

UTAH DIVISION OF WATER QUALITY

| | |
|---|--|
| IN THE MATTER OF Judge Tunnel and Spiro Tunnel UPDES Park City Municipal Corporation 445 Marsac Ave. P.O. Box 1480 Park City, Utah | DOCKET NUMBER M14-01 STIPULATED COMPLIANCE ORDER |
|---|--|

PURPOSE

1. The purpose of this **STIPULATED COMPLIANCE ORDER** (“**AGREEMENT**”) is to specify a compliance schedule for the **PARK CITY MUNICIPAL CORPORATION** (“**OPERATOR**”) to come into full compliance with the final effluent limits that will be in the Utah Pollutant Discharge Elimination System (“**UPDES**”) discharge permits for the Judge Tunnel and Spiro Tunnel, UPDES permits #UT0025925 and #UT0025941. The permits and this **AGREEMENT** are expected to be finalized concurrently, subject to public comment and other requirements of the Utah Water Quality Act, Title 19 Chapter 5 of the Utah Code (“**ACT**”), and Rule 317 of the Utah Admin. Code and other applicable law. The compliance schedule extends beyond the expiration dates of the permits. This **AGREEMENT** is expected to be incorporated by reference into the permits and into future renewal permits.

AUTHORITY

2. The **DIRECTOR** of the **UTAH DIVISION OF WATER QUALITY** (“**DIVISION**”) is authorized to issue, continue in effect, renew, revoke, modify or deny discharge permits and to issue orders in accordance with Section 19-5-106, and to specify a schedule of compliance in a permit leading to compliance with the **ACT** pursuant to Rule 317-8-5.2.

3. The **DIVISION** was created to administer the **ACT** under the immediate direction and control of the **DIRECTOR** pursuant to Section 19-1-105 of the Utah Code.

4. The State of Utah 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), known in Utah as UPDES.

FINDINGS

5. **OPERATOR** operates a municipal water system in Park City, Utah. Under certain agreements with the owner of historic mine tunnels, known as the Judge Tunnel and Spiro Tunnel, **OPERATOR** manages the water draining from the Judge Tunnel and Spiro Tunnel, to

provide domestic water to its water system customers. Excess tunnel waters are discharged into adjacent water courses, including Empire Canyon Creek and the Spiro North and East ditches. These waters eventually discharge into McLeod, East Canyon and Silver Creeks. See Park City February 7, 2012, updated application for a UPDES permit in the administrative record.

6. As of 2009, EPA Region 8 and the **DIVISION** have directed **OPERATOR** to obtain UPDES permits for Judge Tunnel and Spiro Tunnel. In July 2011, **OPERATOR** submitted initial applications to the **DIVISION** for UPDES permits at each source. The **OPERATOR** has requested compliance schedules to come into compliance with the final effluent limits that will be established in the UPDES permits. Pursuant to Rule 317-8-5.2, a “permit may, when appropriate, specify a schedule of compliance leading to compliance. . .” with the **ACT**. The purpose of this **AGREEMENT** is to specify compliance schedules that will be incorporated into the UPDES permits.

7. On June 5, 2012, EPA issued the *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (“*Integrated Framework*”) dated May 2012. The *Integrated Framework* allows a municipality to identify its relative priorities for infrastructure projects required by the Clean Water Act, balancing human health and water quality impacts with financial capability. A copy of the *Integrated Framework* is in the administrative record.

8. **OPERATOR** represents that compliance schedules are appropriate to meet permit effluent limits at Judge Tunnel and Spiro Tunnel, because the complex nature of the water sources, the existing water system, local conditions and climate, and financial constraints require time to develop a plan to treat each source, as needed, including time to analyze the feasibility and desirability of integrating treatment for the sources. **OPERATOR** has also represented that compliance will require **OPERATOR** to construct several miles of pipeline through challenging mountain town topography and treatment systems for some or all of the sources and that **OPERATOR** requires time to raise funds through water rate increases to acquire land, design, construct and operate treatment facilities.

