

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

**Denial of Water Quality Certification**

WPR Development Company  
Wasatch Peaks Ranch Development Project  
Certification Decision No.: DWQ-2020-05001

On November 4, 2020, The Utah Department of Environmental Quality, Division of Water Quality (DWQ), received a complete application for a Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the Wasatch Peaks Ranch Development (WPRD) project (“proposed WPRD project”) in Morgan County, Utah. The application was submitted on WPR Development’s (“project proponent”) behalf by Dave Charette of Langan. The project proponent originally submitted their WQC on May 12, 2020, but the submittal was incomplete pending the items requested in a letter sent to the project proponent dated June 12, 2020.

The Director denies the CWA Section 401 Water Quality Certification for the proposed WPRD project, on the basis that the proposed WPRD project prevents or interferes with the attainment or maintenance of applicable water quality standards in Utah Administrative Code R317-2. A detailed explanation of that finding is provided below.

**Project Background**

According to the project proponent the proposed WPRD project is a 12,831-acre recreation-driven private residential development in Morgan County, Utah with up to 750 residential units including a combination of ranch lots, single-family residences, cabins, duplexes, townhomes, and condominiums. The proposed WPRD project includes an 18-hole championship golf course, 9-hole family golf course, alpine skiing, lake camp, equestrian facilities, hiking, mountain biking and other recreational activities. The proposal also includes a base lodge and several retail and entertainment spaces for the development’s residents. The project proponent proposes to impact 3.21 acres of wetlands and 18,524 linear feet (LF) of streams to accommodate utilities, roads, alpine skiing, and the proposed golf course. As part of the WQC application, the project proponent provided a description of proposed mitigation in a document titled “Wetland and Creek Mitigation Plan for the Wasatch Peaks Development Project”. The project proponent proposes the relocation/reestablishment of 17,658 LF of streams and the preservation/restoration of 83,000 LF of existing streams onsite. The plan includes 190 acres of preservation/restoration of adjacent buffers (100-ft wide creek and adjacent riparian buffer). The plan also proposes to establish approximately 8.2 acres of new palustrine emergent, scrub-shrub and forested wetlands from an existing upland agricultural field along the Weber River. Based on the submitted mitigation plan, the project proponent plans to conduct “permitted responsible mitigation.”

**Water Quality Certification Review Process**

The DWQ was first introduced to the project during an inter-agency coordination meeting held by the U.S. Army Corps of Engineers (USACE) on Jan 21, 2020. The USACE public noticed the project on April 21, 2020. According to Utah Administrative Code (UAC) R317-15-4.7” *an application for*

*Certification shall be made simultaneously with the application to the federal licensing or permit agency.”* The DWQ reached out to the project contact provided by the USACE on May 11, 2020 to request a Section 401 WQC Application. The project proponent submitted its application for the WPRD project to DWQ on May 12, 2020.

After review of the application and supplemental documents, the Director determined the application was incomplete. On June 12, 2020, the Director issued an incomplete application notification to the project proponent and outlined the additional items that were required in order to make a certifying decision. The letter requested the additional items within 90-days to ensure sufficient time to evaluate and make a certifying decision. A copy of the letter issued can be found in Attachment 3. At the request of the project proponent, DWQ staff met with the project proponent and its consultants on June 29, 2020, to discuss the project and answer questions related to the additional items requested by the June 12, 2020 letter.

On September 4, 2020, the project proponent requested an additional 30-days to submit the required items the Director requested. The Director granted the 30-day extension and advised the project proponent that the application would remain incomplete pending the receipt of the additional items. The project proponent requested an additional 30-day extension on October 8, 2020, and the Director granted the request and reiterated that the application would remain incomplete pending the receipt of the additional items.

On November 4, 2020, the project proponent submitted the additional items requested in the June 12, 2020 letter. On December 16, 2020, the Director issued a complete application letter to the project proponent for the WPRD project.

### **Regulatory Framework**

The project proponent is required to receive certification from the Director, in accordance with the Clean Water Act (CWA) Section 401 and UAC R317-15, that the discharge from a proposed project will comply with all applicable water quality requirements prior to a federal license or permit being issued. The project proponent must provide sufficient information to demonstrate compliance with Sections 301, 302, 303, 306, and 307 of the CWA, as implemented by Utah Code 19-5, UAC R317-2, and UAC R317-15.

On June 1, 2020, the Environmental Protection Agency (EPA) Administrator signed the EPA’s final “Clean Water Act Section 401 Certification Rule” (the Final Rule), which became effective on September 11, 2020, and now supersedes the 1971 regulations which were controlling before the Final Rule. The DWQ received the WQC request for the WRPD Project in May 2020, prior to the Final Rule effective date. Although the 1971 regulations likely control in this case and the WRPD WQC application did not meet new requirements in the Final Rule, this certifying decision meets both the Final Rule requirements and the requirements of the 1971 regulations.

According to Utah’s Water Quality Certification Rules in UAC R317-15-6.1, in making a certifying decision, 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.

