

# Proposed Utah Water Quality Standards Changes for Wetlands

## Overview of Utah's Wetland Program

The goals of Utah's Wetland Program are to:

- increase the amount and availability of scientific data on Utah's wetlands
- continue to build and deploy scientifically-based tools to assess wetland health
- afford greater protection by determining wetland specific beneficial uses and criteria to protect those uses.

The actions covered by UDWQ and the Utah Geological Survey to advance this goal are divided into four sections:

1. Mapping and Landscape Planning
2. Monitoring and Assessment
3. Water Quality Standards
4. Outreach, Coordination, and Data Dissemination

The program is structured following the EPA's Core Elements Framework. Two projects were recently completed which directly support developing Water Quality Standards (WQS) for Utah's wetlands. First, Conservation Action Planning (CAP) meetings gathered feedback from stakeholders on wetland classes to be included in water quality standards (WQS), measurable characteristics of those wetlands, and the major threats to wetlands. Second, UDWQ benchmarked Utah's standards against those of other states, regions, and tribes to develop implementation strategies for updating Utah's WQS based on stakeholder input and other state's experiences.

## Need for wetland definition and mixing zone policy

To help states develop WQS for their wetlands, the EPA has identified five steps to apply WQS to wetlands:

1. Define wetlands as Waters of the State
2. Designate uses for all wetlands
3. Adopt aesthetic narrative and appropriate numeric criteria protective of wetland uses
4. Apply biological criteria to assess wetlands are attaining their use
5. Apply antidegradation policy and implementation methods to wetlands

The Utah Water Quality Act defines Waters of the State as:

*Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other*

*bodies or accumulations of water, surface and underground, natural artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish wildlife, shall not be considered to be "waters of the state" under this definition (UAC R317-1-1).*

This Waters of the State definition is broad and implicitly covers wetlands; it does not explicitly include wetlands as Waters of the State of Utah. Thus, there is uncertainty within the Division as well as the regulated community on whether wetlands are waters regulated by our WQS. Because of arguments at the federal level over jurisdictional Waters of the United States, there is also confusion over which types of wetlands count as jurisdictional waters.

Currently only wetlands within state and federal wildlife refuges and adjacent to Great Salt Lake have been assigned use classes in Utah's WQS and the classes assigned to those wetlands are based on political boundaries rather than ecologically meaningful distinctions. To address uncertainty and inconsistencies in current rules, and following the step-wise progression suggested by the EPA, we propose the addition of a definition of wetlands to the state's water quality rules.

A definition of wetlands could be easily incorporated into standards so long as it is both comprehensive and easily implementable by sampling crews for the majority of wetlands (i.e., does not require a wetland expert to determine when a waterbody is a wetland). A clear and comprehensive wetland definition would be especially useful in protecting wetlands that are not well mapped and wetlands that are part of riparian zones.

We propose the following definition of wetlands to be added to R317-1-1:

"Wetlands" consist of areas that are inundated or saturated by surface groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically for life in saturated soil conditions. Wetlands generally include marshes, fens, playas, mudflats, and similar areas.

This definition is adopted from the Code of Federal Regulations (40 CFR § 230.41) and is the definition utilized by 52 of the 84 states and tribes that include wetlands in their WQS. Within that subset, 24 states and tribes have modified the definition slightly by identifying regional wetland types, excluding some types of wetlands like constructed wetlands, or specifying that wetlands are Waters of the State. The second sentence has been modified with wetland types common to Utah. This proposed definition is

comprehensive, follows precedent in being adopted by many water quality codes, and captures the wetland types that stakeholders identified as important in CAP meetings.

While adding a definition of wetlands to Utah's standards, we would also like to update the mixing zone policy with a clarification about wetlands. It is general practice in Utah and the policy of EPA Region 8 to not allow mixing zones in wetlands. Thus, we would like to add the following to R317-2-5 (Mixing zone policy):

*No mixing zones are allowed in wetlands.*

### **Future endeavors**

Once a definition of wetlands has been added to WQS, further steps will be taken to incorporate wetland evaluation into a more formal assessment process. Field sample data taken from wetlands will need to be categorized as wetlands. Currently, data from wetlands is not included in DWQ's AQWMS database and wetlands are not assessed in the 303(d)/305(b) Integrated Report. For statewide assessments included in the Integrated Report, changes will need to be made to those methods.

Utah's Wetland Program has been conducting evaluations of wetlands with the support of Wetland Program Development Grants, primarily around Great Salt Lake. The general goal of much of Utah's grant-funded projects has been to gather data in support of developing beneficial use classes for wetlands with appropriate water quality criteria. Incorporating the proposed water quality standard elements into rule will advance DWQ's goals to protect Utah's waters by providing a defensible basis for protecting and restoring wetland health.