9. **OPERATOR** represents that it will develop and implement a plan under the *Integrated Framework*, generally, by addressing discharges at the Judge Tunnel first, completing a Sampling and Analysis Plan and water quality modeling and other studies to characterize the Spiro Tunnel watershed, and conducting engineering feasibility analysis on integrating Judge Tunnel and Spiro Tunnel water sources for treatment, distribution and discharge in the vicinity of Spiro Tunnel, including potentially expanding the capacity and upgrading the process of the existing Quinns Junction Water Treatment Plant (“QJWTP”) or Spiro Water Treatment Plant (“SWTP”) as may be required by an integrated approach. See **OPERATOR’s Expanded Draft Outline for Park City Municipal Corporation Integrated NPDES Plan** in the administrative record. **OPERATOR’s Expanded Draft Outline for Park City Municipal Corporation Integrated NPDES Plan** is modeled after EPA’s *Integrated Framework*. The *Expanded Draft Outline for Park City Municipal Corporation Integrated NPDES Plan* describes the water quality

improvements expected from addressing the Judge Tunnel and the financial capability of the **OPERATOR** to address the discharges in total, especially Spiro Tunnel, which is anticipated to be the most costly source due to its size and importance to **OPERATOR'S** water system. The **OPERATOR** has also represented that the activities and facilities contemplated by **OPERATOR** to achieve compliance with UPDES permit requirements are expected to be costly (tens of millions of dollars), are expected to have a significant permanent impact on **OPERATOR'S** construction, operation, maintenance, and replacement expenses far into the future, and will be funded entirely by existing and future water rate payers. **OPERATOR** has represented that it anticipates significant annual water rate increases for several years to pay for the required new facilities. The **OPERATOR** has also represented that the compliance schedules will allow the **OPERATOR** to both mitigate the financial impacts of many years of significant water rate increases and reduce pollutant loading in the Silver Creek, McLeod Creek and East Canyon watersheds from the Spiro and Judge Tunnel discharges. The financial representations of the **OPERATOR** are also in the **OPERATOR's** May 23, 2013 *Analysis of the Financial Impact of Alternative UPDES Compliance Schedules with 12-30-13 updated Table 10* in the administrative record.

10. **The DIRECTOR** finds there is adequate support in the administrative record as described above to reasonably find that the compliance schedule will lead to compliance with the effluent limitations that will be in the permits to meet water quality standards by the end of the compliance schedule, that the compliance schedule is appropriate given the circumstances, that compliance will be achieved as soon as possible, and that the **OPERATOR** cannot immediately comply with the final effluent limits that will be in the permits.

AGREEMENT

11. **THE DIRECTOR HEREBY ORDERS** and the **OPERATOR** agrees to the following compliance schedules:

Final Park City Municipal Corporation Integrated NPDES Plan

A. No later than December 31, 2015, **OPERATOR** agrees to complete and submit to the **DIVISION** for approval, the *Park City Municipal Corporation Integrated NPDES Plan ("Integrated Plan")*. The scope of the *Integrated Plan* shall include descriptions of all projects and work necessary, in as much detail as is known at the time, to bring all surface water discharges from the Judge and Spiro Tunnels into compliance with their associated UPDES permits, with schedules and deadlines consistent with those in this **AGREEMENT**. The *Integrated Plan* shall be modeled after the *Integrated Municipal Stormwater and Wastewater Planning approach Framework* attached to the June 5, 2012 memorandum from EPA Administrators Nancy Stoner and Cynthia Giles.

Through the end of the term of this **AGREEMENT**, **OPERATOR** agrees to submit to the **DIVISION** combined routine *Integrated Plan and construction project* updates and

addenda every April 1 and October 1 when project construction is in progress, and annually on October 1, when project construction is not in progress. The reports, at a minimum, will document any changes or updates to the *Integrated Plan*, a summary of progress and milestones achieved in all construction, study and design projects during the previous reporting period, projected progress and milestones scheduled to be completed during the following reporting period, and if the project(s) are on schedule. The reports will also include any revisions to the **OPERATOR's** Level II Antidegradation Review for the Judge and Spiro Tunnel discharges, if needed.

Judge Tunnel Pipeline and Empire Tank and Site Improvements

B. No later than 30 days after the execution of this **AGREEMENT**, **OPERATOR** agrees to submit to the **DIVISION** a complete, detailed scope of work and engineering and construction plans for the Empire Tank discharge site improvements, and a pipeline from the vicinity of the Judge Tunnel portal to the vicinity of the SWTP. **OPERATOR** agrees to complete this construction by November 1, 2015.

C. No later than December 31, 2017, **OPERATOR** agrees to submit to the **DIVISION** a detailed engineering and financial analysis of the options for compliance with the effluent limits for water from the Judge Tunnel identified in the Judge permit. This analysis shall include the identification of **OPERATOR'S** intended option for treatment of water from the Judge Tunnel, as well as an assessment of feasible options to minimize bypass for reasonably foreseeable bypass scenarios.

