

PAUL M. McCONKIE, Bar No. 5881
Assistant Attorney General
SEAN REYES, Bar No. 7969
Attorney General
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Salt Lake City, Utah 84114
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IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

State of Utah, on behalf of Utah Department of Environmental Quality, an agency of the State of Utah, and Utah Division of Water Quality, an agency of the State of Utah; Erica B. Gaddis, Director of the Utah Division of Water Quality, in her official capacity,

Plaintiffs,

vs.

Gordon Creek, LLC,

Defendant.

COMPLAINT

Civil No.

Plaintiffs the State of Utah, on behalf of the Utah Department of Environmental Quality and the Utah Division of Water Quality, and Erica B. Gaddis, Director of the Utah Division of Water Quality (collectively Plaintiffs), through undersigned counsel, the Utah Attorney General, file this Complaint against the Defendant Gordon Creek, LLC, and allege and state as follows:

PRELIMINARY STATEMENT

1. This civil enforcement action is brought by the Plaintiffs under Sections 19-5-115(7)(a) and 63G-4-501 of the Utah Code, seeking enforcement by the district court of a Notice of Violation and Compliance Order issued by the Director.

2. The Director is authorized to issue orders prohibiting or abating discharges of pollutants into waters of the state. *See Utah Code § 19-5-106(2)(d)(i).*

3. Plaintiffs seek civil penalties under Section 19-5-115(2) of the Utah Code and declaratory injunctive relief under Section 19-5-115(7)(a) of the Utah Code to secure the Defendant's compliance with the Act, the Utah Water Quality Rules, and the Notice of Violation and Compliance Order issued by the Director.

PARTIES

4. Plaintiff, the Utah Department of Environmental Quality (UDEQ), is an agency of the state government created under Section 19-1-104 of the Utah Code.

5. Plaintiff, the Utah Division of Water Quality (UDWQ), is a division of the UDEQ created under Section 19-1-105(1)(e) of the Utah Code. The UDWQ is responsible for administration and enforcement of the Act and the Utah Water Quality Rules.

6. Plaintiff, Erica B. Gaddis, is the Director of the UDWQ and appears in this action solely in her capacity as the Director. The Director is authorized to take any enforcement

actions necessary under Section 19-5-115(7)(a) of the Utah Code where there is a violation of the Act and the Utah Water Quality Rules.

7. Defendant Gordon Creek, LLC, is an independent crude oil and natural gas exploration company doing business in Carbon County, State of Utah.

8. Defendant Gordon Creek, LLC, is a domestic limited liability company which was registered with the Utah Department of Commerce, Utah Division of Corporations and Commercial Code, with a principal office address of 1207 7347, 7th Avenue SW, Calgary AB, T2P 3P8 Canada. The Defendant's Registered Agent is CT Corporation System, located at 1108 East South Union Avenue, Midvale, Utah 84047.

JURISDICTION AND VENUE

9. This Court has jurisdiction under Sections 78A-5-102(1) and 78B-6-401 of the Utah Code.

10. Venue is proper in this Court under Section 78B-3-307(1) of the Utah Code as the cause of action arose in Carbon County, Utah.

GENERAL ALLEGATIONS

11. On June 18, 2018, the UDWQ issued a Notice of Violation and Compliance Order to the Defendant. *See* Notice of Violation and Compliance Order, Docket No. I18-04 (June 18, 2018) (NOV) attached as Exhibit 1.

12. The NOV asserted that in March 2018, employees of the Utah Division of Oil, Gas, and Mining (DOGM) discovered evidence of an old leak of produced water from Defendant's pipeline. The leak resulted in the discharge of an unknown amount (but estimated at more than 1,000 barrels) of liquid near Halley Canyon Road in the Gordon Creek Wildlife Management Area, approximately 13 miles west of Price, Utah, killing the vegetation over an approximate one-half acre area. See *id.*, Finding of Fact ¶3.

13. The discharged liquid saturated the soil around the pipeline eventually reaching the surface and flowing downhill into a dry wash and then into a livestock pond approximately 1,000 feet to the northwest; which flows into tributaries of the Price River, waters of the state. *See id.* Sampling analysis for salt and hydrocarbon content exceeded water quality regulatory standards for conductivity, exchangeable sodium percentage, sodium absorption ration and total dissolved solids (TDS). *See id.*, Finding of Fact ¶6.

14. The NOV was originally served on Defendant Gordon Creek Energy, LLC c/o Rupert Evans, 737 7th Avenue SW, Suite 1207, Calgary, Alberta, Canada T2P 3P8 on June 18, 2018, by email and certified mail, return receipt requested. The UDWQ did not receive a written response or a return receipt. *See Exhibit 1.*

15. The UDWQ project manager called Rupert Evans in early August 2018. Mr. Evans confirmed that he had received the email copy of the NOV but not the mailed paper copy.

