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

**Section 401 Water Quality Certification No. DWQ-2024-11001**

**Project Proponents:** US Army Corps of Engineers
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**Project:** The United States Army Corps of Engineers Sacramento District (the Project Proponent) is proposing to modify and re-issue the Regional General Permit (RGP) 16 for Aquatic Habitat Restoration and Enhancement Activities. The proposed RGP 16 (the Project) would authorize permanent or temporary discharge of dredged and /or fill material into waters of the U.S., including wetlands, for construction and maintenance activities for which the United States Army Corps of Engineers (USACE) has determined the activities are associated with aquatic habitat restoration and enhancement activities within the Sacramento District boundaries of California, Nevada, and Utah. The Sacramento District issued the RGP 16 Permit No. SPK-2014-00534 for Anadromous Salmonid Fisheries Restoration, which became effective on July 11, 2019. The Permit was re-issued with modifications to increase the permit scope. The RGP 16 Permit will authorize activities such as but not limited to fish passage and screening improvements; bioengineered bank stabilization; engineering/designing with nature; nature-based solutions; water conservation; aquatic habitat restoration and pilings, small dams, tide gates, flood gates and other in water structures. The Project Proponent proposes reauthorizing the RGP 16 with terms and conditions to minimize and avoid impacts to Waters of the U.S. Any permittee authorized by RGP 16 must comply with the general terms and conditions listed within the following RGP 16 Section 401 Water Quality Certification and the RGP 16 Permit when conducting activities within the State of Utah.

**Location:** Aquatic habitat restoration and enhancement in waters of the United States subject to the authorities of the U.S Army Corps of Engineers, Regulatory Program within the State of Utah.

**Watercourse(s):** Waters of the U.S, including wetlands in the State of Utah.

**USACE Section 404**: SPK-2014-00534

**Effective Date:** **May 15th, 2025**

**Table of Contents**


I. Definitions 3

II. Acronyms 3

III. Executive Summary 4

IV. Background 5

V. Certification Conditions 6

VI. Condition Justification and Citation 7

VII. Disclaimers 14

VIII. Public Notice and Comments 14

IX. Water Quality Certification 14

## I. Definitions

A. **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.

B. **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.

C. **Beneficial Use Classes** are how waters of the state are grouped and classified to protect against controllable pollution the beneficial uses designated within each class. UAC R317-2-6.

D. **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

E. **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

F. **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.

G. **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.

H. **Level I Antidegradation Review (ADR):** *"is conducted to insure that existing uses will be maintained and protected."* UAC R317-2-3.5

I. **Level II Antidegradation Review (ADR)** is conducted to insure that water quality degradation is necessary and that the proposed activity is documented to be both economically and socially important. Level II ADRs are required for any activity that's impacts are not considered temporary and limited and is likely to result in degradation of water quality.

J. **Project Proponent** *"means the applicant for license or permit or entity seeking certification*." 40 CFR §121.1.

K. **Protection Category:** *"Utah's surface waters are assigned to one of three protection categories that are determined by their existing biological, chemical and physical integrity, and by the interest of stakeholders in protecting current conditions."* Utah Antidegradation Review Implementation Guidance (V 2.1)

L. **Temporal Loss:** *"is the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site."* 40 CFR 230.92

M. **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

N. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

O. **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

AU – Assessment Unit
BMPs – Best Management Practices
CFR – Code of Federal Regulations
CWA – Clean Water Act

CY – cubic yards
DEQ – Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
EIS – Environmental Impact Statement
EPA – Environmental Protection Agency
LOP – Letter of Permission
mg/L – milligrams per liter
MS4 – Municipal Separate Storm Sewer System
NEPA – National Environmental Policy Act
NOI – Notice of Intent
NTU – Nephelometric Turbidity Units
PEM – palustrine emergent
RGP 16- Aquatic Habitat Restoration Enhancement Activities
ROW – right of way
SWPPP – stormwater pollution prevention plan
TMDL – Total Maximum Daily Load
TSS – total suspended solids
UAC – Utah Administrative Code
UPDES – Utah Pollutant Discharge Elimination System
USACE – U.S. Army Corps of Engineers
WQC – Water Quality Certification
WQS – Utah Water Quality Standards
WOTUS – Waters of the United States