Under Utah Code Section 19-1-110, the Water Quality Board is required to “group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class.” According to these classifications in UAC R317-2-6, Class 1 is protected for use as a raw water source for domestic water systems, Class 2 is protected for recreational use and aesthetics, Class 3 is protected for use by aquatic wildlife, Class 4 is protected for agricultural uses, and Class 5 is protections specifically for the Great Salt Lake. Below is a table summarizing the use classes, excluding Class 5 as the Great Salt Lake is not located where the project is proposed:

<b>Beneficial Use Classes as described in UAC R317-2-6</b>	
<b>Use Class</b>	<b>Description of Protection</b>
Class 1: Protected for use as a raw water source for domestic water systems	
1C	Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water
Class 2: Protected for recreational use and aesthetics.	
2A	Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.
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.
Class 3: Protected for use by aquatic wildlife.	
3A	Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.
3B	Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.
3C	Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.
3D	Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.
3E	Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.
Class 4: Protected for agricultural uses including irrigation of crops and stock watering.	

Numeric water quality criteria are assigned to each of the use classes, and “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” R317-2-7.1.a.

Utah's Antidegradation Policy in UAC R317-2-3.1 requires that *"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."* According to Utah's Antidegradation Review Implementation Guidance ("the Antidegradation Guidance")<sup>1</sup> "Utah's surface waters are assigned to one of three protection categories that are determined by their existing biological, chemical and physical integrity, and the interest of stakeholders in protecting current conditions" (Division of Water Quality, 2019, pg.3). Category 1 Waters are *"[w]aters 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. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands are Category 1 Waters unless otherwise exempted. UAC 317-2-12. 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. Waters that are not assigned to Category 1 or Category 2 are assigned Category 3.

According to UAC R317-2-3.5.1 *"[f]or all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected."*

For Category 1 and Category 2 Waters *"[d]ischarges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects"* R317-2-3.2; R317-2-3.3

Although the WRPD project is not proposed to be permitted under a CWA Section 404 general permit, the Antidegradation Policy in UAC R317-2-3.2 and R317-2-3.3 calls out subsection UAC R317-2-3.5.b.4., to provide factors to be considered in determining whether a discharge should be considered "temporary and limited". Under UAC R317-2-3.5.b.4. *"[a]s general guidance, CWA Section 402 general discharge permits, CWA Section 404 general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion."* Factors to be considered in determining whether the water quality impacts will be temporary and limited may include: the length of time the water quality will be lowered, percent changes in ambient concentrations of pollutants of concern, pollutants affected, likelihood for long-term water quality benefits to a segment, potential for any residual long-term influences to existing uses, and if there is potential for impairment of fish spawning, survival and development of aquatic fauna excluding fish removal efforts. UAC R317-2-3.5.b.4.

---

<sup>1</sup> The Antidegradation Implementation Guidance document was developed in a collaborative process among stakeholders to identify procedures that would meet the intent of antidegradation rules, while avoiding unnecessary regulatory burdens.

In addition to maintaining a stream’s designated beneficial use “all actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses.” UAC R317-2-8.

**Basis for Denial**

The DWQ carefully reviewed the WQC application, including the Level II Antidegradation Review (“Level II ADR”) provided by the project proponent as part of the WQC application. After review of the full and complete application packet, the Director determined that the project could not be certified as proposed because it fails to meet Utah’s Water Quality Standards, in particular the Antidegradation Policy and requirements to maintain existing beneficial uses, as explained below.

The project proponent proposed to impact of 3.21 acres of wetlands and 18,524 linear feet of streams to accommodate utilities, roads, alpine skiing, and golf courses. Filling stream channels is considered a point source discharge and has been evaluated as such.<sup>2</sup>

Waters in Question

A summary of the waterbodies proposed to impact directly and indirectly and their associated beneficial uses classes and protection category is provided below:

<b>Linear Water Features (not man-made) Impacted</b>		
Direct Impacts		
Feature Name	Protection Category	Beneficial Uses
Jacobs Creek and tributaries	1	2B, 3A, 4
Peterson Creek and tributaries	1	2B, 3A, 4
Dalton Creek and tributaries	1	2B, 3A, 4
Indirect Impacts (Downstream Waters)		
Jacobs Creek and tributaries	1	2B, 3A, 4
Peterson Creek and tributaries	1, 3	2B, 3A, 4
Dalton Creek and tributaries	1, 3	2B, 3A, 4
Weber River-3	2	2B, 3A, 4
Weber River-4	3	2B, 3A, 4

Jacobs Creek, Peterson Creek, and Dalton Creek are assigned protection Category 1 within the project boundaries. These waterbodies are protection Category 1 because they are “geographically located within the outer boundaries of U.S. National Forests whether on public or private lands” R317-2-12.1.(a). and are not otherwise categorized or exempted by R317-2-12.2. Outside Forest Service Boundaries and outside of the project boundaries, Peterson Creek and Dalton Creek are protection Category 3. Although Weber River-3 falls within the Forest Service boundary it is protection Category 2 because it listed in

<sup>2</sup> Although Section 401 of the CWA does not specifically define “point source”, the most recent EPA responses to comments on the final rule for 401 certifications in 85 FR 42210 concluded that the definition was unnecessary because “of the statutory definition (33 U.S.C. 1362(14)) and court decisions concluding that bulldozers, mechanized land clearing machinery, and similar types of equipment used for discharging dredge or fill material are “point sources.”” See, e.g., *Avoyelles Sportsmen’s League v. Marsh*, 715 F.2d 897 (5th Cir. 1983); *U.S. v. Larkins*, 657 F.Supp. 76 (W.D. Kent. 1987), *aff’d*, 852 F.2d 189 (6th Cir. 1988). See also footnote 34 of the final rule for 401 certifications in 85 FR 42210.

