

## **Utah Division of Water Quality Response to Comments**

**on**

### **Proposed Settlement Agreement with Chevron Pipeline Company**

**November 14, 2011**

#### **Background**

The Executive Secretary of the Utah Water Quality Board, together with Salt Lake City, is proposing to enter into a settlement agreement (Agreement) with Chevron Pipeline Company (CPL). The State's \$3.5 million portion of the \$4.5 million settlement is to settle the violations that occurred as the result of two oil spills. The settlement covers only the penalty and damages portion of the violations. CPL is still obligated under a compliance order from the Executive Secretary to complete remediation of the oil spills.

The proposed Agreement relates to two notices of violation (NOVs) issued to Chevron Pipe Line Company for two separate oil spills. The first oil spill occurred on June 11, 2010 from a leak in the Rangely-to-Salt Lake segment of the Salt Lake Crude System Pipeline, owned by CPL. The second spill occurred on December 1, 2010, as the result of a damaged valve, from the Hanna-to-Salt Lake City segment of the pipeline.

June 2010 Oil Spill. The Salt Lake City Fire Department notified CPL about the crude oil spill on the morning on June 12, at which time CPL commenced its response actions to the spill. The spill site is located approximately 50 feet uphill from and adjacent to Red Butte Creek. The spill released approximately 800 barrels of crude oil into the creek. The oil traveled down Red Butte Creek and generally collected in Liberty Lake located at Liberty Park. Some oil residue reached the Jordan River. CPL's cleanup addressed the entire impacted area including six areas affected by the spill: the spill site; Red Butte Creek; Liberty Lake; concrete storm water drains; the Jordan River; and the Mount Olivet Cemetery Pond and overflow ditch.

December 2010 Oil Spill. The release from the second spill occurred on the CPL pipeline at the Red Butte valve site, located adjacent to the Red Butte Arboretum on the University of Utah campus and proximate to Red Butte Creek. Oil overflowed from the valve box onto the ground and followed several paths downhill towards Red Butte Creek, eventually pooling in a natural low area. Between 350 and 500 barrels of crude oil were released as a result of this incident. Liquid oil did not reach the creek but low levels of volatile contamination were detected in the creek waters. These volatiles were believed to reach the creek via the air.

## A. Clean up Measures

### 1. Phase I

The decisions for clean up measures followed the Unified Command structure, with all activities directed by a single, coordinated Incident Action Plan. Unified Command was made up of members from Salt Lake City, Salt Lake Valley Health Department, Utah Department of Environmental Quality Division of Water Quality (DWQ), the U.S. Environmental Protection Agency (EPA) and CPL. The initial actions taken after the spill were to stop the spill source, protect human health, recover lost crude oil and minimize environmental damages. Oil collecting booms were placed on Red Butte Creek, Liberty Lake and the Jordan River. “Initial” and “Rapid Assessment” SCAT surveys were conducted immediately after the spill with “Hot Spot” SCAT surveys continuing on an “as needed” basis upon identification of contaminated locations. The surveys consist of identifying the extent and degree of oil contamination, categorizing habitat, identifying resources at risk, whether ecological, cultural or recreational, and finding opportunities for cleanup. Additionally, a creek cleaning program using portable low pressure washers and multiple high water releases from Red Butte Reservoir was utilized to wash residual oil from creek banks and culverts downstream to be collected by vacuum trucks and absorbent materials. Initial monitoring of Red Butte Creek included water and sediment chemistry, macroinvertebrates, ground water and banks soils. Ongoing quarterly sampling will monitor water and sediment chemistry and macroinvertebrates.

### 2. One Year Mark

June 12, 2011 marked one year since the first Red Butte Creek Oil Spill. Phase I of the creek clean up was completed in summer and fall of 2010 with crews working from the spill site at the University of Utah through the entire length of Red Butte Creek until it enters Liberty Lake. Crews used washing/flushing equipment and various oil absorbing booms. Liberty Lake was cleaned over the winter of 2010-2011; pond sediment was removed and structures that were contaminated with oil were either cleaned or replaced.

### 3. Phase II

There are still oil residues in Red Butte Creek sediment. The contaminated sediment, along with the residues, can be entrained in the water but residues have rarely been detected in water since July 2011. In one area near 1300 East, residents continue to report odors at times and still see evidence of oil residues in the creek. DWQ continues to be committed to responding to all of these reports.

