

Kierra Baker
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The Flow of Bureaucracy: Ralston Creek and Governance

As is the case with most things that fall under governmental control, Ralston Creek is affected, controlled, or otherwise used by a variety of different departments at a variety of different levels for a variety of different reasons. There are activities (or a lack of activity) at the federal, state, county and city levels, and all of these levels influence and play on each other. Then, within each level but especially on the city level, different departments have different jobs in relation to the creek. Therefore, I will start with each level of government and then work my way down to the myriad departments within the City that have an impact on the Creek.

The highest jurisdictional level in the United States is of course the federal government. As of now, the federal government does not have a whole lot to say about creeks in the United States, but they do have their share of water quality standards. In fact, a department in the City (Stormwater Utility, which will be discussed in detail later) was created five years ago as a result of the Federal Stormwater Quality Standards passed by Congress and signed by the President (Fosse). Currently, no other federal laws are affecting the disposition of the Creek. However, the federal government could have a profound effect on the city and the county in the future; this concern is discussed later.

The next level down is the state. I found nothing in Iowa Law or Code that dictated activities regarding the Creek.

Below the state is the county level. In this case, we are working with Johnson County. The county also does not really have any regulations regarding the Creek, mostly because all of

the creek-related disasters take place in city limits (Graves). However, the county's inaction on things such as water quality and runoff control have an impact on how effectively the city can carry out their own plans regarding the Creek. The county does not limit or otherwise monitor what farmers are putting into the creek upstream from Iowa City, but the City government does not have the authority to do so. As a result, as of now there is not really a mechanism to prevent rural areas from using the stream as a dumping ground, and the City has no control over what is flowing through Iowa City from those outside the City limits. This could also pose a problem if the federal government establishes water quality standards that must be enforced by cities; the County's inaction could potentially cause Iowa City to suffer punishments (this is not the case as of now) (Fosse).

The City is where Ralston Creek is the most heavily regulated and controlled. I began by e-mailing Mayor Matthew Hayek because I work in his law office. He told me he did not know much about the Creek, but he put me in touch with Rick Fosse, Director of Public Works. Mr. Fosse proved to be invaluable to my understanding of the City's use and regulation of Ralston Creek. He told me that it is divided into two main categories, public and private. The private areas are controlled and maintained by those that own the property. If the City wants to do anything in these areas, such as a cleanup, they must have the approval of the owners. As for the public areas, the Creek is yet again divided into two sections: where it flows through parks and where it does not. Where it runs through the park, the Parks Department maintains the Creek. Where it does not, Stormwater Utility takes care of it. If there is a crisis (such as a flood), the Streets Department takes care of the damage.

However simple this may seem, it quickly gets much more complicated. Also, statements such as "The City of Iowa City has complied with all applicable conditions of its National

Pollutant Discharge Elimination System (NPDES) Phase II permit for the Municipal Separate Storm Sewer System (MS4) during this reporting period” (Boelk 4) begin to appear. Basically, this sentence means that the City government has complied with the terms of a federal permit.

All political-speak aside, this report, put together by Iowa City’s Senior Civil Engineer Brian A. Boelk, has a lot of useful information as to how the City handles the Creek. This report is an annual report sent to the state Wastewater Section in Des Moines, and it covers the status of various aspects of Ralston Creek, which include: (a) public education and outreach (Boelk 5); (b) public involvement and participation (6); (c) illicit discharge detection and elimination (8); (d) construction site storm water runoff control (9); (e) post-construction storm water management (10); and (f) pollution prevention/good housekeeping (12). Each of these has various other organizations working under them. A basic list looks like this, categorized by goal (any “division” falls under the purview of the Department of Public Works):

1. Iowa Storm Water Education Program (ISWEP); Iowa Storm Water Partnership; Iowa City; Coralville; North Liberty; University Heights; University of Iowa; Johnson County Storm Water Alliance (JCSWA); Natural Resources Conservation Services (NRCS); Iowa Department of Agriculture and Land Stewardship (IDALS); Housing and Inspection Services (HIS); Das Manufacturing Company, in Valrico, FL (Boelk 5-6)
2. Volunteers, including neighborhood associations, University students and faculty, City employees, junior high and high school organizations, community service individuals, and the Winona State football team; Carol Sweeting with Stormwater Utility; Parks and Recreation; Public Works; local newspapers and Iowa City Cable

- network; Streets Division; Engineering Division; City; Creek Maintenance Program; property owners (Boelk 6 – 8)
3. Public Works; HIS; Engineering Division; City Inspector; City; Iowa City landfill; Household Hazardous Waste Mobile Collection Unit (Boelk 8 – 9)
 4. Public Works; HIS; City Attorney; City Council; Coralville; North Liberty; University Heights; University of Iowa; developers; home builders; Engineering Division; Iowa Department of Natural Resources; Johnson County Stormwater Alliance (JCSWA) (Boelk 9 – 10)
 5. City; JCSWA; Home Builders Association and Developer; Engineering Division; HIS; Planning and Community Development; Public Works; ISWEP; Streets Division; Wastewater Division; Parks and Recreation; IDALS; University Heights (Boelk 10 – 12)
 6. Streets Division; Public Works; Streets Division; Wastewater Division; Parks Division; Engineering Division; East Side Recycling Center (does not yet exist) (Boelk 12 – 13)

That is a grand total of more than thirty distinct departments, divisions, and other organizations. It is also important to note that this muddled list includes divisions, departments, city governments, departments of the Iowa government and departments of the United States government. It also, as mentioned, is a rather muddled list; there are few, if any, clearly defined jurisdictional lines when dealing with the Creek.

