



State of Utah

GARY R. HERBERT  
Governor

GREG BELL  
Lieutenant Governor

Department of  
Environmental Quality

Amanda Smith  
Executive Director

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

**MEMORANDUM**

TO: Water Quality Board

THROUGH: Walter L. Baker  
Executive Secretary

FROM: Chris Bittner  
Environmental Scientist IV

DATE: August 11, 2010

SUBJECT: Petition for Rulemaking Utah Administrative Code R317-2-12 or R317-2-13

Division of Water Quality staff recommends that the Board not approve the June 10, 2010 petition submitted by the Utah Waterfowl Association and others (Petitioner). The petition is included in **Attachment 1**.

After conducting a time-limited investigation of the area under petition, staff agrees with the Petitioner that these waters appear to be of high ecological value. However, Petitioner's request for reclassification of Willard Bay as Category 1 water and its designation as an Outstanding National Resources Water and its beneficial use reclassification is not appropriate at this time. These changes would have long term and far reaching impacts for water quality management and the Petitioner does not provide data or adequate rationale to support these changes.

This memo is organized to discuss: (1) Petitioner's request; (2) Outstanding National Resource Waters; (3) Categories assigned to Utah's waters; (4) Beneficial Use Classes; and (5) Next steps to insure the subject waters of the petition are protected. Supporting materials are provided as attachments. Also, in this memo the term "Willard Spur" is used in place of Petitioner's "Willard Bay" to avoid confusion with the freshwater Willard Bay impoundment (**Map 1**).

**Petitioner's Request.** The Petitioner outlines three actions they want the Board to take:

1. Proceed with rulemaking to change Willard Spur or a portion thereof from a Category 3 water to Category 1 water.
2. Nominate Willard Spur as Outstanding National Resource Water.
3. Proceed with rulemaking to reclassify Willard Spur or a portion thereof from Classes 5C, and 5E to Classes 2B, 3B, and 3D, if request # 1 is denied.

3.2

**Categories.** Utah waters are assigned to either Category 1, 2, or 3. No new discharges or increases to existing discharges are allowed in Category 1 waters. In Category 2 waters, discharges of pollutants are allowed but the effluent concentrations must be equal to, or less than, the existing pollutant concentrations in the receiving waters. Waters are Category 3 unless they have been designated Category 1 or 2. In Category 3 waters, effluent concentrations greater than ambient are allowed if the use of assimilative capacity is justified by an antidegradation review and all other water quality standards are met. Willard Spur is currently designated as Category 3.

Petitioner is requesting a change to Category 1. **Attachment 2** is a copy of the rule language regarding Category designations. In Utah's draft Antidegradation Implementation Guidance, the Water Quality Standards Workgroup developed guidance for suggested data to support a change in Category (**Attachment 3**). USEPA Region 8's (1993) guidance (**Attachment 4**) also has recommendations for criteria to be considered. Specific data needs include:

- water quality data
- biological data
- hydrological data
- an evaluation of current impacts of Category change
- an evaluation of future impacts of a Category change

Category 1 designation is the most restrictive and provides the highest degree of protection for a water. Wildlife refuges are a specific example given in USEPA guidance for waters that are candidates for Category 1. Changing Willard Spur to Category 1 will have long term and far reaching impacts to discharges to Willard Spur. Additionally, the Petitioner did not supply any of the data outlined to justify this change, therefore, staff recommends that this part of the petition be denied.

**Outstanding National Resource Water.** Utah Water Quality Standards do not have the Outstanding National Resource Water designation, which is a tier in Environmental Protection Agency Antidegradation rules. However, Utah's Category 1 waters designation provides equivalent protections. Therefore the Board must deny request 2 listed above.

**Beneficial Use Classifications.** Utah's waters are assigned one or more use classifications (UAC R317-2-6 and UAC R317-2-12). Beneficial Use Classifications are part of the water quality standards and include uses such as drinking water, aquatic life, and agriculture. Appropriate use classes are important because a misclassification can result in incomplete protection or inappropriate standards. For instance, saline GSL cannot support fish, so Class 3B for fish is inappropriate. Currently, Willard Spur waters are Classes 2B, 3B, and 3D (in the Bear River Migratory Bird Refuge) or, Class 5E, and/or Class 5C for the Spur (**Map 2 and Table 1**). Petitioner's alternate request is for all of Willard Spur to be reclassified to Classes 2B, 3B, and 3D (**Map 3**), if the Board declines to change Willard Spur from a Category 3 water to Category 1 water.

As can be seen in Table 1, most uses are similar between Classes 2B and 3D compared to Class 5C and 5E. The primary difference if Petitioner's proposal is adopted is that all Willard Spur, instead of just the Bear River Migratory Bird Refuge, will be Class 3B, protected for warm,

freshwater fish which aren't present in saline waters. The other practical difference is that Classes 3B and 3D have numeric standards whereas Great Salt Lake Class 5C and 5E do not have numeric standards at this time. Numeric standards for the Class 5 waters need to be developed that account for effects of salinity.

Class	Use
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.
3B	Protected for warm water species of game fish and other warm water 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.
5C	Bear River Bay. Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.
5E	Transitional waters on Great Salt Lake Shoreline. Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

The Board adopted the Class 5C and 5E classifications in 2008 and staff does not recommend changing the use classifications because the existing beneficial uses are appropriate for Willard Spur. While staff observed fish in the brackish Class 5C waters just south of the Bear River Migratory Bird Refuge boundary during a site reconnaissance, we do not have the data to determine to what extent these waters normally support fish. We do not have adequate data to understand the hydrology in Willard Spur, especially as it relates to salinity and other parameters that control what beneficial uses a water will support. Therefore staff recommends the Board deny this part of the petition.

In addition to being appropriate, the current use designations are adequately protective because the most sensitive use is considered for permitting. For instance, Willard and Perry have constructed a wastewater treatment plant that proposes to discharge into the Class 5E waters east of the Bear River Migratory Bird Refuge. We have assumed that the discharge will commingle with the Bear River Migratory Bird Refuge waters and have set the permit limits to meet Class 2B, 3B, and 3D. These permit limits would be identical if this area of Willard Spur were reclassified to 2B, 3B, and 3D.

**Next Steps.** Though we recommend that the Board deny this petition, we appreciate that these issues were brought to our attention. We agree these waters should be appropriately protected but we simply do not have enough data at this time to evaluate whether changes to either the category of water or the use classifications are the optimal way to accomplish this protection. However, we are taking interim actions relative to the impact from the proposed discharge from the Perry/Willard wastewater treatment plant. We have completed an Antidegradation Review and amended the draft discharge permit to include numeric criteria for Class 2B, 3B, and 3D without the reclassification of the waters.

We have collected water quality and macroinvertebrate data from the proposed discharge site as well as other data to compare to wetlands we have studied for several years. We will then model the proposed discharge from Willard/Perry and determine the potential vulnerability of these wetlands to eutrophication. If we determine that the treatment plant effluent does not pose a risk to the wetlands, we intend to reissue the permit for public comment. If we determine that the effluent poses an unacceptable risk to the wetlands, further investigation and discussion will be necessary to determine a course of action. This may include investigating alternative discharge locations and/or consideration of enhancing the treatment capabilities of the wastewater treatment plant. Lastly, we recommend that reclassification issues should be evaluated by the Water Quality Standards Workgroup prior to making recommendations to the Board to proceed with rulemaking.