Mr. Evans stated that a response was being worked on and would be sent to UDWQ as soon as it was finished. Since then, Mr. Evans has not returned calls or emails from UDWQ.

16. On September 19, 2018, UDWQ emailed to the Defendant and mailed by certified mail, return receipt requested, a proposed settlement penalty and settlement agreement. Total Penalties and Costs were calculated at \$8,141.00. *See Proposed Penalty and Settlement Agreement – Gordon Creek LLC Produced Water Discharge* (September 19, 2018) attached as Exhibit 2.

17. On September 26, 2018, Defendant’s registered agent, CT Corporation Systems was served with the NOV by certified mail return receipt requested. *See Service of Process Return Receipt* (September 26, 2018) attached as Exhibit 3.

18. To timely challenge a NOV, Defendant must send to the Director, a written request that complies with Section 63G-4-201(3) of the Utah Code and Rule R305-7-303 of the Utah Administrative Code.

19. Under Rule R305-7-303(5) of the Utah Administrative Code, the Director must receive this request within 30 days of the issuance of the NOV.

20. Failure to contest a NOV within this period “waives any right of administrative contest” and establishes the allegations in the NOV. Utah Admin. Code r.305-7-319(3).

21. Because the Director did not receive a timely request for an administrative hearing under Section 63G-4-201(3) of the Utah Code and R305-7-303 of the Utah

Administrative Code, the NOV became final at least within 30 days of September 26, 2018, the date of service upon the registered agent, triggering the Director's right to sue for penalties under Section 19-5-115 of the Utah Code.

22. All allegations in the NOV became final and are established by default for failure to contest.

23. As of the date of this filing, the Defendant has not paid the penalty for violations listed in the NOV, and has not provided to the UDWQ anything in writing demonstrating compliance with the requirement in the NOV.

FIRST CAUSE OF ACTION

24. The allegations in paragraphs 1 through 23 are incorporated by reference. The Notice of Violation and Compliance Order concludes that Defendant has unlawfully discharged a pollutant into a water of the state or otherwise violated Utah's Water Quality Act, in violating sections 19-5-107(1), 19-5-114, and Utah Admin. Code R317-2-7.2. *See* June 18, 2018, Violations at page 4.

25. Plaintiffs are entitled to have this Court impose a civil penalty on the Defendant of up to \$10,000 per day for violating the Act, and the Utah Water Quality Rules by unlawfully discharging a pollutant into a water of the state. *See* Utah Code § 19-5-115(2).

PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

1. An order from the Court imposing civil penalties on the Defendant for unlawfully discharging into a water of the state as established by the Director's June 18, 2018 NOV, in the amount of \$8,141,00 as calculated in the UDWQ's proposed penalty calculation worksheet, attached to the Director's September 19, 2018 Proposed Penalty and Settlement Agreement letter (Exhibit 2), as allowed by Section 19-5-115(2) of the Utah Code.

2. A declaration and injunction from the Court that the Defendant must comply with the terms of the June 18, 2018 NOV, the Act, and the Utah Water Quality Rules as soon as practicable at the Director's request.

3. An award of reasonable attorney's fees and costs incurred in the prosecution of this action, interest both before and after judgment as provided by law, and any further relief the Court may deem appropriate.

DATED this 4th day of February, 2020.

SEAN D. REYES
Utah Attorney General

/s/ Paul M. McConkie
PAUL M. McCONKIE
Utah Assistant Attorney General
Attorneys for Plaintiffs State of Utah et al.

LIST OF EXHIBITS

Exhibit 1: Notice of Violation and Compliance Order, Docket No. I18-04 (June 18, 2018)

Exhibit 2: Proposed Penalty and Settlement Agreement – Gordon Creek LLC Produced Water Discharge (September 19, 2018)

Exhibit 3: Service of Process Return Receipt (September 26, 2018)

Defendant's Address:

Gordon Creek, LLC
CT Corporations System (Registered Agent)
1108 E South Union venue
Midvale, Utah 84047

Principal Office Address:

1207 7347 7th Avenue SW
Calgary AB
T2P 3P8 Canada

Exhibit 1



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

FILE COPY

DWQ-2018-005807 blj

June 18, 2018

CERTIFIED MAIL
(Return Receipt Requested)

Gordon Creek, LLC
C/O Rupert Evans
737 7th Avenue SW, Suite 1207
Calgary, Alberta, Canada T2P 3P8

VIA EMAIL

Subject: Notice of Violation and Compliance Order, Docket No. I18-04
Gordon Creek Wildlife Management Area Produced Water Discharge
DEQ Environmental Incident Report #13387

Dear Mr. Evans:

Enclosed is the Notice of Violation and Compliance Order (Order), issued to Gordon Creek, LLC, by the Division of Water Quality, for your immediate attention.

