



## Weber River Safety and Access Proposal

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Submitted by:

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### Introduction:

The Weber River offers a short and desirable whitewater paddling resource in the bypassed reach of the Weber River Hydroelectric Project. The run is near large population centers with a significant paddling community and few additional close-to-home whitewater paddling opportunities. During the relicensing process for the project, stakeholders reached an agreement for the provision of four annual pulse flow releases to support whitewater paddling. Stakeholders agreed that American Whitewater would propose a safe and legal plan for river access, including potential infrastructure enhancements, for consideration. Releases will begin following a Forest Service determination that the proposed access is appropriate for public use.<sup>1</sup> This proposal documents findings that recreational releases and public use on the Weber River are legal, reasonably safe, and appropriate. We look forward to a favorable decision by the Forest Service on this exciting river restoration and sustainable outdoor recreation opportunity.

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<sup>1</sup> See Weber Hydroelectric Project (FERC Project No. 1744) Final License Application – Exhibit E, pg. xi. REC-9.

1. The US Forest Service Owns All Land and Rights Necessary to Continue to Allow Legal Recreational Paddling, Portage, Egress, and Related Parking.

The United States Forest Service owns the land under and surrounding the Davis and Weber County Canal Company (DWCCC) diversion dam. This parcel, Davis County Parcel ID 130010003, encompasses the portage proposed take-out upstream of the DWCCC diversion dam, portage trail, and portage put in point below the DWCCC diversion dam.<sup>2</sup> There are no special use or other permits related to the diversion dam that in any way constrain the Forest Service from allowing the public to portage the diversion dam. This area is currently open to public use for recreational purposes, including paddling, walking, and portaging, and is actively used for these purposes.

Similarly, the Forest Service owns the land where paddlers currently park to take out upon completing the run. This parcel, Davis County Parcel ID 130080016, encompasses roadside parking near the junction of Cornia Road and Weber Road, the latter of which is also known as Forest Road 82012.<sup>3</sup> There are no special use or other permits that in any way constrain the Forest Service from continuing to allow the public to exit the river and park in this area.

Between these two parcels of public land is a private parcel, Davis County Parcel 130080018, which is owned by Rocky Mountain Pipeline System LLC. Forest Road 82012, also known as Weber Road and Weber Davis Canal Road, passes through this parcel, though the road is explicitly excluded from the legal description of the parcel.<sup>4</sup> In the vicinity of the DWCCC diversion dam, a 0.33 mile segment of USFS Road 82012 is currently closed to vehicular use according to official USFS GIS records, but open to hiking.<sup>5</sup> Thus, the public may hike out from the DWCCC diversion dam to the take out parking area on Forest Road 82012.

Figure 1. Map depicting portage and takeout areas, all of which are on public land.



<sup>2</sup> See Appendix 1: Property Maps, Map 1.

For land ownership records, see: Davis County GIS:

<https://webportal.daviscountyutah.gov/App/PropertySearch/esri/map>,

and Weber County GIS: <https://www3.co.weber.ut.us/gis/maps/gizmo2/index.html>.

<sup>3</sup> See Appendix 1: Property Maps, Map 2.

<sup>4</sup> See Appendix 1: Property Maps, Map 3.

<sup>5</sup> See Appendix 1: Property Maps, Maps 4 and 5.

In summary, the Forest Service has legal authority to authorize and/or implement recreational enhancements in the project area, including put-in and take-out facilities, trails, signage, and vehicular use. River and recreational land use in these areas is entirely legal.

## 2. River access is appropriate under USFS policy and practice

The Forest Service supports whitewater paddling across the National Forest System. Paddling falls under the multi-use mandate of the agency, and is embraced within the agency's Sustainable Recreation Framework.<sup>6</sup> The Forest Service consistently advocates for recreation flows and access wherever rivers under their management are impacted by private hydropower dams, often using mandatory conditioning authority to require such mitigation. The Weber River is poised to join a long list of dam-regulated whitewater rivers on which the Forest Service has supported the restoration of recreational and ecological values.