**Attachments:**

- 1: Petition for Rule Change
- 2: Utah Rule Language regarding Category Designations
- 3: DWQ Draft Antidegradation Implementation Guidance
- 4: USEPA Region 8's (1993) guidance

**Maps:**

- 1: Willard Spur General Location
- 2: Map of Existing Beneficial Use Classifications for Willard Spur
- 3: Map of Proposed Beneficial Use Classifications for Willard Spur

**Attachment 1  
Petition for Rule Change**



**WESTERN RESOURCE  
ADVOCATES**

June 10, 2010

Director Walt Baker  
Executive Secretary  
Water Quality Board  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870

Re: Petition for Amendment to either Utah Admin. Code r. 317-2-12 or r. 317-2-13.

Walt:

In accordance with Utah Code Ann. § 63G-3-601 and Utah Admin. Code r. 15-2-3, Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association) respectfully submits the enclosed Petition for Rule Change to amend either Utah Admin. Code r. 317-2-12 or, in the alternative, Utah Admin. Code r. 317-2-13.

Enclosed with this letter is a Petition for Rule Change and accompanying memorandum in support of the proposed rule change. Utah Waterfowl Association respectfully requests that the Water Quality Board exercise its rulemaking power and either (1) provide notice of its intent to exercise its rulemaking power to amend either Utah Admin. Code r. 317-12 or -13 in a manner consistent with this request; or (2) adopt and publish the proposed rule as permitted under Utah Admin. Code R15-2-5.

Additionally, Utah Waterfowl Association respectfully requests a hearing to explicate the intended purpose of the proposed changes to either Utah Admin. Code r. 317-12 or -13. If the Water Quality Board needs any further information in processing this Petition, please do not hesitate to contact me. Thank you for your consideration of this important matter.

Yours,

ROB DUBUC  
JORO WALKER  
Attorneys for Utah Waterfowl Association

## Petition for Rule Change

### **Jurisdiction:**

Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association), pursuant to Utah Code Ann. § 63G-3-601 and Utah Admin. Code r. 15-2-3, hereby petition the Water Quality Board (Board) to exercise its rulemaking power and amend Utah Admin. Code r. 317-2-12 to add Willard Bay<sup>1</sup> as a Category 1 water. Separately, and in conjunction with this rule change, Utah Waterfowl Association requests that the Board nominate Willard Bay as an Outstanding National Resource Water. Alternatively, Friends requests that the Board amend Utah Admin. Code r. 317-2-13 to designate the open waters of Willard Bay (to include Willard Spur) above 4,200 feet as class 2B, 3B and 3D.

The proposed rule change-amendment to Utah Admin. Code r. 317-2-12 is set forth below (proposed amendment language emboldened and italicized):

### **R317. Division of Water Quality**

#### **R317-2. Standards of Quality for Waters of the State.**

#### **R317-2-12. Category 1 and Category 2 Waters.**

##### **R317-2-12.1 Category 1 Waters**

##### 12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage...

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

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<sup>1</sup> For the purposes of these petitions, references to Willard Bay refer to the unimpounded water body north of the Great Salt Lake Minerals, Harold Crane and Willard Reservoir impounds, south of the Bear River Refuge impounds, and including the Willard Spur down to elevation 4200.

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

***13. Willard Bay (including Willard Spur), open water above approximately 4,200 feet.***

Alternatively, should the Board decline to amend r. 317-2-12 to add Willard Bay as a Category 1 water, Utah Waterfowl Association requests that the Board amend r. 317-2-13 as set forth below (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**

**R317-2. Standards of Quality for Waters of the State**

**R317-2-13. Classifications of Waters of the State**

**R317-2-13.11. National Wildlife, and Other Areas Associated with Great Salt Lake**

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D
 Bear River Bay			
Open Water below approximately 4,208 ft.			5C
Transitional Waters approximately 4,208 ft. to Open Water			5E
Open Water above approximately 4,208 ft.	2B	3B	3D
 <b><i>Willard Bay (Including Willard Spur)</i></b>			
<b><i>Open Water above approximately 4,200 ft.</i></b>	<b><i>2B</i></b>	<b><i>3B</i></b>	<b><i>3D</i></b>

**Reason for the Proposed Rule Change:**

The Utah Waterfowl Association has a direct stake in the Board's consideration of the proposed amendment and will be substantially affected by the amendment inasmuch as the present rule currently fails to adequately protect Willard Bay and its pristine water quality, as well as the aquatic wildlife in and around the Bear River Migratory Bird Refuge. See Utah Admin. Code r.317-2-8 ("All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.."). The proposed amendments have substantial value to the citizens of this State because they would provide the necessary protection of wildlife resources that thrive in the Great Salt Lake ecosystems, which are enjoyed by Utah Waterfowl Association and other recreational users of the Lake. Likewise, the proposed amendments have national significance as they provide greater protection for migratory birds, which utilize the Willard Bay area, Bear River Migratory Bird Refuge and surrounding wetlands for nesting and feeding. The legal basis for this proposed rule change is set forth in the accompanying Memorandum in Support of Petition for a Rule Change.


**Address and Daytime Telephone Number of Petitioner:**

Utah Waterfowl Association  
c/o Rob Dubuc  
Western Resource Advocates  
150 South 600 East, Suite 2A  
Salt Lake City, Utah 84102  
Phone: 801.487.9911

**Request for copies of all correspondence, memoranda, or notices:**

Pursuant to Utah Code Ann. § 63G-3-301(10), I hereby request that the Board provide me, as counsel for Utah Waterfowl Association, with complete copies of any correspondence resulting from this Petition, including any rule analysis performed by the Board, advance notice of any rulemaking proceedings, or any other correspondence, memoranda, or notice. Such copies may be sent to me at the above address.

DATED this 10<sup>th</sup> day of June, 2010.



ROB DUBUC  
JORO WALKER  
Attorneys for Utah Waterfowl Association



## MEMORANDUM IN SUPPORT OF PETITION FOR A RULE CHANGE

### INTRODUCTION

Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association) hereby petition the Utah Water Quality Board (Board) to exercise its rulemaking power pursuant to Utah Code Ann. §65A-2-2 and Admin. Code r. 15-2-3 to amend either Utah Admin. Code r. 317-2-12 or r. 317-2-13. The amendments are described below. Utah Waterfowl Association is directly affected by the amendment since the current rule unnecessarily limits the protection of the designated uses of Willard Bay. Utah Waterfowl Association is dedicated to the protection of the natural resources and recreational opportunities of State water bodies, to include Great Salt Lake. We have participated extensively in processes relating to State and Federal decision making that affect Great Salt Lake, including its ecosystems and Public Trust resources. The amendments would be beneficial to citizens of the State because they would protect critical Public Trust resources.

### PROPOSED AMENDMENTS

The Executive Secretary of the Utah Water Quality Board (Executive Secretary) is authorized by statute to "advise, consult, and cooperate with . . . affected groups in furtherance of the purposes of [the Water Quality Act], Utah Code Ann. § 19-5-106(2), to cooperate with any person in studies and research related to preventing water pollution, § 19-5-106(11), and to exercise all incidental powers necessary to carry out the Water Quality Act. § 19-5-106(10). The Utah Water Quality Board (Board) is authorized by statute to "make rules in accordance with [the] Utah Administrative Rulemaking Act . . . to: (iii) set effluent limitations and standards . . ." Utah Code Ann. § 19-5-104(1)(f)(iii).