This Order has been issued as a result of a large discharge of produced water into the upper Gordon Creek drainage at or near Halley Canyon Road in Carbon County, Utah, sometime before November, 2017.

If you have any questions regarding this information, please contact Kevin Okleberry at 801-536-4054 or kokleberry@utah.gov.

Sincerely,

Erica Brown Gaddis, PhD
Director

EBG/KO/blj

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**Notice of Violation and Compliance Order, Docket No. I18-04
Gordon Creek Wildlife Management Area Produced Water Discharge
DEQ Environmental Incident Report #13387**

Enclosures (1): 1. Notice of Violation and Compliance Order (DWQ-2018-005808)

cc: Brady Bradford, Southeast Utah Health Department, via email
Kirt Jensen, Southeast Utah Health Department, via email
Scott Hacking, DEQ District Engineer, via email
Mark Jones, Utah Division of Oil, Gas, and Mining, via email
Craig Anderson, Office of Attorney General, via email

DWQ-2018-005807

In the Matter of:
Gordon Creek, LLC
C/O Rupert Evans
737 7th Avenue SW, Suite 1207
Calgary, Alberta, Canada T2P 3P8

**NOTICE OF VIOLATION
AND COMPLIANCE ORDER
DOCKET NO. I18-04**

A. STATUTORY AUTHORITY

This **NOTICE OF VIOLATION and COMPLIANCE ORDER (NOV/CO)** is issued by the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY (DIRECTOR)** pursuant to the authority under the Utah Water Quality Act, as amended, Utah Code Ann. §§ 19-5-101 to 19-5-124 (the **ACT**), including Utah Code Ann. §§ 19-5-106(2)(d), 19-5-111 and 19-5-115. This **NOV/CO** is also issued in accordance with the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-101 through 63G-4-601.

B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by permit, Utah Code Ann. § 19-5-107(1)(a). "Waters of the State" means "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state", Utah Code Ann. § 19-5-102(23)(a). See also Utah Admin. Code R317-1-1.
2. "Waste" or "pollutant" means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water", Utah Code Ann. § 19-5-102(22). See also Utah Admin. Code R317-1-1.
3. It is unlawful "to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water". It is also unlawful "to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution", Utah Code Ann. § 19-5-107(1)(a). "Pollution" means "any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety", Utah Code Ann. § 19-5-102(13). See also Utah Admin. Code R317-1-1.
4. Utah Code Ann. § 19-5-114 states that "[a]ny person who spills or discharges any oil or other substance which may cause the pollution of the waters of the state shall

immediately notify the director of the spill or discharge, any containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the board.”

5. *Utah Admin. Code R 317-2-7.2, Narrative Standards* prohibits any person from discharging or placing any waste or other substance “....in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.”

C. FINDINGS OF FACT

1. On information and belief, Gordon Creek, LLC, (hereinafter “**GORDON CREEK**”) is an independent crude oil and natural gas exploration and production company operating in the State of Utah.
2. On or about March 29, 2018, employees of the Utah Division of Oil, Gas, and Mining (hereinafter “**DOGM**”) discovered evidence of an old leak of produced water from a pipeline which resulted in the discharge of an unknown amount of liquid. The leak occurred near Halley Canyon Road in the Gordon Creek Wildlife Management Area at or near the geographical coordinates 39° 35'47" N, 111° 3'36" W approximately 13 miles west of Price, Utah.
3. During the inspection on or about March 29, 2018, the **DOGM** employees noted the vegetation in the spill area was “almost entirely dead” and the soils were “heavily impacted” by the salts in the produced water. The area obviously impacted by the spill was estimated to be approximately one-half acre in size. Based on the presence of cattle tracks in the mud around the discharge area, **DOGM** employees estimated the pipeline could have been leaking any time from June 2017 to November 2017, as this is the time frame when cattle were last allowed to graze in that area. The total volume of produced water discharged is unknown but was estimated to be greater than 1,000 barrels. The discharged liquid saturated the soil around the pipeline, eventually reaching the surface and flowing downhill into a dry wash, and then into a livestock pond approximately 1,000 feet to the northwest. This pond drains into a dry wash which flows into Second Water Creek approximately 0.75 miles to the northeast. This creek eventually drains into the South Fork of Gordon Creek approximately 6 miles downstream. South Fork Gordon Creek is a tributary of Gordon Creek, which itself is a tributary of the Price River.
4. On or about April 24, 2018, **DOGM** issued a Notice of Violation to **GORDON CREEK** for violations of Utah Administrative Code Rules R649-3-32 and R649-3-15

arising from the discharge. In the Notice of Violation, the company was instructed to report the discharge within 5 days of receiving the Notice to the Utah Department of Environmental Quality (hereinafter “**DEQ**”) and also report it to the property owner, the Utah Division of Wildlife Resources (hereinafter “**DWR**”). Rupert Evans, a representative of **GORDON CREEK**, did not file a report to **DWQ** within the 5 days required by the **DOGM** Notice of Violation. According to representatives of **DWR**, the agency had not received an official report of the discharge as of May 30, 2018.