R317-2-12.2. Jacobs Creek, Peterson Creek, and Dalton Creek are assigned beneficial use classes 2B, 3A, and 4, because R317-2-13.4.a assigns these uses to Weber River and its tributaries from Slaterville diversion to Stoddard diversion. Additionally, the Weber River sections adjacent to the proposed WPRD project are designated as blue-ribbon fishery (administered by the Utah Division of Wildlife Resources and the Blue Ribbon Advisory Council).

#### The Discharges Cannot be Certified Because the Pollution Will Not be Temporary and Limited

As outlined above in the regulatory framework section, for a point source discharge to be allowed in a Category 1 waterbody the pollution must be “temporary and limited,” taking into consideration factors outlined in R317-2-3.5.b.4. and where best management practices will be employed to minimize pollution effects. UAC R317-2-3.2. Because the proposed WPRD project had potential for major water quality impacts, the DWQ required a Level II ADR. After an evaluation of the Level II ADR in accordance with the State Antidegradation Policy R317-2-3, the Director determined the project, as currently proposed, does not meet antidegradation requirements because the pollution resulting from the discharges would not be temporary and limited.

The filling and relocation of 18,524 linear feet of headwater streams is considered a major impact to water quality that is not temporary nor limited. An evaluation of the project proponent’s Level II ADR did not reveal a reasonable or factual basis to consider these impacts temporary and limited.

The Antidegradation Guidance indicates “as a general rule of thumb, temporary means days or months, not years, and covers activities that lower water quality on a non-permanent basis such as during construction activities” (Division of Water Quality, 2019, pg. 11). The relocation of 18,524 linear feet of headwater streams, that likely contain riffle pool complexes (which are considered special aquatic sites 40 CFR 230.45), will require years to reestablish comparable water quality and therefore cannot be determined to be a temporary impact. The project proponent did not demonstrate that the stream relocation would not result in a permanent lowering of water quality, specifically disallowed by the Antidegradation Guidance.

According to 40 CFR 230.96(b) “Permittee responsible mitigation” is required to have a minimum of 5-years of monitoring to ensure that the mitigation is meeting performance standards. This is a good indication that the reestablishment of aquatic features, namely streams, takes a significant amount time, outside the boundaries to be considered “temporary” under the Antidegradation Guidance. The document provided by the project proponent as part of their WQC application titled “*Stream Channel Reestablishment at Ski Areas*”, provided construction sequencing. It indicated that first a new channel would be established and stabilized in a new location, prior to the diversion of the stream. The stream would then be diverted into the new channel while sections of the ski run were constructed. The final step identified would be to put in erosion control features and revegetation measures on the ski run and cut slopes, while adding native vegetation and grasses and building water features in the new channel. The description of this timeline also indicates the inability of this work to be conducted within “months”, which will not allow enough time for the stream to reestablish and provide essential functions such as, but not limited to, sediment, nutrient, and water transport and habitat for aquatic life, including fish. Although the relocated streams may have water immediately, the temporal loss in stream functions will likely prevent the streams from meeting their designated beneficial uses for a period of time greater than what could be considered temporary.

Additionally, filling and relocation of 18,524 linear feet of headwater streams is not a limited impact. Streams are a difficult-to-replace resource and discharges of dredged or fill material to stream containing riffle pool complexes may reduce stream habitat diversity. 40 CFR 230.93 & 40 CFR 230.45. United States Department of Agriculture Forest Service's "*Ski Area BMPs: Guidance for Planning, Erosion Control, and Reclamation*" states that the relocation of streams for ski runs can cause stream channel flow to change from perennial to intermittent with the new channel often drying up in the summer months and "the resulting channel often resembles more of a ditch than a living, functioning stream." (USDA Forest Service, 2001, pg. 26). Furthermore, even though a majority of the channels are proposed to be relocated and realigned, loss of the existing channels will likely result in the permanent loss of many stream functions, including providing aquatic habitat and crucial transport of sediment and nutrients. Although additional mitigation is proposed in the form of preservation to attempt to offset the temporal loss of the stream relocations, this mitigation does not negate the fact that the impacts to the existing Category 1 waters will not be temporary nor limited.