## III. Executive Summary

Pursuant to Section 401 of the CWA 33 U.S.C. Section 1251 et seq., the DWQ grants Water Quality Certification (Certification) to The U.S. Army Corps of Engineers Sacramento District (USACE) (Project Proponent) for the proposed Regional General Permit (RGP) 16- Aquatic Habitat Restoration and Enhancement Activities (Project) within the boundaries of the Sacramento District. Certification is subject to the conditions outlined in this document and adherence to any USACE Section 404 Permit Conditions. The conditions outlined in this Certification are necessary to assure compliance with effluent limitations, monitoring requirements, and/or other applicable laws and regulations adopted for state primacy of the CWA.

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 Section 404 Permit: 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.

USACE submitted a pre-filling meeting request to DWQ for 401 Certification for the RGP 16 on June 24, 2024. DWQ attended a pre-filling meeting on July 8, 2024. A Section 401 Certification Request was submitted to DWQ

on November 20, 2024 on behalf of the USACE by Michael Jewell. The reasonable period of time to act on this water quality certification request was determined to be 6 months. DWQ has until May 20, 2025 to waive, deny or issue a 401 Certification.

## IV. Background

The United States Army Corps of Engineers (USACE), Sacramento District (the Project Proponent), is proposing to modify and re-issue the Regional General Permit (RGP) 16 (the Project). The Project Proponent is requesting a Section 401 Water Quality Certification for all projects authorized under the RGP 16 Permit. The RGP 16 Permit is designated for aquatic habitat restorations and enhancement activities subject to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act in Nevada, Utah, and Parts of California within the boundaries of the Sacramento District. The Project Proponent proposes that the overall purpose of the Project is to provide a streamlined permitting process for aquatic habitat restoration and enhancement projects within the Sacramento District.

The original RGP 16 Permit issued in 2014 was issued to authorize anadromous salmonid habitat restoration activities. RGP 16 Permit was re-issued in 2019, which expired on July 11, 2024. The USACE is proposing to widen the applicability of the RGP 16 Permit to cover a broader scope of activities. The RGP 16 would be effective for five years and authorize permanent and or temporary work or structures in navigable waters of the U.S, and the permanent and or temporary discharge of dredge and fill material into waters of the U.S, including wetlands, for aquatic habitat restoration and enhancement activities.

The RGP 16 Permit authorizes similar activities that, when conducted under the Permit's terms and conditions, would result in minimal individual and cumulative impacts on the aquatic environment.

Typical activities to be authorized by the RGP 16 include but are not limited to fish passage and screening improvements, bioengineered bank stabilization, engineering/designing with nature, nature-based solutions, water conservation, aquatic habitat restoration, and enhancement of tidal and non-tidal streams, wetlands, and other waters; and removal of pilings small dams, tide gates, flood gates and other in water structures. Any permittee authorized by the RGP 16 Permit must comply with the general terms and conditions listed within this RGP 16 Section 401 Water Quality Certification when conducting activities within the State of Utah. The Section 401 Water Quality Certification will be effective for five years from the issuance date.

The Project Proponent has developed and identified general conditions in the RGP 16 to minimize impacts to the waters of the U.S to ensure that no more than minimal individual and cumulative adverse effects would occur and to ensure the activities authorized under RGP 16 would result in no net loss in aquatic resource functions and services. Activities resulting in a net loss of aquatic resource functions and services are not authorized under the RGP 16. Restoration activities may, however, result in a reduction in the area of the aquatic resource while still increasing the functions and services of the resource. No compensatory mitigation for activities that qualify for authorization under RGP 16 will be required. General Conditions included in the RGP 16 to reduce aquatic impacts. The general conditions include conditions such as; no activity may use unsuitable material, appropriate soil erosion, and sediment controls must be used and maintained in effective operating condition during construction, and dredged and excavated materials must be deposited and retained in an area that has no waters of the U.S. An Environmental Assessment was conducted by the Project Proponent for the RGP 16 Permit. The assessment determined that the Permit would not significantly impact the quality of the human environment and a environmental impact statement would not be required.