5. On or about April 25, 2018, Scott Hacking, the District Engineer in the **DEQ** Southeastern Region inspected the area of the discharge with Kirt Jensen, a representative of the Southeast Utah Health Department. During the inspection they observed the mud, dead vegetation, and cattle tracks noted by **DOGM** employees during the March 29, 2018 inspection. Mr. Hacking collected three soil samples from the affected area, the first approximately 40 feet downhill from the site of the discharge, the second approximately 500 feet downhill from the site of the discharge in the dry wash, and the third in the dry wash approximately 30 feet upstream from the cattle pond. A water sample was collected from the cattle pond itself. On or about April 27, 2018, the samples were delivered to America West Analytical Laboratories in South Salt Lake, Utah for analysis.
6. On or about May 11, 2018, **DWQ** received the results of the sample analysis from America West Analytical Laboratories. The soil samples were analyzed for salt and hydrocarbon content and compared to **DOGM** cleanup standards, while the water sample was analyzed for Total Dissolved Solids content and compared to **DWQ** water quality standards. The results of the sample analyses are summarized below; bold numbers in red indicate a violation of the applicable standard:

Sample	Conductivity	ESP	SAR	TPH-DRO	TPH-ORO	TDS
First Soil Sample	43,800	73	189	42.4	<20.3	N/A
Second Soil Sample	3,710	12	9.78	65.6	40.7	N/A
Third Soil Sample	2,100	20	17.9	29.3	<20.1	N/A
Cattle Pond	N/A	N/A	N/A	N/A	N/A	4,380
Regulatory Standard	4,000 umhos	<15%	<12	2,000 mg/kg	N/A	1,200 mg/L

ESP = Exchangeable Sodium Percentage

SAR = Sodium Adsorption Ratio

TPH-DRO = Total Petroleum Hydrocarbons – Diesel Range Only

TPH-ORO = Total Petroleum Hydrocarbons – Oil Range Only

TDS = Total Dissolved Solids

7. On or about June 24, 2014 **DWQ** issued a Notice of Violation to **GORDON CREEK** for violations of the Utah Water Quality Act. This NOV was issued in response to a June 11, 2013 discharge of approximately 85 barrels of produced water into Gordon Creek from an underground pipeline. As a result of this NOV, **GORDON CREEK**

signed a Stipulation and Settlement Agreement on December 12, 2014 and paid a penalty of \$3,200.00 to resolve the NOV.

8. Price River and its tributaries are designated as 2B, 3C, 4 State Waters in R317-2-13.1(b), *Classification of Waters of the State, Standards of Quality for Waters of the State*.

D. VIOLATIONS

Based on the foregoing Findings of Fact, **GORDON CREEK** has violated the following:

1. Utah Code Ann. § 19-5-107(1)(a) for releasing "...a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution.", as listed and described in the Findings of Fact paragraphs C.2 through C.6.
2. Utah Code Ann. § 19-5-114 for failing to "...immediately notify the director of the spill or discharge, any containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the board.", as listed in Findings of Fact paragraph C.4.
3. R317-2-7.2, Utah Admin. Code, for placing a substance "...in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects.", as listed and described in the Findings of Fact paragraphs C.2 through C.6.

E. ORDER

Based on the foregoing **FINDINGS OF FACT** and **VIOLATIONS** and pursuant to Utah Code Ann. § 19-5-107 and § 19-5-111, **GORDON CREEK** is hereby **ORDERED** to:

1. Immediately initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act and the Water Quality rules in the Utah Administrative Code, R317.
2. Immediately cease and desist all un-permitted releases of produced water which violate Utah Water Quality standards.

3. Submit a report containing the information below. The report must be submitted to the **DIRECTOR** within thirty (30) days of receipt of this NOV/CO and must provide the information listed below:
 - A. An evaluation of what caused the cited violations. This information should include the facts of the specific discharge outlined in the Findings of Fact as well as any other information regarding the release that occurred that may be important in resolving the violations listed in Section D of this **NOV/CO**.
 - B. Describe, in detail, the actions taken and/or planned to be implemented (including dates), to attain and continue to be in full compliance with this **NOV/CO**.
 - C. Describe, in detail, any environmental mitigation and restoration plans for the area affected by the discharge, and the expected timetables related to these plans.