#### The Discharges Cannot Be Certified Because Increased Temperature Will Inhibit Beneficial Uses

The "*Creek Relocation / Re-Establishment Plan*" provided by the project proponent as part of their WQC application, depicts the relocation to streams onsite, including the 14,885 LF of stream impacts due to alpine skiing and 2,853 LF of impacts proposed to accommodate two golf courses. Based on the scale and legend provided in that plan, the stream relocations will include a narrow buffer and the relocated channels will be adjacent to ski runs that are around 120 feet wide, with some up to 150 feet wide. The ski run areas would have little riparian vegetation that would provide stream shading. The Level II ADR indicated that there would be a moderate temporary effect on creek temperature due to loss of vegetation. However, the Level II ADR did not demonstrate that the impact would be temporary. A moderate impact to temperature would cause an exceedance of water quality standards for temperature. The waterbodies proposed to be directly impacted (Jacobs Creek and tributaries, Peterson Creek and tributaries, and Dalton Creek and tributaries) are assigned beneficial use class 3A, which is protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain. The WQC application and supplemental documents, including the Level II ADR indicated that there would be some vegetation reestablished in buffer of the newly created channels. However, "because ski slopes are managed for recreation, ski slope revegetation mixes must consist of low-stature or herbaceous plant that can tolerate typical environmental conditions on ski slopes (high elevation, disturbed soils, open, steep slopes)" (Burt, 2012, pg. 636).

A document provided as part of the WQC application by the project proponent titled "*WPR Utah USACE IP APP Figures*", Figure 17 titled "*UDWR Dominant Vegetation Land Cover With Development Overlay*"<sup>7</sup> provides the existing dominant land cover with development overlay. Figure 17 depicts the existing dominant species in the project boundaries as Douglas Fir, with Aspen and White Fir being the first and second subspecies in the higher elevations. In the lower elevation areas, the dominant species is oak with the sub-species listed as serviceberry. Replacing these existing shade-providing species adjacent to 14,885 LF of stream channels for smaller low-stature or herbaceous plants and grasses suitable for ski runs will have a cumulative impact on the channels, especially in regards to temperature.

The Level II ADR indicated a moderate impact to temperature due to loss of vegetation. The project proponent has not demonstrated that the reduction in stream shade would not cause the temperature to rise in the stream channels and subsequently the downstream waterbodies. If temperature increases in these channels, it could cause them to no longer meet beneficial use class 3A. 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 comparable riparian vegetation that results in the failure to maintain beneficial use class 3A is a violation of Utah's rules promulgating standards of quality for waters of the State.

The Discharges Cannot Be Certified Because the Project Proponent did not Demonstrate that Increased Temperature will not Cause Violations of Instream Criteria for Dissolved Oxygen and Did Not Demonstrate That There Would Not be an Increase in Sediment Load.

As described above, the project proponent did not demonstrate that the moderate impact to temperature, due to loss of vegetation, will not 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 (DO) to be violated. Temperature and DO have an inverse relationship, where temperature increases then DO decreases, so an increase in temperature could cause a decrease in DO, and possibly a violation of the instream criteria for DO which for beneficial use class 3A is a minimum of 8.0 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.

The "*Creek Relocation / Re-Establishment Plan*" also depicted proposed new channels that were less sinuous than the channels they are meant to replicate. This is concerning because the lack of sinuosity coupled with the high gradient slopes of the channels could cause the increased transport of sediment downstream. In the Level II ADR, the project proponent utilized the EPA STEPL Model for estimating pollutant loads. The model results indicated an overall reduction in pollutant loads, including sediment, due to BMPs, primarily related to stormwater runoff. However, the inputs into the models did not take into consideration the increased sediment load that would likely result from the relocation of 14,885 LF of headwater streams on high gradient slopes, with little sinuosity and a meager riparian buffer for the accommodation of alpine ski slopes. The model and inputs were focused on the areas where the residential development was proposed and did not take into consideration the increased sediment loads brought by their proposed impacts for alpine ski runs and changes in stream geomorphology. An increased sediment load to onsite streams can have a significant impact to aquatic life and their habitat, including fish.

The Discharges Could Not Be Certified Because They Will Impair Fish Spawning, Survival, and Development.

Due to the 18,524 LF impacts to streams that are potential spawning habitat for the Bonneville Cutthroat Trout (*Oncorhynchus clarkii utah*), a Utah sensitive species, the DWQ consulted with the Division of Wildlife (DWR). The DWR confirmed that Jacobs Creek and its tributaries, Peterson Creek and its tributaries, and Dalton Creek and its tributaries contain important spawning habitat for the Bonneville



Cutthroat Trout (BCT). Additionally, DWR informed the Director that the management of sensitive species populations (which includes BCT) to prevent them from being federally listed as threatened or endangered is part of Utah Division of Wildlife Resources strategic plan.

