



Programmatic General Permit 10

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

MINIMAL IMPACT ACTIVITIES AUTHORIZED IN CONJUNCTION WITH THE STATE OF UTAH'S STREAM ALTERATION PROGRAM

EFFECTIVE: February 22, 2021

EXPIRES: February 22, 2026

The U.S. Army Corps of Engineers (Corps), Sacramento District, is issuing Programmatic General Permit 10 (PGP 10) for certain activities in waters of the U.S. (waters) that have been authorized under the State of Utah's Stream Alteration Program. An activity is verified under PGP 10 when the Utah State Engineer issues a Stream Alteration Permit in compliance with state law and the Corps has determined it meets the terms and conditions of this general permit.

ISSUING OFFICE: U.S. Army Corps of Engineers, Sacramento District

ACTION ID: SPK-2002-50464

AUTHORITIES: This permit covers activities under Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Under Section 404, the Corps authorizes the discharge of dredged or fill material into waters. Work or structures in, or affecting, navigable waters are authorized by the Corps under Section 10.

LOCATION: This PGP authorizes activities in streams that are part of the surface tributary system over which the Utah State Engineer has regulatory authority under the Utah Division of Water Rights' Stream Alteration Program. Limits of the State of Utah's jurisdiction are defined in Administrative Rule R655-13.

ACTIVITIES COVERED: PGP 10 authorizes structures or work in navigable waters and/or the discharge of dredged or fill material into waters for activities that have been authorized by the Utah State Engineer through a Stream Alteration Permit. These activities include, but are not limited to, culvert installation and extension, bridges, low water crossings, utility line crossings, bank stabilization, linear transportation projects, diversion structures, outfall structures, boat ramps, docks, commercial and residential construction, flood control facilities and maintenance of previously permitted activities that are located in waters subject to jurisdiction under Section 10 and/or are not exempt under Section 404.

TERMS:

1. Thresholds: The discharge of dredged and/or fill material into streams is limited to no more than 300 linear feet below the ordinary high-water mark of a stream, including stream restoration projects.

2. Avoidance and Minimization: Impacts to waters shall be avoided and minimized to the maximum extent practicable.

3. Except for stream restoration activities as identified in Term 4, this permit does not authorize the discharge of dredged or fill material into special aquatic sites such as wetlands, springs and riffle/pool complexes. Activities involving discharges of dredged or fill material in special aquatic sites, with the exception noted above, will require an alternate form of Department of Army (DA) authorization.

4. Stream restoration activities located in riffle/pool complexes are authorized under this general permit. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate. Riffle and pool complexes are particularly valuable habitat for fish and wildlife.

5. This permit does not authorize the relocation of streams, including channelization, realignment or piping of natural channels, with the exception of relocation for the purposes of restoration to a more natural condition, where there is an increase in functions and services of the stream environment.

6. Projects requiring compensatory mitigation to offset the adverse impacts are not authorized under this PGP.

7. Projects proposed in the proximity of a public water supply intake, are not authorized under this PGP, except where the activity is for the maintenance, repair, or replacement of the intake structure, or for bank stabilization adjacent to the intake structure.

8. This permit does not authorize any activities in waters of the U.S. undertaken on tribal lands or activities conducted under emergency situations. These activities require an alternate form of DA authorization, such as a Nationwide or other General Permit.

9. Section 7 of the Endangered Species Act of 1973 (ESA): Unless another federal agency has completed the process to demonstrate compliance with Section 7 of the ESA for impacts related to the project, this PGP may not be used to authorize activities have the potential to affect federally-listed species or for projects in sections of the Green River, Virgin River, Provo River, and Colorado River that have been designated as critical habitat under the ESA.

10. Section 106 of the National Historic Preservation Act of 1966 (NHPA): Unless another federal agency has completed the process to demonstrate compliance with Section 106 of the NHPA for impacts related to the project, this PGP may not be used to authorize activities that have the potential to affect historic properties.

11. After-the-fact authorizations: This PGP may not be used to authorize activities for any work that has already occurred in waters of the U.S.

12. Authorizations subject to Corps Civil Works Section 408 projects: This PGP may not be used to authorize activities that require authorization under 33 USC 408 (Section 408) to alter or temporarily or permanently occupy or use a Corps' federally-authorized Civil Works projects. This includes work in the Surplus Canal in Salt Lake County and in Kays Creek in Davis County.

13. Authorizations subject to reviews under the Wild and Scenic Rivers Act: This PGP may not be used to authorize activities located in a component of a National Wild and Scenic River System or study river. This includes work in sections of the Green River and Virgin River.

14. Modifications: Requests for modifications to projects authorized under this PGP cannot be processed. If the work authorized under this PGP changes, a new application must be submitted for the work.