F. NOTICE

This **NOV/CO** is effective immediately. **GORDON CREEK** may contest this **NOV/CO** by submitting a Request for Agency Action (RFAA) in writing as provided for in Utah Code Ann. § 19-1-301, and as specified in Utah Admin. Code R305-7-303. Any such request must be received by the **DIRECTOR** within 30 days of the **NOV/CO**'s issuance or the **NOV/CO** shall become final. Failure to file an RFAA within 30 days waives any right to contest this **NOV/CO**.

Compliance with the provisions of this **ORDER** is mandatory. Failure to respond may subject **GORDON CREEK** to further civil penalties or criminal fines under Utah Code Ann. § 19-5-115.

Any compliance schedules submitted by the violator as required by this **NOV/CO** must be submitted by the deadlines established in the Order and approved by the **DIRECTOR**. Once compliance schedules are approved by the **DIRECTOR**, the compliance schedule must be implemented according the deadlines and requirements established in the compliance schedules(s) and/or this **NOV/CO**. Once approved, timeframes and requirements of any compliance schedules become binding on the violator.

All reports required under the **NOV/CO** must be accompanied by the following certification, which is to be signed in accordance with Utah Admin. Code R 317-8-3.4(4):

"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 managed 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 am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

Utah Code Ann. § 19-5-115 provides that violation of the ACT or a related order may be subject to a civil penalty of up to \$10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to \$25,000 per day of violation.

This NOV/CO does not relieve GORDON CREEK from complying with all other local, State, and Federal laws and requirements, nor does it preclude the Utah Department of Environmental Quality or the DIRECTOR from taking any and all other actions allowed by law.

Signed this 18th day of June 2018.

Erica B. Gaddis
Erica Gaddis, PhD
Director

DWQ-2018-005808

Exhibit 2



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

FILE COPY

DWQ-2018-009151

b1j

September 19, 2018

CERTIFIED MAIL
(Return Receipt Requested)

Gordon Creek, LLC
C/O Rupert Evans
737 7th Avenue SW, Suite 1207
Calgary, Alberta, Canada T2P 3P8
VIA EMAIL

Subject: Proposed Penalty and Settlement Agreement, Docket Number 118-04
Gordon Creek LLC Produced Water Discharge
Utah DEQ Incident #13387

Dear Mr. Evans:

Enclosed is the proposed Settlement Agreement (Agreement) to resolve a Notice of Violation (NOV) issued to Gordon Creek, LLC by the Division of Water Quality (DWQ). This Notice of Violation was issued in response to a large discharge of produced water into a tributary of Gordon Creek approximately 11 miles west of Price, Utah.

Attached please find two copies of the Agreement, along with the supporting penalty documents to formally resolve the NOV. If you are in agreement, please sign both documents (**do not date them**) and return to our office within 10 days of receipt.

We are required to give public notice of the Agreement for thirty days. If there are no significant changes necessary as a result of the public comment period, the Agreement will be finalized. Once finalized, we will send you a fully executed copy for your records, along with an invoice for the penalty amount.

If you have any questions regarding this information, please contact Kevin Okleberry at 801-536-4054 or kokleberry@utah.gov.

Sincerely,



Erica Brown Gaddis, PhD
Director

EBG/KO/blj

- Enclosures (3):
1. Settlement Agreement – 2 Copies (DWQ-2018-009154)
 2. Penalty Calculation and Justification (DWQ-2018-009153)
 3. Penalty Calculation Sheet (DWQ-2018-009152)

cc: Brady Bradford, Southeast Utah Health Department, via email
Scott Hacking, DEQ District Engineer, via email
Lisha Cordova, Utah Division of Oil, Gas, and Mining, via email
Craig Anderson, Office of Attorney General, via email

DWQ-2018-009151

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF GORDON CREEK, LLC	DOCKET NUMBER I18-04 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "AGREEMENT") is between **GORDON CREEK, LLC**, (hereinafter "**GORDON CREEK**") and the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **DIRECTOR** has authority to administer the *Utah Water Quality Act, as amended 1953*, as specified in *UCA 19-5-106(2)(d)* (hereinafter the "*ACT*").
2. The **DIRECTOR** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by **GORDON CREEK**.
4. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I18-02 (hereinafter the "**NOTICE**"), between **GORDON CREEK** and the **DIRECTOR**, issued to **GORDON CREEK** on June 18, 2018, by the **DIRECTOR**. It does not in any way relieve **GORDON CREEK** from any other obligation imposed under the *Act* or any other State or Federal laws.
6. In resolution of said **NOTICE** in Paragraph 5 of this **AGREEMENT**;
 - A. **GORDON CREEK** agrees to pay a penalty and costs in the amount of \$8,141.00, which was calculated and adjusted for circumstances in conformance with the penalty policy outlined in *UAC 317-1-8*.