“During the past century, Cutthroat Trout *Oncorhynchus clarkii* have experienced large, rangewide reductions in distribution and abundance due to a combination of competition and hybridization with nonnative trout, habitat loss, and fragmentation.” (Behnke, as cited by Thompson & Burnett, 2019, pg. 569). “Currently, in the Weber River watershed, BCT occupy approximately 55% of their Historic Range, and 43 conservation populations occur throughout the watershed” (Thompson & Burnett, 2019, pg. 571). Some Bonneville Cutthroat Trout are fluvial fish, which means they spawn in tributary streams, where they rear for several years before migrating to the larger river system to grow to maturity (Budy et al., 2020, pg. 444). Jacobs Creek and Peterson Creek are tributaries to the Weber, and they provide important habitat to this state sensitive species. The DWR and partners, including the Weber River Partnership have invested time and money into removing barriers and improving the habitat in the Weber River and its tributaries. The impacts, both direct and indirect, caused by this proposal could be detrimental to the Bonneville Cutthroat Trout population, and set back the growth this population has achieved in the last few years due to the efforts of the DWR and its partners. Monitoring data of Jacobs Creek and Peterson Creek provided by the DWR (Attachment 3) demonstrates an improvement in the overall health of the Bonneville Cutthroat Trout population in these tributaries over the past few years. In Jacobs Creek the number of sizes classes increased between 2014 and 2018 and there was an increase in the number of age-1 individuals. In Peterson Creek the size of the Bonneville Cutthroat Trout more than doubled between 2014 and 2018. The data collected for Peterson Creek also suggested that the habitat in the particular reach sampled functioned as a spawning habitat.

The potential increased sediment load, altered hydrology, loss of habitat, increase in temperature, and temporal loss of stream function in these tributaries will almost certainly have a detrimental effect on the spawning of the Bonneville Cutthroat Trout and the project proponent has not demonstrated otherwise or that this project would not further degrade its status. The impairment of fish spawning must be considered when determining whether a proposed discharge will have a temporary and limited impact according to UAC 317-2-3.4a. Such a dramatic impact on a sensitive species violates Utah’s antidegradation policy found in UAC R317-2-3.5. An impairment of fish spawning may also impact whether the waterbody can maintain its designated beneficial uses, as it relates to aquatic wildlife use classes. 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.

## **Conclusion**

The Director has determined the project cannot be certified as proposed because it does not meet Utah’s State Water Quality Standards. The project proposes significant impacts to Category 1 Waters, without a reasonable factual basis to determine that the impacts are temporary and limited, as required by the Antidegradation Policy in UACR317-2-3 in order for a new point source discharge to be allowed.

Additionally, the project proponent failed to demonstrate that the moderate impacts to temperature due to removal of vegetation for the accommodation of alpine ski runs will not cause the stream channels to fail to meet beneficial use class 3A. Additionally, the project proponent failed to demonstrate that the relocation of 14,885 linear feet of headwater streams on high gradient slopes, with little sinuosity and a meager riparian buffer will not cause a significant increase in sediment load transport downstream, which will almost certainly impact fish spawning habitat. The Bonneville Cutthroat Trout (*Oncorhynchus clarkii Utah*) is a state sensitive species that relies on the habitat provided by Jacobs Creek and Peterson Creek for spawning. The significant impacts proposed to these tributaries onsite could have a detrimental impact to the Bonneville Cutthroat Trout Population. The Director will public notice this decision on the Division website with the associated Level II ADR.

---

Erica Brown Gaddis, PhD  
Director, Division of Water Quality

---

Date

DWQ-2021-002337

PN DRAFT

## References

- Budy, P., Thompson, P.D., McKell, M.D., Thiede, G.P., Walsworth, T.E., and Conner, Mary M. (2020). A Multifaceted Reconstruction of the Population Structure and Life History Expressions of a Remnant Metapopulation of Bonneville Cutthroat Trout: Implications for Maintaining Intermittent Connectivity. *Transactions of the American Fisheries Society* 149, 443–461.
- Burt, J.W. (2012). Developing Restoration Planting Mixes for Active Ski Slopes: A Multi-Site Reference Community Approach. *Environmental Management* 49, 636–648. <https://doi.org/10.1007/s00267-011-9797-y>
- Thompson, P.D. and Burnett, P.C. (2019). The Weber River Partnership: How Fish Gained Relevance through a Recently Formed Watershed Group. *American Fisheries Society Symposium* 91, 565–588.
- Kimley Horn. (2020). Wasatch Peaks Ranch Creek Relocation/Re-Establishment Plan. [Supplemental Application Document].
- Kimley Horn. (2020). Wasatch Peaks Ranch Morgan County, Utah: Level II Antidegradation Review (ADR). [Supplemental Application Document].
- Langan. (2020). WPR Utah USACE IP APP Figures: Figure 17: UDWR Dominant Vegetation Land Cover With Development Overlay. [Supplemental Application Document].
- Langan. (2020). Revised October 23, 2020. Wetland and Creek Mitigation Plan for the Wasatch Peaks Ranch Development Project. [Supplemental Application Document].
- SE GROUP. (2020). Stream Channel Reestablishment at Ski Areas. [Supplemental Application Document].
- USDA Forest Service Wasatch-Cache National Forest in cooperation with Sun Valley Corporation and Snow Basin Ski Area.(2001). Guidelines for Planning, Erosion Control, and Reclamation. [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsem\\_035270.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsem_035270.pdf)
- Utah Division of Water Quality. (2019). Utah Antidegradation Review Implementation Guidance. Version 2.1. State of Utah, Department of Environmental Quality, Division of Water Quality. <https://documents.deq.utah.gov/water-quality/standards-technical-services/antidegradation-reviews/DWQ-2019-001047.pdf>