1. If **OPERATOR** determines in the December 31, 2017 analysis above that the best means of treating Judge Tunnel water to meet effluent limits would be to send the water to and treat it at the QJWTP (hereinafter, "QJWTP Solution"), it shall provide, no later than December 31, 2018, a complete, detailed scope of work and engineering and construction plans for the construction of the continuation of the Judge Tunnel pipeline from the vicinity of the SWTP to the QJWTP, expansion of the capacity of the QJWTP and upgrades to the treatment capability of QJWTP to include options such as dewatering to remove solids filtered from Judge Tunnel water, **OPERATOR** agrees to comply with Paragraph 11.D of this **AGREEMENT** (collectively, "the QJWTP solution").

2. If **OPERATOR** determines in the December 31, 2017 analysis that treatment of Judge Tunnel water at SWTP would be technically, operationally, or financially superior to the QJWTP Solution, **OPERATOR** agrees to comply with Paragraph 11.E of this **AGREEMENT** (collectively, "the Interim SWTP solution").

The QJWTP Solution for Judge Tunnel Water

D. If **OPERATOR** elects to pursue the QJWTP solution, no later than December 31, 2022, **OPERATOR** agrees to complete construction of the continuation of the pipeline from the Judge Tunnel portal to the QJWTP, expansion of the capacity of the QJWTP, and upgrade the treatment capability of QJWTP to include options such as dewatering to remove solids filtered from Judge Tunnel water. At the completion of such construction, all surface water discharges from the Judge Tunnel, associated water treatment facilities and Empire Tank water storage facility shall comply with the final limits in the UPDES permit issued for the Judge Tunnel, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permit issued for the Judge Tunnel and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants.

The Interim SWTP Solution for Judge Tunnel Water

E. If **OPERATOR** elects the Interim SWTP solution (defined below), no later than December 31, 2018, **OPERATOR** agrees to submit to the **DIVISION** a complete, detailed scope of work and engineering and construction plans for the expansion of the capacity of the SWTP and upgrades to the treatment capability of SWTP to treat Judge Tunnel water, including options such as dewatering to remove solids filtered from Judge Tunnel water. An Interim SWTP solution is a project which involves a modification or reconstruction of the present SWTP treatment process and facilities to achieve final effluent limits in the UPDES permits for Judge Tunnel water.

1. If **OPERATOR** elects the Interim SWTP solution as the final solution needed to achieve final effluent limits for the Judge Tunnel UPDES permit and such project costs less than \$6 million (including legal, engineering, construction, and other direct costs of the Interim SWTP revision), no later than December 31, 2022, **OPERATOR** agrees to complete construction of the expansion of the capacity of the SWTP, and upgrade the treatment capability of SWTP to include options such as dewatering to remove solids filtered from Judge Tunnel water, if necessary.

2. If **OPERATOR** elects the Interim SWTP solution as the final solution needed to achieve final effluent limits for the Judge Tunnel UPDES permit and such project costs more than \$6 million (including legal, engineering, construction, and other direct costs of the Interim SWTP revision), no later than January 1, 2024, **OPERATOR** agrees to complete construction of the expansion of the capacity of the SWTP, and upgrade the treatment capability of SWTP to include options such as dewatering to remove solids filtered from Judge Tunnel water, if necessary.

3. The project costs described in this Paragraph 11.E shall be based on the cost estimates provided in the analysis to be provided pursuant to Paragraph 11.C of this **AGREEMENT**.

4. At the completion of such construction called for in this Paragraph 11.E, all surface water discharges from the Judge Tunnel, associated water treatment facilities and Empire Tank water storage facility shall comply with final limits in the UPDES permit issued for the Judge Tunnel, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permit issued for the Judge Tunnel and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants.

Final Judge and Spiro Solution

F. No later than December 31, 2021, **OPERATOR** agrees to submit to the **DIVISION** a complete, detailed engineering and financial analysis of the options for compliance with any permitted effluent limits for water from the Spiro Tunnel and/or the combined Spiro and Judge Tunnel discharge. This analysis shall include the identification of **OPERATOR'S** intended option for treatment of water from the Spiro Tunnel and/or the combined Spiro and Judge Tunnel discharge, as well as an assessment of feasible options to minimize bypass for reasonably foreseeable bypass scenarios. If no additional revision to the existing SWTP treatment process, beyond the Interim SWTP solution scope of work identified in Paragraph 11.E above, and no further revision of that facility is required to meet water quality standards for any Spiro and/or the combined Spiro and Judge Tunnel discharges, **OPERATOR** agrees that all discharges related to the Judge and Spiro Tunnels will comply with the final effluent limits in the applicable UPDES permits, including applicable General Permits, one year after completion of construction called for in Paragraph 11.E, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permits issued for the Judge & Spiro Tunnels and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants. Minor construction and revisions to the facility, or the need to construct other major drinking water-related facilities, which are not material in achieving water quality standards, will not delay this deadline to meet water quality discharge standards.