Payment is to be made within thirty (30) days of the effective date of this **AGREEMENT** by online payment, or check made payable to the State of Utah delivered or mailed to:

Department of Environmental Quality
Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870

- B. **GORDON CREEK** agrees to submit a remediation and recovery plan to the **DIRECTOR** for approval, and complete all necessary clean up and remediation steps in the affected areas.
- C. **GORDON CREEK** shall be required to submit updates, based on an approved remediation plan. The updates must include how the project is progressing and any known setbacks that may impact the progress of the mitigation and recovery.
- 7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions against **GORDON CREEK** for permit violations not resolved by this **AGREEMENT**.
- 8. If an agreement between **GORDON CREEK** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then **GORDON CREEK** or the **DIRECTOR** may commence a proceeding with the **BOARD** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
- 9. Nothing in this **AGREEMENT** shall constitute a waiver by **GORDON CREEK** to raise in defense any legal or factual contention for future allegations of noncompliance.
- 10. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against **GORDON CREEK**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this _____ day of _____, 2018.

GORDON CREEK, LLC

**UTAH DIVISION OF
WATER QUALITY**

By _____
Authorized Agent

By _____
Director

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
GORDON CREEK, LLC, SETTLEMENT AGREEMENT DOCKET No. I18-04**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

GORDON CREEK, LLC, Statutory Maximum of \$10,000/violation/day for one day, for one violation = \$10,000.00 (Calculated as required)

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation;
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance; and
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1) the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator;
- 6) good faith efforts of the violator;
- 7) ability of the violator to pay; and
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,

- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

FINDINGS OF FACT:

1. On information and belief, Gordon Creek, LLC, (hereinafter “**GORDON CREEK**”) is an independent crude oil and natural gas exploration and production company operating in the State of Utah.
2. On or about March 29, 2018, employees of the Utah Division of Oil, Gas, and Mining (hereinafter “**DOGM**”) discovered evidence of an old leak of produced water from a pipeline which resulted in the discharge of an unknown amount of liquid. The leak occurred near Halley Canyon Road in the Gordon Creek Wildlife Management Area at or near the geographical coordinates 39° 35'47" N, 111° 3'36" W approximately 13 miles west of Price, Utah.
3. During the inspection on or about March 29, 2018, the **DOGM** employees noted the vegetation in the spill area was “almost entirely dead” and the soils were “heavily impacted” by the salts in the produced water. The area obviously impacted by the spill was estimated to be approximately one-half acre in size. Based on the presence of cattle tracks in the mud around the discharge area, **DOGM** employees estimated the pipeline could have been leaking any time from June 2017 to November 2017, as this is the time frame when cattle were last allowed to graze in that area. The total volume of produced water discharged is unknown but was estimated to be greater than 1,000 barrels. The discharged liquid saturated the soil around the pipeline, eventually reaching the surface and flowing downhill into a dry wash, and then into a livestock pond approximately 1,000 feet to the northwest. This pond drains into a dry wash which flows into Second Water Creek approximately 0.75 miles to the northeast. This creek eventually drains into the South Fork of Gordon Creek approximately 6 miles downstream. South Fork Gordon Creek is a tributary of Gordon Creek, which itself is a tributary of the Price River.
4. On or about April 24, 2018, **DOGM** issued a Notice of Violation to **GORDON CREEK** for violations of Utah Administrative Code Rules R649-3-32 and R649-3-15 arising from the discharge. In the Notice of Violation, the company was instructed to report the discharge within 5 days of receiving the Notice to the Utah Department of Environmental Quality (hereinafter “**DEQ**”) and also report it to the property owner, the Utah Division of Wildlife Resources (hereinafter “**DWR**”). Rupert Evans, a representative of **GORDON CREEK**, did not file a report to **DWQ** within the 5 days required by the **DOGM** Notice of Violation. According to representatives of **DWR**, the agency had not received an official report of the discharge as of May 30, 2018.
5. On or about April 25, 2018, Scott Hacking, the District Engineer in the **DEQ** Southeastern Region inspected the area of the discharge with Kirt Jensen, a representative of the Southeast Utah Health Department. During the inspection they observed the mud, dead vegetation, and cattle tracks noted by **DOGM** employees during the March 29, 2018 inspection. Mr. Hacking collected three soil samples from the affected area, the first approximately 40 feet downhill from the site of the discharge, the second approximately 500 feet downhill from the site of the discharge in the dry wash, and the third in the dry wash approximately 30 feet upstream from the cattle pond. A water sample was collected from the cattle pond itself. On or about April 27, 2018, the samples were delivered to America West Analytical Laboratories in South Salt Lake, Utah for analysis.

