

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 2:19-cv-00677-CMR
)	
THE UTAH DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Defendant.)	
_____)	

**NOTICE OF LODGING OF CONSENT DECREE
FOR SETTLEMENT OF CLAIMS INVOLVING
THE UTAH DEPARTMENT OF TRANSPORTATION**

Plaintiff, the United States of America, on behalf of the Environmental Protection Agency, is lodging with the Court a proposed Consent Decree in this matter to resolve the United States’ claims against Defendant the Utah Department of Transportation. Plaintiff filed a Complaint alleging violations of the Clean Water Act concurrently with the presently proposed Consent Decree. Plaintiff’s Complaint alleges that Defendant violated and continues to violate the terms and conditions of Defendant’s National Pollutant Discharge Elimination System Permit issued by the State of Utah under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), for discharges of stormwater from Defendant’s municipal separate storm sewer system (“MS4”) throughout the State of Utah. The Complaint alleges that Defendant failed to comply with permit procedures related to wet and dry weather monitoring of its MS4; implement a program to detect and eliminate illicit discharges and improper disposal into the MS4; implement a program to reduce pollutants in construction site stormwater runoff; implement and enforce a program to address post-construction stormwater runoff in new development and redevelopment; and

implement an operation and maintenance program to reduce polluted runoff from municipal operations. The proposed Consent Decree addresses the alleged violations by requiring Defendant to update its MS4 plans and operating practices to comply with its permit and to pay a \$325,000 civil penalty.

No action by the Court is required at this time. Pursuant to Department of Justice regulations codified at 28 C.F.R. § 50.7, the United States is required to publish a notice in the *Federal Register* that the proposed Consent Decree has been lodged with the Court. The notice will solicit public comment for a period of 30 days. After the close of the comment period, the United States will evaluate any comments received and will request the Court to take appropriate action regarding the Consent Decree. The Deputy Section Chief of the Environmental Enforcement Section has delegated authority to evaluate any public comments received regarding this matter and, if appropriate, to move to enter the proposed Consent Decree.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

BRUCE GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

/s/ Alexandra B. Sherertz
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JOHN W. HUBER
United States Attorney
United States Attorney's Office for the District of Utah

/s/ Jared C. Bennett
JARED C. BENNETT
Assistant United States Attorney

Of Counsel:

MARGARET J. LIVINGSTON
Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2019, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system and that I served the foregoing on counsel for the Utah Department of Transportation listed below by U.S. Mail and e-mail pursuant to Paragraph 111 of the proposed Consent Decree.

Renee Spooner
Assistant Attorney General
Counsel to the Utah Dept. of Transportation
4501 South 2700 West
Salt Lake City, Utah 84119

Counsel for the Utah Department of Transportation

/s/ Alexandra B. Sherertz
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Counsel for the United States

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UTAH DEPARTMENT OF TRANSPORTATION)
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Case No. 2:19-cv-00677-CMR

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, the Utah Department of Transportation (“UDOT”), violated the terms and conditions of UDOT’s Utah Pollutant Discharge Elimination System (“UPDES”) Permit issued by the Utah Department of Environmental Quality’s Division of Water Quality pursuant to the Utah Water Quality Act. UCA Sections 19-5-101 *et seq*, for discharges of stormwater from UDOT’s municipal separate storm sewer system (“MS4”) throughout the State of Utah.

In June 2013, EPA inspected UDOT’s MS4. In February 2015, EPA provided UDOT with an inspection report which identified potential deficiencies in UDOT’s compliance with the MS4 Permit referenced above. UDOT provided EPA with a list of corrective actions taken in response to the inspection report on April 22, 2015, November 2, 2015, and March 27, 2017.

The Complaint against UDOT alleges that UDOT violated the terms and conditions of its MS4 Permit, specifically MS4 Permit provisions related to the following: (1) wet weather monitoring; (2) dry weather monitoring; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management in new development and redevelopment; and (6) pollution prevention/good housekeeping for municipal operations.

UDOT does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to 33 U.S.C. § 1319(b), 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395, because (1) it is the judicial district in which UDOT, UDOT's MS4, facilities, and stormwater conveyances are located, (2) it is the judicial district in which UDOT does business, (3) the claims in this lawsuit arose in this District, and (4) the acts for which Plaintiff seeks relief occurred in this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership, control, or operation of the MS4, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such

transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 8, the United States Attorney for the District of Utah, and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the MS4 without complying with this Paragraph constitutes a violation of this Decree.