15. Single and Complete: The activity must be a single and complete project as defined in Section F of the January 6, 2017, Federal Register Notice for Issuance and Reissuance of Nationwide Permits; Final Rule (82 FR 1860), which can be found at: <https://www.govinfo.gov/content/pkg/FR-2017-01-06/pdf/2016-31355.pdf>

16. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this PGP. This discretionary authority may be used by the Corps to further condition or restrict the applicability of the PGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the project applicant that the proposed activity is not authorized by the PGP and provide instructions on how to apply for authorization under another type of DA permit. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit, Regional General Permit, Letter of Permission or Standard Permit. The Corps will determine on a case-by-case basis, as needed, whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may restore authorization under the PGP at any time it determines the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the PGP at any time.

GENERAL CONDITIONS:

1. The permittee must avoid activities in waters of the U.S. that serve as breeding areas for migratory birds to the maximum extent practicable.
2. The permittee may not engage in activities in waters of the U.S. that may result in the take, possession, sale, purchase, barter or transport of any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. The permittee shall avoid the destruction of riparian vegetation, especially mature cottonwoods, to the maximum extent practicable. Unavoidable vegetation clearing and surface disturbance shall be conducted outside critical breeding, nesting, and

fledging seasons. Locations of existing bald and golden eagle nests should be identified prior to the initiation of activities. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to eagle nest sites or territories. Arrival at nesting sites can occur as early as December. Nesting and fledging can continue through August.

3. The project shall not substantially disrupt the movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area.
4. The permittee shall avoid activities in spawning areas during the spawning season to the maximum extent practicable. Activities that would result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
5. The permittee shall avoid destruction of riparian or riverine vegetation within waters of the U.S., especially mature cottonwoods, to the maximum extent practicable and all disturbed areas must be restored to pre-disturbance levels. When work authorized by this permit causes damage to riparian vegetation that is not directly covered by a permanent feature, these scarred areas shall be replanted with a mixture of native trees, shrubs, forbs and grasses, as appropriate. At a minimum, replanting an area at a 1:1 ratio will be required. The permittee is ultimately responsible for re-vegetation success.
6. The permittee shall design all bank stabilization activities using bio-engineering techniques to the maximum extent practicable, unless the Corps determines it to not be practicable.
7. The permittee must stop all work if any previously unknown historic properties, archaeological artifacts, or remains are identified during the completion of authorized work, and the permittee must immediately notify the Corps. The Corps will initiate the federal coordination procedures required to determine if the remains or cultural resources warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Work may not resume until the Corps has completed the process to comply with the appropriate laws and regulations.
8. The permittee shall ensure all activities satisfy all conditions of the January 20, 2021 Section 401 water quality certification issued for this permit by the Utah Division of Water Quality.
9. The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. The permittee shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all installation activities are completed.
10. Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires.
11. The permittee is responsible for ensuring all construction equipment be cleaned to remove noxious weeds/seeds and petroleum products prior to moving on site. Machinery shall be fueled outside of the channel to prevent spillage into waterways. Best management practices

shall be used to ensure construction related byproducts do not enter the riverine ecosystem and have negative effects on aquatic organisms.

12. The permittee shall not use heavy equipment within the stream channel, except where the Corps determines it is necessary.
13. The permittee must ensure that material is not placed in any location or manner which will impair surface water flows into or out of any adjacent wetlands.
14. The permittee is responsible for ensuring construction best management practices are implemented to minimize sedimentation inputs to river systems resulting from stream bed disturbance by storing excavated material outside of the stream channel. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
15. Work in waters shall only be conducted during periods of low or no flow, unless the permittee demonstrates the proposed work during higher flows is necessary and would not result in more than minimal impacts, or that this condition is otherwise not appropriate or practicable. If work in live water is necessary, a dewatering plan will be required to be submitted with the application. The Corps will make this determination on a case by case basis. In situations where work must occur in water, a dewatering plan will be required with the application.
16. To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters shall be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity shall not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities). Culverts placed in streams must be installed in a manner that maintains flows during low flow periods, and in a manner that maintains fish passage in locations where periodic flows provide stream connectivity and allow fish movement above and below the installed structure.
17. All temporary fills must be removed in their entirety within 30 days after completion of the permitted action and the affected areas returned to their pre-existing elevations.
18. Within 30 days of completion of the permitted work, the permittee must submit the following information to the Corps and State Engineer:
 - I. The permittee's name, address, telephone number and email address.
 - II. The Stream Alteration Permit number and Corps Action ID.
 - III. A statement that the authorized work was done in accordance with the Stream Alteration Permit and PGP 10, including any special conditions added to the verification, and
 - IV. The signature of the permittee certifying the completion of the work.