Utah Admin. Rule r. 317-2 delineates the Standards for Quality of Waters of the State. Utah Admin. Rule r. 317-2-12 outlines the Category 1 and Category 2 Waters of the State. A Category 1 water is a water body which has been determined by the Board to be of exceptional recreational or ecological significance requiring protection and which shall be maintained at existing high quality by the Board. Utah Admin. Rule r. 317-2-3.2. New point source discharges of wastewater are prohibited in Category 1 waters. *Id.* A Category 2 water is a water body which is treated as a Category 1 water but allows for a point source discharge if that discharge does not degrade existing water quality. *Id.* Utah Waterfowl Association proposes that the Board amend Utah Admin Rule r. 317-2-12 to include Willard Bay as a Category 1 water. Specifically, we request that the rule be changed to read (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**  
**R317-2. Standards of Quality for Waters of the State.**  
**R317-2-12. Category 1 and Category 2 Waters.**  
**R317-2-12.1 Category 1 Waters**

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage...

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

***13. Willard Bay (including Willard Spur), open water above approximately 4,200 feet.***

Rule 317-2-13 delineates the Classification of Waters of the State. The Board is required to group the waters of the state into classes in order to protect the beneficial uses of those waters. Utah Admin. Code r. 317-2-6. Specifically, we request that the rule be changed to read (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**  
**R317-2. Standards of Quality for Waters of the State**  
**R317-2-13. Classifications of Waters of the State**  
**R317-2-13.11. National Wildlife, and Other Areas Associated with Great Salt Lake**

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B 3B 3D	
Bear River Bay		
Open Water below approximately 4,208 ft.		5C
Transitional Waters approximately 4,208 ft. to Open Water		5E

Open Water above approximately 4,208 ft.	2B 3B 3D
<i>Willard Bay (Including Willard Spur)</i> Open Water above approximately 4,200 ft.	2B 3B 3D

ANALYSIS

**I. Willard Bay is an Unimpaired Water Body Deserving Both Nomination as an Outstanding National Resource Water (ONRW) and a Re-categorization as a Category 1 Water Under Utah Law.**

The Federal antidegradation policy states that "where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected." 40 C.F.R. § 131.12(a)(3). The EPA qualification criteria for ONRWs include: (1) location such as federally protected land; (2) previous special designation such as wild and scenic river; (3) existing pristine or naturally-occurring water quality; (4) ecological value such as the presence of threatened or endangered species during one or more life stages; (5) recreational or aesthetic value; and (6) other factors that indicate outstanding ecological or recreational resource value such as rare or valuable wildlife habitat. *Water Quality Standards Handbook*, Chs. 2, 9. (EPA Antidegradation Guidance Region VIII).

While Utah does not have a procedure for designating waters as ONRWs, the State's "High Quality Waters" classification echoes most of the federal guidelines for ONRWs. Specifically, DWQ regulations state:

Waters of high quality which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or Nation resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as high Quality Waters – Category 1.

Utah Admin. Code r. 317-2-3.2.

The protections provided to an ONRW under Utah law include:

New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. ... Other diffuse sources of wastes shall be controlled to the extent feasible through implementation of BMPs or regulatory programs.

*Id.*

EPA guidance notes that “Outstanding water quality is not a prerequisite for ONRW designation. The only requirement is that the segment have outstanding value as an aquatic resource, which may derive from the presence of exceptional scenic or recreational attributes, or from the presence of unique or sensitive ecosystems that have naturally low water quality (i.e., as measured by conventional parameters).” *Water Quality Standards Handbook* at 9-10. According to the *Water Quality Standards Handbook*, “[t]he public may nominate any state water for ONRW protection at any time by sending a written request . . . [which] should explain why an ONRW designation is warranted” based on one or more of the factors identified above. *Water Quality Standards Handbook* at 10.

Through this Petition for Agency Rulemaking, Utah Waterfowl Association requests that the Board nominate Willard Bay as an ONRW under EPA guidelines, and re-categorize and protect the Bay as a Category 1 water body under Utah law. Willard Bay is a fresh water body that we believe meets the necessary qualifications for designation as an ONRW, and we encourage the Board to move forward with the nomination process. Additionally, we believe that the Bay should be re-categorized as a Category 1 water under Utah law. Willard Bay and its waters intermix with Refuge waters, and these waters are of crucial ecological significance in supporting the Refuge’s migratory bird population and the freshwater fish that inhabit the freshwaters of Bear River Bay and Willard Bay. This designation provides the best method for ensuring that these waters do not become impaired and that the aquatic wildlife that rely on these waters are not jeopardized by discharges of polluted water. As such, we request that the Board direct the Executive Secretary to undertake any studies necessary to determine whether it is appropriate to nominate Willard Bay as an ONRW and re-categorize the Bay as a Category 1 water. Until such a determination can be made, we request that any approval of UPDES permits that would result in a discharge into Willard Bay be stayed.

## II. The Board Should Reclassify Willard Bay as a Class 2B, 3B, 3D Water

Should the Board deny Utah Waterfowl Association’s request to nominate Willard Bay as an ONRW and re-categorize the Bay as a Category 1 water, the Association requests that the Board reclassify Willard Bay be as a Class 2B, 3B, and 3D water. As justification for its request for reclassification Utah Waterfowl Association asks the Board to consider, *inter alia*, the article entitled *Avian Ecology of Great Salt Lake*, which describes Bear River Bay and Willard Bay as the freshest region of the Lake that receives the largest volume of riverine inflow. Tom Aldrich & Don Paul, *Avian Ecology of Great Salt Lake*, in GREAT SALT LAKE: AN OVERVIEW OF CHANGE, at 344 (Utah Department of Natural Resources, 2002). The article goes on to describe the waters of that portion of the lake fresh enough to support a community of submergent hydrophytes including sago pondweed (*Potamogeton pectinatus*) and widgeon grass (*Ruppia maritima*), and notes that there are significant islands of emergent wetlands in that part of the Lake, especially in the east part of the bay in the Willard Spur. Further evidence that Willard Bay is a freshwater body can be found in the Great Salt Lake Waterbird Survey (Survey) published by the U.S. Fish and Wildlife Service. *See*

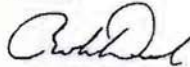
www.wildlife.utah.gov/gsl/waterbirdsurvey. The survey describes the primary habitat of Willard Bay as Fresh Water, Freshwater Shorelines and Freshwater Wetlands. Survey at p. 121.

Due to the freshwater nature and hydrology of Willard Bay, the Board should, at a minimum, reclassify Willard Bay to ensure the same water class protections as the Refuge. The evidence shows that Willard Bay is a freshwater body of water, and plays host to migratory birds and freshwater fish. Reclassifying Willard Bay as a 2B, 3B, and 3D water is the first step necessary to ensure that the designated uses for both Willard Bay and the Refuge are being met.

**CONCLUSION**

The Utah Waterfowl Association respectfully requests that the Board, through its Executive Secretary, exercise its rulemaking power and either (1) provide notice of its intent to exercise its rulemaking power to amend either Utah Admin. Code r. 317-2-12 or -13 in a manner consistent with this request; or (2) adopt and publish the proposed rule as permitted under Utah Admin. Code R15-2-5.

Yours,



ROB DUBUC  
JORO WALKER  
Attorneys for Utah Waterfowl Association

**Attachment 2**  
**Utah Rule Language regarding Category Designations (R317-2-3)**

3.2 Category 1 Waters

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. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

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. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

### **Attachment 3**

### **Excerpt from DWQ May 13, 2010 Draft Antidegradation Implementation Guidance**

#### ***2.1 Assigning Protection Categories***

Utah's surface waters are assigned to one of three protection categories that prescribe generally permissible water quality actions. These levels of protection are determined by their existing biological, chemical and physical integrity, and by the interest of stakeholders in protecting current conditions. Antidegradation procedures are differentially applied to each of these protection categories on a parameter-by-parameter basis.

