

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

Section 401 Water Quality Certification No. DWQ-2023-03001

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Project: Ferron Canal and Reservoir Co. (Project Proponent) proposes to dredge deposited sediment from the Millsite Reservoir and release the material over the secondary spillway during the snowmelt runoff period, where it will reenter Ferron Creek. The Project Proponent proposes that the Millsite Dam Sediment Management Project (the proposed project) is needed to preserve the remaining storage capacity of Millsite Reservoir. The Project Proponent also suggests that the introduction of the sediment to the downstream creek will increase turbidity during spillway discharge events so as to more closely mimic the natural sediment characteristics of the Creek. The proposed release of dredged sediment will only occur when the reservoir is overtopping the spillway, which occurs most years and lasts typically up to 6 weeks. The Project is located within the watershed of Ferron Creek, which is approximately 153 square miles in size and consists mainly of US Forest Service, US Bureau of Land Management and State managed Lands. Ferron Creek is a perennial stream that drains into the San Rafael River. The Project Proponent has proposed extensive monitoring both upstream and downstream of the discharge locations to ensure that the impacts of the Project do not degrade Ferron Creek. It is estimated that the Project could discharge approximately 71.3 acre-feet (roughly 116,500 tons) of accumulated sediment over the spillway per year. The discharge sediment will be mostly composed of sand and silt. The Project Proponent will utilize USGS gauges, transects and visual inspections to ensure the Project impacts are minimal. The Project Proponent will submit annual reports to the Department of Water Quality (DWQ) Division Director. USACE has not proposed that any compensatory mitigation be required at this time. This Project received a 401 Certification and a 404 USACE permit which expired in 2020 for this proposed project.

Location: The Project site is located on Millsite Reservoir and below the reservoir along Ferron Creek in Emery County Utah. The approximate location is at 39.0994 and -111.1976 degrees.

Watercourse(s): Ferron Creek

USACE Section 404: SPK-2013-00240

Effective Date: Month, Day, Year

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P N D R A F T

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

AF- Acre-foot

BMPs – Best Management Practices

CFR – Code of Federal Regulations
CFS-cubic feet per second
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
NWP – nationwide permit
PEM – palustrine emergent
ROW – right of way
SWPPP – stormwater pollution prevention plan
Tons/d- tons of sediment per day
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., DWQ grants Water Quality Certification (Certification) to Ferron Canal and Reservoir Co. for the proposed Millsite Dam Sediment Management Project (Project) in Ferron, Emery County, Utah. The Project 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 R317-15-6.1.A.3.

On January 24, 2023 DWQ attended a pre-filing meeting with Rollin Hotchkiss, representing Ferron Canal and Reservoir Co. for the Millsite Sediment Management Project. Rollin Hotchkiss submitted a 401 Water Quality Certification Application on March 8, 2023 on behalf of Ferron Canal and Reservoir Co. On April 6, 2023, DWQ sent Tracy Behling of Ferron Canal and Reservoir Co. a request for additional information. DWQ received requested information on May 5, 2023 from Rollin Hotchkiss. On April 21, 2023 Hollis Jenkins from the USACE received notification of the 401 Certification request and established the reasonable period of time to be 90 days from the notification. The DWQ has until August 25, 2023 to grant, deny, or expressly waive certification.

IV. Background

Ferron Canal and Reservoir Co. (the Project Proponent) is proposing to dredge deposited sediment from the forebay of Millsite Reservoir and discharge the dredged material into Lower Ferron Creek during the annual snowmelt runoff period. The Project Proponent was issued a 401 Certification on June, 2015 that expired in June, 2020. The Project Proponent estimates that up to 71.4 acre-feet (roughly 116,500 tons) of sediment is deposited annually in Millsite Reservoir, although recent years have reported from 5 to 31 acre-feet (8000 to 51000 tons) of sediment inflow during the snowmelt runoff period. The Project Proponent proposes that the Millsite Dam Sediment Management Project (the Project) is needed to maintain the present storage capacity of Millsite Reservoir. The Project will utilize a cutterhead/pump system to excavate deposited sediments located close to the dam in water less than 22 ft. The Project Proponent proposes that most of the excavated sediment will be silt and fine sand. The excavated sediment mixed with water which is proposed to be a maximum of 30% sediment concentration will be transported via a floating pipeline to the spillway, which will then run into a short canal that connects to Ferron Creek. Events where excavated sediment is discharged over the spillway will only occur during times of spillover from the uncontrolled (secondary) when the overflow discharge water flow rate exceeds approximately 50 cfs. The daily and annual sediment loads will depend on water levels of the reservoir. The Project Proponent proposes that dredge and spill operations could occur from three days to six weeks based on previous discharge events. The watershed of Ferron Creek (the Project location) is approximately 153 square miles in size and consists mainly of US Forest Service, US Bureau of Land Management and State managed Lands. Ferron Creek is a perennial stream that drains into the San Rafael River.