19. Work authorized under this permit may be inspected by the Corps at any reasonable time to assure that it is being or has been completed in compliance with the terms and conditions of this permit.
20. Any activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of this permit.
21. For activities authorized through this permit under Section 10 of the Rivers and Harbors Act of 1899, the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
22. If the permittee sells the property associated with this PGP verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the Corps office to validate the transfer. A copy of the PGP verification and new landowner information must be attached to the letter requesting transfer.

PRE-CONSTRUCTION NOTIFICATION PROCEDURES:

Applicants must submit a joint permit checklist developed by the State Engineer and the Corps when applying for a Stream Alteration Permit and verification under this PGP. Although not required, the Corps highly recommends a pre-application meeting with both agencies and the applicant. The joint permit checklist and instructions may be obtained from either agency. To be determined completed for processing, the application must include the following:

1. Completed Joint Permit Checklist is located at <https://waterrights.utah.gov/strmalt/forms.asp>.
2. A vicinity map that clearly identifies the location of the proposed project site on a USGS topographic map (7.5-minute quadrangle map is recommended) with enough detail to easily locate the site and a recent aerial/satellite image of the site.
3. Plan and cross-sectional view drawings showing all work requiring a permit, including permanent and temporary fills, structures, borrow sites, staging areas and storage areas. The drawings must clearly demarcate the ordinary high-water mark of the waters to be impacted and clearly illustrate where fill will be placed below the ordinary high-water mark. Professional drawings are not required; however, drawings must be scaled or indicate dimensions of the work to be completed. The ordinary high water mark is the line on the bank established by fluctuations of water and indicated by physical characteristics such as shelving, destruction of terrestrial vegetation, presence of litter or debris, or changes in the character of soil (see Figures 4, 5, and 6 in the permit application instructions).
4. A restoration plan for any areas temporarily disturbed during work, including removal of fills, re-contouring, re-vegetation with appropriate native plants.

5. Ground photos which clearly show the area of the stream to be impacted, as well as photos of the disturbance areas such as borrow sites, staging areas and storage areas along the bank of the river which show the vegetation in those areas. Photos of the bank are used to help determine the presence/absence of wetlands and other special aquatic sites adjacent to the river. As such, photos showing snow covered ground will not be accepted.

6. If the activity involves bank stabilization or protection:

- A description of the need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety.
- A narrative demonstrating the proposed activity incorporates the least damaging bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody debris and native plantings. If only rock is to be used due to site erosion conditions, explain why bio-engineering is not practicable and provide information indicating how the bank stabilization structure incorporates elements beneficial to aquatic organisms.
- A planting plan which involves the use of native riparian plants, unless the applicant demonstrates it is not appropriate or not practicable.

Note: Activities which would harden and/or narrow the channel beyond what would be required for bank stabilization in natural channels are not authorized if the activity would have the potential to result in more than minimal impacts.

7. An assessment of the likely impact the work would have on upstream, downstream and cross-stream properties. Specifically, discuss the following:

- Will the work speed up accumulation (deposition) or result in the loss (erosion) of sediments?
- Will the activity result in the relocation, straightening, or rearrangement of a natural stream channel?
- Will the activity result in the amount of water flowing in the stream and/or a change in the way water moves within the stream?

The completed joint application checklist and the information above must be submitted to the Utah State Engineer's Office.

1. Once a complete joint application has been received, the State Engineer will circulate copies to federal and states agencies as a public notice of the proposed work. Copies will be sent to the Corps, US Fish and Wildlife Service (FWS), U.S. Environmental Protection Agency (EPA), Utah Division of Wildlife Resources, Utah Division of Water Quality, and local agencies. The State Engineer will allow at least 20 days for review and comment. The State Engineer will notify the Corps of any checklist that generates considerable public interest or opposition.

2. The Corps will review each checklist to determine whether the activity complies with the terms and conditions of this permit.

a. The Corps must also ensure compliance with related laws including Section 7 of the ESA. For an activity to be authorized under this permit, the Corps must find the activity has no effect on federally-listed species or will not modify critical habitat. If the activity may affect listed species or modify critical habitat then the activity will require an alternate form of DA authorization, such as a Nationwide Permit, unless another federal agency has previously demonstrated compliance with Section 7 of the ESA.

b. The Corps must ensure compliance with Section 106 of the NHPA for each activity to be authorized under this permit. Activities that may result in potential effects to sites listed, or sites eligible for listing, on the National Register of Historic Places will not be authorized under this permit. Should any such impacts be identified, the Corps will request, after any necessary coordination with the State Historic Preservation Office, to suspend processing of the application while the applicant considers ways of modifying the proposal to address the identified concerns, unless another federal agency is has previously demonstrated compliance with Section 106 of the NHPA.

c. Should a specific activity be found to not meet the terms and conditions of this permit or have impacts that are more than minimal, the Corps will notify the State and the applicant of one of the following:

(1) The activity does not qualify for authorization under PGP 10, with instruction on the procedures to seek authorization under a different type of permit; or

(2) The activity might be authorized under PGP 10 with certain modifications. In such cases, a revised application would need to be submitted.