## V. Certification Conditions

A. The Project Proponent shall provide Director Notification and Review for the following projects in order to protect designated beneficial uses and Water Quality Standards (WQS) are not violated:

1. Any proposed Project within 500 feet of the existing waters' edge of the Great Salt Lake, Utah Lake, and Bear Lake; and
2. Any project with the potential discharge to Category 1 or Category 2 waters;

B. All activities with a potential discharge to Waters of the U.S. (WOTUS) must implement and maintain Best Management Practices (BMPs) to fully protect the waterbodies assigned beneficial use(s).

C. All activities shall not cause further degradation of impaired waterbodies, as defined in DWQ's most recent 303(d) list, regardless of whether a Total Maximum Dailey Load (TMDL) has been completed. The Project Proponent must review impairments on the waterbodies where the Project has the potential to discharge and is responsible for ensuring that water quality standards are not exceeded and designated beneficial uses are not impaired.

D. Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, soils, 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 would 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**.

E. Project Proponents conducting activities in or immediately adjacent to WOTUS in the State of Utah with assigned beneficial use class 1C (domestic drinking water), that are upstream 2 miles or less from any intake 6 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.

F. Waterbodies classified as beneficial use class 2B for recreation and 3A for cold water aquatic life cannot increase water turbidity by more than 10 Nephelometric Turbidity Units (NTUs). Project activities shall not cause an increase in water turbidity by more than 15 NTUS in waterbodies classified as beneficial use class 3D.

G. 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.

H. All activities conducted in WOTUS in the State of Utah shall be conducted in the "dry" to the maximum extent practicable, by diverting flow utilizing cofferdams, berms constructed of sandbags, clean rock (containing no fine sediment) or other non-erodible, non-toxic material. All diversion materials shall be removed at the completion of the work. The Project Proponent shall consider conducting instream work during low flow conditions and work shall not be conducted during spawning season. Additionally, construction machinery shall not be operated within WOTUS in the State of Utah unless it is unavoidable, in which case it shall be conducted in the "dry" as stated above. The work shall be conducted in a manner to minimize the duration of the disturbance, turbidity increases, substrate disturbance, and minimize the removal of riparian vegetation. Construction machinery shall be clean to prevent the transfer of aquatic invasive species.

I. Construction activities that disturb either greater than one acre of land, or less than one acre of land and is part of a larger common plan of development that would disturb greater than one acre, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000[1]). The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not be limited to, final site maps and legible plans, location of storm water outfalls/discharges, and information pertaining to any storm water retention requirements.

J. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000[2]) applies to the construction dewatering of uncontaminated groundwater or surface water sources due to construction activities; hydrostatic testing of pipelines or other fluids vessels; water used in disinfection of drinking water vessels; and other similar discharges in the State of Utah that have no discharge of process wastewater. The permit requires submission of a Notice of Intent (NOI); maintenance of a discharge log; development and implementation of a dewatering control plan; and monitoring for Flow, Oil & Grease, pH, Total Suspended Solids (TSS), and Chlorine (required when chlorinated water is used and discharged to a stream with a chlorine standard). Discharge Monitoring Reports (DMRs) are required to be submitted monthly, regardless of whether a site discharges in a particular month.

## VI. Condition Justification and Citation

A. **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 RGP 16 Permits. In support of cooperative federalism, the DWQ conditions approval of RGP 16 Permits identified in Part V(1) above on Director Notification, rather than denying all RGP 16 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.

[1] https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf
[2] https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=424298&eqdocs=DWQ-2024-004884

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.

