

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

**Section 401 Water Quality Certification No. DWQ-2024-04002**

**Project Proponents:** Kade Bringhurst  
Principal Engineer  
City of St. George City  
175 East 200 North  
St. George, Utah 84770

**Project:** The City of St. George (Project Proponent) proposes constructing a 75-foot tall earth-fill embankment dam at the eastern edge of Graveyard Wash (Proposed Project). The Proposed Project will also include constructing access roads, a filter station, a spillway, a pipeline, and structures to support the dam. The dam will store approximately 2,000 acres-feet of reuse water from the St. George Regional Water Reclamation Facility. The Project Proponent indicated the Proposed Project is necessary to meet the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Agreement. Water from the reservoir will be pumped into and out of the St. George Reuse Pipeline along Old Highway 91.

The Proposed Project will fill approximately 0.57 acres of wetlands, 0.53 acres of perennial channel (Graveyard Wash), and 0.18 acres of ephemeral channel with sand, gravel drain, rip rap bedding, and rock rip rap. The Proposed Project will also convert aquatic features into open water, indirectly losing approximately 0.65 acres of wetlands, 0.74 acres of perennial channel (Graveyard Wash), and 1.11 acres of ephemeral channel for construction of the dam. The Project Proponent proposes that best management practices be used during construction to reduce sedimentation and erosion. During construction, fill material will only be placed within the footprint of the project site to prevent discharge. Rock rip rap will stabilize the finalized embankment to prevent fill from discharging downstream after construction. The Project Proponent proposed a conceptual compensatory mitigation plan to improve/increase wetland and riparian functions adjacent to the project area near the confluence of Graveyard Wash and the Santa Clara River.

**Location:** The project site is located in Santa Clara, Washington County, Utah, at approximately Latitude 37.14013, Longitude -113.67082.

**Watercourse(s):** This project will permanently impact Graveyard Wash, Emergent Wetlands and an unnamed ephemeral tributary to the Santa Clara River located within the Lower Colorado Watershed.

**USACE Section 404:** SPK-2004-50485

**Effective Date:**

Month, Day, Year

PND DRAFT

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## I. Definitions

- A. **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.
- B. **Category 3 Waters** *“all other waters of the state, point source discharges area allowed and degradation may occur pursuant to the conditions and review procedures outline in UAC R317-2.3.5.”* UACR317-2-3.4
- C. **Designated Beneficial Uses** means a water’s present most reasonable uses, grouped by use classes to protect the uses against controllable pollution. Beneficial uses designated within each class are described in Utah Administrative Code (UAC) R317-2-6 and waterbodies beneficial uses can be found in UAC R317-2-13.
- D. **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.
- E. **Level I Antidegradation Review (ADR):** *“is conducted to insure that existing uses will be maintained and protected.”* UAC R317-2-3.5
- F. **Level II Antidegradation Review (ADR):** *“is conducted to insure that water quality degradation is necessary and that the proposed activity is documented to be both economically and socially important. Level II ADRs are required for any activity that’s impacts are not considered temporary and limited and is likely to result in degradation of water quality.”*
- G. **Project Proponent** *“means the applicant for license or permit or entity seeking certification.”* 40 CFR §121.1.
- H. **Protection Category:** *“Utah’s surface waters are assigned to one of three protection categories that are determined by their existing biological, chemical and physical integrity, and by the interest of stakeholders in protecting current conditions.”* Utah Antidegradation Review Implementation Guidance (V 2.1)
- I. **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
- J. **Total Maximum Daily Load (TMDL)** *“means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.”* UAC R317-1-1
- K. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.
- L. **303(d) list** is a state’s list of impaired and threatened waters, including but not limited to; streams, lakes, and reservoirs adopted to implement the Clean Water Act Section 303(d).