Since the cessation of active remediation of the creek, several other processes are expected to have reduced the concentrations of oil residues in the creek. High runoff in spring 2011 and summer thunderstorms produced scouring flows in Red Butte Creek, which have proved

beneficial in removing remaining oil residues from the creek. In addition, based on observations at other hydrocarbon releases, microbial degradation and volatilization are anticipated to continue to reduce residue concentrations.

DWQ has undertaken further monitoring in Phase II of the cleanup for water quality, creek sediment and soil, and aquatic organisms to identify any remaining areas of contamination that are potential ongoing sources of contamination. Potential source areas (contaminated or potentially contaminated and unremediated) include crude oil contamination adjacent to a power pole at 1196 South 1100 East, beneath a structure located on the creek at the 1365 Harvard Avenue property, and soils contaminated on University of Utah property from a release unrelated to the CPL pipeline release.

Further monitoring is also used to determine how the creek responds and if additional clean up measures are needed. For human health, DWQ has adopted the EPA Regional Screening Levels for a residential exposure scenario to initially evaluate sampling results and determine if further action is warranted. If the creek concentrations are less than the residential screening levels for water sediment for four consecutive quarterly sampling events, CPL may request to terminate monitoring. If creek concentrations exceed the screening levels, options for further action include additional monitoring, administrative controls such as warning signs or creek closures, or further clean up and remediation.

#### 4. Sampling Results

Since the cessation of Phase I cleanup activities, Red Butte Creek sampling results for water met the EPA screening levels. For sediment, analytical results since August 2010 show that hydrocarbon residues exceed the screening levels at some locations in the creek. These locations required further action in the form of ongoing monitoring. No immediate additional remediation was necessary because the incremental lifetime cancer risks for a residential scenario were less than  $1 \times 10^{-4}$  and the hazard quotients were less than one. Final decisions regarding these residues are pending the results of the Human Health Risk Assessment.

#### 5. Risk Assessments

DWQ is conducting a baseline Human Health Risk Assessment that will define the health risks using standard EPA methods for residents and recreational users of the creek. The risk assessment is prospective, that is, the risk assessment will predict potential health risks from August 2011 to 30 years in the future (30 years is the EPA standard default exposure duration for a residential scenario). The outcome from this assessment, in addition to other factors such as technical feasibility, will be used to determine appropriate future actions. The public and other interested parties will be given an opportunity to provide comment on the risk assessment.

In addition to the Human Health Risk Assessment, DWQ is conducting a baseline Ecological

Risk Assessment. Similar to the Human Health Risk Assessment, the Ecological Risk Assessment will be used to determine appropriate future actions. In addition to the prospective Ecological Risk Assessment, DWQ is monitoring benthic macroinvertebrates that live in Red Butte Creek. The samples after the spill show decreases in abundance and diversity of the macroinvertebrates when compared to unimpacted sites upstream of the spill and other similar urban creeks in Salt Lake County. DWQ attributes these impacts to oil and residues toxicity and the physical disturbances during remediation activities. Since that time, subsequent monitoring of the macroinvertebrates shows a recovery trend with regard to diversity and abundance.

#### B. Information and Public Notice

Information on the Red Butte oil spill has been posted on the DWQ website, <http://www.deq.utah.gov/Issues/redbuttespill/index.htm>, immediately after the first spill and has been periodically updated. Information includes enforcement documents, health effects, cleanup efforts, sampling results and summaries, and other related documents.

Public Notice of a thirty day public comment period of the proposed settlement agreement was published in the Salt Lake Tribune on September 7, 2011. Comments were accepted until close of business on October 7, 2011. The Executive Secretary received two comments opposing the proposed Settlement Agreement, one from counsel representing landowners in the vicinity of Red Butte Creek and another from a person representing an environmental organization.

#### C. Settlement

In considering settlement of the penalty and any natural resource damage claims DWQ had against CPL, DWQ evaluated its legal options, relevant case law and other factors pertinent to its litigation risk and determined that the proposed settlement was reasonable. Only two potential claims are being proposed for settlement in this matter: DWQ's penalty against CPL for unpermitted and illegal discharge of pollutants into waters of the State under Utah Code Ann. § 19-5-107, and its claim for damages to natural resources owned by the State.

