

MORTON SALT

A K+S Group Company

January 15, 2014

Walter Baker
Utah Division of Water Quality
195 North 1950 West
Salt Lake City, UT 84114

Re: 401 Water Quality Certification No. SPK 2011-00755

Dear Mr. Baker:

Under section 401 of the Clean Water Act (CWA), the Utah Division of Water Quality (Division) must certify that any federally licensed or permitted activity complies with Utah's water quality standards. Morton Salt (Morton) submits these comments in response to the Division's proposed 401 water quality certification for Union Pacific Railroad's (UPRR) closure of the east culvert on its causeway in the Great Salt Lake (GSL).

Morton is concerned that the Division is approving a project before the applicant is able to demonstrate the impacts of the project. The Division's certification does a good job of requiring monitoring to enable the Division to evaluate the impacts of the project, but this chronology is backwards—UPRR should demonstrate the impacts of the project before the Division grants its 401 certification. UPRR should be required to show that no adverse water quality impacts will result from its project as opposed to Morton, or anyone else, demonstrating that there is an adverse impact.

Morton understands the emergency nature of this project. Yet, Morton has been following this project since 2011 and UPRR has had these past two years to monitor the impacts of closing the culverts. Because UPRR is asking the Division to grant a 401 certification before it can demonstrate the impacts of the project, UPRR should understand the Division's need to implement more stringent monitoring and mitigation requirements and a constrained time frame in which to perform such monitoring.

The potential impacts of UPRR's project are unknown. While Morton supports the Division requiring an Interim Monitoring Plan within 30 days, and public comment within 90 days of its certification, Morton is concerned that it will experience adverse impacts of the project before such impacts are detected by UPRR's monitoring and that it will be too late for Morton to address the impacts. The Division's certification should take a precautionary approach instead of a wait and see approach.

In its anti-degradation review application, UPRR avoids the Phase II anti-degradation review application by stating that the impacts to the GSL will be temporary. UPRR classifies the effects of its closing both the east and west culverts as temporary because it will only last as long as the Corps' temporary emergency closure permit (until March 18, 2017) or until a long term compensatory mitigation plan is approved and implemented. Closing the culverts for up to four years is not temporary and the Division should require UPRR to do a Phase II anti-degradation



review, which includes consideration of “social and economic losses that may result from the project.”

The Division’s proposed certification mentions that UPRR is proposing a 180’ bridge to compensate for the impacts of closing the east and west culverts. UPRR’s construction of the bridge should be a condition of the Division’s certification and the Division should reserve the right to modify its certification based on UPRR’s monitoring to include any measure that will insure the brine transfer between the north and south arms of the GSL is not adversely impacted.

The Division’s requirement for UPRR to monitor and report the impacts of closing the culverts does not make clear the mitigation actions UPRR will be required to take. The Division should make clear that UPRR will be required to mitigate any adverse water quality impacts the monitoring reveals, including the loss of bi-directional flows between the north and south arms. UPRR should be required to post a bond to ensure it will perform the necessary mitigation that may be required to address adverse impacts of its project.

The Division’s proposed certification requires UPRR to submit a Mitigation and Monitoring Plan, but does not impose a deadline for the plan. The Division should impose a deadline for UPRR to submit its mitigation and monitoring plan.

The proposed certification requires UPRR to monitor the effects of its project for at least five years. After the five years, UPRR must report to the Division “any long-term changes in flow and salt transfer associated with the project.” But if UPRR’s project adversely affects Morton or other uses of the GSL and UPRR is not required to report such effects for five years, the damage to beneficial uses of the GSL may be irreversible. UPRR should be required to annually report its findings regarding the project’s impacts to flow and salt transfer between the north and south arms.

Morton appreciates the opportunity to comment on the Division’s proposed certification.

RK Morgan
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