##### **2.1.1 Category 1 Waters**

Category 1 waters (as listed in R317-2-12.1) are afforded the highest level of protection from activities that are likely to degrade water quality. This category is reserved for waters of exceptional recreation or ecological significance, or that have other qualities that warrant exceptional protection. Once a waterbody is assigned Category 1 protection, future discharges of wastewater into these waters are not permitted. However, permits may be granted for other activities (e.g., road construction, dam maintenance) if it can be shown that water quality effects will be temporary and that all appropriate Best Management Practices (BMPs) have been implemented to minimize degradation of these waters.

##### **2.1.2 Category 2 Waters**

Category 2 waters (as listed in R317-2-12.2) are also afforded a high level of protection, but discharges to these waters are permissible, provided no degradation of water quality will occur. In practice, this means that all wastewater parameters should be at or below background concentrations of the receiving water. As a result of this stipulation, the Level I and Level II ADR provisions discussed in these implementation procedures are not required for Category 2 waters.

##### **2.1.3 Category 3 Waters**

All surface waters of the State are Category 3 waters unless otherwise designated as Category 1 or 2 in UAC R317-2-12. Discharges that degrade water quality for social and economically are permitted for Category 3 waters provided that 1) existing uses are protected, 2) the degradation is necessary, 3) the activity supports important social or economic development in the area where the waters are located, and 4) all statutory and regulatory requirements are met in the area of the discharge. Antidegradation rules also apply for any proposed new or expanded discharge that is likely to degrade water quality. ADRs require that these proposed actions demonstrate that such proposed projects are necessary to accommodate social and economic development, and that all reasonable alternatives to minimize degradation of water quality have been explored. These implementation procedures provide details about how ADRs are implemented to meet these requirements.

#### ***2.2 Procedures for Assigning Protection Categories***

The intent of Category 1 and Category 2 protection classes is to protect high quality waters. Any person or DWQ may nominate a surface water to be afforded Category 1 or 2 protections by submitting a request to the Executive Secretary of the Water Quality Board. DWQ generally considers nominations during the triennial review of surface water quality standards. The

nominating party has the burden of establishing the basis for reclassification of surface waters, although DWQ may assist, where feasible, with data collection and compilation activities.

### **2.2.1 Material to Include with a Nomination**

The nomination may include a map and description of the surface water; a statement in support of the nomination, including specific reference to the applicable criteria for unique water classification, and available, relevant and recent water quality or biological data. All data should meet the minimum quality assurance requirements used by DWQ for assessing waters of the State. A description of these requirements can be found in the most recent *Integrated Report Part I Water Quality Assessment*.

### **2.2.2 Considerations for Appropriate Data and Information to Include with Nominations to Increase Protection of Surface Waters**

The Water Quality Board may reclassify a waterbody to a more protected category, following appropriate public comment. Evidence provided to substantiate any of the following justifications that a waterbody warrants greater protection may be used to evaluate the request:

- The location of the surface water with respect to protections already afforded to waters (e.g. on federal lands such as national parks or national wildlife refuges).
- The ecological value of the surface water (e.g., biological diversity, or the presence of threatened, endangered, or endemic species)
- Water quality superior to other similar waters in surrounding locales.
- The surface water is of exceptional recreational or ecological significance because of its unique attributes (e.g., Blue Ribbon Fishery)
- The surface water is highly aesthetic or important for recreation and tourism.
- The surface water has significant archeological, cultural, or scientific importance.
- The surface water provides a special educational opportunity.
- Any other factors the Executive Secretary considers relevant as demonstrating the surface water's value as a resource.

The final reclassification decision will be based on all relevant information submitted to or developed by DWQ.

### **2.2.3 Considerations for Appropriate Data and Information for Consideration to Decrease Protection of Surface Waters**

The intent of Category 1 and Category 2 protections is to prevent future degradation of water quality. As a result, downgrades to surface water protection categories are rare. However, exceptional circumstances may exist where downgrades may be permitted to accommodate a particular project. For instance, in Utah most surface waters in the upper portions of National Forests are afforded Category 1 protection, which may not be appropriate in specific circumstances. Project proponents may request a classification with lower protection; however, it is their responsibility to provide sufficient justification. Examples of situations where a reclassification with less stringent protections might be appropriate follow:

- Failure to complete the project will result in significant and widespread economic harm.



- Situations where the surface water was improperly classified as Category 1 or Category 2 water because the surface water is not high quality water (as defined by the criteria outlined in 2.2.3).
- Water quality is more threatened by not permitting a discharge (e.g., septic systems vs. centralized water treatment).

Requests for downgrades to protection should provide the most complete and comprehensive rationale that is feasible. The request for a reduction in protection may also be considered in concert with the alternatives evaluated through an accompanying Level II ADR. Proposed projects affecting high quality waters may require more comprehensive analysis than projects affecting lower quality waters.

#### **2.2.4 Public Comment Process for Proposed Reclassifications**

All data and information submitted in support of reclassification will be made part of the public record. In addition to public comment, the DWQ will hold at least one public meeting in the area near the nominated water. If the issues related to reclassification are regional or statewide in nature or of broader public interest, the Division will consider requests for public meetings in other locations. Comments received during this meeting will be compiled and considered along with the information submitted with the nomination will be submitted to appropriate local planning agencies.

#### **2.2.5 Reclassification Decision Making Process**

The final reclassification decision will be based on all relevant information submitted to or developed by the DWQ. All data will be presented and discussed with the Water Quality Standards Workgroup. DWQ then submits its recommendations regarding reclassifications to the Water Quality Board who makes a formal decision about whether to proceed with rulemaking to reclassify the waterbody. The proposed reclassification is a rule change, and as such will trigger normal public notice and comment procedures.

**Attachment 4:** Excerpt from USEPA Region 8 Guidance: Antidegradation Implementation

with state antidegradation requirements. The major conclusions of the Division's review are documented using an antidegradation review worksheet, a copy of which is attached to this implementation procedure. Based upon the review findings, a preliminary decision is made by the Division and subjected to intergovernmental coordination and public participation. Public participation occurs regardless of the outcome of the preliminary decision (i.e., whether the proposed activity would be authorized or denied).

The Division then considers public comments and reaches a final decision regarding whether to authorize the proposed activity pursuant to the state antidegradation requirements. The substance and basis of the final decision by the Division are documented in the administrative record. Below, the procedures to be followed by the Division in reaching a preliminary decision under each tier of antidegradation are described in detail.

**PART IV. TIER 3 PROCEDURES**

**A. Waters Qualifying for ONRW Protection**

**(1) Qualification Criteria**

Segments will be subject to tier 3 protection requirements only where an ONRW designation has been assigned by the Board through the state rulemaking procedures. The factors to be considered in determining whether to assign an ONRW designation may include the following: (a) location (e.g., on federal lands such as national parks, national wilderness areas, or national wildlife refuges), (b) previous special designations (e.g., wild and scenic river), (c) existing water quality (e.g., pristine or naturally-occurring), (d) ecological value<sup>1</sup> (e.g., presence of threatened or endangered species during one or more life stages), (e) recreational or aesthetic value (e.g., presence of an outstanding recreational fishery), and (f) other factors that indicate outstanding ecological or recreational resource value (e.g., rare or valuable wildlife habitat). Where determined appropriate, the ONRW designation may be applied to an entire category of waters (e.g., a wilderness area or areas).