It is also important to understand what is not being proposed for settlement under this agreement: CPL's clean up, remediation, and mitigation responsibilities caused by the violations will continue until these activities have been adequately performed. Responsibility for clean up, remediation, and mitigation is explicitly excluded from this settlement agreement under ¶ 8.iii.

## Response to Public Comments

**Comment No. 1:** Water quality violations persist in Red Butte Creek.

- a. *A commenter uses as an example of continuing water quality violations in a concrete-lined trout pond on property located at Harvard Avenue and in creek sediment at the Hayes' property. The commenter included a chemical quality analysis conducted by ALS and Boston Chemical Data Group (BCD), dated October 2, 2011.*

**Response:**

After a detailed review, DWQ concludes that the data submitted by BCD in support of the comment is unreliable because of deficiencies in documentation and methodologies. DWQ staff re-sampled the water and sediment at the pond and the sediment at the Hayes' property on October 27, 2011. DWQ's results were non-detect for petroleum hydrocarbons in the pond water consistent with many previous samples of creek water. For sediments, DWQ's results support that hydrocarbon residues remain in sediments at these locations but not at the magnitude reported by BCD. DWQ's results were similar to concentrations measured at other impacted locations on the creek and to the samples previously collected from the creek at the Hayes' property.

Although DWQ concludes the data reported by BCD is unreliable, Red Butte Creek may not currently meet water quality standards as defined by R317-2-7.2 (Narrative Standards) because of residual hydrocarbons in the sediment. This tentative conclusion may change pending the conclusions of the Human Health and Ecological Risk Assessments anticipated to be completed in the first quarter of 2012. In addition to a quantification of potential risk, the assessments include defining the likely source(s) of the remaining residual hydrocarbons, some of which are suspected to be unrelated to the CPL pipeline release. For instance, DWQ staff observed an appreciable amount of cobble-sized pieces of friable asphalt in the creek at the Hayes' property. This asphalt was confirmed by laboratory analysis to be a potential source of polynuclear aromatic hydrocarbons like benzo(a)pyrene. DWQ also notes that BCD concluded that the hydrocarbon signature from the pond water and Hayes' sediment was unrelated to the CPL oil spill. Although DWQ concludes the BCD data are unreliable, BCD's conclusion may ultimately be consistent with the conclusions of the Human Health and Ecological Risk Assessment regarding the source(s) of remaining hydrocarbons.

- b. *A commenter says that Settlement Agreement ¶ 3 "settles the violation in the NOV's except as provided in ¶ 8.iii below" and that this language "suggests that the water quality violations that are the subject of the NOV's will have been resolved as a result of the Settlement Agreement", whereas there is a continuing violation of applicable water quality standards due to the presence of petroleum hydrocarbons from the oil spill.*

**Response:**

The commenter is directed to the ¶ 8.iii of the Agreement which continues to bind CPL to the Executive Secretary’s compliance authority. In particular, ¶ 8.iii of the Agreement states:

**Ongoing Obligations.** Nothing in this Agreement shall constitute or be considered as a release from any obligation CPL has to submit information, conduct sampling and monitoring, implement work plans, or is otherwise required under the NOVs, including completion of a Human Health Risk Assessment and an Ecological Risk Assessment, or to reimburse DWQ for ongoing oversight costs and other work performed under the NOVs. Furthermore, the following are excluded from the foregoing Releases in Paragraphs 8(i) and 8(ii): CPL shall continue to complete all clean up, remediation actions, and mitigation work for Red Butte Creek or any other property that has been, or is in the future, identified by the Unified Command, the Executive Secretary, or the U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration as having been impacted by the Releases, including ongoing monitoring, and clean up of oil contaminated locations, such as those reported by agency monitoring or citizen complaints.

Accordingly, the Executive Secretary has not released CPL from his compliance order authority or vitiated CPL’s legal obligations to conduct remedial activities with respect to either oil spill.

**Comment No. 2:** Natural Resource Damages.

- a. *A commenter says the Settlement Agreement is illegal and an abuse of discretion because it releases Chevron from natural resources damage claims and the State of Utah did not “comply with the Oil Pollution Act and applicable regulation and guidance . . .”*

**Response:**

The Oil Pollution Act allows recovery of damages to “natural resources,” a term defined as:

[L]and, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States . . . any State or local government or Indian [T]ribe, or any foreign government 33 U.S.C. § 2701(20).