(This page was intentionally left blank)

PND DRAFT

**Attachment 1: Definitions and Acronyms**

PND DRAFT

## Definitions

- 1.) **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.
- 2.) **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.
- 3.) **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
- 4.) **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
- 5.) **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 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.
- 6.) **Director** means the Director of the Division of Water Quality within the Department of Environmental Quality.
- 7.) **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.
- 8.) **Impact** refers, collectively, to the project proponent’s proposed filling of streams and wetlands onsite associated with the development of roads, alpine skiing, golf courses, and utilities as described in Section 3.3 “Anticipated Impacts to Wetlands and Other Waters of the United States” submitted by the project proponent.
- 9.) **Level I Antidegradation Review (ADR)** *“is conducted to insure that existing uses will be maintained and protected.”* UAC R317-2-3.5. A Level I review is conducted for all projects that propose to discharge to a Waters of the State.

- 10.) **Level II 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 with impacts are not considered temporary and limited and is likely to result in degradation of water quality.
- 11.) **Permittee Responsible Mitigation** *“means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.”* 40 CFR 230.92
- 12.) **Project Proponent** *“means the applicant for license or permit or entity seeking certification.”* 40 CFR §121.1 and for the purposes of this document the term “project proponent” means the WPR Development Company LLC.
- 13.) **Protection Category** means one of the three levels of protection assigned to Utah surface waters as described in Utah Antidegradation Review Implementation Guidance (V 2.1)<sup>1</sup>: *“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.”*
- 14.) **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
- 15.) **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).

### Acronyms

ADR- Antidegradation Review  
BCT- Bonneville Cutthroat Trout  
BMPs- Best Management Practices  
CWA- Clean Water Act  
DEQ- Utah Department of Environmental Quality  
DWQ – Utah Division of Water Quality  
EPA – Environmental Protection Agency  
UAC- Utah Administrative Code  
USACE - U.S. Army Corps of Engineers  
WRPD- Wasatch Peaks Ranch Development  
WQC – Water Quality Certification  
WQS- Utah Water Quality Standards

(This page was intentionally left blank)

PND DRAFT



Attachment 2: June 12, 2020 Incomplete WQC Letter

PND DRAFT

(This page was intentionally left blank)

PND DRAFT



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Department of  
Environmental Quality

L. Scott Baird  
Executive Director

DIVISION OF WATER QUALITY  
Erica Brown Gaddis, PhD  
Director

June 12, 2020

Vance Bostock  
WPR Development Company  
**Via Email**

Subject: Wasatch Peaks Ranch Development Project DWQ-2020-05001  
**Incomplete** 401 Certification Application Notification

Mr. Bostock,

The Utah Department of Environmental Quality (DEQ), Division of Water Quality (DWQ), has had the opportunity to review the §401 Water Quality Certification Application submitted to our office on May 12, 2020, for the Wasatch Peaks Ranch Development Project in Morgan County, Utah. The application has been deemed incomplete based on the submitted materials. As detailed further in the letter, a complete application requires the following:

- A Level II Anti-Degradation Review (ADR)
- Additional analysis of impacts to water quality due to filling 26,586 LF of waters of the state; and,
- An updated mitigation plan.

**Antidegradation**

A review of the project site and proposed impacts identified that multiple streams proposed for alteration onsite are considered Category 1 water for antidegradation purposes. Category 1 Waters in Utah 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, [and] shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters”, as described in Utah Administrative Code R317-2-3.2.

The DWQ could not determine that the proposed impacts onsite would be temporary and limited, based on the submitted application. Additionally, DWQ has determined there is a potential for major impacts to water quality of waters of the state onsite due to work proposed by this project. Therefore, a Level II antidegradation review will be required. Please prepare and submit Level II antidegradation for DWQ review and public participation following review requirements in R317-2-3.5.

Please take the following information into consideration as you prepare the Level II antidegradation review:

- 1.) The project proposes permanent impacts to 5,646 LF of stream and temporary impacts to 17,345 LF of stream onsite. The basis for the 17,345 LF of impacts being considered temporary is that they will be filled and relocated. Please be advised that the DWQ does not consider the relocation of streams to be a temporary impact. Based on the submittal, the project is proposing impacts to 22,991 LF of stream and an additional 3,595 LF of impacts to what's been classified as man-made diversions. The project as proposed would result in permanent impacts to approximately 26,586 LF of waters of the state, not including any proposed impacts to wetlands.
- 2.) The application states that there are no point source discharges proposed for Category 1 waters onsite, but the review of supporting application materials conflicts this determination. The addition of pollutants (fill) to streams is considered a point source discharge.
- 3.) Please take into consideration the beneficial uses of the streams onsite that are proposed to be impacted. The streams onsite are assigned beneficial use classes 2B (infrequent primary contact recreation), 3A (cold water fisheries/aquatic life), and 4 (agricultural uses). Impacts to the streams onsite should not prevent the streams from meeting beneficial use designations. The Level II ADR should provide details as to how the beneficial uses will be maintained.
- 4.) The Level II ADR requires the evaluation of whether there are any other reasonable non-degrading or less degrading alternatives for the proposed activity. The alternatives analysis that was provided in the submittal is insufficient and does not provide enough detail to demonstrate that the project, as proposed, is only practicable alternative. The DWQ feels there are less degrading alternatives available to the applicant that were not evaluated.