6. On or about May 11, 2018, DWQ received the results of the sample analysis from America West Analytical Laboratories. The soil samples were analyzed for salt and hydrocarbon content and compared to DOGM cleanup standards, while the water sample was analyzed for Total Dissolved Solids content and compared to DWQ water quality standards. The results of the sample analyses are summarized below; bold numbers in red indicate a violation of the applicable standard:

Soil Samples	Conductivity (umohs)	ESP (%)	SAR	TPH-DRO (mg/kg)	TPH-ORO (mg/kg)
First Soil Sample	43,800	73	189	42.4	<20.3
Second Soil Sample	3,710	12	9.78	65.6	40.7
Third Soil Sample	2,100	20	17.9	29.3	<20.1
Regulatory Standard	4,000	<15	<12	2,000	N/A

ESP = Exchangeable Sodium Percentage

SAR = Sodium Adsorption Ratio

TPH-DRO = Total Petroleum Hydrocarbons Diesel Range Only

TPH-ORO = Total Petroleum Hydrocarbons – Oil Range Only

Water Sample	Total Dissolved Solids (mg/L)
Cattle Pond	4,380
Regulatory Standard	1,200

7. On or about June 29, 2014 DWQ issued a Notice of Violation to GORDON CREEK for violations of the Utah Water Quality Act arising from a June 11, 2014 discharge of approximately 85 barrels of produced water into Gordon Creek from a pipeline.
8. Price River and its tributaries are designated as 2B, 3C, 4 State Waters in R317-2-13.1(b), *Classification of Waters of the State, Standards of Quality for Waters of the State*.

VIOLATIONS

The Gravity Component of the penalty is based on the following citations:

Narrative violations of Utah Water Quality Standards

VIOLATION 1, Utah Code Ann. § 19-5-107(1)(a), for the unpermitted release of a “pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution”, as described in Findings of Fact paragraphs 2 through 8.

VIOLATION 2, Utah Administrative Code R317-2-7.2, for discharging or placing a waste in such a way that waters of the state will be or may become “...offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic

life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures" as described in Findings of Fact paragraphs 2 through 8.

VIOLATION 3, Utah Code Ann. § 19-5-114 for failure to "...immediately notify the director of the spill or discharge...in accordance with rules of the board."

PENALTY: The penalty for GORDON CREEK, LLC, has been calculated as follows:

Penalty Category C:

Category C - \$500.00 to \$2,000.00 per violation per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include any discharges which contained "...significant quantities or concentrations of non-toxic or non-hazardous materials" or where there was "[s]ubstantial non-compliance with monitoring or reporting requirements". **GORDON CREEK** discharged a significant amount of produced water into the Gordon Creek drainage, which based on sampling results and visual inspections of the area had the potential to impair the quality of the water in the creek and the Price River. Based on photographic evidence and subsequent inspections, the conditions which caused these violations were immediately corrected or reported to the Division of Water Quality. Total Category C penalty: **\$6,000.00**.

Penalty Category D:

Category D - \$167.00 to \$500.00 per violation per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include "minor violations of compliance schedule requirements" or where there was "minor violations of reporting requirements". **GORDON CREEK** was issued a Notice of Violation on or about Division of Water Quality on or about June 18, 2018, and did not provide an official response to DWQ within 30 days as required in Section E, Paragraph 3 of the Notice of Violation. Total Category C penalty: **\$500.00**

Mitigation considerations are subdivided into three equal categories (1/3 each for History of Compliance, Degree of Negligence, and Degree of Cooperation).

Credit for degree of negligence: As described in paragraph 2 of the Findings of Fact, the discharge of produced water from the pipeline is unknown but is probably related to corrosion causing material failure. However, as **GORDON CREEK** has not yet provided an official report to DWQ outlining the cause for the failure, no credit will be given. 0% credit given, \$0.00 deducted.

Credit for history of compliance: As described in paragraph 3 of the Findings of Fact, on or about June 29, 2014, DWQ issued a Notice of Violation to **GORDON CREEK** for a discharge of produced water into Gordon Creek from a pipeline. 0% credit given, \$0.00 deducted.

Credit for good faith efforts to comply: As noted in paragraph 2 through 6 of the Findings of Fact, **GORDON CREEK** did not detect and remediate the produced water spill, despite being officially notified by **DOGM**. In addition, Gordon Creek did not notify DWQ as instructed by **DOGM** in their April, 24, 2018 Notice of Violation, and Gordon Creek has not yet officially responded to the Notice of Violation issued by DWQ. 0% credit given, \$0.00 deducted.

Total deduction: \$0.00 per violation/day. \$2,000.00 per violation/day X 3 violations + \$500.00 per violation/day X 1 violation = **\$6,500.00**.

Economic Benefit Justification:

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. No economic benefit to **GORDON CREEK** was determined to have been gained from this incident, so economic benefit is \$0.00.