5. Within 10 Days after the Effective Date, UDOT shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Annual Report” shall mean an annual submission from Defendant to EPA that includes information required by Section 5.4 of the MS4 Permit and the information required by Paragraph 52.

“Clean Water Act” or “Act” shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387 and Utah Water Quality Act, UCA §§19-5-101 *et seq.*;

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendant” shall mean Utah Department of Transportation (“UDOT”), including all of its divisions and regions;

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“EPA Inspection Report” shall mean the inspection report EPA provided to UDOT on February 24, 2015;

“Effective Date” shall have the definition provided in Section XIV;

“MS4” shall mean Defendant’s municipal separate storm sewer system, including supporting structures including but not limited to maintenance facilities, located throughout the State of Utah.

“MS4 Permit” shall mean the UPDES MS4 permit No. UTS000003 issued by the Utah Department of Environmental Quality, Division of Water Quality (“UDWQ”) to UDOT pursuant to UAC R317-8. Unless otherwise specified, “MS4 Permit” shall refer to the current version of the permit;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” shall mean the United States and Defendant;

“Section” shall mean a portion of this Decree identified by a Roman numeral;

“SWMP” shall mean a Stormwater Management Program plan developed and implemented by UDOT pursuant to Part 2.0 and 2.1 of the MS4 Permit. “2016 SWMP” shall mean the SWMP developed by UDOT in December 2016;

“UDEQ” shall mean the Utah Department of Environmental Quality, including the Division of Water Quality established in UCA Title 19 Chapter 1 and operating under UCA Title 19 Chapter 5 pursuant to the Utah Water Quality Act; and

“United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$325,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Utah after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Alison Williford
Utah Department of Transportation
Comptroller's Office
PO Box 141510
Salt Lake City, Utah 84114-1510
awilliford@utah.gov
(801) 965-4801

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Utah Department of Transportation* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-11614.

V. COMPLIANCE REQUIREMENTS

10. Defendant shall fully comply with all requirements of the Clean Water Act, including all terms and conditions of applicable UPDES permits.

11. Dry Weather Monitoring. Defendant shall screen all outfalls from the MS4 at least once by December 3, 2020, to detect the presence of any illicit connections and improper discharges to the MS4. Defendant's screening shall be conducted in accordance with Part 5.2.4 of the MS4 Permit.

12. Within 90 Days after the Effective Date, Defendant shall revise its dry weather monitoring plan to identify parameters, including an appropriate indicator of deicing agents, that

have a potential to be present in dry weather flows. The dry weather monitoring plan shall also describe procedures for collection of samples during dry weather screening as well as procedures for analysis of the parameters. Defendant shall submit this plan to EPA for review in accordance with the procedures specified in Paragraph 49.

13. Illicit Discharge Detection and Elimination. By December 3, 2020, Defendant shall develop a complete storm sewer system map showing the locations of all outfalls, and the name and location of waters receiving discharges from those outfalls, storm drain pipe and other stormwater conveyance structures within the MS4 in accordance with Part 4.2.3.1 of the MS4 Permit.

14. In accordance with Part 4.2.3.11 of the MS4 Permit, Defendant shall revise its illicit discharge detection and elimination training plan to address (i) methods to detect and address spills and non-stormwater discharges, and (ii) field protocols to screen outfalls and collect and analyze samples when potential non-stormwater discharges are detected.

15. Within 90 Days after the Effective Date, Defendant shall submit the revised illicit discharge detection and elimination training plan to EPA for review in accordance with the procedures specified in Paragraph 49.

16. After receipt of the final EPA acknowledgement and comments in accordance with Paragraph 49, all UDOT personnel and contractors described in Part 4.2.3.11 of the MS4 Permit shall complete the illicit discharge detection and elimination training by January 30, 2020.

17. Construction Site Stormwater Runoff Control. Defendant shall revise its construction site stormwater runoff control program to ensure adequate permitting and permit

compliance for construction sites. The revised construction site stormwater runoff control program shall include the following:

- a. A mechanism to track timely completion of contract operators' site inspection reports;
- b. A system to periodically review site inspection reports from contract operators at all UDOT construction sites;
- c. A checklist that UDOT shall use during its periodic review of contract operators' site inspection reports to ensure that contract operators are correcting deficiencies in a timely manner;
- d. A requirement for site contract operators to conduct site inspections, at a minimum, at the frequency required by the Utah Construction General Permit; and
- e. A requirement for qualified UDOT staff to join contract operators to conduct, document, and track UDOT oversight inspections at the frequencies required by Part 4.2.4.4.1 and 4.2.4.4.3 of the MS4 Permit and which includes all phases of construction in accordance with Part 4.2.4.4.2 of the MS4 Permit.

