

Official Draft Public Notice Version March 1, 2022. The findings, determinations, and assertions contained in this document are not final and subject to change following the public comment period.

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

Section 401 Water Quality Certification No. DWQ-2022-02001

Project Proponent: Jeremy Lapin
Saratoga Springs City
1307 North Street #200
Saratoga Springs, Utah 84045

Project: Saratoga Springs City (Project Proponent) proposes to discharge fill material into Utah Lake to construct a Jetty structure at the Saratoga Springs Marina. Fill material would consist of 8,470 cubic yards of riprap that would impact 0.95 acres of waters of the state. The Project Proponent indicated the project purpose was to provide additional recreational space; improve safety of non-motorized activities; facilitate emergency access to Utah Lake; and increase the overall capacity of the Saratoga Springs Marina. The Project Proponent proposes to rehabilitate 5 acres of 5 acres of emergent marsh wetland.

Location: The Saratoga Spring Marina is located in Saratoga Springs, Utah County, Latitude 40.29172°, Longitude -111.87112°.

Watercourse(s): Utah Lake

USACE Section 404: SPK-2017-00046

Effective Date: Month, Day, Year

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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. **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.
- C. **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
- D. **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).
- E. **Project Proponent** "means the applicant for license or permit or entity seeking certification." 40 CFR §121.1
- F. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.

II. Acronyms

BMPs – Best Management Practices
CFR – Code of Federal Regulations
CWA – Clean Water Act
DEQ – Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
EPA – Environmental Protection Agency
NOI – Notice of Intent
NTU – Nephelometric Turbidity Units
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
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., the Utah Division of Water Quality (DWQ) grants Water Quality Certification (Certification) to Saratoga Springs for the proposed Marina Jetty Project (project) at the Saratoga Springs Marina in Utah County, Utah. Certification is subject to the conditions outlined in this document and adherence to any U.S. Army Corps of Engineers (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 R317-15-6.1A.3.

The DWQ participated in a joint pre-filing meeting with the Project Proponent and the USACE on January 20, 2022, and received a Section 401 Certification on February 4, 2022, from PEC on Saratoga Springs behalf for the Project.

IV. Background

The Project Proponent proposes to discharge fill material into Utah Lake to construct a Jetty structure at the Saratoga Springs Marina. Fill material would consist of 8,470 cubic yards of riprap that would impact 0.95 acres of waters of the state. Riprap for the South Marina Jetty is made of limestone which is a carbonate rock. The Project Proponent indicated that due to qualities of limestone such as durability that it will not degrade or affect the water quality of Utah Lake which is why they selected it for this project.

Based on the information provided by the Project Proponent, the project purpose is to provide additional recreational space; improve safety of non-motorized activities; facilitate emergency access to Utah Lake; and increase the overall capacity of the Saratoga Springs Marina. The Project Proponent indicated that the size of the Saratoga Springs Marina is not sufficient to accommodate the recreational demands. Additional beach, parking, boat docking, and boat launching space is needed. A new jetty would provide additional space for boating activities as well as provide protection for swimming and beach recreation. The project will also separate motorized and non-motorized vessels' lake access, which would increase safety within the marina. The project will provide an alternate location for emergency search and rescue teams to access Utah Lake when needed, and provide additional safe harbor for boats during storms.

The proposed mitigation site encompasses approximately 5 acres and is located along the shoreline of Utah Lake. The site is approximately 2,100 feet long and 100 feet wide. The northern-most location is 40.314, -111.886. The permittee proposes to rehabilitate emergent marsh wetland. The proposed plan would result in 5 acres of rehabilitated emergent marsh wetland and a more manageable Utah Lake Shoreland. The wetlands within the proposed mitigation site are dominated by non-native and noxious weed species. Mitigation would include the removal of common reed, five-stamen tamarisk, and Russian olive. The establishment of the mitigation site would improve water quality, enhance valuable wetland habitat for wildlife, promote plant biodiversity, and provide flood and erosion control. The Project Proponent believes the construction and enhancement of wetlands within the mitigation site would contribute positively to the overall Utah Lake ecosystem.