TOTAL PENALTY AMOUNT: \$6,500.00 + \$0.00 = \$6,500.00

COST RECOVERY

Labor costs incurred by DEQ during the investigation were calculated based on a standard reimbursement rate of \$90.00 per hour. The time the DEQ District Engineer spent inspecting the location, collecting samples, and transporting them to the laboratory for analysis is estimated to be 10 hours. Total labor costs for the investigation and preparation of the Notice of Violation is \$90.00/hour X 10 hours = \$900.00.

The samples collected by DEQ on or about April 25, 2018 were analyzed by America West Analytical Laboratories on or about May 14, 2018. Total costs of sample analysis were \$741.00.

TOTAL PENALTIES AND COSTS: = \$6,500.00 + 741.00 + 900.00 = \$8,141.00

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR Gordon Creek, LLC 737 7th Ave SW, Suite 1207 Calgary, Alberta, Canada, T2P 3P8		UPDES Permit Number Date of Analysis Site Name: NOV/SA Docket No. DEQ Analyst Name			FACILITY DESCRIPTION / CONTACT NAMES Name of Site Contact: Name of Authorized Official: Telephone Number			
PERMIT COVERAGE	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance	Credit for Good Faith Efforts	Total Penalty Per Day	No. of Violation Days	Dollar Amount	Total
	Category A \$7,000-\$10,000 Reduction	0% \$0	0% \$0	0% \$0	\$10,000	0	\$0	\$0
Category B \$2,000-\$7,000 Reduction	0% \$0	0% \$0	0% \$0	\$7,000	0	\$0	\$0	
Category C \$500-\$2,000 Reduction	0% \$0	0% \$0	0% \$0	\$2,000	3	\$6,000	\$6,000	
Category D \$0-\$500 Reduction	0% \$0	0% \$0	0% \$0	\$500	1	\$500	\$500	
						Total Gravity:	\$6,500	
Economic Benefit (Enter Numbers From BEN worksheet)	Enter Capital Investment Cost (Delayed Capital)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
							Total BEN:	
DWQ-2018-009152							Total Penalty:	\$6,500

Exhibit 3

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

GORDON CREEK LLC
C/O CT CORPORATION SYSTEM
1108 E SOUTH UNION AVE
MIDVALE UT 84047

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Hollingshead
 Agent
 Addressee

B. Recipient by (Printed Name)

Hollingshead

C. Date of Delivery

9-26-18

D. Is delivery address different from item 1?

 Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

IN

4. Restricted Delivery? (Extra Fee)

 Yes

BRIAN L. TARBET
 Chief Civil Deputy

OAG-076-18

Article Number

(Transfer from service label)

7011 3500 0002 9955 2847

Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gordon Creek, L.L.C.
c/o CT Corporation System, Registered Agent
1108 East South Union Avenue
Midvale, Utah 84047

Re: **Notice of Violation and Compliance Order, Docket No. 118-04**
 Service of Process upon Gordon Creek, L.L.C.,
 located at 737 7th Avenue Southwest, Suite #1207, Calgary, Alberta, Canada T2P 3P8

Dear Sir/Madam:

Enclosed please find Notice of Violation and Compliance Order, Docket No. 118-04, which is being served upon CT Corporation System as Registered Agent for Gordon Creek, L.L.C. This Notice of Violation was served upon Gordon Creek, L.L.C., by Certified Mail (Return Receipt Requested) to Gordon Creek, L.L.C., c/o Rupert Evans, at the above-referenced address, on June 18, 2018. It was also served upon Gordon Creek, L.L.C., by e-mail on that same date. The Division of Water Quality has opted to provide additional service of the Notice of Violation and Compliance Order upon Gordon Creek, L.L.C., by serving the company through its Registered Agent. The Notice of Violation and Compliance Order has a 30-day period in which to contest the Notice of Violation and Compliance Order by filing a response in writing to the Division of Water Quality. This additional service will reset the time in which to contest the Notice of Violation and Compliance Order by giving Gordon Creek, L.L.C., an additional 30 days from the date of this letter.

Please contact me by telephone at (801) 536-0288 or by e-mail at pmcconkie@agutah.gov with any questions or concerns.

Sincerely yours,

Paul M. McConkie

Paul M. McConkie,
Assistant Attorney General

PMM/srb

cc: Rupert Evans, Gordon Creek, L.L.C.
 Kevin Ockleberry, Division of Water Quality

ENVIRONMENT AND HEALTH DIVISION • ENVIRONMENT SECTION • TELEPHONE: (801) 536-0290 • FACSIMILE: (801) 536-0222

MAILING ADDRESS: P.O. Box 140873 • SALT LAKE CITY, UTAH 84114-0873

STREET ADDRESS: 195 NORTH 1950 WEST, 2ND FLOOR SOUTHWEST • SALT LAKE CITY, UTAH 84116