18. Within 30 Days from the Effective Date, Defendant shall submit the revised construction site stormwater runoff control program to EPA for review in accordance with the procedures specified in Paragraph 49.

19. Within 90 Days after receipt of final EPA acknowledgement and comments on the revised construction site stormwater runoff control program, in accordance with Paragraph 49, Defendant shall implement the program, post the program on the UDOT website, and distribute

the program to all UDOT personnel and contract operators involved in implementation of the construction site runoff control program.

20. Within 30 Days from the Effective Date, Defendant shall revise the inspection checklist/report template for construction site operators to capture site information regarding (i) specific best management practices (“BMP”) deficiencies, (ii) specific corrective action(s) taken in response to deficiencies, and (iii) the date the action(s) were taken.

21. Defendant shall apply for UDEQ approval of the revisions to the inspection checklist/report template in accordance with Paragraph 49.

22. Defendant shall include a requirement in contracts with contract operators that the contract operators must use the UDEQ-approved inspection checklist and submit to UDOT completed reports using the state-approved inspection report template. Submission of completed reports must be in accordance with the frequency and timeframes specified in the construction site stormwater runoff control program described in Paragraph 18.

23. By September 1, 2019, Defendant shall submit the contract language with contract operators referenced in Paragraph 22 for EPA review in accordance with the procedures specified in Paragraph 49.

24. Post-Construction Stormwater Management in New Development and Redevelopment. Within 90 Days after the Effective Date, Defendant shall revise its post-construction stormwater management program so that it is designed to ensure post-construction controls are properly installed, inspected, and maintained.

25. By December 3, 2020, Defendant shall complete its inventory of post-construction controls owned and/or maintained by UDOT or private parties, and develop a

process to ensure that the inventory is maintained. UDOT will develop the maintenance process within 90 Days after the Effective Date.

26. Defendant's revised post-construction stormwater management program shall memorialize agreements for the post-construction controls owned and/or maintained by private parties specifying (i) the person or entity that owns each control identified in the inventory of post-construction controls, (ii) the person or entity that will maintain each control identified in the inventory; (iii) the required frequency of inspection and maintenance required for each control identified in the inventory, and (iv) a requirement for private parties to submit an annual certification that the inspection and maintenance have been performed, including each date upon which inspection or maintenance was performed.

27. Defendant's revised post-construction stormwater management program shall include a standard operating procedure ("SOP") for post-construction control inspections by Defendant and/or the owner of post-construction control(s) in accordance with Parts 4.2.5.5.2 and 4.2.5.5.3 of the MS4 Permit. The SOP shall be designed to (i) ensure the quality and coverage of post-installation inspections by Defendant, annual inspections by the owner of the control(s), and periodic inspections by Defendant for post-construction controls, (ii) require adequate maintenance of the post-construction control(s), and (iii) require the development of a tracking system for Defendant's completion of required inspections and maintenance by Defendant as well as by private parties.

28. Within 90 Days after the Effective Date, Defendant shall submit the revised post-construction stormwater management program to EPA for review in accordance with the procedures specified in Paragraph 49. Defendant's submittal shall include a description of the

information tracked by the tracking system referenced in Paragraph 27, which may be a representative screenshot of the tracking system.

29. Within 30 Days after receipt of final EPA acknowledgement and comments on the revised post-construction stormwater management program, in accordance with Paragraph 49, Defendant shall implement the program, post the program on the UDOT website, and distribute the program to all UDOT personnel and contractors involved in implementation of the post-construction stormwater management program.

30. Within 90 Days after the Effective Date, Defendant shall complete the post-construction design guide to instruct UDOT contractors on selection and performance expectations of BMPs. Defendant shall submit the post-construction design guide to EPA for review in accordance with the procedures specified in Paragraph 49. Defendant's submittal shall include the contract language referenced in Paragraph 31.

31. Within 30 Days after receipt of final EPA acknowledgement and comments on the post-construction design guide, in accordance with Paragraph 49, Defendant shall implement the guide and post the guide on the UDOT website. Within 90 days of receipt of final EPA acknowledgment and comments on the post construction guide, UDOT shall include a requirement in contracts executed with contract operators that contract operators must consult and adhere to the guide.