After evaluating many factors, the State of Utah decided that it could achieve a more comprehensive and greater monetary settlement by combining its civil penalty under the two NOVs with any State claim for natural resource damages into a single settlement.

In settling with CPL, the State of Utah evaluated its legal options, litigation risks, relevant case law and other factors and determined that it would settle for an amount certain with CPL and in addition retain its order authority over CPL to ensure CPL’s continued compliance with risk

assessments, remediation etc.. Even under a natural resource damage claim, settlements are encouraged.<sup>1</sup>

To pursue a money damage claim under the Oil Pollution Act, the State would have had to devote personnel and resources to a multi-year procedural process to evaluate and quantify damages to any State natural resources in Red Butte Creek. The Oil Pollution Act does not allow double recovery,<sup>2</sup> which raises a question of how payment of a penalty to the State fits into that provision. The State decided it has obtained a monetary settlement under its State law authority to cover both a penalty for the NOV's as well as settlement of any natural resources damages. This decision is reinforced by the fact that CPL is still under the Executive Secretary's compliance order authority. *See* Response to Comment 1.b above.

*b. A commenter objects that there has been no attempt to follow the public process outlined in the Oil Pollution Act where “the general public, including people who have been directly impacted by the pollution [have] the opportunity to be engaged in the process.”*

**Response:**

As described in ¶ 6 of the Agreement, \$3 million is to be devoted to mitigation projects, as approved by the Executive Secretary. The Agreement states: “The Parties shall agree to the process for soliciting stakeholder and public comment on the Mitigation Projects.”

The process that will be used to select mitigation projects will incorporate a public comment

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<sup>1</sup>See federal guidance for natural resource damage trustees, such as: BLM, *Natural Resource Damage Assessment & Restoration Handbook* at 65-66 (May 2008), [www.blm.gov/pgdata/etc/medialib/blm/wo/InformationResources\\_Management/policy/blm\\_handbook.Par.38115.File.dat/H-1703-3.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/InformationResources_Management/policy/blm_handbook.Par.38115.File.dat/H-1703-3.pdf) (“A cooperative PRP may be willing to participate in a cooperative assessment, and fund all or some of the trustees’ assessment activities, enabling the BLM and co-trustees to avoid all or some NRDA costs. Cooperative assessments are likely to be more cost-effective and expedient than both parties conducting separate data collection, by eliminating duplicate efforts, allowing for agreements on technical issues like the extent of injuries, and promoting earlier focus on restoration); and FWS, *The Natural Resource Damage Assessment and Restoration Program* (Feb. 2005), [http://www.fws.gov/fisheries/pdfs/Programs/NRDAR\\_Program\\_2-10-05.pdf](http://www.fws.gov/fisheries/pdfs/Programs/NRDAR_Program_2-10-05.pdf) (“The trustees contact the responsible parties and attempt to reach a settlement for the cost of the restoration, for the loss of the use of the land or resources to the general public, and for the money the trustees spent to assess the damages . . . responsible parties agree to do the restoration work themselves, money for restoration is not collected by the trustees. This is called in-kind work. If a negotiated settlement cannot be reached, the trustees can take the responsible parties to court. Most cases are settled out of court.”)

<sup>2</sup>Specifically the Oil Pollution Act provides: “There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.” 33 U.S.C. § 2706(d)(3)

opportunity. The details of this will be clearly outlined in a public announcement in the Request for Proposals to be issued by the Executive Secretary following finalization of the settlement agreement. Accordingly, the public will have the opportunity to comment on the mitigation projects. Moreover, this Settlement Agreement was the subject of public notice and comment.

It should also be noted that the State cannot recover damages for private parties. The Oil Pollution Act provides:

**(B) Real or personal property**

Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property. 33 U.S.C. § 2702(b)(2).

Accordingly, claims for damage to real or personal property must be pursued by the property owners.