Further Information:

1. This permit does not obviate the need to obtain any other required federal, state, or local authorizations.
2. This permit does not grant any property rights or exclusive privileges, nor do they authorize injury to the property or the rights of others.
3. This permit does not convey the right to interfere with any existing or future federal project.
4. In issuing authorizations under this permit, the Federal Government does not assume any liability for the following: damages to authorized projects, or uses thereof, as a result of other permitted or un-permitted activities or natural events; damages to persons or property caused by authorized activity; damages to authorized projects, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest; design or construction deficiencies associated with the authorized work; damage claims associated with any modification, suspension or revocation of individual authorizations.
5. In issuing authorizations under this permit, the Corps must rely on information supplied by the applicant. Should it be determined that any authorization was based on false, incomplete, or inaccurate data, the Corps reserves the right to re-evaluate the case and to suspend, modify or revoke the authorization. Failure to comply with the terms and conditions of an authorization is also

grounds for suspension, modification, or revocation, as is the discovery of relevant information not considered in the initial application review.

Permit Duration: This General Permit expires 5 years from the date of issuance. The Corps may re-evaluate the terms and conditions of this permit at any time deemed necessary to protect the public interest. Activities verified by the Corps under this permit are valid until the date this General Permit expires. If this General Permit expires when the project is under construction or under contract to begin construction, the permittee will have up to one year after the permit expiration to complete the work. In such case, the permittee must notify the Corps and submit sufficient evidence such as photos of work or proof of contract.

CONTACTS AND ADDITIONAL INFORMATION:

For additional information or questions about PGP 10, please contact:

SPKRegulatoryMailbox@usace.army.mil
U.S. Army Corps of Engineers, Sacramento District
Utah Regulatory Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010-7744
(801) 295-8380

This permit becomes effective when the federal official, designated to act for the Secretary of the Army has signed below.



Michael S. Jewell
Chief, Regulatory Division

19 February 2021

Date

**STATE OF UTAH
DIVISION OF WATER QUALITY
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALT LAKE CITY, UTAH**

Section 401 Water Quality Certification No. DWQ-2020-12001

Applicant: U.S. Army Corps of Engineers
Jason Gipson, Chief, Nevada-Utah Regulatory Section
Sacramento District
533 West 2600 South, Suite 150
Bountiful, Utah 84010

Project: **On December 4th, 2020**, the U. S. Army Corps of Engineers (USACE) issued a public notice for the reissuance of the **Programmatic General Permit (PGP) 10 for Minimal Impact Activities under the State’s Stream Alteration Program**. General Permits are a form of Department of Army authorization that are issued for structures, work, or discharges that will result in only minimal individual and cumulative adverse effects. This Programmatic General Permit was first issued by the USACE on November 2, 1987. It authorized activities that had minimal adverse effects on the aquatic environment that fall under the USACE’s Regulatory Program and that had also been authorized through a Utah Stream Alteration Permit. After 1987, PGP 10 has been reissued every five years. Activities authorized under this PGP 10 include, but are not limited to, culvert installation and extension, bridges, low water crossings, utility crossings, bank stabilization, linear transportation projects, diversion structures, outfall structures, boat ramps, docks, commercial and residential construction, flood control facilities, and maintenance of previously permitted activities. The USACE Proposes to reauthorize the PGP with some modifications including reduction in level of impact authorized and the inclusion of four (4) additional conditions.

Location: State of Utah

Watercourse(s): All streams in the State of Utah that are part of a surface tributary system and over which the State Engineer has regulatory authority under the State’s Stream Alteration Permit Program (Section 73-3-29, Utah Code Annotated).

