



State of Utah

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Department of
Environmental Quality

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

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: **DRAFT** Approval 401 Water Quality Certification with Conditions to the 2017 U.S. Army Corps of Engineers Section 404 Nationwide Permits

Pursuant to the provision of Section 401 of the federal Clean Water Act (CWA), 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) hereby makes the following CWA Section 401 Water Quality Certification (Certification) determination for the U.S. Army Corps of Engineers' (USACE) 2017 Nationwide Permits (NWP) which becomes effective on March 19, 2017 and which will expire on March 18, 2022.

DWQ grants Certification to the 2017 NWP subject to the Conditions and the Notification Requirements by the above-referenced NWP, 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 described below.

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 the Utah Pollutant Discharge Elimination System (UPDES) program: Construction Dewatering and Hydrostatic Testing, General Permit No. UTG070000 (<http://www.deq.utah.gov/Permits/water/updes/docs/utrc00000.pdf>) and the Storm Water General Permit for Construction Activities, Permit No. UTRC00000 (www.deq.utah.gov/Permits/water/updes/updes_f.htm).

In an effort to provide applicants with some of the necessary scientific information to meet the following 401 water quality certification conditions, DWQ has provided an internet based searchable State surface water quality map application at: <http://mapserv.utah.gov/surfacewaterquality/>. 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. DWQ encourages 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 all the 2017 404 Nationwide Permits:

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144870 • Salt Lake City, UT 84114-4870
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www.deq.utah.gov

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- 1) DWQ 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 Utah.
- 2) This Certification is conditioned upon total payment of any fee required and owed by the applicant. The legislatively-mandated fee for 2017 is \$90.00/hour, for review and issuance of the \$401 Water Quality Certification
<http://www.deq.utah.gov/FeesGrants/fees/docs/2016/DEQFEEDOC17.pdf>, per: (see page174).
- 3) All activities conducted in the Waters of the State must implement and maintain best management practices (BMPs) to fully protect the assigned beneficial uses. Water quality standards for Waters of the State could be violated unless appropriate BMPs are incorporated to minimize the erosion-sediment and nutrient load to any adjacent waters during Project construction activities. Utah Administrative Code R317-2 requires that the Project and their subcontractors cannot increase water turbidity by 10 NTUs in waters of the State and if violated shall immediately notify the Utah Division of Water Quality. A fact sheet describing the Utah Department of Environmental Quality's (DEQ) recommended environmental BMPs for construction sites are located on our web site at:
<http://www.deq.utah.gov/Permits/water/updes/docs/utrc00000.pdf>. 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.
- 4) All activities conducted in 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 DWQ-approved TMDLs is available on-line at: <http://www.rules.utah.gov/publicat/code/r317/r317-001.htm#T7> and can be found on-line in the application at: mapserv.utah.gov/surfacewaterquality/.
- 5) 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: mapserv.utah.gov/surfacewaterquality/.
- 6) 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 BMPs 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: mapserv.utah.gov/surfacewaterquality/.
- 7) Applicants are required to submit notification to DWQ's Director if any part of the proposed project will be within 500 feet of the existing water's edge for the following water bodies: Great Salt Lake, Utah Lake; and Bear Lake. Notification will consist of a project description with location; types, chemistry make-up and quantity of any potential discharge material; any reports submitted to the USACE; a description of any steps that will be taken to avoid or minimize loss of or significant adverse impacts to the water quality standards including beneficial uses to the waterbody.
- 8) Applicants are required to submit notification to DWQ's Director for any NWP No. 3 (Maintenance) and NWP No. 37 (Emergency Watershed Protection and Rehabilitation). Notification will consist of a project description with location; types, chemistry make-up and

quantity of any potential discharge material; any reports submitted to the USACE; a description of any steps that will be taken to avoid or minimize loss of or significant adverse impacts to the water quality standards including beneficial uses to the waterbody.

- 9) Code Annotated 19-5-114 requires that any spill in Utah or discharge of oil or other substances which may cause pollution to the waters of the State, including wetlands, must be immediately reported to the Utah DEQ Spill Hotline at (801) 536-4123, a 24-hour phone number.
- 10) 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.
- 11) 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.
- 12) 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: mapserv.utah.gov/surfacewaterquality/. 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 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 an 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.
- 13) 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.
- 14) All NWP 17 (Hydropower) projects required to submit notification to the DWQ Director 60 days prior to request for FERC exemption or license. Hydropower projects permitted under NWP 17 shall minimize any disturbance to the existing water flow regime, the ecosystem and aquatic habitat.
- 15) 401 Certification Modification: Without limiting DWQ's discretion to take other actions in accordance with UAC R317-15, and, as applicable, 33 USC 1341, DWQ may modify or revoke

the Certification to add, delete, or modify the conditions in this Certification as necessary and feasible to address:

- a) Changes in water quality standards;
- b) Changes in the Utah Water Quality Act UCA § 19-5-101-124;
- c) Adverse or potentially adverse Project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;
- d) TMDLs listed waters of the State.

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 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

BD:nf

DWQ-2017-000741