**(2) Water Quality Requirements**

Outstanding water quality is not a prerequisite for ONRW designation. The only requirement is that the segment have outstanding value as an aquatic resource, which may derive from the presence of exceptional scenic or recreational attributes, or from the presence of

<sup>1</sup> States should consider ONRW or OSRW designations for segments selected as reference sites (e.g., to define biological/ecological integrity for a particular ecoregion).

3.19

**EPA REGION VIII  
ANTIDEGRADATION  
GUIDANCE**

unique or sensitive ecosystems that have naturally low water quality (i.e., as measured by conventional parameters).

**(3) Public Nomination**

The public may nominate any state water for ONRW protection at any time by sending a written request to the following address: [insert appropriate address]. The written request should explain why an ONRW designation is warranted based on one or more of the factors identified above.

**B. Direct Sources to ONRWs**

***Any proposed activity that would result in a permanent new or expanded direct source of pollutants to any segment which has been designated as an ONRW is prohibited.***

**(1) Prohibition on New or Expanded Sources**

Any proposed activity that would result in a permanent new or expanded direct source of pollutants to any segment which has been designated as an ONRW is prohibited. This prohibition applies to new sources, expansion of existing sources in which treatment levels are maintained, and expansion of existing sources in which treatment levels are increased to maintain existing pollutant loading levels. Regardless of effluent quality, any new or expanded direct source is prohibited.

**C. Sources Upstream from ONRWs**

**(1) No Change in Water Quality Allowed**

Any proposed activity that would result in a permanent new or expanded indirect source of pollutants (i.e., an upstream source) to an ONRW segment is prohibited except where such source would have no effect on the existing quality of the downstream ONRW segment. Effects on ONRW water quality resulting from upstream sources will be determined based on appropriate techniques and best professional judgment. Factors that may be considered in judging whether ONRW quality would be affected include: (a) percent change in ambient concentrations predicted at the appropriate critical condition(s), (b) percent change in loadings (i.e., the new or expanded loadings compared to total existing loadings to the segment), (c) percent reduction in available assimilative capacity, (d) nature, persistence, and potential effects of the parameter, (e) potential for cumulative effects, and (f) degree of confidence in the various components of any modeling technique utilized (e.g., degree of confidence associated with the predicted effluent variability).

**(2) Trading**

A proposed activity that will result in a new or expanded upstream source may be allowed where the applicant agrees to implement or

finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. Where such trading occurs upstream of an ONRW segment, tier 3 requirements will be considered satisfied where the applicant can show that water quality at all points within the study area will be either maintained or improved. The Division will document the basis for the trade through a Total Maximum Daily Load (TMDL) pursuant to CWA § 303(d) requirements. Such TMDLs will include an appropriate margin of safety. Such a margin of safety will address, in particular, the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources. See definition of trading in Part II.

(3) Information Requirements

The applicant may be required to provide information sufficient to evaluate the potential effects of the proposed activity on downstream ONRWs. The information that will be required in a given situation will be identified on a case-by-case basis by the Division.

**D. Temporary and Limited Effects**

(1) Guidelines

A direct or upstream source that would result in a temporary and limited effect on ONRW water quality may be authorized. The decision regarding whether effects will be temporary and limited will be handled on a case-by-case basis. As a *non-binding* rule of thumb, activities with durations less than one month and resulting in less than a 5% change in ambient concentration will be deemed to have temporary and limited effects. Decisions on individual proposed activities may be based on the following factors: (a) length of time during which water quality will be lowered, (b) percent change in ambient concentrations, (c) parameters affected, (d) likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments), (e) degree to which achieving applicable water quality standards during the proposed activity may be at risk, and (f) potential for any residual long-term influences on existing uses.

