

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

FILED

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**U.S. EPA REGION 8
HEARING CLERK**

IN THE MATTER OF:

Utah County, Utah,

Respondent

Docket No. CWA-08-2025-0007

**ADMINISTRATIVE ORDER
ON CONSENT**

Section 309(a)(3) of the Clean Water
Act, 33 U.S.C. § 1319(a)(3)

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is voluntarily entered into by the United States Environmental Protection Agency (the EPA) and Utah County, Utah (Respondent). This Consent Order concerns restoration for environmental damage caused by alleged illegal discharges of dredged or fill material to waters of the United States within an approximate 1,000-acre tract in connection with construction of the Loafer Mountain Parkway in Utah County, Utah, located at or near Latitude 40.0674°N and Longitude 111.6884°W (the Site).

II. STATUTORY AUTHORITY

2. This Consent Order is issued under section 309(a) of the Clean Water Act (the Act), 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned official. This Consent Order is based on the following findings of violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with other provisions of the Act, including section 404 of the Act, 33 U.S.C. § 1344.

III. PARTIES BOUND

3. This Consent Order shall apply to and be binding upon the EPA and upon Respondent and Respondent's agents, successors, and assigns. Each signatory to this Consent Order certifies that he or she is authorized to execute and legally bind the party he or she represents to this Consent Order. No change in ownership of the Site shall alter Respondent's responsibilities under this Consent Order unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to

such transfer, Respondent shall notify the EPA at the addresses specified in paragraph 35, below.

IV. STATEMENT OF THE PARTIES

4. In signing this Consent Order, Respondent neither admits nor denies the Findings in paragraphs 5 through 26, below. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings of Fact and Violation in any proceeding to enforce this Consent Order or in any action under this Consent Order.

V. FINDINGS OF FACT AND VIOLATION

5. As a county, Respondent Utah County is a “municipality” as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4).
6. As a “municipality” under the CWA, Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).
7. At all relevant times, the Respondent owned, managed, operated on, or otherwise controlled property at the Site.
8. Beer Creek flows through the Site.
9. Beer Creek is a perennial tributary of the Benjamin Slough.
10. The Benjamin Slough is a perennial tributary of Utah Lake.
11. Utah Lake is a navigable in fact water.
12. Commencing on or around November 1, 2022, in the course of conducting mechanical land-clearing and filling activities for construction of the Loafer Mountain Parkway, Respondent and/or those acting on behalf of Respondent discharged dredged and/or fill material into approximately 1,224 linear feet along a perennial stream channel, including Beer Creek and tributaries of Beer Creek, and 6.04 acres of wetlands adjacent to Beer Creek.

13. The activities described in paragraph 12, above, were performed using common earthmoving vehicles and equipment.
14. The vehicles and equipment used in the activities described in paragraph 12, above, are and were at all relevant times each a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).
15. The material discharged at the Site and described in paragraph 12, above, is and was at all relevant times “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
16. Beer Creek, the tributaries of Beer Creek and adjacent wetlands mentioned in paragraph 12, above, Benjamin Slough, and Utah Lake are and were at all relevant times “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
17. The placement of dredged and/or fill material into Beer Creek and its adjacent wetlands described in paragraph 12, above, constitutes the “discharge of pollutants” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).
18. The United States Army Corps of Engineers (Corps) conducted an initial inspection of the Site on August 30, 2023. The EPA conducted an inspection of the Site on May 2, 2024. The inspections of the site confirmed the activities listed in paragraph 12, above.
19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with certain other provisions of the Act, including section 404, 33 U.S.C. § 1344.
20. Section 404 of the Act, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
21. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

22. In 2017, the Corps issued a permit to Respondent authorizing certain impacts on waters of the United States in connection with the Loafer Mountain Parkway project. That permit, however, expired on August 22, 2022, before Respondent began the construction for the project. In addition, Respondent conducted additional work, not authorized in the expired permit, resulting in additional discharges included in the discharges described in paragraph 12, above.
23. Respondent was not authorized by a permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 12.
24. The activities conducted by Respondent and/or by persons acting on Respondent's behalf as described in paragraph 12, above, violate section 301(a) of the Act, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondent into waters of the United States without authorization under section 404 of the Act, 33 U.S.C. § 1344, or any other provision of the Act, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).
25. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the Act's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the Act, 33 U.S.C. § 1251(a). Restoration is appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities.
26. This Consent Order was issued after consultation and coordination with the Corps' Sacramento District, Bountiful, Utah, Regulatory Office.

VI. ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS OF FACT AND VIOLATION and pursuant to the authority vested in the Administrator of the EPA pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), as properly delegated to the undersigned official, it is hereby ORDERED, and Respondent agrees:

27. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.
28. Respondent has notified the EPA that it intends to engage the services of Lars Andersen of Consor Engineering LLC to prepare the mitigation plan referenced in paragraphs 29 - 32, below (Plan) and directly supervise all work performed pursuant to the Plan once it is approved by the EPA. If Respondent engages a different individual to perform any of these functions, Respondent shall ensure that this individual is experienced in stream and wetlands restoration and shall, no later than 10 days after hiring that consultant, provide the EPA the name and qualifications, including professional resume, of that individual.
29. Within 30 days of receipt of this Consent Order, Respondent shall submit to the EPA for review, comment, and approval a Plan prepared by the individual consultant referenced in paragraph 28, above. The plan must detail the appropriate mitigation required for the unauthorized discharge of any dredged and fill material into waters of the United States at the Site.
30. The Plan shall be prepared in accordance with the “U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals” guidelines attached as Exhibit A. The Plan shall include:
 - a. A complete assessment of the impacts to Beer Creek and adjacent wetlands due to Respondent’s discharges of dredged and fill material at the Site;
 - b. A site map at an appropriate scale showing the entire area of disturbance. The site map shall include existing undisturbed natural features that were not impacted and clearly identify all unauthorized man-made disturbances, fills, excavations, road crossings, culverts, structures, and any other work;