32. Defendant shall develop a post-construction control training plan for all pertinent UDOT personnel and contractors. The training plan shall specify how post-construction control training will continue as UDOT operates its MS4.

33. Within 90 Days after the Effective Date, Defendant shall submit the post-construction control training plan to EPA for review in accordance with the procedures specified in Paragraph 49.

34. All UDOT staff as described in Part 4.2.5.6 of the MS4 Permit must complete the post-construction control training within 30 Days after receipt of final EPA acknowledgement and comments, in accordance with Paragraph 49.

35. UDOT Maintenance Facilities. Within 90 Days after the Effective Date, Defendant shall (i) develop a comprehensive inspection checklist for each UDOT maintenance facility, (ii) compile and post online the checklists for all UDOT maintenance facilities, and (iii) provide EPA the URL for the inspection checklists. Within 30 Days after EPA receives the web link for the checklists, EPA may, at its discretion, review and recommend modifications to the inspection checklists. If EPA recommends a revision to any checklist, UDOT shall incorporate the recommendation within 30 Days of receipt of the recommendation from EPA.

36. Within 150 Days after the Effective Date, UDOT shall incorporate the inspection checklists into the stormwater pollution prevention plan (“SWPPP”) for each maintenance facility.

37. Within 90 Days after the Effective Date, Defendant shall submit to EPA for review a report addressing each of the individual maintenance facility deficiencies identified in the EPA Inspection Report. The report shall specify the corrective actions Defendant has taken to correct the deficiencies at individual maintenance facilities. For any maintenance facility for which corrective actions have not been taken, Defendant shall implement immediate temporary remediation efforts. Defendant shall further describe its corrective action plans to fully address

pollution prevention, housekeeping, and BMP deficiencies at individual maintenance facilities and shall take all such actions no later than 60 Days after submission of the report.

38. Defendant's report shall also describe a plan for the following long-term maintenance items:

- a. A specified "cleaning" process and pollutant testing regime to be used at the Kanab station as well as any other maintenance facilities where recovered salts are cleaned and used;
- b. A remediation plan to select and install appropriate BMPs at all salt storage facilities; and
- c. A plan that requires adequate BMPs for preventing contaminated runoff from leaving maintenance facilities and that requires adequate BMPs to be implemented and maintained on a consistent basis.

39. Defendant's report and plan, described in Paragraphs 37 and 38, shall be subject to the deliverables procedures specified in Paragraph 49. Within 30 Days after receipt of final EPA acknowledgement and comments on the report and plan described in Paragraphs 37 and 38, Defendant shall implement the plans, post the report and plans on the UDOT website, and distribute the plans to all pertinent UDOT personnel and contractors.

40. Within 150 Days after the Effective Date, Defendant shall incorporate the plans referenced in Paragraphs 37 and 38 and incorporate into the SWPPP for each maintenance facility.

41. Enforcement Response Guide. Defendant shall develop an enforcement response guide that requires compliance with the requirements of the MS4 Permit and the requirements of UDOT's MS4 Program. The enforcement response guide shall specify appropriate follow-up

actions, including enforcement, to be taken in response to non-compliance with the requirements of the MS4 Permit, agreements with contractors and/or private parties, and the requirements of UDOT's MS4 Program.

42. The enforcement response guide shall (i) outline types of violations that may occur, (ii) describe appropriate responses to different types of violations and time-control goals for those responses, and (iii) include an escalation guide for ongoing or repeat non-compliance.

43. The enforcement response guide shall explicitly address enforcement mechanisms for: (i) illicit discharges identified by Defendant or otherwise brought to Defendant's attention, (ii) construction site violations, and (iii) the control of post-construction runoff with respect to implementing BMPs that minimize water quality impacts.

44. Within 120 Days after the Effective Date, Defendant shall submit the enforcement response guide to EPA for review in accordance with the procedures specified in Paragraph 49.

45. Within 30 Days after receipt of final EPA acknowledgement and comments on the enforcement response guide, in accordance with Paragraph 49, Defendant shall post the enforcement response guide on its website and shall implement the enforcement response guide program-wide.

46. Stormwater Management Program Plan (SWMP). UDOT shall modify its 2016 SWMP to integrate the changes described in this Consent Decree. The modified SWMP shall be provided to EPA no later than 150 Days after the Effective Date.