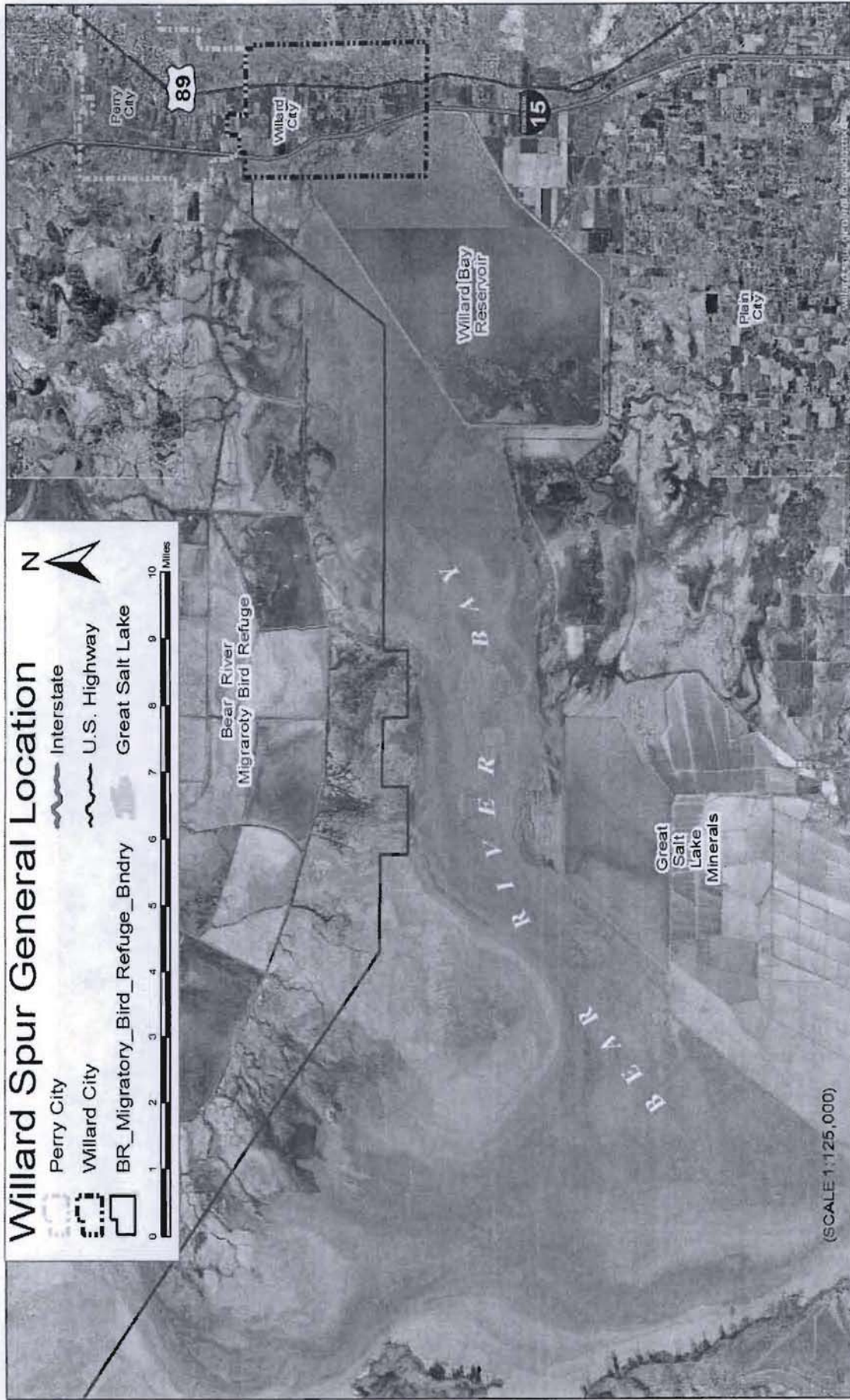
**PART V. TIER 2.5 PROCEDURES**

**A. Waters Qualifying for OSRW Protection**

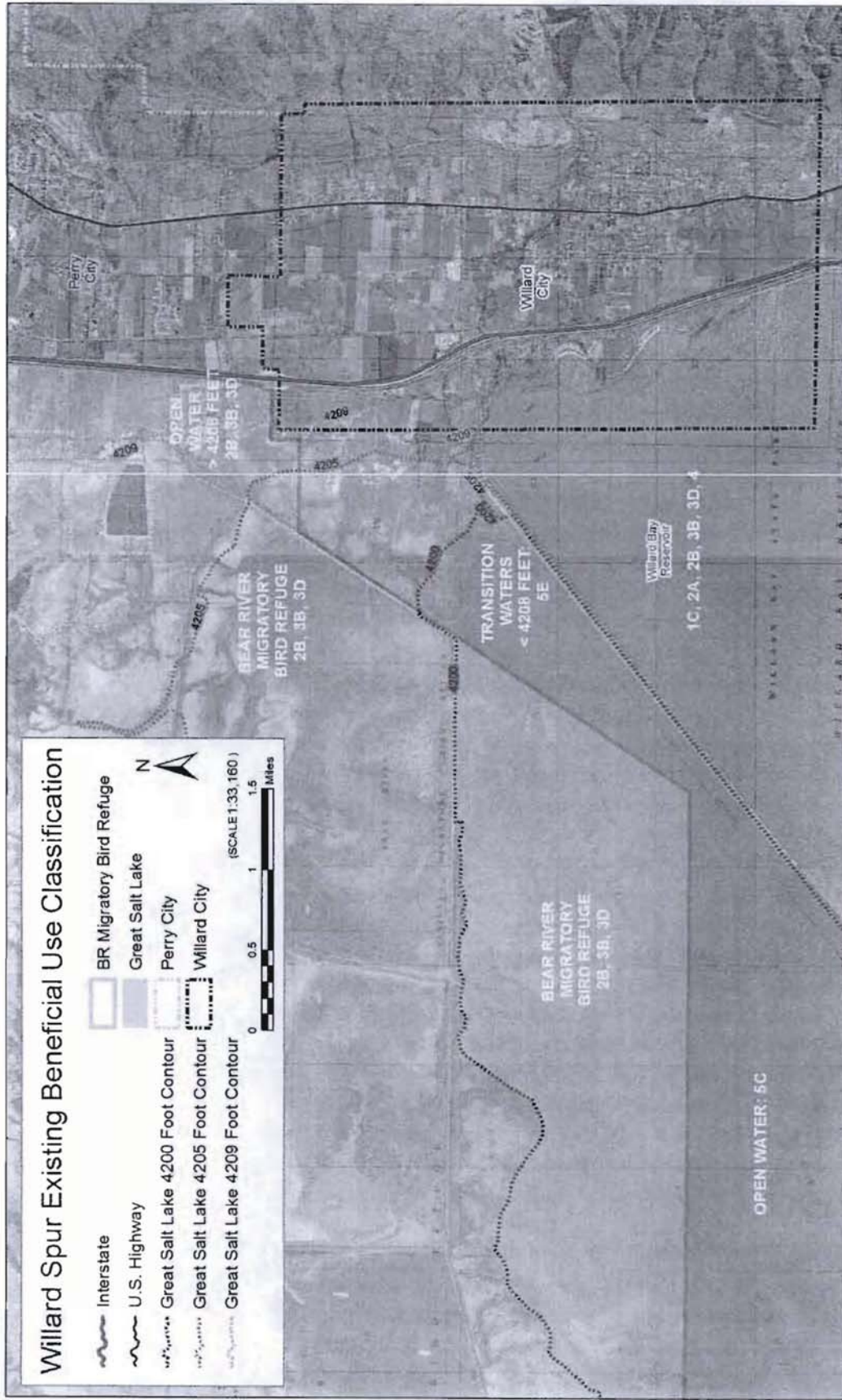
(1) Qualification Criteria

Segments will be subject to tier 2.5 protection requirements only where an OSRW designation has been assigned by the Board through the state rulemaking procedures. The factors to be consid-

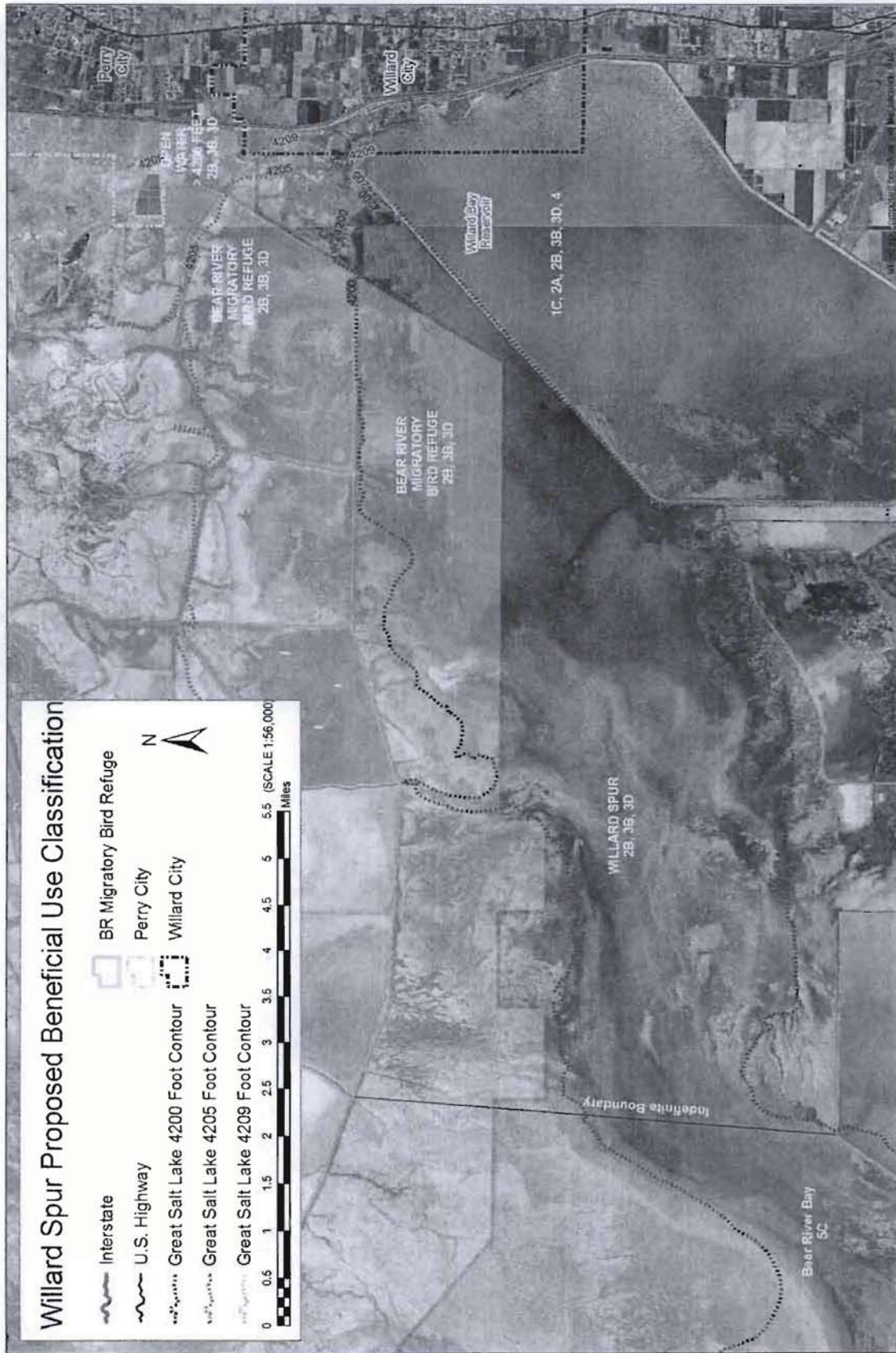
Map 1: Willard Spur General Location



Map 2: Map of Existing Beneficial Use Classifications for Willard Spur



Map 3: Map of Proposed Beneficial Use Classifications for Willard Spur



3.24



**WESTERN RESOURCE**  
ADVOCATES

June 10, 2010

Director Walt Baker  
Executive Secretary  
Water Quality Board  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870

Re: Petition for Amendment to either Utah Admin. Code r. 317-2-12 or r. 317-2-13.

