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

Section 401 Water Quality Certification No. DWQ-2021-11001

Project Proponent: Hollis Jencks
U.S. Army Corps of Engineers (USACE), Sacramento District
533 West 2600 South, Suite 150
Bountiful, UT 84010

Project: The USACE Sacramento District proposes to issue Regional General Permit (RGP) 6 for U.S. National Park Service (NPS) Categorically Excluded Activities in Glen Canyon and Lake Mead National Recreation Areas (NRAs) for activities that have been determined by the NPS to be categorically excluded from further environmental documentation because the actions, under normal circumstances, are not considered major federal actions and that they will have no measurable impacts on the human environment. This RGP 6 is a modification of a previous version of the RGP which expired on September 22, 2019.

Location: Lake Mead and Glen Canyon NRAs

Watercourse(s): All waters of the U.S. (WOTUS) within the Lake Mead and Glen Canyon NRAs in Garfield, Kane and San Juan Counties, Utah.

USACE Section 404: SPK-2020-00541

Effective Date: Month, Day, Year

Table of Contents

I. Definitions 3
II. Acronyms 3
III. Executive Summary 4
IV. Background 4
V. Certification Conditions 5
VI. Condition Justification and Citation 7
VII. Disclaimers 12
VIII. Public Notice and Comments 12
IX. Water Quality Certification 13

I. Definitions

A. **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.

B. **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

C. **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

D. **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.

E. **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.

F. **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

G. **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).

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

I. **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
CY – cubic yards
DEQ – Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
EPA – Environmental Protection Agency
mg/L – milligrams per liter
NEPA – National Environmental Policy Act
NOI – Notice of Intent
NPS – National Park Service
NRA – National Recreation Area
NTU – Nephelometric Turbidity Units
OHWM – ordinary high water mark
RGP – Regional General Permit
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 permittees receiving USACE permit coverage under Regional General Permit 6 (RGP 6) in Garfield, Kane and San Juan Counties, Utah. 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. 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.

In order to further assure compliance, DWQ reserves the right to request an individual certification for any project that is determined to have potential for significant adverse effects on water quality, potential to cause a violation of Utah Water Quality Standards (WQS) under UAC R317-2 or potential to degrade Waters of the United States (WOTUS), causing a violation of Utah Antidegradation Policy in UAC 317-2-3 in the State of Utah.

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.

The Utah DWQ participated in a pre-filing meeting with the Project Proponent on October 7, 2021, and received a formal Section 401 Certification Request on November 4, 2021, from the USACE Sacramento District for the reissuance of RGP 6. Per correspondence from the USACE Sacramento District, the reasonable period of time for Certification under Section 401 of the CWA is 60 days based on permit type (General Permit). The DWQ will issue a Certification decision by January 3, 2022.

IV. Background

The USACE Sacramento District proposes to issue RGP 6 for NPS Categorically Excluded Activities in Glen Canyon and Lake Mead NRAs for activities that have been determined by the NPS to be categorically excluded from further environmental documentation because the actions, under normal circumstances, are not considered major federal actions. This RGP 6 is a modification of a previous version of the RGP which expired on September 22, 2019. The types of activities covered under RGP 6 are those that have a minimal impact, individually or cumulatively, on the aquatic environment and have been identified by the NPS as being part of a group of projects

considered to be categorically excluded from further National Environmental Policy Act (NEPA) review. The group of projects categorically excluded from NEPA review can be found within the U.S. Department of Interior, Department Manual (516 DPM). Activities covered under RGP 6 pertain to work in WOTUS, including USACE-jurisdictional streams, drainage ditches, wetlands and Section 10 waterways within national park boundaries of the Glen Canyon and Lake Mead NRAs.

Compensatory mitigation for loss of aquatic habitat may be required on a case-by-case basis. Impact limits authorized by RGP 6 are as follows:

- For activities that are at or below the OHWM of Lakes Powell, Mead and Mohave, the activity will not cause a permanent loss of more than 1-acre of open water.
- For activities below the OHWM of Lakes Powell, Mead and Mohave, the activity will not cause a permanent loss of more than 1-acre of wetlands.
- Impacts to aquatic resources below the full pool elevation and above the OHWM, which may be subject to future inundation, shall not exceed 3 acres.
- For wetland areas outside of the OHWM of Lakes Powell, Mead and Mohave that are outside of the normal operating range of the reservoirs, wetland impacts are limited to 0.5 acre.
- For activities in perennial and intermittent waters, no more than 300 linear feet may be impacted. If the activity involves the use of a bioengineering method, no more than 500 linear feet may be impacted.
- For activities in ephemeral waters no more than 750 linear feet may be impacted. If the activity involves the use of a bioengineering method, no more than 1000 feet may be impacted.

The proposed issuance of RGP 6 is intended to be used to streamline the application and permitting process for routine maintenance activities, provide mitigation certainty for new construction projects, and authorize minor impact activities which do not qualify for issuance under a Nationwide Permit proposed by the NPS (Lake Mead and Glen Canyon NRA), who must obtain a USACE Permit before discharging dredged or fill materials into waters of the U.S. for categorically excluded activities.

V. Certification Conditions

A. The prospective permittee shall provide Director Notification and Review for the projects with the potential to discharge to Category 1 or Category 2 waters in order to protect designated beneficial uses and assure that WQS are not violated.

B. All activities with a potential discharge to 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 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, etc.) shall not be stored, disposed, 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**.

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

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 are either greater than an acre of land, or less than an acre of land but 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[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

[1] https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf

[2] https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf

VI. Condition Justification and Citation

A. Director Notification and Review is a condition for projects identified in Part V.A above that 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 waterbody specific factors that are not otherwise considered by RGP 6.

The opportunity to review specifically identified projects will allow the DWQ to assure that WQS will be met without automatically requiring a certification request to the Director directly from the prospective permittee. 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;

- The DWQ has determined the project will likely have minimal impact to water quality, pending the prospective permittee's consideration of any written comments, or in infrequent cases,
- 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 RGPs are typically issued for projects with minimal impacts to water quality, the RGPs 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.

B. Implementation of Best Management Practices. 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 best management practices (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 Report[3] 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

[3] Utah's most recent Integrated Report can be found by following this link: https://deq.utah.gov/water-quality/utahs-integrated-report.

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 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. Dry Conditions to the Maximum Extent Practicable. 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 turbidly 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 (3A and 3B) or 15 NTUs (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. Utah Administrative Code 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. Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for

Construction Activities (Permit No. UTRC00000). 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 1-acre of disturbance.

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

J. Utah Administrative Code 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. UPDES General Permit for Construction Dewatering (Permit No. UTG070000). 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 February 1, 2020. UPDES Permit No. UTG070000 applies to construction dewatering of uncontaminated ground water 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 per UAC R317-15-5., this Certification decision is subject to a 14 day public notice period. 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.

IX. Water Quality Certification

The Utah DWQ certifies that if projects covered under USACE RGP 6 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).

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Erica Brown Gaddis PhD, Director Date

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