This information is primarily in regards to simple maintenance of the Creek. However, Ralston Creek is affected by more than just basic upkeep. For example, what if someone wants to build a bridge over it? I posed this question to Mr. Fosse, and he informed me that the first step

(after creating a detailed plan) is to submit the plans to the City. The City then approves the plans, at least preliminarily. Then the plans go to the Department of Natural Resources (DNR), who analyze the backwater that will be created by the flood (the threshold is that the bridge must not create more than a foot of backwater in a hundred-year-flood scenario). Only after it passes through the DNR does the individual get the permission to build (Fosse).

Now, it is also important to determine the water quality of the water flowing through the Creek. This is done by Stormwater Utility. If Stormwater Utility finds a stretch of Creek that has less-than-desirable water quality, or if there is a stretch that is worse than those around it, Stormwater Utility sets out to look for what is called an “illicit connection,” or a place that is illegally dumping something (knowingly or unknowingly) into the Creek. The example Mr. Fosse, gave me was from the 1970s. Although Stormwater Utility did not yet exist (and nothing similar existed until five years ago), there was a part of the Creek east of 1st Avenue that was obviously polluted, as it was bright green. This was eventually traced to a gas station’s floor drain, into which a whole slew of things were being dumped, including a bright green cleaning solution. Once an illicit connection such as this is discovered and traced to their source, the Housing Department (Housing and Inspection Services, or HIS) takes over. There is an individual in that department with the title of “Development Regulatory Specialist” (currently Julie Tallman) who sends a notice to the owner of the property where the illicit connection is located (Health Nuisance Ordinance 1974).

Another closely related area is public health in relation to the Creek. The Department of Public Health can find themselves involved in water quality regulation in the form of the Johnson County Private Sewage Disposal System Regulations, which is exactly what it sounds

like it would be. Public Health also works with the local Department of Natural Resources field office, Field Office number 6 in Washington, Iowa (Lacina).

If there is a health concern, it is Johnson County Public Health that looks into it. If it gets a complaint of a “health nuisance,” or “any act, omission to act or condition which injures or threatens the health and safety of one or more persons,” then it goes into the situation to see if there is in fact a violation. The current-standing code with regards to public health is the Health Nuisance Ordinance, passed in 1968 and amended in 1974, and if this code is violated the violator is first given a notice and a grace period to get the problem fixed. Failure to do so results in a fine of \$100 or less or 30 days or less in prison. This may not sound too harsh comparatively, but each day past the 30-day grace period is considered a new offense. If the person still fails to comply, then the Board of Public Health directs the fixing, with costs being charged to the owner. This constitutes a lien on the property until these costs are paid. This ordinance was passed by the Johnson County Board of Supervisors (Health Nuisance Ordinance 1974).

An example of a health concern is the area of the Creek near the old coal/gas plant, whether coal tar had polluted the Creek. This was actually investigated by a federal body, the Environmental Protection Agency (EPA), in conjunction with the Iowa Department of Public Health and Hazardous Waste Health Assessment Program. (The conclusion was that coal tar was sequestered in the soil, so as long as people did not dig, the Creek was safe.) (Fosse)

There are many problems with the current system. It is important to note, however, that change is often, if not always, preceded by increased public attention on a problem. With reference to Ralston Creek, public interest is most affected in three areas. First of all, people pay attention if and when the Creek floods public areas. Second, property owners pay attention if

something about the Creek is damaging their property. This includes not only flooding, but things such as beavers cutting down trees or building dams. Third, a certain sector of the population considers water quality a top issue. As a result, they always care (Fosse). However, they are a relatively small portion of the population and as such they do not have a lot of pull. As a result, the policy towards Ralston Creek is nearly always reactionary; for example, as a result of the 1972 flood, the City commissioned a report by an engineering firm that laid out a solution to the incessant flooding of the Creek. The result of this was the building of two detention basins, one in Hickory Hill Park and one near Scott Boulevard. These were built by the City using federal money and are maintained by Public Works (Fosse). However, these detention basins were simply a reaction; when it comes to the Creek, problems are not averted, but just reacted to.

Conclusions

The way Ralston Creek is currently handled administratively is sort of a mess. While each section of government may be efficient in its own area of expertise, there is no central body that oversees the Creek in its entirety. Public Works is close. However, within Public Works there are several divisions that have an impact on the Creek, and those divisions do not always work together. Additionally, Ralston Creek is never looked at holistically; it is viewed as a compilation of projects. In order to attempt to rectify this, there should be one department or at the very least, a couple of people within Public Works that are aware of and involved in every aspect of the governance of the Creek.

The second concern is one mentioned earlier, and that is the timing of the projects. Changes have only been made in response to some major disaster. A good change to the current system would be to have that couple of people or department look into ways to care for the Creek before it hits crisis stage and before irreversible damage is done to it. There are several forms of

wildlife that are already in trouble, and if we wait until the situation is critical, it may be too late. The Creek is only cared for when it comes into contact, or, more accurately, conflict with human plans. A proactive strategy will not only allow for control and monitoring of non-human situations, but it creates the possibility of preventing any further disasters created by Ralston Creek.

Third and final, the government should raise awareness of Ralston Creek. So very few people are truly aware of the Creek and everything that it is and signifies, and it is important for the public to have this understanding. This goal of education is already being pursued to a certain extent with Creek Clean-ups and the various education activities outlined in the NDPES report. However, more can be done, and an increase in knowledge is the first step in an increase in care and ultimately, care is what Ralston Creek needs.

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