- c. A detailed description and schedule for all work and activities to be accomplished, including applying no later than 60 days after the EPA approves the Plan for any required permits related to completing all aspects of the work;
 - d. A detailed description of how the work and activities will provide compensatory mitigation;
 - e. A timeline for completion of compensatory mitigation;
 - f. A description of all costs associated with compensatory mitigation, including the costs of all consultations, permits, construction and monitoring;
 - g. A process after mitigation is complete for recording a deed restriction prohibiting future development of the mitigation area.
31. The EPA will review the Plan and approve it, approve it with modifications, or reject it with comments. If the EPA rejects the Plan, Respondent shall, within 30 calendar days after receipt of the EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by the EPA.
32. Upon receiving the EPA's written approval of the Plan, Respondent shall obtain all necessary permits to implement the Plan and then commence all activities in accordance with the approved Plan, including the Plan's timeframes and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits and permit amendments to the EPA within seven calendar days of issuance of each permit or amendment.
33. All activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken under the direct, on-site supervision of the consultant referenced in paragraph 28, above, unless otherwise approved in advance by the EPA.
34. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps under section 404 of the Act. If any such permit is required, Respondent shall

obtain such permit(s) and provide a copy or copies to the EPA pursuant to paragraph 32, above, prior to initiating any work that is to be performed pursuant to this Consent Order.

Jason Gipson
Chief, Utah Regulatory Section
US Army Corps of Engineers
Sacramento District, Regulatory Division
533 West 2600 South, Suite 150
Bountiful, UT 84010-7744
Telephone: (801) 725-8380 ext 8314
Email: Jason.A.Gipson@usace.army.mil

35. Respondent shall submit all notifications under this Consent Order and related correspondence to:

Zachary Schlachter, 8ECA-W-NW
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone: (720) 751-3305
Email: schlachter.zachary@epa.gov

A copy of all notifications and related correspondence also shall be provided to:

Peggy Livingston, 8ORC-LE-R
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone: (303) 312-6858
Email: livingston.peggy@epa.gov

36. In addition to the notification requirements set forth above, after issuance of any Corps authorization for the restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

37. The Plan and any other deliverables, reports, specifications, schedules, permits, and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits, or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to the EPA enforcement.
38. Until termination of this Consent Order, the EPA, the Corps, and their authorized representatives and contractors shall have the authority at all reasonable times to enter the Site to:
- a. Inspect and monitor progress of the activities required by this Consent Order;
 - b. Inspect and monitor compliance with this Consent Order;
 - c. Inspect and review any records relevant to this Consent Order; and
 - d. Verify and evaluate data and other information submitted to the EPA or the Corps.

This Consent Order shall in no way limit or otherwise affect the EPA's authority or the authority of any other governmental agency to enter the Site; conduct inspections; have access to records; issue notices and orders for enforcement, compliance, or abatement purposes; or monitor compliance pursuant to any statute, regulation, permit, or court order.

39. This Consent Order shall be effective upon receipt by Respondent of a fully executed copy.
40. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to the Consent Order.
41. The EPA agrees to submit all notifications and correspondence to:
- | | |
|---|---------------------------------------|
| Richard J. Nielson | with a copy to: |
| Public Works Director / County Engineer | |
| Utah County | Civil Division Chief |
| 2855 South State | Utah County Attorney's Office |
| Provo, Utah 84606 | 100 East Center Street, Suite 206 HCH |
| 801-851-8600 | Provo, Utah 84606 |
| richardjn@utahcounty.gov | 801-851-8001 |

42. Any party hereto may, by notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.
43. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify the EPA orally as soon as possible and in writing within ten working days from the date Respondent first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to minimize the delay, and a timetable by which those measures will be or have been implemented. Notification to the EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondent to comply with the requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.
44. If Respondent demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence and that Respondent has taken all reasonable measures to prevent or minimize such delay, the EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. The EPA's determination on these matters shall be made as soon as possible, and in writing within ten working days, after the receipt of Respondent's written notification of the event. The EPA and Respondent agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.
45. Each party shall bear its own costs and attorneys' fees in connection with this matter.
46. Respondent understands and acknowledges the following:
 - a. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. § 19.4, authorizes civil penalties of up to \$66,712 per day for each

violation of an order issued by the Administrator of the EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a).

- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of their obligations to comply with any applicable federal, state, tribal, or local law or regulation.
- c. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondent to a civil action under section 309 of the Act, 33 U.S.C. § 1319, for violation of this Consent Order.

47. This Consent Order shall remain in effect until a written notice of termination is issued by the EPA following compliance with all requirements of this Consent Order and the Plan. Respondent may petition the EPA to terminate this Consent Order upon completion of the requirements in this Consent Order and the Plan, as well as demonstrated compliance with the Act. The EPA its sole discretion, will determine whether to grant such a petition from Respondent.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: _____

By: _____
Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance
Assurance Division

**UTAH COUNTY,
Respondent**

Date: December 4, 2024

By: _____
DocuSigned by:
Brandon B. Gordon
Brandon B. Gordon
Chair
Utah County Board of Commissioners