Request Date: December 4, 2020

Effective Date: January 20, 2021

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Attachment 1: Applicant/Project Proponent Resources

I. Definitions

- 1.) **Blue Ribbon Fishery**: status administered by the Utah Division of Wildlife Resources and the Blue Ribbon Advisory Council that indicates the waterbody has high quality in the following attributes: fishing, outdoor experience, fish habitat, and economic benefits.
- 2.) **Category 1 Waters** are “*Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters.*” UAC R317-2-3.2
- 3.) **Category 2 Waters** “*are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality.*” UAC R317-2-3.3
- 4.) **Designated Beneficial Uses**: means a water’s present most reasonable uses, grouped by use classes to protect the uses against controllable pollution. Beneficial uses designated within each class are described in Utah Administrative Code (UAC) R317-2-6 and waterbodies beneficial uses can be found in UAC R317-2-13. For the purposes of this document, the term “designated beneficial uses” will be used to describe all uses required to be protected by Utah Water Quality Standards and Antidegradation Policy.
- 5.) **Director Notification and Review** means submittal of the U.S. Army Corps of Engineers (USACE) and Utah’s State Engineer’s Office (Water Rights) joint application and any supplemental attachments to the Utah Department of Environmental Quality (DEQ), Director of the Utah Division of Water Quality (DWQ) for review.
- 6.) **Existing Uses** “*means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.*” UAC R317-1-1.” *If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use.*” UAC R317-2-3.
- 7.) **Project Proponent** “*means the applicant for license or permit or entity seeking certification.*” 40 CFR §121.1
- 8.) **Total Maximum Daily Load (TMDL)**- “*means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.*” UAC R317-1-1
- 9.) **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

10.) **303(d) list** is a state's list of impaired and threatened waters, including but not limited to; streams, lakes, and reservoirs adopted to implement the Clean Water Act Section 303(d).

II. Acronyms

BMPs- Best Management Practices
CWA- Clean Water Act
DEQ- Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
PGP 10- Programmatic General permit 10
UAC- Utah Administrative Code
USACE - U.S. Army Corps of Engineers
TMDL – Total Maximum Daily Load
WQS- Utah Water Quality Standards
WOTUS- Waters of the United States

III. Executive Summary

Pursuant to Section 401 of the Clean Water Act (CWA) 33 U.S.C. Section 1251 et seq., DWQ grants water quality certification to the U.S. Army Corps of Engineers (USACE) Programmatic General Permit (PGP 10). Certification is subject to the conditions outlined in this document and adherence to any conditions outlined in the proposed PGP 10. The conditions outlined in this certification are necessary to assure compliance with effluent limitations, monitoring requirements, and other applicable laws and regulations adopted for state primacy of the CWA. Condition justification and appropriate citations of Federal and State laws that authorize the condition, as required by 30 CFR Part 121.7, can be found in the section immediately following the conditions.

DWQ's conditions are based on and are necessary to comply with applicable state rules. Specifically, the following Utah Rules represent overarching considerations that require the conditions outlined by this document to apply to the USACE PGP 10 Permits: Utah's rules promulgating standards of quality for waters of the State affirm "it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated" UAC R317-2-7.1.a. Additionally, "All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses." UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6" UAC R317-15-6.1.A.1., "exceeds water quality criteria, either narrative or numeric, in Section R317-2-7" UAC R317-15-6.1A.2. or "fails to meet the antidegradation (ADR) requirements of Section R317-2-7" UAC R317-15-6.1.A.3

The Utah DWQ participated in a pre-filing meeting with the USACE on November 4, 2020, and received a formal 401 Certification request on December 4, 2020 from the USACE for the reissuance of the USACE PGP 10. Utah DWQ was informed that the reasonable period of time to make a certification decision was 60 days, which requires the DWQ to act by February 2, 2020.

IV. Background

This Programmatic General Permit was first issued by the USACE on November 2, 1987. It authorized activities that had minimal adverse effects on the aquatic environment that fall under the USACE's Regulatory Program and that had also been authorized through a Utah Stream Alteration Permit. After 1987, PGP 10 has been reissued every five years. Activities authorized under this PGP 10 include, but are not limited to, culvert installation and extension, bridges, low water crossings, utility crossings, bank stabilization, linear transportation projects, diversion structures, outfall structures, boat ramps, docks, commercial and residential construction, flood control facilities, and maintenance of previously permitted activities.

The USACE is proposing to reauthorize PGP 10 with the following modifications:

- 1.) The USACE proposes to modify the level of impact authorized by this permit from no more than 500 linear feet for perennial/intermittent streams and 750 linear feet for ephemeral streams to a consistent level of no more than 300 linear feet for activities in streams.
- 2.) The USACE Proposes to clarify that the relocation of streams for the purposes of restoration activities is authorized by this permit. Currently, PGP 10 has a blanket prohibition regarding the relocation of streams. The USACE is proposing to retain this restriction with the exception of relocation for purposes of restoration, provided the project results in a net increase in aquatic resource functions and services.
- 3.) The USACE proposes to modify this permit to authorize projects that may affect historic properties and/or federally-listed threatened and endangered species when another federal agency is involved in the project (i.e. conducting the work, issuing a permit, lease, funding, etc.) and was the lead federal agency for purposes of determining compliance with the NHPA and/or the Endangered Species Act.
- 4.) USACE is proposing to reauthorize the existing PGP 10 general conditions, with the inclusion of the following four additional general conditions:
 - (a) The permittee shall design all bank stabilization activities using bio-engineering techniques to the maximum extent practicable, unless the USACE determines it to not be practicable.
 - (b) The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all installation activities are completed.

