



State of Utah

SPENCER J. COX  
Governor

DEIDRE M. HENDERSON  
Lieutenant Governor

## Department of Natural Resources

JOEL FERRY  
Executive Director

### Public Lands Policy Coordinating Office

REDGE B. JOHNSON  
Director

October 12, 2023

Submitted via Federal eRulemaking Portal: <https://www.regulations.gov>

Kathy Hurld  
Oceans, Wetlands, and Communities Division  
Office of Water (4504-T)  
Environmental Protection Agency  
Pennsylvania Avenue NW  
Washington, DC 20460

RE: **Clean Water Act Section 404 Tribal and State Program Regulation**  
RIN 2040-AF83, 40 CFR Parts 123, 124, and 233

Dear Ms. Hurld:

The State of Utah (“Utah” or the “State”) has reviewed the above-referenced proposed rule (the “Proposed Rule”) that purports to “respond to longstanding requests from Tribes and States to clarify the requirements and processes for assumption and administration of a CWA [“Clean Water Act”] 404 permitting program for discharges of dredged and fill material.”<sup>1</sup> The State appreciates the opportunity to submit comments on this Proposed Rule. Utah generally supports the Proposed Rule and encourages the Environmental Protection Agency (“EPA”) to explore additional avenues allowing states to assume more management authority over natural resources within their borders.

Currently, only three states have been approved by EPA to administer CWA 404 permitting programs. No Tribes have been approved by EPA to administer a CWA 404 permitting program.<sup>2</sup> Change is necessary to encourage states and Tribes to take an active role in managing resources within their borders.

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<sup>1</sup> Clean Water Act Section 404 Tribal and State Program Regulation, 88 Fed. Reg. 55276 (Aug. 14, 2023) (to be codified at 40 C.F.R. pts. 123, 124, 232, 233).

<sup>2</sup> *Id.* at 55278.

## Clean Water Act Section 404 Tribal and State Program Regulation

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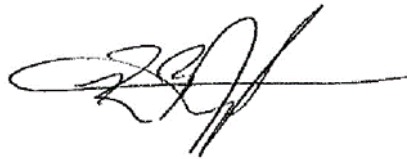
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Assuming adequate staffing and funding, state agencies are in the best position to make management decisions as it relates to waters within the state. This is due to the state agencies' proximity to and persistent work in the waters within the state's borders. Nobody understands the water situation in Utah better than our state employees tasked with managing the resource. Utah's Division of Water Quality does an excellent job of safeguarding and improving Utah's water through balanced regulation.

Utah is encouraged by the EPA's effort to encourage state and Tribal participation on this issue. If Utah determines that the assumption of CWA 404 permitting is in the best interests of the State, we will look forward to working collaboratively with the federal government.

Thank you for the opportunity to comment. Please direct any written correspondence to the Public Lands Policy Coordinating Office at the address below or call to discuss any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Redge B. Johnson', with a long horizontal line extending to the right.

Redge B. Johnson  
Director