

Craig C. Coburn [0688]  
Kallie Smith [12386]  
RICHARDS BRANDT MILLER NELSON  
299 South Main Street, 15<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
T: (801) 531-2000  
Email: [craig-coburn@rbmn.com](mailto:craig-coburn@rbmn.com)  
[kallie-smith@rbmn.com](mailto:kallie-smith@rbmn.com)

W. Cullen Battle [0246]  
FABIAN & CLENDENIN  
215 South State, Ste. 1200  
Salt Lake City, UT 84111  
T: (801) 531-8900  
Email: [cbattle@fabianlaw.com](mailto:cbattle@fabianlaw.com)

*Attorneys for Plaintiff*

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

---

UTAH STREAM ACCESS COALITION, a Utah  
non-profit corporation,

Plaintiff,

vs.

JAMES FULLER PARK As Trustee of the  
Revocable Trust Of James Fuller Park; ORANGE  
STREET DEVELOPMENT, A Utah limited  
partnership; WENDELL J. STEMBRIDGE and ILA  
D. STEMBRIDGE, as Trustees of the Wendell J.  
Stembridge Intervivos Revocable Trust dated the 29<sup>th</sup>  
day of November 1988; VERN G. STEMBRIDGE  
and DOROTHY MECHAM STEMBRIDGE, as  
Trustees of The Vern G. Stembridge And Dorothy M.  
Stembridge Trust dated December 7, 1989; UTAH  
DIVISION OF WILDLIFE RESOURCES, an agency  
of the State of Utah; the UTAH DIVISION OF  
PARKS AND RECREATION, an agency of the State  
of Utah; and SHERIFF DAVID A. EDMUNDS, in  
his official capacity as Summit County Sheriff,

Defendants.

**COMPLAINT**

Civil No. \_\_\_\_\_

Hon. Keith A. Kelly

The Utah Stream Access Coalition alleges:

**PARTIES**

1. The Utah Stream Access Coalition (“the Coalition”) is a Utah non-profit corporation in good standing with its base of operations in Salt Lake County, State of Utah.

2. James Fuller Park is the trustee of the Revocable Trust of James Fuller Park, (“Park”), which owns real property abutting the Weber River in Summit County, State of Utah, more specifically described as Parcel No. CD-33 in the tax records of Summit County (“the Park property”).

3. Orange Street Development (“Orange Street”), a Utah limited partnership, owns real property abutting the Weber River in Summit County, State of Utah, more specifically described as Parcel No. CD-32 in the tax records of Summit County (“the Orange Street property”).

4. Wendell J. Stembridge and Ila D. Stembridge are the trustees of the Wendell J. Stembridge Intervivos Revocable Trust dated the 29th day of November 1988, which owns real property abutting the Weber River in Summit County, State of Utah, more specifically described as Parcel No. CD-161 in the tax records of Summit County.

5. Vern G. Stembridge and Dorothy Mecham Stembridge are trustees of the Vern G. Stembridge And Dorothy M. Stembridge Trust dated December 7, 1989, which owns real property abutting the Weber River in Summit County, State of Utah, more specifically described as Parcel No. CD-99 in the tax records of Summit County. The properties identified in paragraphs 4 and 5 are referred to as the Stembridge properties.

6. Orange Street, Park and the Stembridges are collectively referred to in this Complaint as the “Landowner defendants” and their properties as the “Landowner properties.”

7. The Utah Division of Wildlife Resources (“DWR”) is a division of the Department of Natural Resources, State of Utah, and is authorized to issue and has issued criminal trespass citations as discussed herein, and is charged with enforcing that portion of Utah Code Ann. §23-20-14 pertaining to revocation of hunting and fishing privileges upon conviction of criminal trespass while engaged in wildlife-related activities.

8. The Utah Division of Parks and Recreation (“DPR”) is a division of the Department of Natural Resources, State of Utah, and is authorized to issue and has issued criminal trespass citations as discussed herein.

9. David A. Edmunds is the duly-elected Sheriff of Summit County, State of Utah. He and his office (collectively “the Sheriff”) are authorized to issue criminal trespass citations as discussed herein. He is named in his official capacity as Summit County Sheriff.

#### **JURISDICTION – VENUE**

10. This action seeks an adjudication and declaration of the legal rights of the Coalition, its members, and the public as to the waters, bed and related resources of the Weber River, including the portion that abuts the Landowner properties.