Minimization/Monitoring

The Project Proponent indicates that the discharge sediment will mostly be composed of sand and silt that will mimic the sediment deposition from upstream. The Project Proponent proposes monitoring of the sediment impact for approximately 9 miles with the most downstream monitoring transect 5 miles past the Ferron Creek and HWY 10 intersection. If monitoring indicates fine sediment is creating negative impacts downstream the Project Proponent will adjust operations to discharge coarser material as needed. If monitoring indicates that deposition of only silts and fine sands are causing an adverse effect to the stream environment, the following season the dredging shall occur further upstream of the dam (further west) to include removal of coarser materials such as small to medium sized gravels.

To minimize any negative sediment impacts the Project Proponent proposes that the average daily suspended sediment concentration measured at the stream gage downstream from the dam will not exceed the average daily suspended sediment concentration measured at the gage upstream of the reservoir during the time-period that the reservoir is filling. The amount of discharged sediment material added to the outflow of the spillway will only occur during times that the spillway is overflowing at or exceeding the flow rate of 50 cfs and the maximum daily concentration of discharge suspended sediment must be less than the average daily suspended calculated during the snowmelt runoff period. The Project Proponent suggests that this discharge method best mimics natural conditions and minimizes the potential impacts.

The Project Proponent will utilize the monitoring stations to determine the appropriate tons of sediment per day and seasonally to be released. Two USGS gauges, paired with multi-parameter probes, one upstream of the reservoir and one downstream, will be used for monitoring discharge and turbidity in Ferron Creek. The USGS gauges will be installed and in proper working order before the start of the snowmelt runoff period. USGS will collect flow-integrated samples, following USGS protocols, to determine suspended sediment concentrations (SSC) during the snowmelt runoff period. These measurements will be used to create and update a Turbidity-Suspended Sediment (load), by regression or other appropriate means, for both upstream and downstream gages and for every year this Project is in operation. Other water quality parameters will be monitored during and after discharge events. The Project Proponent will monitor temperature and dissolved oxygen (DO) in Ferron Creek upstream and downstream. Seven cross-sections in the Project area will be monitored regularly during dredging operations for deposition, sand embeddedness, and macroinvertebrates that will be sampled to determine the impacts on the food chain.

The Project Proponent will visually inspect sediment deposition along Ferron Creek at pre-determined cross-section site locations during the dredging events. Any sediment deposited in Ferron Creek that exceeds 1.5 feet in average deposition of the creek will be removed. If sediment exceeds the 1.5 foot deposition the Project Proponent will remove the sediment. The Project Proponent will obtain all necessary permitting, and the sediment will be handled and disposed properly to not further impact the creek or surrounding WOTUS. The Project Proponent has assessed the vegetation and creek bed areas. Most of the banks are non-vegetated or composed of grasses or woody plants. The Project area consists of unstable, highly sloped streambanks that will not be impacted with increased sediment load. The Project Proponent suggests that the conditions created by the sediment release will more closely resemble natural conditions that would occur without the construction of the dam and reservoir. The Project Proponent proposes that the conditions created by the discharge events will be advantageous to the native Utah fish species found in Ferron Creek. The USACE has determined that no compensatory mitigation will be required for the Proposed Project.