The Forest Service approach to river management is to minimize direct limits with the objective of "provid[ing] river and similar water recreation opportunities to meet the public needs in ways that are appropriate to the National Forest recreation role and are within the capabilities of the resource base."<sup>7</sup> The Forest Service Manual states: "Manage the use of rivers by establishing as few regulations as possible. Ensure that established regulations are enforceable,"<sup>8</sup> and, "Emphasize user education and information. Educate users before they enter a river area. When necessary, prescribe direct management techniques that are sensitive to the values users seek. Impose only that level of direct management necessary to achieve management objectives."<sup>9</sup> Forest Service policy and practice would thus not support limiting river recreation by blocking opportunities for restoration of more natural flows to the river.

The "Water Safety" section of the Forest Service Manual states: "The manager's role in safety is advisory and informational. Provide opportunities for the river recreation user to become informed of current river flows, equipment and experience minimums and hazards. The user must make the final decision about whether or not to engage in the recreation activity."<sup>10</sup> Thus closing a river, or preventing boatable flows from occurring for safety reasons would not be in keeping with the "informational" role that managers should play in river safety matters. In addition, this stretch of the Weber River has a long history of whitewater paddling, currently supports the activity when river flows exceed the hydropower diversion capacity, and we are aware of no documented or expressed safety concerns from the whitewater paddling community upstream or downstream of the DWCCC diversion dam.

Incidentally, the US Forest Service is not subject to liability claims for any paddling accidents that may occur on the Weber River during pulse flow releases. While the Federal Torts Claim Act waives the Federal Government's typical claim of immunity in cases of employee negligence, there is an exception for decisions made in the execution of a statute or regulation, or the "exercise or performance [of] a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."<sup>11</sup> Furthermore, the Tenth Circuit has consistently held that the United States is entitled to the protection of state recreational use statutes, which in Utah clearly protects landowners not

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<sup>6</sup> [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5346549.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5346549.pdf)

<sup>7</sup> FSM 2354.02 [wo\\_2350-2016-2.docx](#)

<sup>8</sup> FSM 2354.03(3)

<sup>9</sup> FSM 2354.03(4)

<sup>10</sup> FSM 2354.41b

<sup>11</sup> 28 U.S.C. §2680(a)

charging a fee against liability claims relating to recreational use of lands.<sup>12</sup> Federal liability is not an issue in flow restoration decisions on the Weber River.

In summary, Forest Service regulatory requirements for flow restoration to support whitewater paddling and ecological values is consistent and ubiquitous wherever private hydropower dams affect rivers on Forest Service lands. These policies and practices apply without caveat to the Weber River, where flow restoration is an exciting opportunity to restore public values to the river.

3. Modest Improvements Would Support Safe Recreational Paddling, Portage, Egress, and Related Parking on the Weber River.

While no infrastructure enhancements are required to provide safe, legal, and appropriate public access to the Weber River, which indeed exists today, we recommend the following modest recreational infrastructure enhancements to improve the recreational experience.

<b>Table 1. Recommended Weber River Access Enhancements</b>	
<b>Enhancement</b>	<b>Description</b>
1. Put In Sign (not pictured in Figure 2)	We recommend a new sign be placed at the put in noting that there is a portage required downstream, and basic information about the river and its recreational opportunities.
2. Portage Sign	We recommend a new sign be placed upstream of the DWCCC diversion dam on river left that states: "Dam Ahead: Take Out On River Left Here to Portage," with an arrow as needed to direct people to the river left portage trail.
3. Portage Take Out	We recommend the positioning and stabilization of some simple rock steps from the pool upstream of the DWCCC diversion dam to Forest Road 82012 which serves as the portage trail. This is currently a hardened surface with fairly easy egress.
4. Portage Put In Enhancement	Paddlers would benefit from some simple rock steps to provide better traction and reduce erosion leading down to the river below the DWCCC diversion dam infrastructure. There is currently a well used path down to the river in this location.
5. Gate Sign Removal	The private No Trespassing sign should be removed from the gate on Forest Road 82012. This sign will confuse paddlers as to the legality of walking out on the public road when flows necessitate hiking the road out from the DWCCC diversion dam. We suggest instead the sign say "Closed to Unauthorized Vehicular Traffic, Hiking Permitted."
6. Take Out Sign	We recommend a small sign be placed along the river near the parking area at the end of the run stating: "Dam Ahead: Take Out on River Left Here"

<sup>12</sup> Utah Code § 57-14

7. Take Out Enhancement	We recommend a few rock or wood crossbars be installed in the existing path to the river at the take out to improve traction and reduce erosion. There is currently a well-used path down to the river in this location.
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Figure 2. Map depicting the locations of recommended access enhancements. Numbers correspond to recommendation number in Table 1.