1. **Projects within 500 feet of the Great Salt Lake, Utah Lake, and Bear Lake** are conditioned on Director Notification and Review. The DWQ has determined that the Great Salt Lake, Utah Lake, and Bear Lake are unique waterbodies that require special attention and are at greater risk for potential adverse impacts when projects are within 500 feet of their existing water's edge. Utah Lake is the largest freshwater lake in Utah, the Great Salt Lake is the largest saline lake in the U.S. and provides habitat to migrating birds, and Bear Lake is well known for its recreation opportunities. When projects are being completed in close vicinity to these waterbodies, it poses increased risk of impacts to the designated uses for these waterbodies. Both Utah Lake and Bear lake have recreation designated use 2A (frequent primary contact recreation) and aquatic wildlife designated uses associated with either 3A cold water species of game fish (Bear Lake) or 3B warm water species of game fish. Both types of designated uses could be impacted by turbidity increases. Water quality criteria for turbidity will be violated if there is an increase of 10 NTUs in waterbodies with designated uses related to recreation and if there is an increase of 10 NTUs in aquatic wildlife designated use classes 3A and 3B. UAC R317-2-14.1 and UAC R317-2-14.2. Significant turbidity spikes or sediment deposits could cause a waterbody not to meet all its designated beneficial uses or if large quantities of sediment are transported downstream, it could impact the downstream beneficial uses. 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. 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 R317-2-14.1, UAC R317-2-14.2., UAC R317-2-7.1.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.

2. **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 RGP 16 is typically issued for projects with minimal impacts to water quality, RGP 16 does 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.

B. **Implementation of BMPs**. Project approval is conditioned on implementation of BMPs, which are required to be implemented by the antidegradation policy in UAC R317-2-3, water quality standards may be violated unless appropriate BMPs are incorporated to minimize the erosion-sediment and nutrient load. Violations of water quality standards could cause a waterbody to fail to meet its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1 "*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*." 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. If appropriate BMPs are incorporated, there is assurance that the Project will not violate water quality standards or impair a waterbody's beneficial use.

Citation(s): UAC R317-2-3.1, 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.

C. **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 most recent

Integrated Report3 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 Project meets Utah's antidegradation policy 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 waterbody proposed for discharge is impaired, could cause applicable water quality standards 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.

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.

D. **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 would 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 Section 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.

E. **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**. 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 [water quality standards], 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

F. **Turbidity Increases.** Beneficial uses associated with recreation and aquatic life have been assigned numeric criteria for turbidity. An increase of more than 10 NTUs in class 2B and 3A waterbodies above the turbidity of that waterbody would be a violation of instream criteria for waterbodies that have recreation or aquatic life uses. Similarly, an increase of more than 15 NTUs in class 3D waterbodies above the turbidity of that waterbody would be a violation of instream criteria for waterbodies that have aquatic life uses. UAC R317- 2-14.1 and UAC R317-2-14.2. Therefore, turbidity increases above those allowed by this Certification could cause the waterbody to fail to meet its designated beneficial use classes. 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 turbidity increases that result in the failure to maintain beneficial use class 2B or 3A would be considered a violation of Utah's rules and promulgated standards of quality for waters of the State, specifically Utah's antidegradation policy found at UAC R317-2-3. 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.

Citations: UAC R317-2-3.1, UAC R317-2-3, UAC R317-2-14.1, UAC R317-2-14.2 R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

G. **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 ribbon 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 maximum 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 to be violated. Temperature and dissolved oxygen have an inverse relationship, where temperature increases then dissolved oxygen decreases, so an increase in temperature could cause a decrease in dissolved oxygen, and possibly a violation of the instream criteria for dissolved oxygen. The instream criteria for dissolved oxygen for beneficial use class 3A is a minimum of 8.0 milligrams per liter (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