### **Additional Analysis Required**

The DWQ appreciates the extensive review of potential impacts to the site from stormwater and providing details on limiting impacts to water quality due to stormwater pollutants and increased runoff. However, the DWQ was not provided sufficient information and analysis of the impacts from filling and relocating 26,586 LF of waters of the state would have on the water quality on site. The application referred to the majority of the impacts as temporary because they would be reestablished in a similar place and location in the landscape, where it would return to its normal functioning in a relatively short period of time. The application provided no reasonable factual basis to support this claim. Please provide a thorough analysis of the impacts of this project on water quality, including any secondary impacts that may occur to high quality wetlands and streams onsite.

### **Mitigation Plan**

A review of the submitted "*Wetland and Creek Mitigation Plan*" determined that it did not provide enough information on reestablishment of streams after relocation or enough mitigation to offset the permanent loss of function of the streams proposed to be filled onsite. The plan should be revised to include the following:

- 1.) Assessment of appropriate mitigation for all proposed permanent and secondary impacts, including the 17,345 LF of stream relocation. Currently the applicant has not proposed sufficient mitigation to offset permanent loss of stream functions onsite.

- 2.) Please provide details on how the streams will be reestablished after relocation, including monitoring, assessment, and management.
- 3.) If the applicant proposes to move forward with stream preservation as a portion of their mitigation, then details should be provided on how the site will be protected through a legal protection mechanism or conservation easement.

The DWQ has concerns that the project, as currently proposed, will have major impacts to water quality. Please provide any additional information, studies, or analysis you may have to alleviate our concerns. Additionally, provide the requested items to the DWQ within **ninety (90) days** of receipt of this letter. Once the DWQ has a complete application, a determination will be made on whether to issue, issue with conditions, or deny the certification. If you have any questions about the above requests, please contact Leanna Littler at 801-536-4397 or [lnlittler@utah.gov](mailto:lnlittler@utah.gov).

Sincerely,



Erica Brown Gaddis, PhD  
Director, Division Water Quality

EBG/LL/bj

Cc: Via Email  
Michela Harris, Weber-Morgan Health Department  
Dave Charette, Langan  
Michael Pectol, USACE

DWQ-2020-012794  
File: 401 Certification

Attachment 3: Jacobs Creek and Peterson Creek Monitoring Data

PND DRAFT

**Jacobs Creek**  
*Monitoring*

**IVAP065**

The Jacobs Creek monitoring station, 100 m in length, was electrofished on July 12, 2018. Results of this and the prior survey are shown in Table 11 and Figure 14. Based on two data points for this station the BCT population has experienced an increase since the previous sampling, nearly tripling in abundance and increasing in estimated biomass by four times (Table 11). The length-frequency distribution shows an expansion of the number of size-classes between 2014 and 2018, along with an increase in the number of age-1 individuals, which was the only age-class sampled in 2014 (Figure 14).

Table 11. Population statistics for BCT sampled in Jacobs Creek, 2014 and 2018.

Year	Species	Total Catch	#/km ± 95% C.I. (#/mi ± 95% C.I.)	kg/ha (lb/ac)	TL (mm)		WT (g)		Mean K
					Mean	Range	Mean	Range	
2018	≥age-1 BCT	44	471±61 (758±97)	36 (32)	115	86-186	14	6-53	0.90
	age-0 BCT	5	53±19 (86±31)						
2014	≥age-1 BCT	16	159±6 (256±10)	9 (8)	101	82-127	12	6-25	1.09

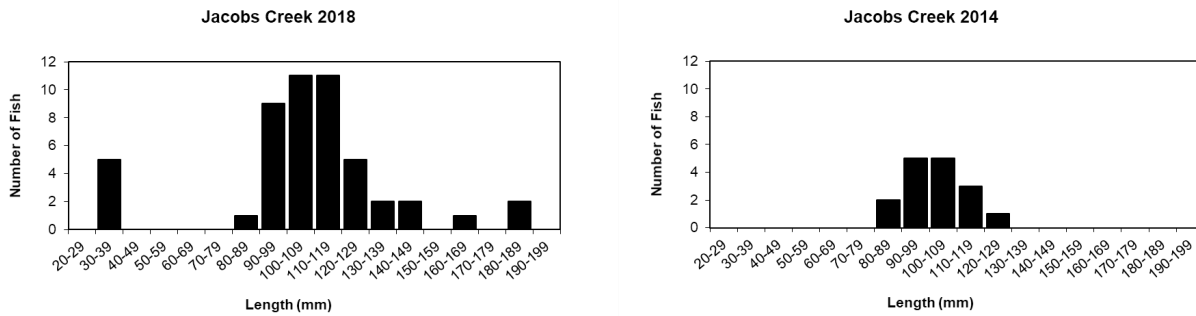


Figure 14. Size distribution of BCT sampled in the Jacobs Creek monitoring station, 2014 and 2018.