## II. Acronyms

AU – Assessment Unit  
BMPs – Best Management Practices  
CFR – Code of Federal Regulations  
CWA – Clean Water Act  
DEQ – Utah Department of Environmental Quality  
DWQ – Utah Division of Water Quality  
EA – Environmental Assessment  
EPA – Environmental Protection Agency  
mg/L – milligrams per liter  
MS4 – Municipal Separate Storm Sewer System  
NEPA – National Environmental Policy Act  
NOI – Notice of Intent  
NTU – Nephelometric Turbidity Units

SWPPP – stormwater pollution prevention plan  
TMDL – Total Maximum Daily Load  
TSS – total suspended solids  
UAC – Utah Administrative Code  
UPDES – Utah Pollutant Discharge Elimination System  
USACE – U.S. Army Corps of Engineers  
WQC – Water Quality Certification  
WQS – Utah Water Quality Standards  
WOTUS – Waters of the United States

### III. Executive Summary

Pursuant to Section 401 of the CWA 33 U.S.C. Section 1251 et seq., the DWQ grants Water Quality Certification (Certification) to the City of St. George for the proposed Graveyard Wash Reservoir (Proposed Project) in Santa Clara, Washington County, Utah. Certification is subject to the conditions outlined in this document and adherence to any U.S. Army Corps of Engineers (USACE) Section 404 Permit Conditions. The conditions outlined in this Certification are necessary to assure compliance with effluent limitations, monitoring requirements, and/or other applicable laws and regulations adopted for state primacy of the CWA.

DWQ's conditions are based on and are necessary to comply with applicable state rules. Specifically, the following Utah rules represent overarching considerations that require the conditions outlined by this document to apply to the USACE Section 404 Permit: Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated*" UAC R317-2-7.1.a. Additionally, "*all actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses*" UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3.

A pre-filing meeting was requested by Glen Carnahan of Alpha Engineering on August 11, 2023. DWQ attended a pre-filing meeting with the project proponent on August 24, 2023. On April 11, 2024 DWQ attended a second pre-filing meeting with Glen Carnahan and Kade Bringhurst from the City of St. George. Glen Carnahan submitted a complete 401 Water Quality Certification application on behalf of Kade Bringhurst on May 29, 2024. DWQ has until November 29, 2024 to issue, waive or deny a certification decision.

### IV. Background

The Project Proponent proposes constructing a 75-foot tall earth-fill embankment dam in Graveyard Wash for the Proposed Project. The dam will create Graveyard Wash Reservoir that will store approximately 2,000 acre-feet of reuse water from the St. George Regional Water Reclamation Facility. The Graveyard Wash reservoir will act as one of the water storage reservoirs for the City of St. George's Water Reuse Project, which pipes water from the St. George Water Reclamation Facility through the City of St. George and surrounding communities including the Shivwits Reservation and Gunlock Reservoir. The Proposed Project is needed to provide Shivwits Band with the water required according to the Utah Water Rights Settlement Agreement. In accordance with the terms of the

Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Agreement, the City of St. George is required to provide the Shivwits Band with 2,000 acre-feet of water from their resources annually. The Proposed Project will also require the construction of access roads, a filter station, a spillway, a pipeline, and structures to support the dam. Water from the dam will be pumped into and out of the St. George Reuse Pipeline running along Old Highway 91, which has already been constructed. No material or water will be discharged from the dam under normal operating conditions.

The total project area is an 82-acre site adjacent to Old Highway 91 on Graveyard Wash, approximately 1,100 feet upstream of the confluence with the Santa Clara River. The area surrounding Graveyard Wash is currently undeveloped and not in use. An ephemeral stream approximately 1.5 miles long that is a tributary to the Sana Clara River is located within the project site. The discharge of fill material and work will occur in approximately 4.78 acres of Waters of the U.S. (WOTUS). The Proposed project will permanently impact approximately 0.57 acres of wetlands, 0.53 acres of the perennial channel (Graveyard Wash), and 0.18 acres of an ephemeral channel with the placement of fill material to construct the 75-foot tall dam and create the 2,000-acre-foot reservoir. Filling the reservoir will also convert aquatic features into open water, resulting in the indirect loss of approximately 0.65 acres of wetlands, 0.74 acres of perennial channel (Graveyard Wash), and 1.11 acres of ephemeral channel. The Project Proponent proposes that the structural fill for the dam will be processed from on-site excavation and borrow sources. The material used to construct the dam would consist of approximately 30,746 CY of filter sand, 23,271 CY of gravel drain, 18,645 CY of riprap bedding, and 23,920 CY rock rip rap to construct the dam to its final elevation for use. The top of the dam is proposed to reach 2,900 feet, with a proposed high-water elevation of 2,842 feet. Minor temporary impacts to Graveyard Wash for the pipeline installation near the toe of the proposed dam will also occur from the Proposed Project.