V. Aquatic Resource Impacts

All Waters of the State of Utah (defined in UAC R317-1-1) are protected from pollutant discharges that affect water quality by narrative standards (see UAC R317-2-7.2); broadly, discharges should not become offensive or cause undesirable conditions in human health effects or aquatic life. In addition, some particularly sensitive classes of water are further protected from deleterious effects of specific pollutants by application of numeric criteria to designated (beneficial) uses of that water body. Listed below are the water features within the Project area and their associated designated beneficial uses (see UAC R317-2-6 and UAC R317-2-13):

A. Utah Lake

1. Use Designations

- a. Class 2A: Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.
- b. Class 3B: Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.
- c. Class 3D: Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.
- d. Class 4: Protected for agricultural uses including irrigation of crops and stock watering.

2. Impairments and Total Maximum Daily Loads (TMDLs)

Results from the current water quality assessment, as documented in Utah's Final Combined 2018/2020 Integrated Report^[1], indicate that the water quality of Utah Lake is considered impaired (Assessment Category 5). Utah Lake is impaired for harmful algal blooms, PCB in fish tissue, Total Dissolved Solids, and Total Phosphorous. These impairments impact beneficial use class 2A (Frequent Primary Contact Recreation), 3B (Warm Water Fishery/Aquatic Life), and 4(Agricultural Uses). The CWA directs states to prepare a plan to restore water quality to impaired waters, otherwise known as TMDL study. A TMDL is required for each parameter and water body to define pollutant reduction requirements necessary for the water body to meet water quality standards. At this time Utah Lake does not have an approved TMDL.

3. Antidegradation Review

Utah Lake is considered Category 3 waters for antidegradation purposes. Category 3 waters in Utah are waters where “*point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5*”, as described in UAC R317-2-3.4. The antidegradation policy allows for discharges where the water quality effects of the proposed Project are determined to be temporary and limited after consideration of the factors identified in UAC R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

VI. Certification Conditions

- A. 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).
- B. 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

¹ <https://documents.deq.utah.gov/water-quality/monitoring-reporting/integrated-report/DWQ-2021-002686.pdf>

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.

- C. 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.**
- D. Waterbodies classified as beneficial use class 2A for recreation and 3B for warm water aquatic life cannot increase water turbidity by more than 10 Nephelometric Turbidity Units (NTUs). The Project Proponent must notify the Utah DWQ at the start of the proposed activity and must continuously monitor turbidity during construction to ensure turbidity increases are within the limits listed above. The Project Proponent must provide monthly reports to DWQ during construction that include at a minimum: baseline (reference) turbidity measurements, measurements outside of BMPs in Utah Lake when construction is occurring; and identifying any exceedances and duration of exceedances that have occurred during construction.
- E. 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.
- F. Construction activities that either greater than an acre of land, or less than an acre of land and is part of a larger common plan of development that will disturb greater than acre, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000^[2]). 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.
- G. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000^[3]) 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

² <https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf>

³ <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf>

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

VII. Fees

The legislatively-mandated fee for the 2022 fiscal year is \$110.00/hour for review and issuance of the Section 401 Water Quality Certification. A quarterly invoice will be sent and your payment is due within 30 days.

VIII. 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.

IX. Public Notice and Comments

As per UAC R317-15-5., this Certification decision is subject to a 30 public notice period. UAC R317-15-5.1 allows for the 30 public notice period to be lengthened or shortened for a good cause, which includes those projects that are routinely granted and any proposed activity is considered minor. The project proponent is seeking a Letter of Permission (LOP) through the USACE. The DWQ typically views these impacts as minor compared to USACE Standard Permits and have routinely granted these types of certifications. Therefore, the DWQ has reduced the public notice permit to 14 days (2 weeks). After considering public comment, the Director may execute the Certification issuance, revise it, or abandon it.

- A. Public Notice Dates
- B. Public Notice Comments/Response
- 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.

X. Water Quality Certification

The Utah DWQ certifies that if Saratoga Springs adheres 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).

Erica Brown Gaddis PhD, Director

Date

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