**Peterson Creek**  
Monitoring

**IVAP090**

The Peterson Creek monitoring station, 96 m in length, was electrofished on July 18, 2018. Results of this and the prior survey are shown in Table 13 and Figure 17. Comparison of the two data points for this station indicates the size of the BCT population more than doubled since the 2014 sampling (Table 13); estimated biomass increased slightly since the 2014 estimate. The length-frequency distribution shows a similar spread of size-classes for both years but an increase in the number of individuals in each size-class in 2018, as well as a single larger individual (Figure 17). These data suggest that the habitat in this reach functions as spawning/nursery habitat, possibly for fluvial BCT running out of the Weber River, and does not host a resident population of BCT. Brown Trout, represented by a single age-0 individual, may also be utilizing this reach for spawning. Sculpin remain abundant in the station.

Table 13. Population statistics for fish species sampled in Peterson Creek, 2014 and 2018.

Year	Species	Total Catch	#/km ± 95% C.I. (#/mi ± 95% C.I.)	kg/ha (lb/ac)	TL (mm)		WT (g)		Mean K
					Mean	Range	Mean	Range	
2018	≥age-1 BCT	29	304±9 (489±15)	15 (13)	121	94-190	17	8-61	0.89
	age-0 BCT	27	321±88 (516±141)		37	28-46			
	age-0 BNT	1	no depletion		56				
	RSS		sparse						
	SC		abundant						
2014	≥age-1 BCT	16	137±17 (221±27)	12 (11)	134	99-157	24	10-34	0.96
	age-0 BCT	2	19±0 (31±0)		68	67-69			
	SC		abundant						

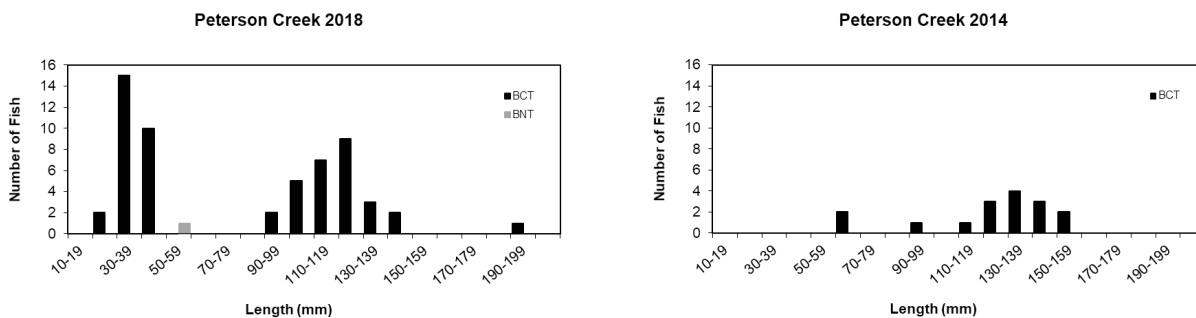


Figure 17. Size distribution of salmonids sampled in the Peterson Creek monitoring station, 2014 and 2018.

**Dalton Creek**  
Survey

**IVAP100**

A survey was conducted in the middle portion of Dalton Creek. The station, 105 m in length, was electrofished on July 17, 2018. Results of this survey are shown in Table 14 and Figure 18. The BCT population in this portion of Dalton Creek is doing well, and for the size of the stream



is quite large, with very high biomass (Table 14). The length-frequency distribution shows a good range of sizes, a strong age-1 cohort, and a number of adults (Figure 18).

Table 14. Population statistics for BCT sampled in Dalton Creek, 2018.

Year	Species	Total Catch	#/km ± 95% C.I. (#/mi ± 95% C.I.)	kg/ha (lb/ac)	TL (mm)		WT (g)		Mean K
					Mean	Range	Mean	Range	
2018	≥age-1 BCT	127	1214±14 (1953±22)	100 (89)	135	90-236	27	7-124	0.93
	age-0 BCT	5	51±19 (82±30)		35	33-37			

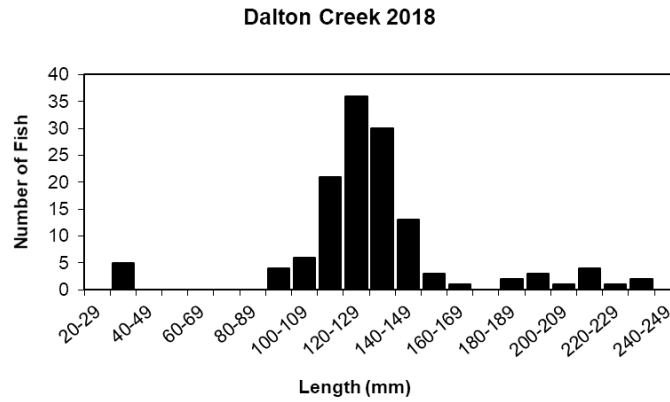


Figure 18. Size distribution of BCT sampled in the Dalton Creek survey station, 2018.