Walt:

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In accordance with Utah Code Ann. § 63G-3-601 and Utah Admin. Code r. 15-2-3, Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association) respectfully submits the enclosed Petition for Rule Change to amend either Utah Admin. Code r. 317-2-12 or, in the alternative, Utah Admin. Code r. 317-2-13.

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Enclosed with this letter is a Petition for Rule Change and accompanying memorandum in support of the proposed rule change. Utah Waterfowl Association respectfully requests that the Water Quality Board exercise its rulemaking power and either (1) provide notice of its intent to exercise its rulemaking power to amend either Utah Admin. Code r. 317-12 or -13 in a manner consistent with this request; or (2) adopt and publish the proposed rule as permitted under Utah Admin. Code R15-2-5.

Additionally, Utah Waterfowl Association respectfully requests a hearing to explicate the intended purpose of the proposed changes to either Utah Admin. Code r. 317-12 or -13. If the Water Quality Board needs any further information in processing this Petition, please do not hesitate to contact me. Thank you for your consideration of this important matter.

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Yours,

ROB DUBUC  
JORO WALKER  
Attorneys for Utah Waterfowl Association

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# Petition for Rule Change

## **Jurisdiction:**

Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association), pursuant to Utah Code Ann. § 63G-3-601 and Utah Admin. Code r. 15-2-3, hereby petition the Water Quality Board (Board) to exercise its rulemaking power and amend Utah Admin. Code r. 317-2-12 to add Willard Bay<sup>1</sup> as a Category 1 water. Separately, and in conjunction with this rule change, Utah Waterfowl Association requests that the Board nominate Willard Bay as an Outstanding National Resource Water. Alternatively, Friends requests that the Board amend Utah Admin. Code r. 317-2-13 to designate the open waters of Willard Bay (to include Willard Spur) above 4,200 feet as class 2B, 3B and 3D.

The proposed rule change-amendment to Utah Admin. Code r. 317-2-12 is set forth below (proposed amendment language emboldened and italicized):

## **R317. Division of Water Quality**

### **R317-2. Standards of Quality for Waters of the State.**

#### **R317-2-12. Category 1 and Category 2 Waters.**

##### **R317-2-12.1 Category 1 Waters**

###### 12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage...

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

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<sup>1</sup> For the purposes of these petitions, references to Willard Bay refer to the unimpounded water body north of the Great Salt Lake Minerals, Harold Crane and Willard Reservoir impounds, south of the Bear River Refuge impounds, and including the Willard Spur down to elevation 4200.

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

***13. Willard Bay (including Willard Spur), open water above approximately 4,200 feet.***

Alternatively, should the Board decline to amend r. 317-2-12 to add Willard Bay as a Category 1 water, Utah Waterfowl Association requests that the Board amend r. 317-2-13 as set forth below (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**

**R317-2. Standards of Quality for Waters of the State**

**R317-2-13. Classifications of Waters of the State**

**R317-2-13.11. National Wildlife, and Other Areas Associated with Great Salt Lake**

	TABLE			
Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D	
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.	2B	3B	3D	
<b><i>Willard Bay (Including Willard Spur)</i></b>				
<b><i>Open Water above approximately     4,200 ft.</i></b>	<b><i>2B</i></b>	<b><i>3B</i></b>	<b><i>3D</i></b>	

**Reason for the Proposed Rule Change:**

The Utah Waterfowl Association has a direct stake in the Board's consideration of the proposed amendment and will be substantially affected by the amendment inasmuch as the present rule currently fails to adequately protect Willard Bay and its pristine water quality, as well as the aquatic wildlife in and around the Bear River Migratory Bird Refuge. See Utah Admin. Code r.317-2-8 ("All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.."). The proposed amendments have substantial value to the citizens of this State because they would provide the necessary protection of wildlife resources that thrive in the Great Salt Lake ecosystems, which are enjoyed by Utah Waterfowl Association and other recreational users of the Lake. Likewise, the proposed amendments have national significance as they provide greater protection for migratory birds, which utilize the Willard Bay area, Bear River Migratory Bird Refuge and surrounding wetlands for nesting and feeding. The legal basis for this proposed rule change is set forth in the accompanying Memorandum in Support of Petition for a Rule Change.

**Address and Daytime Telephone Number of Petitioner:**

Utah Waterfowl Association  
c/o Rob Dubuc  
Western Resource Advocates  
150 South 600 East, Suite 2A  
Salt Lake City, Utah 84102  
Phone: 801.487.9911

**Request for copies of all correspondence, memoranda, or notices:**

Pursuant to Utah Code Ann. § 63G-3-301(10), I hereby request that the Board provide me, as counsel for Utah Waterfowl Association, with complete copies of any correspondence resulting from this Petition, including any rule analysis performed by the Board, advance notice of any rulemaking proceedings, or any other correspondence, memoranda, or notice. Such copies may be sent to me at the above address.

DATED this 10<sup>th</sup> day of June, 2010.



ROB DUBUC  
JORO WALKER  
Attorneys for Utah Waterfowl Association

# MEMORANDUM IN SUPPORT OF PETITION FOR A RULE CHANGE

## INTRODUCTION

Utah Waterfowl Association, FRIENDS of Great Salt Lake, Western Wildlife Conservancy, League of Women Voters of Utah, League of Women Voters of Salt Lake, National Audubon Society, Bridgerland Audubon Society, Utah Airboat Association, Utah Mud Motor Association, the Utah Chapter of the Sierra Club, the Great Salt Lake Yacht Club, and the Utah Physicians for a Healthy Environment (Collectively Utah Waterfowl Association) hereby petition the Utah Water Quality Board (Board) to exercise its rulemaking power pursuant to Utah Code Ann. §65A-2-2 and Admin. Code r. 15-2-3 to amend either Utah Admin. Code r. 317-2-12 or r. 317-2-13. The amendments are described below. Utah Waterfowl Association is directly affected by the amendment since the current rule unnecessarily limits the protection of the designated uses of Willard Bay. Utah Waterfowl Association is dedicated to the protection of the natural resources and recreational opportunities of State water bodies, to include Great Salt Lake. We have participated extensively in processes relating to State and Federal decision making that affect Great Salt Lake, including its ecosystems and Public Trust resources. The amendments would be beneficial to citizens of the State because they would protect critical Public Trust resources.

## PROPOSED AMENDMENTS

The Executive Secretary of the Utah Water Quality Board (Executive Secretary) is authorized by statute to “advise, consult, and cooperate with . . . affected groups in furtherance of the purposes of [the Water Quality Act], Utah Code Ann. § 19-5-106(2), to cooperate with any person in studies and research related to preventing water pollution, § 19-5-106(11), and to exercise all incidental powers necessary to carry out the Water Quality Act. § 19-5-106(10). The Utah Water Quality Board (Board) is authorized by statute to “make rules in accordance with [the] Utah Administrative Rulemaking Act . . . to: (iii) set effluent limitations and standards . . . “ Utah Code Ann. § 19-5-104(1)(f)(iii).