We encourage PacifiCorp to collaboratively plan these mitigation measures and to refer to the new River Access Planning Guide<sup>13</sup> to help shape the project, consistent with our Memorandum of Agreement as documented in the Final License Application.<sup>14</sup>

5. Significant hazard mitigation is not necessary to remove man-made objective hazards and support public recreational use.

On November 6, 2019, three qualified paddlers and a PacifiCorp representative hiked the entire length of the Weber Project bypassed reach to assess potential man-made hazards caused by industrial debris.<sup>15</sup> Each piece of debris was photographed and discussed, and GPS coordinates were taken. We assessed each piece of debris for its likelihood of entrapping or injuring a paddler in their boat, as well as swimming. Entrapment potential was assessed based on the ability of a piece of debris to snare a person or pin them based on sharp upstream projections (sharper and pointing upstream is more dangerous), space underneath the debris for water flow (more space is more dangerous), and position in the channel (in higher velocity main channels is more dangerous, less obvious is more dangerous, and full spanning is more dangerous). Injury potential was assessed by noting sharp projections and the position in the channel in a similar manner.

We documented the existence of 2 large pieces of metal debris, 16 small pieces, as well as three small grade control drops made of concrete. All debris was characterized as typical of a

<sup>13</sup> <https://www.river-management.org/river-access-planning-guide>

<sup>14</sup> See Weber Hydroelectric Project (FERC Project No. 1744) Final License Application – Exhibit E, pg. xi. REC-9.

<sup>15</sup> Whitewater paddling experts included the authors of this report, as well as Greg Davis, Assistant Director of Outdoor Programs, Utah State University. Qualifications meet and exceed the requirements of this assessment, and are available upon request.

heavily developed river reach, and none have caused problems with paddlers in the past over many years of documented use. The 18 pieces of metal debris were embedded pieces of rebar, cable, pipe, chain, or wire. Most pieces were located on or along one river bank and posed little or no risk to paddlers. Results of the assessment are documented in Appendix 2.

Figure 1. Locations of industrial debris within the high-water channel of the Weber River.



There is nothing that poses an atypical risk to a paddler while in their boats except for some old wires hanging down into the river that will be easy to remove. The two large pipes entering the river do pose some entrapment risk, however those risks are similar to natural trees, are obvious, are easily avoided, and can be easily mitigated by signage and scouting or portaging. More debris poses some minor risk to swimmers, but other than the debris mentioned above, those risks are low and typically associated with trauma caused by stepping on or swimming into a piece of debris rather than death by entrapment. These kinds of risks are ubiquitous in many rivers that experience vast recreational use including on Forest Service lands and operating under FERC licenses. The specific pieces of debris are largely outside of areas where paddlers are likely to swim or step, are small, and are thus very unlikely to pose any kind of safety issue.

We propose to remove the old communication wires from the river channel this winter as a volunteer effort. Easy access to the areas via the gravel road on river right and the small gauge of these wires will make this effort relatively easy. American Whitewater proposes to organize this effort. Once this effort is complete there are no hazards remaining that necessitate delaying flow restoration.

To mitigate the two large non-spanning pipes we propose to include their location on a map with images at the put in and encourage caution, scouting, and if merited, portage. They are obvious and easy to scout and/or portage from the gravel road paralleling the river at that point. We note that they are in low gradient reaches and easy to simply and safely paddle past, so limiting mitigation to informational precautions and proceeding with flow restoration is appropriate.

Remaining debris does not require mitigation prior to flow restoration. With this said, American Whitewater is interested in collaboratively pursuing the removal of all industrial debris from the river over time to enhance the recreation experience, and would welcome partnership efforts to this end.

## 6. Conclusions

American Whitewater is pleased to share this information documenting that access to the Weber River is safe, legal, and appropriate, and that additional modest access enhancements would improve the recreational experience. We look forward to discussing this proposal with other stakeholders and request Forest Service approval of this proposal so that flow restoration releases may proceed promptly upon license issuance.