*c. Another commenter says there is no rationale for how DWQ arrived at the amounts for mitigation projects and lost uses.*

**Response:**

See response to 2.a

**Comment No. 3:** The Civil Penalty is Grossly Insufficient.

*a. One commenter believes that settlement for a penalty of \$649 per penalty day – based on a penalty of \$500,000 and “475 days of consecutive day . . . as of October 1, 2011” – to be grossly insufficient.*

**Response:**

The commenter misapprehends the terms of the Agreement. Under the terms of the settlement agreement, the Executive Secretary has agreed to a \$3.5 million penalty, \$500,000 of which is a cash payment from CPL and \$3 million is payment for mitigation projects. Agreement ¶ 5. The \$500,000 cash payment is to be deposited into the State of Utah General Fund. Utah Code Ann. § 19-5-115(11(a)). The \$3 million is to be used to fund projects approved by the Executive Secretary.

In sum, the commenter has used incorrect assumptions in arriving at a penalty of \$649 per penalty day.

*b. A commenter disagrees with the application of the Penalty Criteria for Civil Settlement Negotiations, Utah Admin Code R317-1-8 (penalty policy) because of the belief that “Chevron’s conduct may be deemed willful or criminally negligent” and, even if not*



*criminally negligent, the crude oil “releases clearly resulted in documented public health effects and significant environmental damage.”*

**Response:**

The commenter refers to various violations issued by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). Those violations and the causes leading to the violations were the subject of a separate federal administrative enforcement action and are not part of DWQ’s jurisdiction. As described in the Settlement Agreement, CPL has paid a civil penalty of \$424,000 to PHMSA in settlement of violations regulated by PHMSA.

With respect to intent of the penalty policy, R317-1-8, the commenter recognizes that the criteria and procedures in the policy “are intended solely for ‘guidance’ and create no substantive rights, as provided in Section 8.5. . . .” However, the commenter believes “for purposes of administrative law, decisions reached by DWQ must be fair, reasonable, and based on substantial evidence in the administrative record.”

Section 8.5 explicitly states the policy is “intended solely for the guidance of the State.”<sup>3</sup> DWQ, consistent with the penalty policy, used the policy as guidance in settlement negotiations with CPL and, based on the totality of the circumstances, including retention of compliance order authority, DWQ evaluated litigation risks, CPL’s performance, resource demands, ongoing cleanup activities and used its professional judgment to conclude that the \$3.5 million settlement was fair and reasonable.

- c. Another commenter says the amount proposed for settlement of fines and mitigation of impacts to the public and Red Butte Creek and lost uses are too small compared to the actual damage to public resources and lost uses caused by the oil spill.*

**Response:**

See Response to Comment 3.a

**Comment No. 4:** Chevron’s mitigation project duties are illegal, illusory, arbitrary and capricious.

- a. The concept of mitigation is distinct from remediation; mitigation involved direct or ancillary projects intended to restore wildlife habitat and other measures in order to indirectly mitigate environmental impacts resulting from the release.*

**Response:**

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<sup>3</sup>Section 8.5 states:

**Intent of Criteria/Information Requests.** The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

We agree that mitigation is distinct from remediation and the Executive Secretary has retained his compliance order authority over ongoing or future remediation. As to restoration, the settlement agreement ¶ 6 addresses mitigation projects. Under the Agreement, the Executive Secretary will evaluate mitigation projects eligible for funding by CPL. At this time it is premature to pre-judge what those mitigation projects are other than to say the projects must “enhance and protect waterways that may have been affected by the Releases or otherwise relate to the Releases [of crude oil].” Agreement ¶ 5.ii.

*b. The mitigation project must be judicially enforceable and undertaken by the violator.*

**Response:**

This comment is premature because mitigation projects have yet to be proposed. If the Executive Secretary approves a mitigation project, it will be subject to an enforceable agreement. Moreover, as described elsewhere, the Executive Secretary has used the penalty policy as guidance and has decided that it is preferable for those proposing mitigation projects to determine who should implement them and that CPL will provide the funding.

*c. The Settlement Agreement places the acceptance and funding of any mitigation project in the sole discretion of Chevron and in the event that an insufficient number of Mitigation Projects are proposed within 90 days or are otherwise accepted to add up to \$3 million, Chevron has no further obligations under the Settlement Agreement.*

**Response:**

CPL has a duty to pay \$3 million. First, mitigation projects must be completed within three years of the date of the Agreement. Agreement ¶ 6.ii. Second, CPL shall fund any approved mitigation project. *Id.* ¶ 5.ii. Third, the terms of the Agreement state: “Within 3 years from the date of this Agreement, CPL shall pay any unexpended mitigation funds to the State of Utah as a civil penalty in accordance with Paragraph 5.i.” *Id.* ¶ 6.iv. If this were to occur, CPL is obligated to pay any remanding funds from the \$3 million not used to fund mitigation projects into the State of Utah General Fund. Accordingly, CPL is legally obligated to pay the \$3 million portion of the penalty either in payment of mitigation projects or into the General Fund.