Utah Admin. Rule r. 317-2 delineates the Standards for Quality of Waters of the State. Utah Admin. Rule r. 317-2-12 outlines the Category 1 and Category 2 Waters of the State. A Category 1 water is a water body which has been determined by the Board to be of exceptional recreational or ecological significance requiring protection and which shall be maintained at existing high quality by the Board. Utah Admin. Rule r. 317-2-3.2. New point source discharges of wastewater are prohibited in Category 1 waters. *Id.* A Category 2 water is a water body which is treated as a Category 1 water but allows for a point source discharge if that discharge does not degrade existing water quality. *Id.* Utah Waterfowl Association proposes that the Board amend Utah Admin Rule r. 317-2-12 to include Willard Bay as a Category 1 water. Specifically, we request that the rule be changed to read (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**  
**R317-2. Standards of Quality for Waters of the State.**  
**R317-2-12. Category 1 and Category 2 Waters.**  
**R317-2-12.1 Category 1 Waters**

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage...

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

***13. Willard Bay (including Willard Spur), open water above approximately 4,200 feet.***

Rule 317-2-13 delineates the Classification of Waters of the State. The Board is required to group the waters of the state into classes in order to protect the beneficial uses of those waters. Utah Admin. Code r. 317-2-6. Specifically, we request that the rule be changed to read (proposed amendment language emboldened and italicized):

**R317. Division of Water Quality**  
**R317-2. Standards of Quality for Waters of the State**  
**R317-2-13. Classifications of Waters of the State**  
**R317-2-13.11. National Wildlife, and Other Areas Associated with Great Salt Lake**

TABLE

Bear River National Wildlife Refuge, Box Elder County	2B	3B	3D	
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E

Open Water above approximately  
4,208 ft.

2B 3B 3D

*Willard Bay (Including Willard Spur)*  
*Open Water above approximately*  
*4,200 ft.*

2B 3B 3D

### ANALYSIS

**I. Willard Bay is an Unimpaired Water Body Deserving Both Nomination as a an Outstanding National Resource Water (ONRW) and a Re-categorization as a Category 1 Water Under Utah Law.**

The Federal antidegradation policy states that “where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.” 40 C.F.R. § 131.12(a)(3). The EPA qualification criteria for ONRWs include: (1) location such as federally protected land; (2) previous special designation such as wild and scenic river; (3) existing pristine or naturally-occurring water quality; (4) ecological value such as the presence of threatened or endangered species during one or more life stages; (5) recreational or aesthetic value; and (6) other factors that indicate outstanding ecological or recreational resource value such as rare or valuable wildlife habitat. *Water Quality Standards Handbook*, Chs. 2, 9. (EPA Antidegradation Guidance Region VIII).

While Utah does not have a procedure for designating waters as ONRWs, the State’s “High Quality Waters” classification echoes most of the federal guidelines for ONRWs. Specifically, DWQ regulations state:

Waters of high quality which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or Nation resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as high Quality Waters – Category 1.

Utah Admin. Code r. 317-2-3.2.

The protections provided to an ONRW under Utah law include:

New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. ... Other diffuse sources of wastes shall be controlled to the extent feasible through implementation of BMPs or regulatory programs.

*Id.*

EPA guidance notes that “Outstanding water quality is not a prerequisite for ONRW designation. The only requirement is that the segment have outstanding value as an aquatic resource, which may derive from the presence of exceptional scenic or recreational attributes, or from the presence of unique or sensitive ecosystems that have naturally low water quality (i.e., as measured by conventional parameters).” *Water Quality Standards Handbook* at 9-10. According to the *Water Quality Standards Handbook*, “[t]he public may nominate any state water for ONRW protection at any time by sending a written request . . . [which] should explain why an ONRW designation is warranted” based on one or more of the factors identified above. *Water Quality Standards Handbook* at 10.

Through this Petition for Agency Rulemaking, Utah Waterfowl Association requests that the Board nominate Willard Bay as an ONRW under EPA guidelines, and re-categorize and protect the Bay as a Category 1 water body under Utah law. Willard Bay is a fresh water body that we believe meets the necessary qualifications for designation as an ONRW, and we encourage the Board to move forward with the nomination process. Additionally, we believe that the Bay should be re-categorized as a Category 1 water under Utah law. Willard Bay and its waters intermix with Refuge waters, and these waters are of crucial ecological significance in supporting the Refuge’s migratory bird population and the freshwater fish that inhabit the freshwaters of Bear River Bay and Willard Bay. This designation provides the best method for ensuring that these waters do not become impaired and that the aquatic wildlife that rely on these waters are not jeopardized by discharges of polluted water. As such, we request that the Board direct the Executive Secretary to undertake any studies necessary to determine whether it is appropriate to nominate Willard Bay as an ONRW and re-categorize the Bay as a Category 1 water. Until such a determination can be made, we request that any approval of UPDES permits that would result in a discharge into Willard Bay be stayed.

## **II. The Board Should Reclassify Willard Bay as a Class 2B, 3B, 3D Water**

Should the Board deny Utah Waterfowl Association’s request to nominate Willard Bay as an ONRW and re-categorize the Bay as a Category 1 water, the Association requests that the Board reclassify Willard Bay as a Class 2B, 3B, and 3D water. As justification for its request for reclassification Utah Waterfowl Association asks the Board to consider, *inter alia*, the article entitled *Avian Ecology of Great Salt Lake*, which describes Bear River Bay and Willard Bay as the freshest region of the Lake that receives the largest volume of riverine inflow. Tom Aldrich & Don Paul, *Avian Ecology of Great Salt Lake*, in GREAT SALT LAKE: AN OVERVIEW OF CHANGE, at 344 (Utah Department of Natural Resources, 2002). The article goes on to describe the waters of that portion of the lake fresh enough to support a community of submergent hydrophytes including sago pondweed (*Potamogeton pectinatus*) and widgeon grass (*Ruppia maritima*), and notes that there are significant islands of emergent wetlands in that part of the Lake, especially in the east part of the bay in the Willard Spur. Further evidence that Willard Bay is a freshwater body can be found in the Great Salt Lake Waterbird Survey (Survey) published by the U.S. Fish and Wildlife Service. See

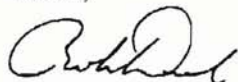
www.wildlife.utah.gov/gsl/waterbirds survey. The survey describes the primary habitat of Willard Bay as Fresh Water, Freshwater Shorelines and Freshwater Wetlands. Survey at p. 121.

Due to the freshwater nature and hydrology of Willard Bay, the Board should, at a minimum, reclassify Willard Bay to ensure the same water class protections as the Refuge. The evidence shows that Willard Bay is a freshwater body of water, and plays host to migratory birds and freshwater fish. Reclassifying Willard Bay as a 2B, 3B, and 3D water is the first step necessary to ensure that the designated uses for both Willard Bay and the Refuge are being met.

### CONCLUSION

The Utah Waterfowl Association respectfully requests that the Board, through its Executive Secretary, exercise its rulemaking power and either (1) provide notice of its intent to exercise its rulemaking power to amend either Utah Admin. Code r. 317-2-12 or -13 in a manner consistent with this request; or (2) adopt and publish the proposed rule as permitted under Utah Admin. Code R15-2-5.

Yours,



ROB DUBUC

JORO WALKER

Attorneys for Utah Waterfowl Association