

Public Notice: ADR Implementation Guidance Draft Version 2.0.08  
UDWQ Response to Comments

#	Commenter	Comment	Response
1	LuAnn Adams, UDAF	<p>“UDAF believes that more could be accomplished by working together with local entities. The changes to 5.3.2.3(5), Other Considerations, would remove the “consideration of the sensitivity of receiving water and its potential for overall improvements.” The notes attached to this deletion indicate that the reasoning behind the removal is to avoid watershed planning. Watershed planning should be done during this process. Conservation Districts should be used as resources to help in the watershed planning. Conservation Districts are charged with protecting the soil, water, plants, animals, the air and other natural resources. Local Conservation District can become a liaison between land owners. It is much easier to gain local stakeholder buy-in when Conservation Districts are utilized.”</p>	<p>Deleted consideration reinserted into Guidance document with the following wording:  <i>“Also included in the review should be consideration of the sensitivity of the receiving water and its potential for overall improvement based on existing watershed assessment and planning documents.”</i>  UDWQ agrees that it is reasonable to require that the antidegradation review (ADR) consider existing watershed assessment and planning efforts. The clause as previously included could have been interpreted to require the applicant to initiate a watershed assessment and planning effort, which is beyond the scope of an individual ADR. Coordination with other governmental agencies and local entities is addressed elsewhere in the Guidance document.</p>

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2	LuAnn Adams, UDAF	<p>“In addition, under 2.2.3, Factors Considered to Decrease Protection of Surface Waters, there should be a method for reclassification based on previous misclassifications due to a limited understanding of the environmental conditions in the past. There are many examples of waters in the state having trout planted during in the 1970’s that the natural state of the water cannot fully support, yet the water body is classified to support the trout. As our ability to understand the environment and ecosystems improves, there should be a mechanism in place to consider these factors and allow for proper classification to take place.”</p>	<p>Comment is regarding designated beneficial use classification, which is distinct from and not directly related to the antidegradation category of a waterbody. The Guidance document does not address reclassification of designated beneficial uses. Changing a designated beneficial use to a less stringent use, such as from cold water aquatic life to warm water aquatic life, can be done if supported by a use attainability analysis. UDAF representatives participate on the DWQ workgroup where potential changes to Utah’s water quality standards are proposed and evaluated prior to petitioning the Water Quality Board in accordance with Utah Administrative Procedures. Mr. Chris Bittner, the DWQ standards coordinator, can be reached at 801-536-4371 for additional details on changing use-s. No change was made to the ADR Guidance document.</p>
3	LuAnn Adams, UDAF	<p>“In 3.2, Level I Antidegradation Reviews, the guidance indicates that the existence and survival of a trout fishery “at some point after 1975” will be used as an “existing use” and the water will be classified according to that use. This is concerning as there have been years where conditions existed where cold water fisheries would have been able to survive, but these were abnormal years and does not represent the ‘normal’ state of the body of water. The water body has been misclassified. Decisions of classification should be made on scientific understanding of what the water body can support during the normal climate and ecological conditions.”</p>	<p>The text was revised for clarity. As required by federal law, existing uses are independent of designated beneficial uses. If a water has been misclassified, the use can be changed (see response to Comment 2). Regardless of the actual designated beneficial use, existing uses must be protected in accordance with federal law.</p>

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4	LuAnn Adams, UDAF	<p>“UDAF is supportive of the new recommendations found in 2.2.1, Material to include with a Reclassification Nomination, that a petition has the “support of the local water quality planning authority and watershed advisory group.” This group should include representation for the Conservation Districts in the watershed affected by the petition. Conservations Districts and the Utah Conservation Commission have the responsibility to conserve the water resources of the state. It is in everyone’s interest for Conservation Districts and DWQ to work together.”</p>	<p>Comment acknowledged - no change made.</p>

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5	Lisa Kirschner, Parsons Behle & Latimer	<p>The suggested revision (as documented in the following highlighted language) is an important addition to ensure the Guidance is consistent with the ADR rules.</p> <p>Section 3.3.1 should be revised as follows:</p> <p>"if a renewing permit maintains the status quo, no additional ADR is required. However, per UAC R317-2-3.5.a.1 (<u>and unless the facility is specifically exempted from the Level II ADR</u>), the Director may require a Level II ADR for any project, including renewing permits, if the proposed activity has the potential to cause a major impact to water quality."</p> <p>Utah's ADR rules require that all discharging facilities conduct a Level 1 review (to ensure that existing uses of receiving water are maintained and protected). Utah Admin. R317-2-3.5. The rules also include introductory language establishing that "[t]he Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state." Utah Admin. R317-2-3.5.a.1. That general rule provision is, in turn, modified by subsequent rule provisions specifically exempting certain limited types of activities/circumstances from triggering a Level II ADR. Utah Admin. R317-2-3.5.b. Those circumstances include, for example, where "a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the permit; or a loads that have been observed, including variability." Utah Admin. R317-2-3.5.b.1.(b)(c); See generally Utah Admin. R317-2-3.5.b.1-4 (enumerating circumstances where a Level II ADR is not required).</p> <p>The language of the ADR rule does not provide the Director discretion to require a Level II ADR review if that particular facility is exempted consistent with the referenced Level II ADR "off ramp" provisions. Because the exemptions specify circumstances modifying the general rule language, the specific provisions apply (and override the general rule language).</p> <p>From a practical perspective, the requested clarification could be important in establishing appropriate certainty for the regulated community regarding the scope of the Level II ADR requirements. Of course, the recommended Guidance clarification is consistent with the well-recognized notion that specific rule exemptions override an earlier, more general rule provision, a</p>	<p>Suggested modifying clause added to sentence. Sentence moved to first paragraph of Section 3.3 since this is referring to a general authority that is limited by other provisions in the rule.</p>

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6	Lareina Guenzel, EPA Region 8	<p>First, UT may want to consider language that acknowledges the ambient condition could change, or at least is allowed to change if there is one or more point sources in the watershed that are not currently discharging at the permitted design flow, effluent limits or are not fully utilizing their waste load allocation. I suggest that UT consider the following addition to the proposed definition:</p> <p>ambient condition: water quality of the receiving water immediately upstream of the point discharge. <u>When there is one or more permitted point source in the receiving water, ambient condition will also account for the modeled water quality at the critical flow conditions if point sources are discharging at the permitted design flow and effluent limits.</u></p>	<p>No change was made to the definition in the Glossary because the methods used to characterize the ambient condition vary and are limited by the available data. The following text was added to Section 4.1:</p> <p><i>“When there is one or more permitted point source(s) upstream in the receiving water, ambient condition may also account for the modeled water quality at the critical flow conditions if point sources are not discharging at the permitted design flow and effluent limits.”</i></p>
7	Lareina Guenzel, EPA Region 8	<p>Second, the proposed definition for assimilative capacity is qualitative and addresses considerations for narrative criteria. It would be strengthened if it also addressed what it means for parameters with numeric criteria (see definition in R317-001). I suggest that UT consider the following addition to the proposed definition:</p> <p>assimilative capacity: the natural capacity of a water body to dilute and absorb pollutants and prevent harmful effects (e.g., damage to public health or physical, chemical, biological integrity of the water). <u>When the pollutant has numeric water quality criteria, assimilative capacity is the difference between the numeric criteria and the ambient condition in the waterbody of interest where the concentration is less than the criterion.</u></p>	<p>Suggested addition made to definition in Glossary to be consistent with the definition of assimilative capacity in UAC R317-1-1.</p>