



State of Utah

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Governor

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Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

April 16, 2012

Jason Gipson, Chief Utah/Nevada Regulatory Branch
U.S. Army Corps of Engineers, Sacramento District
Utah Regulatory Office
533 West 2600 South, Suite 150
Bountiful, UT 84010

Dear Mr. Gipson:

Subject: 2012 U.S. Army Corps of Engineers Section 404 Nationwide Permits

Pursuant to the provision of Section 401 of the federal Clean Water Act, 33 U.S.C. Section 1341, as amended, and consistent with the Utah Water Quality Act UCA § 19-5-101-124, the Utah Division of Water Quality (DWQ) has the authority to review section 404 permits and issue a 401 water quality certification decision.

DWQ certifies that if the applicants comply with the terms and conditions imposed by the above-referenced permits, the regional conditions set forth by the U.S. Army Corps of Engineers Utah Regulatory Office (COE) and the conditions set forth in this water quality certification, then there is reasonable assurance the discharges will comply with the applicable requirements of the Sections 301, 302, 303, 306 and 307 of the Clean Water Act, including the Utah Water Quality Act UCA § 19-5-101-124.

This certification does not constitute authorization for the applicant from the obligation to obtain any other necessary permits, authorizations or approvals which may be required by federal, state, or local law, including without limitation those overseen by Utah Pollutant Discharge Elimination System (UPDES) program: Construction Dewatering and Hydrostatic Testing, General Permit No. UTG070000 (http://www.waterquality.utah.gov/UPDES/updes_f.html) and the Storm Water General Permit for Construction Activities, Permit No. UTR300000 (<https://secure.utah.gov/stormwater/main.html>).

In an effort to provide applicants with some of the necessary scientific information to meet the following 401 water quality certification conditions, the Utah Division of Water Quality (DWQ) will soon provide an internet based searchable State surface water quality map application at: <http://wq.deq.utah.gov>. For all State surface waters this internet application will identify their 303d listing status, Total Maximum Daily Load (TMDL) approval status, TMDL document links, assigned beneficial uses, including blue ribbon fishery designation, any causes of impairment, and

the assigned watershed scientist contact information. We encourage applicants to contact the watershed scientist if they have any questions or need further assistance.

To ensure compliance with water quality standards, DWQ requests, as a required condition of 401 water quality certification, that the following conditions be included in the 404 Nationwide Permits:

- 1) The Utah Division of Water Quality may require submission of a formal application for an Individual Certification for any project if the project has been determined to likely have a significant adverse effect upon water quality or degrade the waters of the Utah.
- 2) All activities conducted on impaired waters with a total maximum daily load (TMDL) must be implemented in a manner that is consistent with the TMDL and any other appropriate requirements of federal, state or local law. A list of UDWQ-approved TMDLs is available on-line at: <http://www.rules.utah.gov/publicat/code/r317/r317-001.htm#T7> and in the application at: <http://wq.deq.utah.gov>.
- 3) All activities shall not cause further degradation of impaired—as defined in DWQ's most recent 303d list—waters regardless of whether a TMDL has been completed. A 303d listing status can be found on-line in the application at: <http://wq.deq.utah.gov>.
- 4) All activities conducted in the waters of state must implement and maintain best management practices (BMPs) to fully protect the assigned beneficial uses. If during project implementation there are indications that water quality standards are not being met, then, the BMPs must immediately be modified as necessary to ensure compliance with water quality standards.
- 5) All activities to be conducted adjacent to or in beneficial use Class 1C (domestic drinking water) streams that are upstream two miles or less from any water intake supply must notify the water supply operator and the local health department in writing 10 days prior to work starting. If the water supply operator or the local health department recommends additional best management practices or monitoring, the applicant must consider those recommendations in their project design. The assigned beneficial use can be found on-line in the application at: <http://wq.deq.utah.gov>.
- 6) All activities conducted in the waters of the state must implement BMPs to prevent and control spill of fuel, lubricants or any other toxic material. Utah Code Annotated 19-5-114 requires that any spill, discharge of oil or other substance which may cause pollution to waters of the state must be immediately reported to DWQ at (801) 536-4100 or after hours to (801) 536-4123. Fill cannot be comprised of material that can leach organic chemicals (e.g. asphalt), nutrients (e.g. phosphate rock); construction demolition debris, automobiles or other manufactured equipment, liquid concrete; and/or any other material containing chemicals pollutants (e.g., creosote or pentachlorophenol).
- 7) Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, and sawdust) must not be stored, disposed of, or accumulated adjacent to or in the immediate

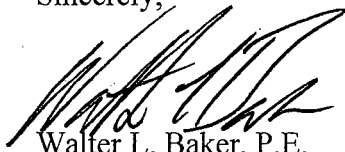
vicinity of waters of the state unless adequate measures and controls are provided to ensure that those materials will not enter waters of the state.

- 8) All activities conducted in the waters of state must not use or operate heavy equipment within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, and riparian vegetation. To the maximum extent practicable, all in-stream work shall be performed during low flow conditions in perennial streams, or no flow in the case of ephemeral and intermittent waterbodies. In-stream work may not be performed during the spawning season.
- 9) All activities conducted on or immediately adjacent to waters of the state with an assigned beneficial use of 3A (cold water fishery) or has a blue ribbon fishery designation must avoid—to the maximum extent possible—removal of native riparian vegetation that provides stream shading. Assigned beneficial use designations are available on-line in the application at: <http://wq.deq.utah.gov>. Destruction of any stream shade vegetation within the project area must be replaced with native vegetation that, once mature, will provide similar or greater channel shading that exists prior to project implementation.. The applicant is ultimately responsible for ensuring revegetation success. Prior to vegetation removal the applicant must submit a restoration plan to the DWQ's office that includes:
 - i) An estimate of the portion of the shaded water surface area within the project area in each of three shade classes: no shade, poor shade, and shade. Time of the year, time of the day, and weather can affect your observation of shading. Therefore, the relative amount of shade is a professional best-guess estimate. Ideally the applicant would be measuring or estimate the amount of shading that would be expected to occur when the sun is at an angle that provides maximum stream shade and the vegetation is in full leaf-out.
 - ii) A revegetation plan that includes planting locations and species that will be planted to ensure restoration of existing channel shading.
- 10) Fertilizer, herbicide and insecticide chemicals used for the project shall be selected and applied in a manner that minimizes environmental impacts and must be approved by the USEPA for the intended use. Application rates printed on the product labels shall be strictly followed. Excess chemicals shall not be applied on recently treated areas and must either be stored, used elsewhere or disposed of appropriately.
- 11) All NWP 17 (Hydropower) projects require state notification 60 days prior to request for FERC exemption or license. Hydropower project permitted under NWP 17 shall minimize any disturbance to the existing water flow regime, the ecosystem and aquatic habitat.

All conditions established in this certification become part of coverage issued under the relevant Nationwide Permit, and hence are enforceable through the permit and its associated mechanisms. In addition, in event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided through the state process. In response to a suspected or confirmed violation


of any condition of this certification, DWQ may require the holder of any permit or license subject to this certification to furnish any technical or monitoring reports that DWQ deems appropriate. Please contact Mr. Bill Damery at (801) 536-4354, wdamery@utah.gov with any questions you may have concerning this 401 Water Quality Certification.

Sincerely,



Walter L. Baker, P.E.

Director

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