The Project Proponent evaluated project alternatives and impacts in an Environmental Assessment completed for the St. George Water Reuse Project in 2004. The Project Proponent proposes that the work for the Proposed Project will be accomplished during a low-flow period. The Project Proponent is collaborating with U.S. Fish and Wildlife to work on plans from the St. George Regional Water Reclamation Facility to maintain flows on the Virgin River. Best Management Practices will be implemented and maintained to prevent an increase in turbidity downstream and minimize sedimentation and erosion during streamside or instream work. Fill materials will only be placed within the dam project site's footprint to prevent any fill from being discharged downstream. The dam will also be protected with riprap to prevent any fill from discharging after completion. The dam will be maintained per the Utah Dam Safety Guide plan, and an emergency response plan will be developed. A Stormwater Permit will be acquired for the proposed project construction. The Project Proponent will reduce the impact on the surrounding wetland areas during construction. A Stream Alteration Permit No. 23-81-09SA has been approved for the Proposed Project's work within the stream and bank. The St. George Regional Water Reclamation Facility, as well as the Water Reuse Project, will be separately permitted through the DWQ

The Proposed Project is still finalizing the proposed project's mitigation plans. The preliminary mitigation plan proposed includes creating a 15-acre riparian area and 1.6 acres of wetland area near Graveyard Wash Reservoir, which will be purchased and maintained by the City of St. George. The areas will be planted with native desert riparian species or xeroriparian vegetation to replace the removed vegetation within Graveyard Wash and provide habitat. The City of St. George will also provide 35.05 acres of desert tortoise habitat near the existing St. George Regional Water Reclamation Facility on the south end of St. George City.

## V. Aquatic Resource Impacts

All Waters of the State of Utah (defined in UAC R317-1-1) are protected from pollutant discharges that affect water quality by narrative standards (see UAC R317-2-7.2); broadly, discharges should not become offensive or cause undesirable conditions in human health effects or aquatic life. In addition, some particularly sensitive classes of water are further protected from deleterious effects of specific pollutants by application of numeric criteria to designated beneficial uses of that waterbody. Listed below are the water features, grouped by Assessment Unit (AU), impacted by the Project, their associated designated beneficial uses (see UAC R317-2-6 and UAC R317-2-13) and any impairments:

### A. Graveyard Wash and an ephemeral stream with in an undefined AU in the Lower Colorado River Watershed.

#### 1. Beneficial Use Designations

- a. Class 2B: Protected for infrequent primary contact recreation. Examples include, but are not limited to, wading, and fishing.
- b. Class 3B: Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.
- c. Class 4: Protected for agricultural uses including irrigation of crops and stock watering.

#### 2. Impairments and Total Maximum Daily Loads (TMDLs): N/A

#### 3. Antidegradation Review

Virgin River and tributaries, from state line to Quail Creek diversion in the Lower Colorado River Watershed Management Unit are considered Category 3 waters for antidegradation purposes. Category 3 waters in Utah are waters where “*point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5*”, as described in UAC R317-2-3.4. The antidegradation policy allows for discharges where the water quality effects of the proposed Project are determined to be temporary and limited after consideration of the factors identified in UAC R317-2-3.5.b.4., and where best management practices (BMPs) would be employed to minimize pollution effects.

### B. Wetlands.<sup>1</sup>

#### 1. Beneficial Use Designations

- a. Class 2B: Protected for infrequent primary contact recreation. Examples include, but are not limited to, wading, and fishing.
- b. Class 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.

#### 2. Impairments and Total Maximum Daily Loads (TMDLs): None

#### 3. Antidegradation Review

Wetlands are considered Category 3 waters for antidegradation purposes. Category 3 waters in Utah are waters where “*point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5*”, as described in UAC R317-2-3.4. The

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<sup>1</sup> In UAC R317-2-13, all waters not specifically classified are presumptively classified 2B and 3D.

antidegradation policy allows for discharges where the water quality effects of the proposed Project are determined to be temporary and limited after consideration of the factors identified in UAC R317-2-3.5.b.4., and where best management practices (BMPs) would be employed to minimize pollution effects.