47. Within 150 Days after the Effective Date, UDOT shall post the modified SWMP on UDOT's website. Each calendar year, UDOT shall verify that the most recent SWMP is posted on its website and report in the Annual Report whether a new SWMP has been posted.

48. Within 150 Days after the Effective Date, Defendant shall develop and implement a platform for managing documents and records regarding SWMP implementation.

49. Submission of Deliverables. Upon receipt of any plan or other document required to be submitted to EPA pursuant to this Consent Decree, EPA will, within 45 Days, provide acknowledgement of receipt with or without comments and may require modification and resubmittal of a portion or all of a plan or document. Within 15 Days of receipt of any written comments from EPA regarding the plan or document, Defendant shall, subject to the dispute resolution process described in Section IX, make modifications and changes to such document as directed by EPA, and resubmit the document to EPA. The parties may agree, in writing, to a longer period of time for EPA to review the documents or for Defendant to resubmit modified documents.

50. Any stipulated penalties applicable to the original submission, as provided in Section VII, shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

51. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and

complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

52. Annual Report. UDOT shall (i) submit an Annual Report to EPA, (ii) post the Annual Report to UDOT's website, and (iii) notify EPA of such posting, beginning with the first Annual Report due after the Effective Date. Annual Reports shall be due to EPA on the date required by UDOT's MS4 Permit and posted on UDOT's website within 15 Days thereafter. The Annual Report shall include the information in Section 5.4 of the MS4 Permit and shall also include the information below:

- a. A quantitative assessment that reports UDOT's activities and whether UDOT met measurable goals, as described in UDOT's MS4 Permit and SWMP.
- b. A qualitative assessment that incorporates a discussion of how successful UDOT has been in meeting implementation timelines, whether metrics tracked by UDOT are effective in measuring specific activities, and whether specific activities have been effective in reducing the discharge of pollutants from the MS4. Where available, the assessment shall include a discussion of water quality monitoring data, as required by UDOT's MS4 Permit. Where monitoring data is not available, UDOT shall evaluate the need for water quality monitoring in determining SWMP effectiveness.
- c. MS4 mapping and dry weather monitoring information related to priority screening areas, including the number of outfalls screened during the reporting period, the total number of outfalls that Defendant has identified and mapped, and an estimate of the percent of all storm drain pipe and other stormwater conveyance

structures within the MS4 that Defendant has mapped.

- d. A budget broken down by major components of the SWMP.
- e. A discussion of progress toward completing multi-year compliance obligations required by Section V (Compliance Requirements).
- f. A discussion of changes to the SMWP to incorporate new activities, modify existing activities, and verify that the current SWMP is posted on UDOT's website.

53. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent and minimize such violation, and recurrence of the violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within 10 working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent and minimize such violation, and recurrence of the violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

54. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its

MS4, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify the EPA NPDES Enforcement Unit Chief identified in Paragraph 99 orally as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

55. All reports shall be submitted to the persons designated in Section XIII (Notices).

56. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

57. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

58. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

59. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

60. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

61. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$675.....	1st through 14th Day
\$1,350.....	15th through 20th Day
\$2,250.....	21st Day and beyond

62. For each failure to complete a task pursuant to the deadlines required by Section V (Compliance Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$675.....	1st through 14th Day
\$1,350.....	15th through 30th Day
\$2,250.....	31st Day and beyond

63. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for failure to submit the Annual Report as required by Paragraph 52 and the reporting requirements of Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$675	1st through 14th Day
\$1,350.....	15th through 30th Day
\$2,250.....	31st Day and beyond

64. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

65. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

66. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

67. Stipulated penalties shall continue to accrue as provided in Paragraph 64, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order,

except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

68. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

69. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

70. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

71. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

72. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to

seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

73. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

74. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally to the Chief of the NPDES Enforcement Unit, as identified in Section XIV (Notices), within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for

attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice, all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

75. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

76. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

77. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be

warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 73 and 74. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

78. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

79. Informal Dispute Resolution.

- a. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, except as provided by subparagraph b below or unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.
- b. After 10 business days of informal negotiations, EPA or UDOT may, by

providing notice in writing, request the employment of a neutral mediator. If both EPA and UDOT agree to the employment of a neutral mediator, any mediation shall not last longer than 45 Days from the filing of the Informal Notice of Dispute unless extended by written agreement. EPA and UDOT will divide equally the fees and costs of the mediator. EPA and UDOT will each provide a list of at least two suggested mediators who shall have the qualifications of (a) demonstrated experience, (b) independence, (c) subject matter experience, and (d) lack of actual or apparent bias. EPA and UDOT shall inform each other of all mediators that are acceptable and shall then select a mediator. Any report, findings, recommendations, written records, or notes prepared by the mediator shall not be binding on any party and shall not be part of the administrative record or admissible in dispute resolution proceedings or any other legal proceeding. Nothing in this subparagraph shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1511-1519.

80. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

81. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include,

but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

82. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

83. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

84. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 80 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based

on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 80, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree.

85. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 67. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

86. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Decree;
 - b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
 - c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
 - d. Obtain documentary evidence, including photographs and similar data;
- and

e. Assess Defendant's compliance with this Consent Decree.

87. Upon request, Defendant shall provide EPA or its authorized representatives, splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

88. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

89. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the

name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

90. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

91. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

92. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

93. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by,

Defendant's MS4, whether related to the violations addressed in this Consent Decree or otherwise.

94. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the MS4 or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 92.

95. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

96. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

97. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

98. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

99. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows (or to such other addresses as may be designated by written notice to the Parties):

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-11614

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-11614

As to EPA:

Stephanie DeJong
NPDES and Wetlands Enforcement Section Chief
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street, 8ENF-W-NW
Denver, Colorado 80202
(303) 312-6362

With a copy to:

Margaret J. (Peggy) Livingston
Senior Assistant Regional CounselRegulatory
Enforcement Section (8-ORC-LE-R)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street, 8ENF-L
Denver, Colorado 80202
(303) 312-6858

As to Utah Department of
Transportation:

Rhonda K. Thiele
Stomwater Program Manager
4501 South 2700 West
Salt Lake City, Utah 84114-8460
(801) 965-4196
rhondathiele@utah.gov

100. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

101. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

102. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant

hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XV. RETENTION OF JURISDICTION

103. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

104. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

105. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 84, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

106. No sooner than three (3) years after the Effective Date of this Consent Decree, Defendant may request the United States' consent to the termination of this Consent Decree upon completing the requirements of Section V (Compliance Requirements), complying with all other

requirements of this Consent Decree, and paying the civil penalty and any accrued stipulated penalties as required by this Consent Decree. Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

107. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

108. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

109. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

110. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

111. This Consent Decree may be signed in counterparts, each of which may be transmitted electronically, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

112. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

113. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The

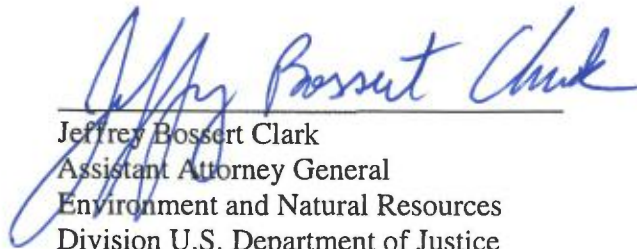
Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this ___ day of _____, 2019.

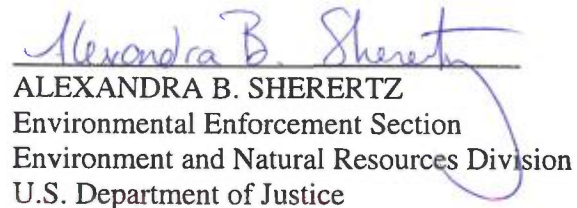
UNITED STATES DISTRICT JUDGE
DISTRICT OF UTAH

FOR THE UNITED STATES OF AMERICA:

8/27/19
Date



Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources
Division U.S. Department of Justice




ALEXANDRA B. SHERERTZ
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Telephone: (202) 514-0414
Facsimile: (202) 514-0097
Email: Alexandra.Sherertz@usdoj.gov


FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:



KENNETH C. SCHEFSKI
Regional Counsel
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8



MARK POLLINS
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460



MARGARET J. (PEGGY) LIVINGSTON
Senior Assistant Regional Counsel
Regulatory Enforcement Section
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202


FOR THE UTAH DEPARTMENT OF
TRANSPORTATION:

5/15/19
Date



CARLOS BRACERAS, P.E.
Executive Director

Approved as to Form:



Renee Spooner
Assistant Attorney General

FOR THE UNITED STATES
ATTORNEY'S OFFICE FOR THE
DISTRICT OF UTAH

JOHN W. HUBER
United States Attorney

/s/ Jared C. Bennett

JARED C. BENNETT
Assistant United States Attorney