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 waterbody. Listed below are the water features, grouped by AUs, impacted by the Project, their associated designated beneficial uses (see UAC R317-2-6 and UAC R317-2-13) and any impairments:

- A. Ferron Creek Lower AU UT140600009-12_00 (Ferron Creek and tributaries from the confluence with San Rafael River to Millsite Reservoir)
 1. Beneficial Use Designations
 - a. Class 2B: Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.
 - b. Class 3C: Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.
 - c. Class 4: Protected for agricultural uses including irrigation of crops and stock watering.
 2. Impairments and Total Maximum Daily Loads (TMDLs): N/A

3. Antidegradation Review

Waters within the Ferron Creek Lower AU are 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 discharge of pollutants 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 (BMPs) would be employed to minimize pollution effects.

VI. Certification Conditions

- A. All activities with a potential discharge to WOTUS must implement and maintain BMPs to fully protect the waterbodies assigned beneficial use(s).
- B. 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 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.**
- C. Discharge of dredged reservoir sediments may occur only during times of snowmelt runoff, when water in excess of reservoir capacity flows over the secondary uncontrolled spillway, and this flow is greater than 50 cfs. The applicant will monitor streamflow, turbidity, suspended sediment, and dissolved oxygen at two USGS gages (1) upstream of the reservoir (NWIS site ID 09326500) and (2) downstream of the dam spillway (NWIS site ID 09327000) before, during, and after the snowmelt runoff period, each year. To ensure that sediment-related impacts to downstream portions of Ferron Ck, below the dam, are temporary and limited during snowmelt runoff when reservoir sediment is being discharged, the applicant will work with USGS to update a previously developed, site-specific Turbidity-to-Suspended sediment regression models to facilitate estimates of suspended sediment concentrations and sediment loading into the reservoir. The average daily suspended sediment concentration (ADSC) of inflow to the reservoir, from the upstream site, will be calculated from the time the Millsite Reservoir begins to fill to the time the spillover begins. This value (ADSC) represents the maximum allowable suspended sediment concentration of dredged sediment that can be discharged to Ferron Ck below the dam during the annual spillover period. Turbidity and discharge will be monitored at the downstream site to allow project personnel to track downstream suspended sediment concentrations during active operations, and to avoid exceeding the ADSC. Any sustained measurement of suspended sediment concentration below the dam that exceeds the ADSC by more than 25% over a 2-hour period will be reported to DWQ within 48 hours. Corrective actions for operations during the spill-period will be clearly described in an Operations and Monitoring Plan submitted by the applicant and approved by the DWQ Director. The maximum quantity of sediment to be passed downstream during the spillover period will be limited to the product of the ADSC and the cumulative daily stream discharge at the downstream monitoring site.
- D. As mentioned in Condition C above, the applicant is required to create an Operations and Monitoring Plan to be submitted and approved by the Director, before any discharge of dredged sediment over the secondary spillway occurs. The plan should clearly outline weekly reporting that will be provided to DWQ during

discharge events. This plan should include clear descriptions of daily operations of the hydraulic dredge, a description of the blending process and all accompanying attachments and piping, as well as procedures for updating results from the upstream and downstream monitoring locations. The plan should also include detailed descriptions of seasonal and annual monitoring activities, such as the 7 (seven) stream channel transects, etc., a schedule for these activities, and a section describing the corrective actions established in the 401 Certification application materials. The monitoring sections of the Plan will provide the applicant with the minimum framework for the Annual Project Reports.

- E. The Project Proponent will notify the Director within 48 hours after the operation ceases for each year of operation. An annual report will be submitted to the Division Director by November 1st each year following the reporting period. The Applicant should also notify the Director, even if no dredging activity occurs. All annual reports will be approved by the Director in writing. If the reporting does not occur or Certification Conditions are not met the Director will provide the Project Proponent a detailed description of deficiencies within 60 days of receipt of the annual report, or its expected due date. The annual report should include at minimum: results from the monitoring parameters and monitoring locations indicated in the 2023 Section 401 Certification application Table 1 provided by the Project Proponent. This report will include; a comparison of the incoming sediment load (tons of sediment per day) to Millsite Reservoir with the sediment loads (ton/d) restored to Ferron Creek (via the secondary spillway), a summary of all turbidity and temperature data, discharge rates, number of days that sediment restoration activities occurred and all dissolved oxygen monitoring results, and visual inspection summary. A spreadsheet of the data should be included with each report. Monitoring should occur prior to dredging, during and after dredging events.
- F. Dissolved oxygen in the water of the affected reach of Ferron Creek will be monitored daily whenever sediment is being added to Ferron Creek to verify that sediment oxygen demand does not result in dissolved oxygen (DO) concentrations of less than 3.0 mg/L and additionally the DO is not allowed to drop below 5 mg/L for more than three consecutive days. If monitoring limitations prevent reliable daily DO monitoring, then a minimum of 5 mg/L DO will be maintained. Daily monitoring will be conducted for the entire period dredging material is being added to the spillway. Dredging rates will be decreased if DO concentrations are 3.0 mg/L or less or cease if a 3.0 mg/L or above DO level cannot be maintained.
- G. 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.
- H. 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