## VI. Certification Conditions

- A. All activities with a potential discharge to WOTUS must implement and maintain BMPs to fully protect the waterbodies assigned beneficial use(s).
- B. Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, etc.) shall not be stored, disposed of, or accumulated or conveyed through adjacent to or in immediate vicinity WOTUS unless adequate measures and controls are provided to ensure those materials would not enter WOTUS in the State of Utah. **Any spill or discharge of oil or other substance which may cause pollution to WOTUS in the State of Utah, including wetlands, must be immediately reported to the Utah DEQ Hotline at (801) 536-4123, a 24-hour phone number.**
- C. All activities conducted in WOTUS in the State of Utah shall be conducted in the “dry” to the maximum extent practicable, by diverting flow utilizing cofferdams, berms constructed of sandbags, clean rock (containing no fine sediment) or other non-erodible, non-toxic material. All diversion materials shall be removed at the completion of the work. The Project Proponent shall consider conducting instream work during low flow conditions and work shall not be conducted during spawning season. Additionally, construction machinery shall not be operated within WOTUS in the State of Utah unless it is unavoidable, in which case it shall be conducted in the “dry” as stated above. The work shall be conducted in a manner to minimize the duration of the disturbance, turbidity increases, substrate disturbance, and minimize the removal of riparian vegetation. Construction machinery shall be clean to prevent the transfer of aquatic invasive species.
- D. Project activities shall not increase water turbidity by more than 10 Nephelometric Turbidity Units (NTUs) in waterbodies classified as beneficial use class 2A for recreation and 3B for warm water aquatic life. Project activities shall not cause an increase in water turbidity by more than 15 NTUS in waterbodies classified as beneficial use class 3D. Project Proponents must continuously monitor turbidity during instream construction to ensure turbidity increases are within the limits listed above. The Project Proponents must provide monthly reports to DWQ during instream construction in waterbodies with class 2A, 3B, and 3D beneficial use designations that include at a minimum: baseline (reference) turbidity measurements and measurement in each waterbody where instream construction is occurring.
- E. Construction activities that disturb either greater than one acre of land, or less than one acre of land and is part of a larger common plan of development that would disturb greater than one acre, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000<sup>[2]</sup>). The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not be

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<sup>2</sup> [https://lf-public.deq.utah.gov/WebLink/Search.aspx?searchcommand={\[:\[DEQ%20Number\]=%22DWQ-2024-004974%22}&repo=Public&?dbid=0](https://lf-public.deq.utah.gov/WebLink/Search.aspx?searchcommand={[:[DEQ%20Number]=%22DWQ-2024-004974%22}&repo=Public&?dbid=0)

limited to, final site maps and legible plans, location of storm water outfalls/discharges, and information pertaining to any storm water retention requirements.

- F. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000<sup>[3]</sup>) applies to the construction dewatering of uncontaminated groundwater or surface water sources due to construction activities; hydrostatic testing of pipelines or other fluids vessels; water used in disinfection of drinking water vessels; and other similar discharges in the State of Utah that have no discharge of process wastewater. The permit requires submission of a Notice of Intent (NOI); maintenance of a discharge log; development and implementation of a dewatering control plan; and monitoring for Flow, Oil & Grease, pH, Total Suspended Solids (TSS), and Chlorine (required when chlorinated water is used and discharged to a stream with a chlorine standard). Discharge Monitoring Reports (DMRs) are required to be submitted monthly, regardless of whether a site discharges in a particular month.

## VII. Condition Justification and Citation

- A. Implementation of BMPs. Project approval is conditioned on implementation of BMPs, which are required to be implemented by the antidegradation policy in UAC R317-2-3, water quality standards may be violated unless appropriate BMPs are incorporated to minimize the erosion-sediment and nutrient load. Violations of water quality standards could cause a waterbody to fail to meet its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1 "*Existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.*" As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3 when making a Certification decision. If appropriate BMPs are incorporated, there is assurance that the Project will not violate water quality standards or impair a waterbody's beneficial use.

Citation(s): UAC R317-2-3.1, UAC R317-15-6.1, UAC R317-15-6.1.A.1., UAC R317-15-6.1.A.2., UAC R317-15-6.1.A.3.