Thank you for considering this proposal, and for valuing healthy outdoor recreation on public lands and waters.

Sincerely,

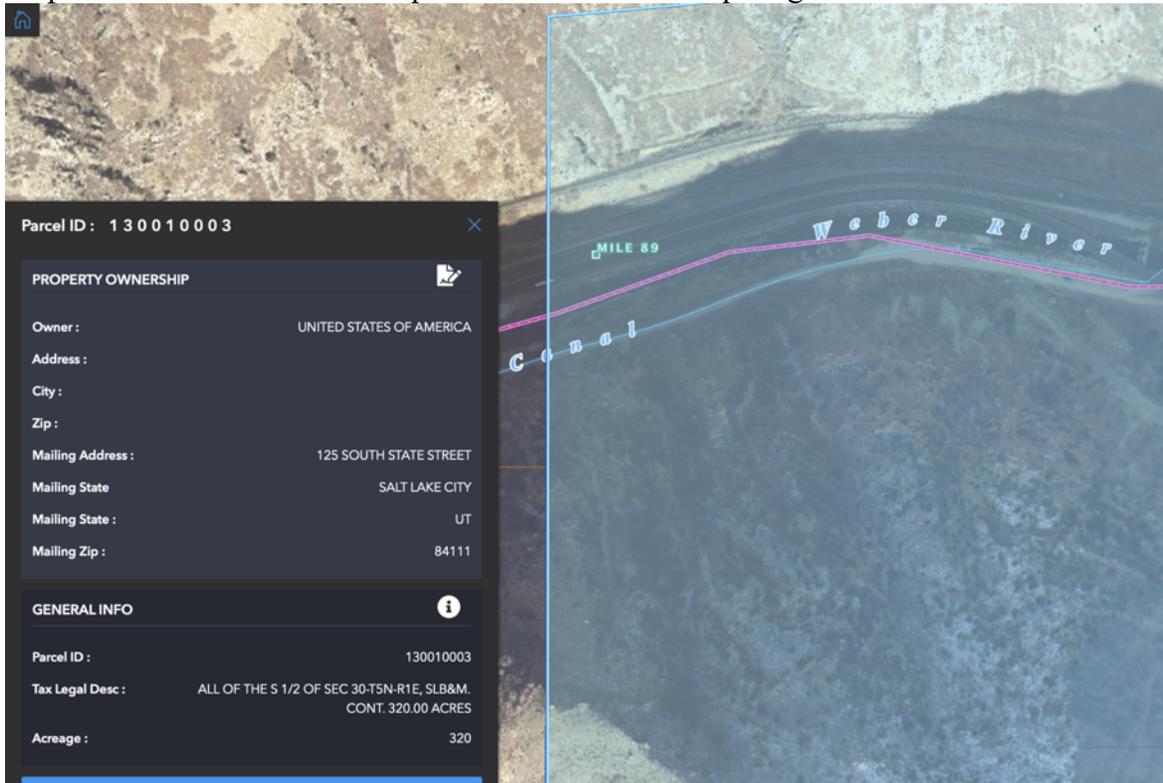
A handwritten signature in black ink, appearing to read 'K. Colburn', written in a cursive style.

