, non-governmental organizations, Indian tribes and agencies	Future activity
FERC and other federal agencies issue an EIS that discloses environmental impacts and conditions required for approval	Future activity
The involved agencies will issue individual records of decision and other authorizations	Future activity

The Anticipated Schedule Timeline provides few details about what is now occurring⁴. Official dates end in 2018.

² <https://lpputah.org/process/>

³ <https://lpputah.org/steps-and-milestones/>

⁴ <http://lpputah.org/schedule/>



How we got to this point – the Lake Powell Pipeline process

The history of the Lake Powell Pipeline Project (LPP) is long and convoluted but perhaps this condensed version of the activities that have occurred since the project began will help.

The idea of securing Utah’s remaining right to Colorado River water came about in the mid-90s under Utah’s Governor Mike Leavitt, but the Lake Powell Pipeline Development Act was not passed until 2006 by the Utah Legislature⁵. Two years later a preliminary permit was issued by the Federal Energy Regulatory Commission to the Utah Board of Water Resources (UBWR) for the hydroelectric development on the pipeline under Project No. 12966⁶.

The UBWR filed a Notification of Intent and Pre-Application Document (PAD)⁷ on March 3, 2008 to begin the integrated licensing and environmental scoping process under FERC. FERC followed on May 5, 2008 by issuing a public notice of the filing and requested comments on the PAD, the environmental scoping document and related study requests⁸.

Utah Board filed a proposed study plan on August 21, 2008⁹, and a revised study plan on December 22, 2008¹⁰. Commission staff issued a study plan determination on January 21, 2009¹¹.

In late 2008 and early 2009, FERC completed cooperating agency MOUs (memorandum of understanding) with three Department of Interior agencies (BLM, Bureau of Reclamation, Parks Service) to facilitate the environmental review process leading to and including the draft and final EIS. FERC also

⁵ https://le.utah.gov/xcode/Title73/Chapter28/C73-28_1800010118000101.pdf

⁶ [file:///C:/Users/Lisa%20R/Downloads/20180920-3043\(33144704\)%20\(1\).pdf](file:///C:/Users/Lisa%20R/Downloads/20180920-3043(33144704)%20(1).pdf)

⁷ https://elibrary.ferc.gov/idmws/docket_sheet.asp

⁸ https://elibrary.ferc.gov/idmws/docket_sheet.asp

⁹ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13640395

¹⁰ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13673989

¹¹ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13681483

granted the Kaibab Band of Paiute Indians cooperating agency status and entered into a similar MOU with the Tribe.

In 2008 FERC conducted the first public comment period. Conserve Southwest Utah (then Citizens for Dixie's Future) filed the first in a series of comments (Scoping Document and Pre-Application Document and Additional Study Requests) on July 7, 2008 along with eight other organizations as part of what has become the LPP Coalition.¹² Again on November 19, 2008, CSU (then CDF) submitted comments on the Proposed Study Plan and Scoping Document¹³.

FERC issued a successive permit for the project on May 20, 2011¹⁴, and granted a two-year extension of that permit on May 14, 2014¹⁵.

Utah Board filed its preliminary licensing proposal on December 2, 2015¹⁶, and its final license application on May 2, 2016¹⁷. The Commission issued a tendering notice on May 6, 2016¹⁸. On July 25, 2016, staff requested additional information on the application¹⁹.

On March 1, 2016 FERC requested additional information²⁰ from UBWR's Utah representative, the Division of Water Resources (UDWR), regarding the LPP study plans as part of the preliminary licensing proposal with this comment: "In this appendix, we provide comments on your study reports and note the areas of the PLP where inconsistencies should be resolved and where specific information must be added to the environmental analysis before you submit your license application."

On December 16, 2016 UBWR filed a Request for Extension of Time to File Additional Information Request Items²¹ after FERC's July information request.

On December 11, 2017, after receiving a "majority" of the additional information requested of UBWR, FERC issued a notice that the project was ready for environmental analysis (REA notice) stating, "The Commission has not yet determined whether these water delivery pipeline will be included as part of

¹² <https://conservewu.org/wp-content/uploads/2012/04/cdf-scoping-comments-pdf.pdf>

¹³ <https://conservewu.org/wp-content/uploads/2012/04/scoping-2-comments-final.pdf>

¹⁴ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13921878

¹⁵ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14216043

¹⁶ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14404848

¹⁷ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14455808

¹⁸ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14457121

¹⁹ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14479946

²⁰ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14434191

²¹ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14522271

the licensed hydro facilities.”²² . This action by FERC began the process of soliciting motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions regarding the project.

Unhappy with FERC’s jurisdictional decision in the REA notice, UBWR and Washington County Water Conservancy District filed a petition for a declaratory order on jurisdiction, motion for expedited action and motion for suspension of procedural schedule on December 27, 2017²³.

January 10, 2018 FERC issued a notice of the petition which established February 12, 2018 as the deadline for filing protests, interventions, and comments²⁴.

Then, on January 11, 2018, FERC issued a notice suspending the procedural schedule for processing the license application until they acted on the jurisdictional petition²⁵.