- (c) To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- (d) If the permittee sells the property associated with this PGP verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the USACE office to validate the transfer. A copy of the PGP verification and new landowner information must be attached to the letter requesting transfer.

V. Certification Conditions

- 1.) The Project Proponent shall provide Director Notification and Review for any project with a potential discharge to *Category 1* or *Category 2* waters; in order to protect designated beneficial uses and assure that WQS are not violated.
- 2.) All activities shall not cause further degradation of impaired waterbodies- as defined in DWQ's most recent 303(d) list, regardless of whether a TMDL has been completed. The project proponent must review impairments on the waterbodies where the projects have potential to discharge and is responsible for ensuring that WQS are not exceeded and designated beneficial uses are not impaired.
- 3.) Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, etc.) shall not be stored, disposed of, or accumulated or conveyed through adjacent to or in immediate vicinity WOTUS unless adequate measures and controls are provided to ensure those materials will not enter WOTUS in the State of Utah. **Any spill or discharge of oil or other substance which may cause pollution to WOTUS in the State of Utah, including wetlands, must be immediately reported to the Utah DEQ Hotline at (801) 536-4123, a 24-hour phone number.**
- 4.) All project proponents conducting activities in or immediately adjacent to WOTUS in the State of Utah with assigned class 1C (domestic drinking water) that are upstream 2 miles or less from any intake supply must notify the water supply operator and the local health department prior to commencement of work. If the water supply operator or the local health department recommends additional BMPs or monitoring, the project proponent must consider those recommendations in their project design.
- 5.) All activities conducted in or immediately adjacent to WOTUS in the State of Utah with assigned beneficial use class 3A (cold water fishery) or has blue ribbon fishery designation must avoid removal of native riparian vegetation that provides stream shading to the maximum extent

practicable. Any projects that approve removal of riparian vegetation that provides shade must require reestablishment of native vegetation that provides equal or greater shade. The project proponent shall provide successful reestablishment of native vegetation.

VI. Condition Justification and Citations

- 1.) **Director Notification and Review** is a condition for projects identified in Part V(1) above which present an increased likelihood of jeopardizing designated beneficial uses or otherwise causing a violation of WQS, promulgated pursuant to Utah Code Sections 19-5-104, 19-5-110 and Section 303 of the Clean Water Act. Director Notification will allow the DWQ to consider water-body specific factors that are not otherwise considered by PGP 10 Permits. In support of cooperative federalism, the DWQ conditions approval of PGP 10 Permits identified in Part V(1) above on Director Notification, rather than denying all PGP 10 Permits with potential to discharge to Category 1 and Category 2 Waters, to avoid unnecessary burden to applicants that would be associated with a blanket requirement for individual certification requests for all identified projects in Category 1 and Category 2 waters.

The opportunity to review projects that discharge to Category 1 and Category 2 waters allows the DWQ to assure that WQS will be met without automatically requiring a certification request to the Director directly from the project proponent. Director Notification would take substantially less time than requiring an individual certification request and associated pre-filing meeting. The Director will provide one of the following responses within two weeks;

- (i) The DWQ has determined the project will likely have minimal impact to water quality, pending the project proponent's consideration of any written comments,

or in infrequent cases

- (ii) The DWQ has determined that the project requires individual certification to adequately protect designated beneficial uses, prevent violation of WQS, or prevent antidegradation. The DWQ reserves the right to require an individual 401 certification in rare circumstances where the DWQ determines there is a potential for adverse water quality impacts.

Projects with potential discharges to Category 1 and Category 2 waters are conditioned on Director Notification and Review in order to ensure that the Utah DWQ's Antidegradation Policies are being implemented effectively. Category 1 waters are "waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters." UAC R317-2-3.2. Category 2 waters "are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality." UAC R317-2-3.3. Discharges may be

allowed in Category 1 and Category 2 waters “where pollution will be temporary and limited after consideration of the factors in UAC R317-2-.3.5.b.4., and where best management practices will be employed to minimize pollution effects.” UAC R317-2-3.2 and UAC R317-2-3.3.