Kevin Colburn  
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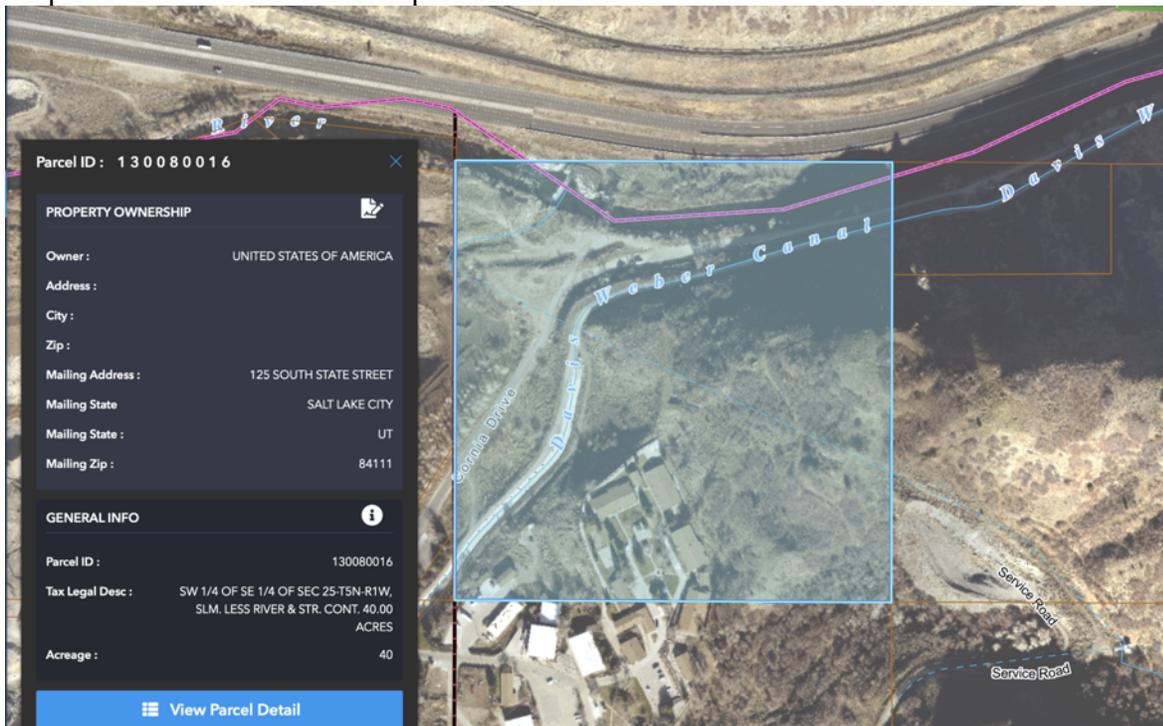
Charlie Vincent  
Volunteer Regional Coordinator  
American Whitewater

## Appendix 1: Property Maps

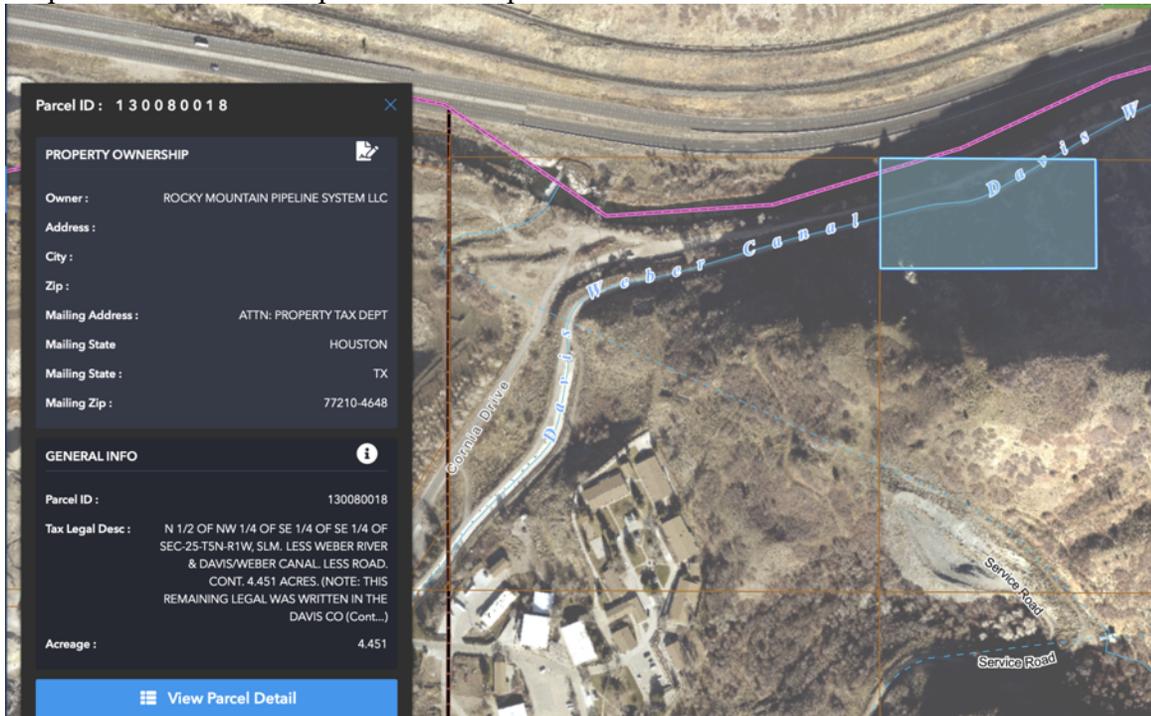
Map 1. Forest Service ownership of the land around the portage of the diversion dam.