- B. Proper Storage of Hazardous and Otherwise Deleterious Materials. Project approval is conditioned on proper storage of hazardous and otherwise deleterious materials, and notification of any discharge of those materials, to assure that water quality and narrative standards are not violated. When projects are occurring in or around waterbodies, there is a chance for pollutants to inadvertently be spilled/discharged into waterbodies due to increased risk from project related activities (e.g. presence of machinery, onsite chemical and gas storage, improper waste storage, and failure to use proper BMPs). To prevent or reduce the possibility that hazardous and otherwise deleterious materials are inadvertently discharged into a waterbody, Project Proponents must not store, dispose of, or accumulated such materials adjacent to or in immediate vicinity of WOTUS unless adequate measures and controls are provided to ensure those

<sup>3</sup> [https://lf-public.deq.utah.gov/WebLink/Search.aspx?searchcommand={\[:\[DEQ%20Number\]=%22DWQ-2024-004277%22}&repo=Public&?dbid=0](https://lf-public.deq.utah.gov/WebLink/Search.aspx?searchcommand={[:[DEQ%20Number]=%22DWQ-2024-004277%22}&repo=Public&?dbid=0)

materials would not enter waters of the State. If there is a discharge to WOTUS in the State of Utah, it must be immediately reported to the DEQ, as stated in Utah Code Section 19-5-114. An inadvertent discharge of pollutants can cause violations with Utah's Narrative Standards, which states "*It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3*" UAC R317-3-7.2. Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated*" UAC R317-2-7.1.a. Discharges of pollutants, even inadvertently, could cause both a violation of applicable water quality standards and possibly interfere with a waterbodies designated uses.

Citation(s): Utah Code § 19-5-114, UAC R317-3-7.2, UAC R317-2-7.1.A, UAC R317-15-6.1., UAC R317-15-6.1.A.1., UAC R317-15-6.1A.2.

- C. Dry Conditions to the Maximum Extent Practicable. Project approval is conditioned on conducting activities under dry conditions to the maximum extent practicable to assure that water quality standards are not exceeded. Construction machinery used within a waterbody can cause significant impacts to water quality if adequate precautions are not taken. When it is unavoidable to operate construction machinery within the waterbody the Project Proponent should focus on minimizing the duration of the disturbance, turbidity increase, substrate disturbance, removal of riparian vegetation, and work shall be conducted in the "dry" to the maximum extent practicable. Minimizing the duration of impact reduces the chance that the impacts will accumulate and cause significant impacts to water quality. Minimizing turbidity increases is important because the State of Utah has numeric water quality criteria for turbidity in certain use designations, which could be violated if the Project Proponent does not take proper steps to minimize the increases. Water quality criteria for turbidity will be violated if there is an increase of 10 NTUs in waterbodies with designated uses related to recreation and if there is an increase of 10 NTUs (class 3A and 3B) or 15 NTUs (class 3C and 3D) in waterbodies with aquatic wildlife designated uses. UAC R317-2-14.1 and UAC R317-2-14.2. Conducting work in the "dry" to the maximum extent practicable will help reduce the risk of the numeric criteria for turbidity to be exceeded, as well as reduce the risk of a significant sediment load being transported downstream. Discharges of sediment can not only violate numeric criteria, but also, risk violating Utah's narrative standard "*It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3*." UAC R317-2-7.2. Violations of numeric and narrative criteria could cause a waterbody not to meet its designated beneficial use and a transport of sediment downstream could prevent a downstream waterbody from meeting its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1

*“Existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses”*. Additionally, *“All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses”* UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge *“impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6”* UAC R317-15-6.1.A.1., *“exceeds water quality criteria, either narrative or numeric, in Section R317-2-7”* UAC R317-15-6.1A.2. or *“fails to meet the antidegradation (ADR) requirements of Section R317-2-7”* UAC R317-15-6.1.A.3 when making a certification decision.