Although PGP 10 Permits are typically issued for projects with minimal impacts to water quality, the PGP 10 Permits do not take into consideration the quality of the water affected. In order to comply with the Antidegradation Policy outlined by UAC R317-2-3.5.b.4, requiring that pollution to Category 1 and Category 2 waters be temporary and limited, the DWQ must review all projects with the potential to discharge to those waters. Without the ability to review the individual projects proposing to discharge to Category 1 and Category 2 waters, the DWQ cannot assure that they will meet the antidegradation policy or other applicable water quality requirements. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge “impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6” UAC R317-15-6.1.A.1., “exceeds water quality criteria, either narrative or numeric, in Section R317-2-7” UAC R317-15-6.1A.2. or “fails to meet the antidegradation (ADR) requirements of Section R317-2-7” UAC R317-15-6.1.A.3 when making a certification decision.

Citation(s): UAC R317-2-3.2., UAC R317-2-3.3. , UAC R317-15-6.1, UAC R317-15-6.1.A.1., UAC R317-15-6.1.A.2., UAC R317-15-6.1.A.3.

- 2.) **Protection of Impaired Waterbodies.** Waters that are impaired and conjunctively on Utah’s most up to date 303(d) list are not currently meeting their designated beneficial uses. According to Utah’s Final 2016 Integrated Report¹ the waters identified as impaired are not meeting their designated beneficial uses because “the concentration of the pollutant- or several pollutants- exceeds numeric water quality criteria, or quantitative biological assessments indicate that the biological designated uses are not supported (Narrative water quality standards are violated).” Utah’s antidegradation policy states “existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.” UAC R317-2-3.1. In order to ensure that proposed activities meet Utah’s antidegradation and that discharges do not further degrade water quality the project proponent needs to be aware of the waterbodies assessment, more specifically if the waterbody is impaired and listed on Utah’s most current 303(d) list. If the potential discharge contains pollutants/ parameters that the waterbody is listed as impaired for, the project proponent needs to take extra precautions to minimize and prevent discharges that could further degrade the waterbodies and prevent the waterbodies from meeting its beneficial and existing uses. Typical pollutants associated with USACE Section 404 permits (e.g. sediment), especially when a waterbodies proposed for discharge is impaired could cause applicable WQS to be violated, if appropriate measures are taken.” As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge “impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6” UAC R317-15-6.1.A.1., “exceeds water quality criteria, either narrative or numeric, in Section R317-2-7” UAC R317-15-6.1A.2. or “fails to meet the antidegradation (ADR) requirements of Section R317-2-7” UAC R317-15-6.1.A.3. when making a certification decision.

¹ <https://documents.deq.utah.gov/water-quality/monitoring-reporting/integrated-report/DWO-2017-004941.pdf>

Citation(s): UAC R317-2-3.1, UAC R317-2.1.a., UAC R317-15-6.1, UAC R317-15-6.1.A.1., UAC R317-15-6.1.A.2., UAC R317-15-6.1.A.3.

- 3.) **Proper Storage of Hazardous and Otherwise Deleterious Materials.** Project approval is conditioned on proper storage of hazardous and otherwise deleterious materials, and notification of any discharge of those materials, to assure that water quality and narrative standards are not violated. When projects are occurring in or around waterbodies, there is a chance for pollutants to inadvertently be spilled/discharged into waterbodies due to increased risk from project related activities (e.g. presence of machinery, onsite chemical and gas storage, improper waste storage, and failure to use proper BMPs). To prevent or reduce the possibility that hazardous and otherwise deleterious materials are inadvertently discharged into a waterbody, project proponents must not store, dispose of, or accumulated such materials adjacent to or in immediate vicinity of WOTUS unless adequate measures and controls are provided to ensure those materials will not enter waters of the state. If there is a discharge to WOTUS in the State of Utah, it must be immediately reported to the DEQ, as stated in Utah Code §19-5-114. An inadvertent discharge of pollutants can cause violations with Utah’s Narrative Standards, which states “It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.” UAC R317-3-7.2. Utah’s rules promulgating standards of quality for waters of the State affirm “it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated.” UAC R317-2-7.1.a. Discharges of pollutants, even inadvertently, could cause both a violation of applicable water quality standards and possibly interfere with a waterbodies designated uses.

Citation(s): Utah Code § 19-5-114, UAC R317-3-7.2, UAC R317-2-7.1.a, UAC R317-15-6.1., UAC R317-15-6.1.A.1., UAC R317-15-6.1A.2.