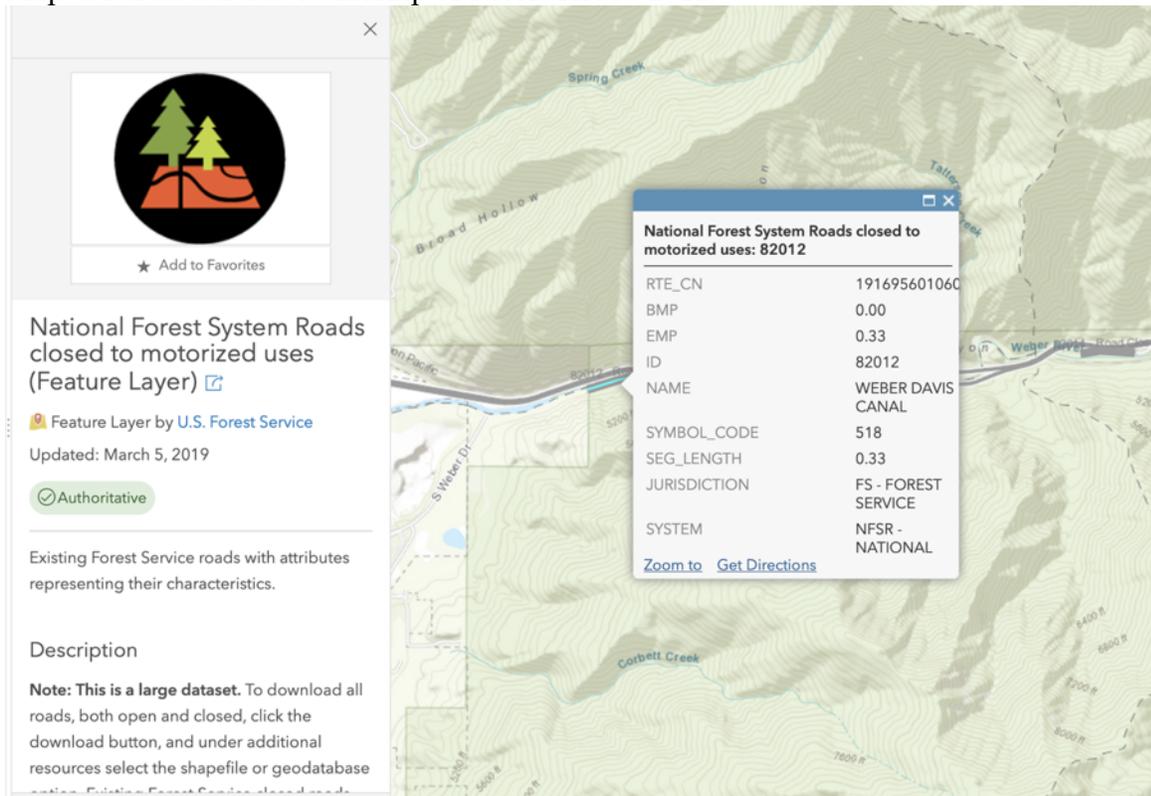
Map 2. Forest Service ownership of the takeout.



Map 3. Private ownership “less road” upstream of takeout.



Map 4. Forest Service ownership of Forest Road 82012



Map 5. Forest Service ownership of Forest Road 82012, no popup, showing closed status.



## Appendix 2. Industrial Debris Survey Results

Description	Boat Hazard	Swim Hazard	Proposed Action
1. Large pipe crossing and entering the river.	Low-Moderate. There is a wide gap to safely pass, and velocity is low. Pin potential exists near both banks. Similar to a tree	Low-Moderate. Swimming in to the right side could result in entrapment. Middle and left are fine. Similar to a tree.	Include precautionary location and image on put in sign. Scouting and portaging are easy, as is avoiding the obvious hazard. Eventual removal would be nice.