11. This court has jurisdiction pursuant to the Art. VIII, §5 of the Constitution of Utah, Utah Code Ann. §78A-5-102, *et seq.* and Utah Code Ann. §78B-6-401, *et seq.*

12. Venue is proper in Wasatch County pursuant to Utah Code Ann. §78B-3-301, *et seq.*, and Utah Code Ann. §78B-6-401, *et seq.*

## FACTUAL AND LEGAL BACKGROUND

### The Weber River

13. The Weber River has its headwaters in the Uinta Mountains in Summit County, Utah, flows through Summit, Morgan and Weber Counties, and ultimately discharges into the Great Salt Lake.

14. Since before Utah's statehood, the public has made extensive use of the Weber River and its bed for various commercial, recreational and other lawful purposes. For example, the Weber River from Holiday Park to Echo Canyon (which includes the portion flowing through the Landowner properties) was used extensively from the mid-1800's through the early 1900's for log and railroad tie drives. Virtually the entire length of the Weber, from the Uinta Mountains to the Salt Lake valley, has been used for recreational boating and fishing. According to the *River Runner's Guide to Utah*, the stretch of the River flowing through the Landowner properties is part of a 28 mile section known as the "Upper Weber" or "Holiday Park to Rockport Reservoir." It is usually runnable in May and June, and is "a very beautiful stretch running through Weber Canyon and then through farmland." This stretch of the Weber contains mostly Class 2 rapids, which means that it is suitable for people with intermediate skills in canoes, kayaks and rafts.

15. At the time of Utah's statehood in 1896, the Weber River – for most or all of its entire reach and including the portion that flows through the Landowner properties – was navigable-in-fact and therefore navigable-at-law under Utah's Enabling Act and the federal equal footing doctrine.

16. Because the Weber River was navigable, Utah at statehood took title, in trust and for the benefit of the people, to the bed of the Weber River, up to and including the River's ordinary high water mark (hereinafter "the bed").

17. Based upon this public ownership, and pursuant to the Utah law and the Public Trust Doctrine, the public has the right to enter and use the waters and bed of the Weber River for recreational and other lawful purposes.

#### The Defendants' Actions

18. The Landowner defendants or their agents have, adverse to this public ownership and trust, unlawfully claimed and asserted title to and possession and control of the waters and bed of the Weber River where it flows through their respective properties. The Landowners defendants have wrongly interfered with the lawful access to and use of the waters and bed by Coalition members and the public. Such actions include:

a. posting 'No Trespassing' signs on the Park and Orange Street properties at a public highway crossing of the River, stating that the banks and bottom of the Weber River are private property, and that access to the River from the public right of way is forbidden and is punishable as a criminal trespass;

b. erecting a barbed wire fence from the Stembridge properties across the entire width of Weber River, thus creating a deadly hazard to boaters navigating the River and a significant hindrance to persons travelling by foot along the River bed;

c. telling Coalition members or members of the public to get off and stay off the waters and bed of the Weber River because the waters and the bed are supposedly "private property;" and

d. otherwise attempting to prevent Coalition members or members of the public from using and enjoying the waters and bed of the Weber River.

19. The DWR, DPR and the Sheriff claim the legal authority to cite members of the public for criminal trespass under Utah Code Ann. §§23-20-14, 76-6-206 and 76-6-206.3 for lawfully accessing and using the waters and bed of the Weber River for recreational or other lawful purposes. In the past, these defendants have cited or threatened to cite members of the public for criminal trespass for lawfully accessing and using Utah's public waters and their beds, including the waters and bed of the Weber River.

#### The Harm to the Coalition and its Members

20. The mission of the Utah Stream Access Coalition includes restoring and preserving the right of the public to lawfully access and use Utah's public waters and their beds for recreational or other lawful purposes, and securing recognition that the public owns title to the beds of all navigable public waters and that the State of Utah must to manage those waters and beds in trust for the benefit of the people.

21. Kris Olsen, a Utah resident, is a member of the Coalition. On multiple occasions beginning in approximately 2009 through May 10, 2010, he has accessed and used the waters and bed of the Weber River for recreational purposes (*i.e.*, fly-fishing) where it flows through the Landowner properties. He returned to fish the Weber River after May 10, 2010, but was discouraged and turned away by the 'No Trespassing' signs posted on the Park and Orange Street properties, and by the barbed wire fence extending from the Stembridge properties across the River.

22. Brent Neill, a former Utah and current California resident, is a member of the Coalition. On many occasions beginning in approximately 2007 through May 10, 2010, he has lawfully accessed and used the waters and bed of the Weber River for recreational purposes (*i.e.*, fly-fishing) where it flows through the Landowner properties. He returned to fish the Weber River after May 10, 2010, but was discouraged and turned away by the 'No Trespassing' signs posted on the Park and Orange Street properties, and by the barbed wire fence extending from the Stembridge property across the River.