H. **<u>Dry Conditions to the Maximum Extent Practicable</u>**. Project approval is conditioned on conducting activities under dry conditions to the maximum extent practicable to assure that water quality standards are not exceeded. Construction machinery used within a waterbody can cause significant impacts to water quality if adequate precautions are not taken. When it is unavoidable to operate construction machinery within the waterbody the Project Proponent should focus on minimizing the duration of the disturbance, turbidity increase, substrate disturbance, removal of riparian vegetation, and work shall be conducted in the "dry" to the maximum extent practicable. Minimizing the duration of impact reduces the chance that the impacts will accumulate and cause significant impacts to water quality. Minimizing turbidity increases is important because the State of Utah has numeric water quality criteria for turbidity in certain use designations, which could be violated if the Project Proponent does not take proper steps to minimize the increases. Water quality criteria for turbidity will be violated if there is an increase of 10 NTUs in waterbodies with designated uses related to recreation and if there is an increase of 10 NTUs (class 3A and 3B) or 15 NTUs (class 3C and 3D) in waterbodies with aquatic wildlife designated uses. UAC R317-2-14.1 and UAC R317-2-14.2. Conducting work in the "dry" to the maximum extent practicable will help reduce the risk of the numeric criteria for turbidity to be exceeded, as well as reduce the risk of a significant sediment load being transported downstream. Discharges of sediment can not only violate numeric criteria, but also, risk violating Utah's narrative standard "*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 R317-2-7.2. Violations of numeric and narrative criteria could cause a waterbody not to meet its designated beneficial use and a transport of sediment downstream could prevent a downstream waterbody from meeting its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1 "*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*". 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 when making a certification decision.

Citation(s): UAC R317-2-3.5., UAC R317-2-7.1.A., UAC R317-2-14.1, UAC R317-2-14.2., UAC R317-2-7.1.a., UAC R317-2-7.2., UAC R317-2-3.1, 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.

I. **UPDES Storm Water General Permit for Construction Activities (Permit No. UTRC00000).** UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. According to UAC R317-8-3.9 (6)(d), construction activities that result in a land disturbance of equal to or greater than one acre, including clearing, grading, and excavation are "industrial activities" under UAC R317-8-3.9(1)(a) and are therefore required to obtain and comply with a UPDES Permit for storm water discharges. This only applies to projects that meet or exceed one acre of disturbance.

Citation(s): UAC R317-8-3.9(6)(d) and UAC R317-8-3.9(1)(a)

J. **UPDES General Permit for Construction Dewatering (Permit No. UTG070000).** UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. Under the authority granted by UAC R317-8-2.5, the Director issued the General Permit for Construction Dewatering and Hydrostatic Testing, UPDES Permit No. UTG070000 renewed and effective as of June 10, 2024. UPDES Permit No. UTG070000 applies to construction dewatering of uncontaminated groundwater or surface water sources due to construction activities, hydrostatic testing of pipelines or other fluids vessels, water used in disinfection of drinking water vessels and other similar discharges in the State of Utah that have no discharge of process wastewater. This only applies to projects that require dewatering and discharge to surface water.

Citation(s): UAC R317-8-2.5

## VII. Disclaimers

A. The Project Proponent must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the Project. This Section 401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.

B. This Section 401 Certification does not preclude the Project Proponent's responsibility of complying with all applicable Federal, State or local laws, regulations or ordinances, including water quality standards. Permit coverage does not release the project proponent from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.

C. A Project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this Section 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.

## VIII. Public Notice and Comments

As Stated in UAC R317-15-5., this Certification decision is subject to a 30 public notice period. Per UAC R317-15-5 draft certification decisions are subject to a thirty (30) day public notice. After considering public comment, the Director may execute the Certification issuance, revise it, or abandon it.

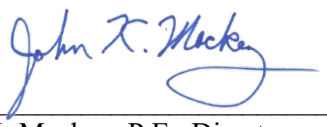
A. Public Notice Dates: 4/13/2025 to 5/13/2025

B. Public Notice Comments/Response: None

C. 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 DWQ certifies that if the Project Proponents adhere to the conditions outlined in this Certification and adheres to any USACE Section 404 Permit Conditions, then the Project will comply with water quality requirements and applicable provisions of the CWA 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).



John K. Mackey, P.E. Director

May 15th, 2025
Date

DWQ-2025-004156