Description	Boat Hazard	Swim Hazard	Action
2. Chain on river right bank	<b>None.</b> It is on the bank and has no space under it.	<b>None.</b> It is on the bank and has no space under it.	<b>None.</b>



3. Large pipe entering the river on right left.	<b>Low-moderate.</b> Similar to a tree, easily seen and avoided.	<b>Low-moderate.</b> Similar to a tree, easily seen and avoided.	<b>Include precautionary location and image on put in sign.</b> Scouting and portaging are easy, as is avoiding the obvious hazard. Eventual removal would be nice.
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Description	Boat Hazard	Swim Hazard	Action
4. Concrete cylinder with rebar on river right bank.	<b>None.</b> It is on the bank and has no space under it.	<b>None.</b> It is on the bank and has no space under it.	<b>None.</b>



5. Cable fragment mid-river	<b>None.</b>	<b>Low.</b> Almost no space under it, no sharp upstream point.	<b>None.</b>
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Description	Boat Hazard	Swim Hazard	Action
6. Cable fragment river right.	<b>None.</b>	<b>None.</b>	<b>None.</b>



7. Comms wires hanging down into river.	<b>None.</b> Not attached at river.	<b>None.</b> Not attached at river.	<b>Trim if possible</b> to be out of water.
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Description	Boat Hazard	Swim Hazard	Action
8. Rebar protruding several inches from bridge abutment	<b>None.</b> Paddlers avoid bridges.	<b>None.</b> Paddlers avoid bridges.	<b>None.</b>



9. Comms wires hanging into river	<b>Moderate.</b> These wires are difficult to see and could entangle paddlers.	<b>Moderate.</b> These wires are difficult to see and could entangle swimmers.	<b>Remove them.</b> Simple effort with easy access.
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Description	Boat Hazard	Swim Hazard	Action
10. Three concrete grade control drops.	<b>Low.</b> These are actually fun for paddlers. Similar to natural drops.	<b>Low.</b> Similar to natural drops.	<b>None.</b>



11. Rebar protruding out of water.	<b>None.</b> Pointing downstream and will be underwater.	<b>Low.</b> Pointing downstream so very low entrapment potential.	<b>None needed.</b> Remove if possible.
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Description	Boat Hazard	Swim Hazard	Action
12. Rebar at head of island. Looped.	<b>None.</b> Will be well under water and not where people paddle.	<b>Low.</b> Not pointy, and out of main flow, so entrapment / injury potential is low.	<b>None needed.</b> Remove if possible.



13. Rebar pointing up next to rock	<b>None.</b> Will be under water.	<b>Low.</b> It is flexible so entrapment risk is low, but could injure a swimmer.	<b>None needed.</b> Remove if possible.
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Description	Boat Hazard	Swim Hazard	Action
14. Small smooth pipe on right bank.	<b>None.</b> Entirely touching shore rocks, no entrapment or injury risk.	<b>None.</b> Entirely touching shore rocks, no entrapment or injury risk.	<b>None.</b>



15. Small rebar on river right	<b>None.</b> Will be underwater, along bank, pointing downstream.	<b>Low.</b> On bank and pointing downstream so no entrapment risk.	<b>None.</b>
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Description	Boat Hazard	Swim Hazard	Action
16. Crushed small metal pipe on river right.	<b>None.</b> Along bottom and smooth.	<b>None.</b> Along bottom and smooth.	<b>None.</b>



17. Flexible rebar near right bank.	<b>None.</b> It is flexible and pointing downstream so no entrapment hazard.	<b>Low.</b> It is flexible and pointing downstream so no entrapment hazard. Could injure a swimmer.	<b>None needed.</b> Remove if possible.
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Description	Boat Hazard	Swim Hazard	Action
18. I-bar on right bank	<b>None.</b> Not in paddling channel, Against a rock.	<b>Low.</b> On bank, no entrapment hazard, low injury potential.	<b>None.</b>
[No Photo]			
19. Crushed pipe on river left. Not in play.	<b>None.</b> Smooth, on the bank, and no gaps for entrapment.	<b>None.</b> Smooth, on the bank, and no gaps for entrapment.	<b>None.</b>
			