23. Gary Nichols, a resident of Utah, is a member of the Coalition. He is the author of *River Runners' Guide to Utah*, a comprehensive guidebook to the rivers and streams of Utah, which has been in print since 1982. Nichols has boated the stretch of the Weber River that passes through Landowner properties and intends to do so again in the future. His use of the River is rendered much more hazardous by the fence on the Stembridge properties, and his access to the River is impeded by the no trespassing signs on the Orange Street and Park properties.

24. The Coalition's members have the right, under federal and state constitutional and common law, to use the waters and bed of the Weber River for recreational and other lawful purposes, including the portion that flows through the Landowner properties, as such waters and bed of the River are owned by the State in trust and for the benefit of the people.

25. The Coalition's members and their interests have been or will be harmed by the conduct of the Landowner defendants outlined above. Specifically, when recreating on Utah's public waters such as the Weber River, the above-listed individuals and other Coalition members are accustomed to using the River's bed below the high water mark for activities such as

stopping, wade-fishing, scouting, resting, eating, wildlife watching, contemplating, and taking photographs. The Landowner defendants' attempts to prohibit these activities and limit public access to and use of the Weber's bed directly interfere with a Coalition members' and the public's ability to experience and enjoy Utah's public waters and related public resources.

26. As a result of the Landowner defendants' actions, the Coalition's members no longer access or use, or are reluctant to access or use, the waters and bed of the Weber River where it flows through the Landowner properties. Because of previous law enforcement actions by the DWR, DPR and the Sheriff, the Coalition's members are unable to determine what access or use they can lawfully make of the waters and bed of the Weber River where it flows through the Landowner properties.

27. The Coalition has a compelling interest to ensure that its members and other members of the public have lawful access to and use of Utah's public waters and their beds, including the navigable waters and bed of the Weber River where it flows through the Landowner properties.

### **CLAIM FOR RELIEF**

(Declaratory and Injunctive Relief)

28. The Coalition realleges paragraphs 1-27 as if more fully set forth herein.

29. Pursuant to Utah Code Ann. §78B-6-401 and Rule 57 of the Utah Rules of Civil Procedure, the Coalition is entitled to judgment, declaring that:

a. the Weber River for all or most of its entire reach, and including the portion that flows through the Landowner properties, is navigable-in-fact and navigable-at-law;



b. title to the bed of the Weber River is held by State of Utah in trust and for the benefit of the people;

c. the public has a right to lawfully enter and use the waters and bed of the Weber River for recreational or other lawful purposes;

d. the Landowner defendants and their successors-in-interest may not interfere with the right of the public to lawfully enter and use the waters and bed of the Weber River for recreational or other lawful purposes; and

e. members of the public who lawfully enter and use the waters and bed of the Weber River for recreational or other lawful purposes are not subject to prosecution for criminal trespass.

30. The Coalition is further entitled to preliminary and permanent injunctions:

a. prohibiting the Landowner defendants and its/their successors-in-interest, and their agents from engaging in any conduct that interferes with the right of the public to lawfully enter and use the waters and bed of the Weber River for recreational or other lawful purposes; and

b. prohibiting the DWR, DPR and the Sheriff from citing or threatening to cite members of the public for criminal trespass for lawfully entering and using the waters and the bed of the Weber River for recreational or other lawful purposes.

### **DEMAND FOR JUDGMENT**

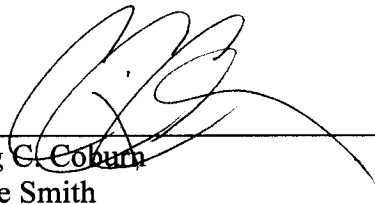
WHEREFORE, Plaintiff demands judgment as follows:

1. A declaratory judgment against all defendants as requested in paragraph 29, above;

2. A preliminary and permanent injunction against the Landowner defendants as requested in paragraph 30.a., above;
3. A preliminary and permanent injunction against DWR, DPR and the Sheriff as requested in paragraph 30.b., above; and
4. Judgment awarding the Coalition its attorneys fees, costs, and such other and further relief as the court deems just and appropriate in the circumstances.

DATED this 3<sup>rd</sup> day of May, 2011.

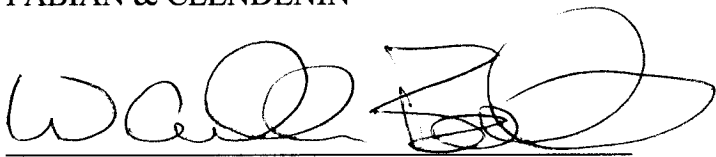
RICHARDS BRANDT MILLER NELSON



---

Craig C. Coburn  
Kallie Smith  
Attorneys for Plaintiff

FABIAN & CLENDENIN



---

W. Cullen Battle  
Attorneys for Plaintiff