

# Lower Provo a fishing crown jewel

## But where is it legal to cast, if at all?

The issue on the river and adjacent lands is a "legal gray area," and no side seems happy about being stuck in limbo.

By PAIGHTEN HARKINS

**W**asatch County's The renowned Lower Provo River is one of just a few top-rated Blue Ribbon fisheries in Utah. Carving between steep limestone cliffs and situated about an hour from what is now bustling Salt Lake City, it's long been a near-perfect place to fish for brown and rainbow trout.

Until it wasn't. Not because the river dried up, or because all the trout got caught. Instead, property lines, a "legal gray area" and an apparent lack of enforcement by state agencies — which property owners, advocates and anglers alike argue could be doing more to clear up confusion — got in the way.

Despite allowing (or at least tolerating) fishing access for decades, landowners more recently have taken issue with anglers trespassing on their property in order to stand in the river to cast. Their ire aligns with the 2010 passage of the state Recreational Use of Public Water on Private Property bill, which allows people to float on rivers but forbids them from setting foot on riverbeds. A Utah Supreme Court case decision last year also reinforced the law.

But others don't see it as plainly, especially after the Utah Stream Access Coalition in 2017 won a legal battle for public rights to parts of the Weber River. The coalition believes this part of the Provo River — like that stretch of Weber — is "navigable," and, according to the Utah Water Rights Act, that also means public.

Whether or not a river is considered "navigable" is a key distinction, because the act says the public may recreationally use private stream beds if the water winding through them is "navigable." By the state's definition, "navigable" means a waterway is large enough to be used to transport goods and people and has been used for commerce.

The coalition sent a letter in July 2023 to the Utah divisions of Forestry, Fire and State Lands and Wildlife Resources arguing the Lower Provo's navigability and asking for clarity, but so far, nothing has changed, said Herbert Ley, the coalition's director.

"The reason we decided to get to this point of issuing our own position statement is because we asked the state to do it ... and they did nothing," Ley said. "And so we just said, 'Forget it. Let's raise the ante. Let's tell the public what our position is. Let's assert that the Provo River is navigable.'"

That declaration was published in the coalition's April newsletter, nine months after the letter was sent to state officials. The newsletter also called on supporters to report trespassing conflicts so that the coalition may take up another legal battle and force the navigability issue.

State legislators last year also upped the ante: passing a law last year that would punish anglers who access rivers and stream beds that run through private land with a class B misdemeanor trespassing charge, which carries up to six months in jail and up to a \$1,000 fine.

That is, if law enforcement chooses to enforce the law — and multiple sources told The Salt Lake Tribune that authorities haven't been on the Lower Provo.

### 'A BUNCH OF NEGATIVE ENERGY'

The lack of enforcement along the Lower Provo seems to stem from the Wasatch County attorney's office, which prosecutes cases in the area.

In a statement, the office said trespassing enforcement along the river is complicated, because county prosecutors feel the courts haven't decided whether anglers accessing the land is technically considered trespassing. The office pointed to ongoing federal litigation over the decision to access certain areas of the river, including a contested "fisherman's easement" on one side of the waterway and railroad easement on the other.

The county attorney's office still evaluates cases on their own merits, the statement noted, adding that if prosecutors find sufficient evidence, they would charge trespassers.

"Wasatch County takes its responsibility to uphold the law very seriously. However,"



Clockwise from top left: The Lower Provo River flows next to the winding path of U.S. 89. Ault, a property owner along the Lower Provo, talks about his property and access to the river and downed private property and no trespassing signs, a locked gate managed by Ault in the river, the Lower Provo winds its way down Provo Canyon.

that I would want our guests to experience would be a bunch of negative energy."

Steve Ault, who owns just under 3,000 acres along a stretch of the river, is so fed up

with the lack of law trespassing enforcement that he's trying to shift the county line — not Wasatch — with hopes that Utah County Sheriff's Office deputies will do something. All this, six years after the state Division of Forestry, Fire and State Lands hired a river analyst — whose job it would be to settle such disputes — yet so far hasn't made any such determinations.

In a statement, Ben Stireman, the division's deputy director of minerals and lands, said the river analyst initially hired has since left and wasn't replaced "due to a lack of legal authority for FFSL to adjudicate navigability issues."

"Currently, the Division's director and deputy director are actively involved in all issues involving the public trust, and have several attorneys working on complex navigability and public trust issues," the

statement continued.

It noted that the division planned to enter a quiet title action involving the Lower Provo on Thursday, but didn't provide more details.

### AN ARGUMENT FOR NAVIGABILITY

The path to proving the Lower Provo's navigability became clearer as the Utah Stream Access Coalition made a similar argument for a stretch of the Weber River between Holiday Park and Echo Reservoir. That's because, during that litigation, the coalition happened to find more evidence to support the Lower Provo's navigability.

But by that time, they were already years into a legal battle over the Upper Provo, a stretch that flows from the Uinta Mountains into the Jordanelle Reservoir. That case was rooted in the argument that Latter-day Saint pioneers routinely used the waterway prestatehood, and that use — which was integral to their survival — created an "easement" for public access today.

The Utah Supreme Court shot down their argument last May.

Still, the coalition feels the logic that helped win Weber River access could help reopen the Lower Provo. To argue their

point, Ley said, they evidence their river analyst in 2017 archives, some of The Tribune.

For instance, a December 18 Examiner applied "cutting [railroad] fluting them 40 thirty miles ... dictation of mar Jones planned more ties by the is through."

An August 19 quire also reported recently come-d men were work than there has Provo."

But with no and with no ac tion expressed "gray area" in its "It is design ible, there w are permitted banks of the river from a lawful letter read, "It's