- 4.) **Notification to water supply operators and local health departments** is a condition of project approval for all projects in or immediately adjacent to WOTUS with assigned class 1C for domestic drinking water upstream two miles or less from any intake supply. PGP 10 term 7 as described in the USACE Public Notice for PGP 10, states ” Projects proposed in the proximity of a public water supply intake, are not authorized under this PGP, except where the activity is for the maintenance, repair or replacement of the intake structure or for adjacent bank stabilization.” The DWQ has determined that this term is not specific enough to protect of beneficial use class 1C (Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water) because it fails to provide an exact distance. As stated in Utah’s Antidegradation Policy UAC R317-2-3.5.d “depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent

effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream WQS, may be required by the Director in order to adequately protect public health and the environment.” “The additional treatment/effluent limits/monitoring which may be required will be determined by the Director after consultation with the Division of Drinking Water and the downstream drinking water users.” UAC R317-2-3.5.d. These additional requirements are necessary to ensure that beneficial use class 1C is maintained in the waterbody proposed for discharge or in some cases, protection of the downstream waterbodies designated beneficial use, when classified as 1C. Should the project proponent refuse to work with the local health department and water supply operators, the Director may request an individual certification request and issue additional requirements in consultation with the operator, the public health departments, and the Division of Drinking water in order to maintain the designated beneficial use.

Citation(s): UAC R317-2-3.5.d, UAC R317-2-7.1.a, UAC R317-2-8., UAC R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3

- 5.) **Vegetation Preservation and Reestablishment in fisheries.** Project approval is conditioned on avoiding vegetation removal to the maximum extent practicable in or immediately adjacent to WOTUS used as fisheries in order to maintain existing beneficial use. Waterbodies with beneficial use class 3A (cold water fishery) or waterbodies with a blue ribbon fishery designation rely heavily on the available stream cover/shade to maintain designated beneficial uses. Riparian vegetation supplies necessary shade to stabilize water temperatures in streams. Removal of riparian vegetation, without reestablishment could cause a waterbody not to maintain beneficial use 3A or its blue river fishery designation. Utah’s antidegradation policy states “existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.” UAC R317-2-3.1. Failure to minimize riparian vegetation removal and failure to reestablish riparian vegetation which results in the failure to maintain beneficial use class 3A would be considered a violation of Utah’s rules promulgating standards of quality for waters of the State, more specifically Utah’s antidegradation policy found at UAC R317-2-3. Additionally, the loss of riparian vegetation could cause a violation of the instream numeric criteria for temperature, which is listed as 20°C with a max temperature change of 2°C for beneficial use class 3A. UAC R317-2-14.2. If the temperature of the waterbody increases, there is a potential for instream water quality criteria for dissolved oxygen (DO) to be violated. Temperature and DO have an inverse relationship, where temperature increases then DO decreases, so an increase in temperature could cause a decrease in DO, and possibly a violation of the instream criteria for DO which for beneficial use class 3A is a minimum of 8.0 mg/L when early life stages are present and 4.0 mg/L when all other life stages are present. UAC R317-2-14.2. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge “impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6” UAC R317-15-6.1.A.1., “exceeds water quality criteria, either narrative or numeric, in Section R317-2-7” UAC R317-15-6.1A.2. or “fails to meet the antidegradation (ADR) requirements of Section R317-2-7” UAC R317-15-6.1.A.3 when making a certification decision.

Citation(s): UAC R317-2-3.1., UAC R317-2-3., UACR317-2-14.2., UAC R317-2-14.2., UAC R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

VII. Disclaimers

- 1.) This Section 401 Water Quality Certification does not preclude the applicant's responsibility to comply with all applicable Federal, State or local laws, regulations or ordinances, including WQS. Permit coverage does not release the applicant from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.
- 2.) Applicants must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the project. This Section 401 Water Quality Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.

VIII. Public Notice and Comments

- 1.) **Public Notice Dates:** December 16, 2020 to January 18, 2021.
- 2.) **Public Notice Comments, Response, and Actions:**
 - (a) Comment 1: No comments received.
- 3.) During finalization of the Certification certain dates, spelling edits, and minor language or formatting corrections may have been completed. Due to the nature of these changes they were not considered major and the Certification will not be Public Noticed again.

IX. Water Quality Certification

The Utah Division of Water Quality Certifies that if projects issued under the USACE Programmatic General Permit 10 (PGP 10) adheres to the conditions outlined in this certification and adheres to any conditions outlined in the proposed PGP 10 Permit then the projects will comply with water quality requirements and applicable provisions of the Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303(Water Quality Standards and Implementation Plans), 306(National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).



Erica Brown Gaddis PhD, Director

01/20/2021

Date

DWQ-2021-000764

X. References

Division of Water Quality. 2016. Utah's Final 2016 Integrated Report. Salt lake City, Utah. Utah Department of Environmental Quality.

Available at: <https://documents.deq.utah.gov/water-quality/monitoring-reporting/integrated-report/DWQ-2017-004941.pdf>

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Attachment 1: Project Proponent Resources

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Project Proponent Resources

Best Management Practices for Construction Sites: <https://deq.utah.gov/sbeap/best-management-practices-for-construction-sites>

Utah DEQ Interactive Map: <https://enviro.deq.utah.gov/>