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>

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.

VII. Condition Justification and Citation

- A. 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 R317-15-6.1.A.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.

- B. 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.

- C. Turbidity increases above those allowed by this Certification would be a violation of instream criteria for waterbodies that have recreation and aquatic life uses. Turbidity increases above those allowed by this Certification could cause the waterbody to fail to meet its designated beneficial use classes. Turbidity monitoring during discharge events in waterbodies with class 2B and 3A beneficial uses designations will ensure turbidity increases do not violate Utah's water quality standards. 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. 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.

- D. The Turbidity-Suspended Sediment (Load) model will determine rates and concentration of sediment that can be discharged to meet the current "instream standards" of upper Ferron Creek. Discharges of sediment exceeding the instream Upper Ferron Creek load could cause the designated beneficial uses of Lower Ferron Creek to not be met. Discharges exceeding the up-stream load standard would violate 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.

- E. Project Certification is conditional upon the receipt of the annual reporting as specified in Section VI.E and Table 1. of the 2023 Project application. Annual monitoring and reporting to DWQ provides documentation the Project is not violating water quality standards or impair a waterbody’s beneficial use. Project approval is conditioned in that discharge of dredged materials to Ferron Creek: 1) meet water quality standards in UAC R317-2-7 and designated beneficial uses in UAC R317-2-6 of the stream and 2) comply with the antidegradation policy in UAC R317-2-3. 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.” 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 annual monitoring is 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.

- F. Dissolved Oxygen levels can be an indicator of water quality. Aquatic life, especially fish derives dissolved oxygen from the water. Decreases in DO below a 3.0mg/L can result in creating hypoxic conditions. The project discharge should not create conditions that would become harmful to aquatic life or violate the beneficial use classification of lower Ferron Creek of 3C . 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. The 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(s): UACE R317-2-3.1, UAC R317-15-6.1, UAC R317-15-6.1.A.1,UAC R317-15-6.1.A.3

- G. 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)

- H. 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 February 1, 2020. 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.

VIII. Modification

- A. Without limiting DWQ’s discretion to take other actions in accordance with UAC R317-15, and, as applicable, 33 USC 1341, DWQ may modify the Certification to add, delete, or modify the conditions in this Certification as necessary and feasible to address:
1. Adverse or potential adverse project effects on water quality of designated beneficial uses that did not exist or were not reasonably apparent when this certification was issued;
 2. If the reporting requirements are not met;
 3. Monitoring data submitted from dredging events show evidence of the Project impacting water quality standards UAC R317-2-7, the streams designated beneficial uses UAC R317-2-6 or violating narrative standards
 4. Total Maximum Daily Loads (TMDLs);
 5. Changes in water quality standards;
 6. Any failure of Certification conditions to protect water quality or designated uses when the Certification was issued; or
 7. Any change in the Project or its operations that will adversely affect water quality of designated beneficial uses when this Certification was issued.

IX. Disclaimers

- A. Fees

1. The legislatively-mandated fee for the 2023 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.

B. Disclaimers

1. 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.
2. 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.
3. 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.

X. Public Notice and Comments

UAC R317-15-5.1 allows for the 30 day public notice period to be lengthened or shortened for a good cause, which includes those projects that are routinely granted. This 401 Certification request is a renewal for a project had previously received a 401 Certification in 2016. Also, due to the nature of the operations the proposed project will need to begin operations during the spring melt conditions. Therefore, the division 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.

XI. 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.

Date