Citation(s): UAC R317-2-3.5., UAC R317-2-7.1.A., UAC R317-2-14.1, UAC R317-2-14.2., UAC R317-2-7.1.a., UAC R317-2-7.2., UAC R317-2-3.1, UAC R317-2-8. , UAC R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

- D. Turbidity Increases and Instream Construction Monitoring. Beneficial uses associated with recreation and aquatic life have been assigned numeric criteria for turbidity. An increase of more than 10 NTUs in class 2B and 3A waterbodies above the turbidity of that waterbody would be a violation of instream criteria for waterbodies that have recreation or aquatic life uses. Similarly, an increase of more than 15 NTUs in class 3D waterbodies above the turbidity of that waterbody would be a violation of instream criteria for waterbodies that have aquatic life uses. UAC R317-2-14.1 and UAC R317-2-14.2. Therefore, turbidity increases above those allowed by this Certification could cause the waterbody to fail to meet its designated beneficial use classes. Turbidity monitoring during instream construction in waterbodies with class 2B, 3A and 3D beneficial uses designations will ensure turbidity increases do not violate Utah’s water quality standards. Utah’s antidegradation policy states *“existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses”* UAC R317-2-3.1. Failure to minimize turbidity increases that result in the failure to maintain beneficial use class 2B or 3A would be considered a violation of Utah’s rules and promulgated standards of quality for waters of the State, specifically Utah’s antidegradation policy found at UAC R317-2-3. The Director will ordinarily consider whether the proposed discharge *“impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6”* UAC R317-15-6.1.A.1., *“exceeds water quality criteria, either narrative or numeric, in Section R317-2-7”* UAC R317-15-6.1A.2. or *“fails to meet the antidegradation (ADR) requirements of Section R317-2-7”* UAC R317-15-6.1.A.3 when making a certification decision.

Citations: UAC R317-2-3.1, UAC R317-2-3, UAC R317-2-14.1, UAC R317-2-14.2 R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

- E. UPDES Storm Water General Permit for Construction Activities (Permit No. UTRC00000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. According to UAC R317-8-3.9 (6)(d), construction activities that result in a land disturbance of equal to or greater than one acre, including clearing, grading, and excavation are “industrial activities” under UAC R317-8-3.9(1)(a) and are therefore required to obtain and comply with a UPDES Permit for storm water discharges. This only applies to projects that meet or exceed one acre of disturbance.

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

- F. UPDES General Permit for Construction Dewatering (Permit No. UTG070000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. Under the authority granted by UAC R317-8-2.5, the Director issued the General Permit for Construction Dewatering and Hydrostatic Testing, UPDES Permit No. UTG070000 renewed and effective as of June 10, 2024. UPDES Permit No. UTG070000 applies to construction dewatering of uncontaminated groundwater or surface water sources due to construction activities, hydrostatic testing of pipelines or other fluids vessels, water used in disinfection of drinking water vessels and other similar discharges in the State of Utah that have no discharge of process wastewater. This only applies to projects that require dewatering and discharge to surface water.

Citation(s): UAC R317-8-2.5

## **VIII. Disclaimers**

### **A. Fees**

1. The legislatively-mandated fee for the 2025 fiscal year is \$125.00/hour for review and issuance of the Section 401 Water Quality Certification. A quarterly invoice will be sent and your payment is due within 30 days.

### **B. Disclaimers**

1. The Project Proponent must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the Project. This Section 401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
2. This Section 401 Certification does not preclude the Project Proponent's responsibility of complying with all applicable Federal, State or local laws, regulations or ordinances, including water quality standards. Permit coverage does not release the project proponent from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.
3. A Project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this Section 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.

## **IX. Public Notice and Comments**

As in UAC R317-15-5., this Certification decision is subject to a 30 public notice period. After considering public comment, the Director may execute the Certification issuance, revise it, or abandon it.

### **A. Public Notice Dates:**

### **B. Public Notice Comments/Response:**

- C. During finalization of the Certification certain dates, spelling edits, and minor language or formatting corrections may have been completed. Due to the nature of these changes they were not considered major and the Certification will not be Public Noticed again.

**X. Water Quality Certification**

The Utah DWQ certifies that if the Project Proponents adhere to the conditions outlined in this Certification and adheres to any USACE Section 404 Permit Conditions, then the Project will comply with water quality requirements and applicable provisions of the CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

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John K. Mackey P.E., Director

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Date

DWQ-2024-005392

PENDING