September 20, 2018 FERC issued their ORDER DENYING PETITION FOR DECLARATORY ORDER ON JURISDICTION²⁶ and began the public process once again and asserting that FERC would “license only the hydroelectric power generating facilities.” FERC offered the following reasons for their decision:

- ...the Commission has consistently regarded these lengthy water delivery pipelines to be outside the purposes of the FPA and unrelated or only incidental to the purpose of power production.
- The Lake Powell Pipeline Project is, first and foremost, a large water conveyance system, whose primary purpose is not hydropower development but delivery of water from Lake Powell in Arizona 140 miles to southwestern Utah for municipal and industrial use.
- Large water delivery projects such as the Lake Powell Pipeline Project arguably present attempts to use the Commission’s hydropower authority to construct large amounts of pipeline that are unrelated to power production, and perhaps to take advantage of the eminent domain authority and federal preemption of inconsistent state requirements that a Commission license provides.
- By not asserting jurisdiction over these large water delivery projects, the Commission leaves to other state and federal authorities decisions regarding the purpose of and need for the water delivery project, the preferred route for the pipeline, and its cost and financial feasibility; matters that are far removed from the limited purpose of the hydroelectric power developments to be located in and along the pipeline.

The September notice added, “The Commission will not act as the ultimate decision maker for approving any portion of the overall project beyond the discrete hydropower facilities. In addition, the Commission

²² https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14626204

²³ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14632948

²⁴ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14633894

²⁵ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14634191

²⁶ https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14705727

will not be responsible for determining which alternative route for the water delivery pipeline should be chosen.”

Other Agency Involvement

Bureau of Reclamation: In December 2017 the UDWR began negotiations to contract with the Bureau of Reclamation (BoR) on Flaming Gorge water rights to be used for the Lake Powell Pipeline.

In September 2018, the Provo office of the BoR issued the Draft Environmental Assessment for the Green River Block Water Exchange Contract. In November, CSU submitted comments on the draft EA. On February 21, 2019, the BoR issued their Final Environmental Assessment and Finding of No Significant Impact – Green River Block Water Exchange Contract.

U.S. Army Corps of Engineers: On December 18, 2018, the U.S. Army Corps of Engineers issued public notice²⁷ announcing a public comment period that would end January 21, 2019 and stating, “The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application to construct the Lake Powell Pipeline project, which would result in impacts to approximately 10.54 acres / 51,636 linear feet of waters of the United States, including wetlands, in or adjacent to Lake Powell and the Virgin River. This notice is to inform interested parties of the proposed activity and to solicit comments.”

The notice described the Corps’ involvement:

The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application to construct the Lake Powell Pipeline project, which would result in impacts to approximately 10.54 acres / 51,636 linear feet of waters of the United States, including wetlands, in or adjacent to Lake Powell and the Virgin River. This notice is to inform interested parties of the proposed activity and to solicit comments.

In January 2019, the U.S. Army Corps of Engineers issued public notice²⁸ announcing the extension of the public comment period to February 18, 2019 and stating, “This public notice has been revised to extend the public comment period, to clarify which Agencies may require water quality certification, and to ensure a wider distribution of the public notice within the State of Arizona. No other aspects have changed.”

As with all FERC LPP comment periods, CSU has composed and submitted comments to the Corps on their involvement.

BLM:

The Bureau of Land Management (BLM) has been involved in the LPP since its inception including consulting with involved tribes and review of ethnographic reports.

²⁷ <https://www.spk.usace.army.mil/Media/Regulatory-Public-Notices/Article/1716369/spk-2008-00354-lake-powell-pipeline-project/>

²⁸ <https://www.spk.usace.army.mil/Media/Regulatory-Public-Notices/Article/1734573/spk-2008-00354-lake-powell-pipeline-project-az-and-ut/>

In-person meetings:

- Kaibab Band of Paiute Indians – 3 meetings in 2006 & 2007
- Navajo Utah Commission – 1 meeting in 2010
- Northwestern Band of the Shoshone Nation – 1 meeting in 2011
- Paiute Indian Tribe of Utah – 2 meetings in 2006 & 2012
- Pueblo of Zuni – 2 meetings in 2011 and 2012
- Southern Paiute Nation – 1 meeting in 2007

Field visits:

- Kaibab Band of Paiute Indians – 2 field visits in 2007 & 2015

Conference calls:

- Monthly Kaibab Band of Paiute Indians began in 2014
- Pueblo of Zuni – 3 meetings in 2008 and 2011

Tribal consultation initiation letters:

- Sent to Northwestern Band of the Shoshone Nation and Navajo Utah Commission in 2010.

December 11, 2018, following FERC's jurisdictional decision, BLM held the first LPP Sec. 106 meeting. The meeting was organized by BLM to gather all participating agencies that have land (archeological resources) that may be impacted by the Lake Powell Pipeline (LPP). BLM is developing a Section 106 agreement for agencies to sign.

On March 12, 2019 a subsequent Section 106 meeting will be held to move the process along.