*d. The commenter states “Chevron need only entertain Mitigation Project requests that are made within 90 days of the effective date [of the Agreement].”*

**Response:**

As stated in ¶ 6.i of the Agreement: “Any mitigation project and implementation plan eligible for funding shall require approval from the Executive Secretary (in consultation with the City).” Accordingly, the Executive Secretary must first approve any mitigation project and CPL’s role is in funding those approved mitigation projects.

*e. The commenter states “[i]n the event that an insufficient number of Mitigation Projects*

*are proposed within 90 days or are otherwise accepted to add up to \$3 million, CPL has no duty to pay for any single Mitigation Project at all.”*

**Response:**

See Response to Comment 4.c.

- f. A commenter opposes CPL drafting its own mitigation plan and DWQ approving the proposed mitigation plan and project and also opposes how Salt Lake City may use the \$1 million portion of the settlement without any public input or oversight.*

**Response:**

CPL will not draft its own mitigation plan. Under ¶ 6.i of the Agreement it is the mitigation project proponent who must submit a detailed description of the mitigation project and an implementation plan to the Executive Secretary for his approval.

The comment relating the Salt Lake City is noted but is outside the scope of DWQ’s authority.

**Comment No. 5:** The Mitigation Project Funding Cap is Illegal, Arbitrary and Capricious.

- a. There is nothing to support the \$3 million cap on reimbursement of mitigation projects proposed to be undertaken in the future by the victims of Chevron’s illegal conduct or to evaluate the impact to over 100 single family residential properties.*

**Response:**

The Settlement Agreement does not settle any private causes of action against CPL. See Agreement ¶¶ 3 and 8.iii; *see also* Response to Comment 2.b.

- b. As there is no assessment of the health and ecological risks associated with the oil spill, the \$3 million mitigation cap arbitrary and capricious.*

**Response:**

First, under the Executive Secretary’s compliance order authority, CPL has been ordered to produce an Ecological Risk Assessment and a Health Risk Assessment. DWQ is performing these risk assessments, the cost of which is being borne by CPL. The work necessary to perform these risk assessments is well underway.

Second, in deciding to negotiate a settlement with CPL, and in applying the penalty policy, it was necessary to determine a value of the mitigation projects. As described in responses to Comment No. 2 and No. 3, the Executive Secretary negotiated a settlement that is fair and reasonable, while still retaining compliance order authority over CPL for ongoing and future remediation.

**Comment No. 6:** Involvement of the Red Butte Creek Citizens’ Committee.

- a. *A commenter recommends the convening the above Committee to provide input into the process for determining the amount levied against Chevron Pipeline for mitigation projects and lost use.*

**Response:**

As described in Response to Comment 2.a, this was a global settlement of penalties and natural resource damage claims. Furthermore, the proposed settlement agreement was available for comment by any person, including the Red Butte Creek Citizens' Committee; however, we received no comments from that entity.

- b. *The commenter also recommends reconvening the Red Butte Citizens Committee following adoption of the Agreement to discuss the proposed mitigation plans and make recommendations for the use of all monies and, in particular, recommends setting aside funds for construction of recreational boating facilities along the Jordan River.*

**Response:**

The Agreement at ¶6 describes the process to submit mitigation projects to the Executive Secretary for approval and funding. It is premature at this stage to discuss the scope of any mitigation projects. *See also* Response to Comment 2.b.

**Comment No. 7:** DWQ and Salt Lake City should refrain from entering into the Settlement Agreement.

- a. *DWQ and Salt Lake City should refrain from entering into the Settlement Agreement until such time that they have developed sufficient information to support the same, including a comprehensive assessment of natural resource damages.*

**Response:**

As to assessment of natural resource damages, *see* responses to Comment No. 2.

DWQ sincerely appreciates the thoughtful comments received on the proposed Settlement Agreement. However after careful consideration of comments submitted, DWQ finds no basis for abandoning or modifying this agreement. Accordingly, it is the Executive Secretary's decision to sign and proceed under the terms of the Settlement Agreement.