G. If a 'Major Revision' (defined below), beyond the scope of work described in Paragraph 11.E. above, is needed to meet the final limits in all applicable UPDES permits for all discharges related to the Judge and Spiro Tunnels and all other Park City drinking water system infrastructure, then **OPERATOR** agrees to achieve the deadlines set forth in this Paragraph 11.G. A Major Revision is defined as a project, including land

acquisition, with a total cost, including legal, engineering, construction of only the infrastructure which is a direct component of the revision or expansion of facilities needed to meet the final limits of the UPDES Permits, and other direct costs of \$12.5 million or less to complete including the work outlined in Paragraphs 11.D, E, G, and H of this **AGREEMENT**.

1. No later than December 31, 2022, **OPERATOR** shall submit construction plans and specifications to the **DIVISION** for such Major Revision.
2. No later than January 1, 2025, **OPERATOR** shall complete construction of such Major Revision as the chosen alternative to meet final UPDES permit effluent limits.
3. No later than July 1, 2025, **OPERATOR** shall comply with all final UPDES permit limits for all water treatment plant infrastructure if a Major Revision is required to meet all such limits.
4. The project costs described in this Paragraph 11.G shall be based on the cost estimates provided in the analysis to be provided pursuant to Paragraph 11.F. of this **AGREEMENT**.
5. Notwithstanding any other provision in Paragraph G, **OPERATOR** agrees that the discharges related to Judge Tunnel will comply with applicable UPDES discharge permit limits within the time period (no later than January 1, 2024) stated in Paragraph 11.E.4 of this **AGREEMENT**.

H. If an 'Extensive Revision' (defined below), beyond the scope of work described in Paragraph 11.E. above, is required to meet the final limits in the applicable UPDES permits for all discharges related to the Judge and Spiro Tunnels and all other Park City drinking water system infrastructure, then **OPERATOR** agrees to achieve the deadlines set forth in this Paragraph 11.H. An Extensive Revision is defined as a project, including land acquisition, with a total cost, including legal, engineering, construction of only the infrastructure which is a direct component of the revision or expansion of facilities needed to meet the final limits of the UPDES Permits, and other direct costs, of greater than \$12.5 million, including the work outlined in Paragraphs 11.D, E, G, and H. of this **AGREEMENT**.

1. No later than January 1, 2028, **OPERATOR** agrees to submit to the **DIVISION** construction plans and specifications for such Extensive Revision.
2. No later than January 1, 2033, **OPERATOR** agrees to complete construction of all remaining facilities needed to achieve final effluent limits for Spiro Tunnel and

Judge Tunnel and all other Park City drinking water system related discharges and begin startup and optimization of such treatment facilities.

3. No later than July 1, 2033, **OPERATOR** agrees all discharges related to Judge Tunnel and Spiro Tunnel discharges, and all other Park City drinking water infrastructure related discharges will comply with all applicable UPDES discharge permit limits, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permits and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants.
 4. The project costs described in this Paragraph 11 H. shall be based on the cost estimates provided in the analysis to be provided pursuant to Paragraph 11.F. of this **AGREEMENT**.
 5. Notwithstanding any other provision in Paragraph H herein, **OPERATOR** agrees that the discharges related to Judge Tunnel will comply with applicable UPDES discharge permit limits within the time period (no later than January 1, 2024) stated in Paragraph 11.E.4 of this **AGREEMENT**.
12. Nothing in this **AGREEMENT** shall constitute a waiver by **OPERATOR** of any claims it may have against third parties for costs, damages or other relief associated with pollutants in Judge and Spiro Tunnel discharges. Further, nothing in this **AGREEMENT** shall prohibit or limit in any way **OPERATOR's** ability to seek contribution or cost recovery from third parties under Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, Clean Water Act, or other laws or regulations. **OPERATOR** reserves all rights to any remedy not expressly prohibited by this **AGREEMENT**.
13. **OPERATOR** acknowledges that this **AGREEMENT** waives governmental immunity as to the **DIVISION** and State of Utah relating to this **AGREEMENT**. Nevertheless, the **OPERATOR** is not waiving any defenses or immunity as to any other party that may be available under the Utah Governmental Immunity Act (Chapter 63G-7, Utah Code) nor does the **OPERATOR** waive any limits of liability currently provided by the Utah Governmental Immunity Act. Subject to all provisions of this **AGREEMENT**, and as may be applicable to third parties, nothing herein shall be deemed a waiver by the **OPERATOR** of any immunity provided by law to the **OPERATOR** or an extension of any limits of liability applicable to the **OPERATOR**. This **AGREEMENT** shall not be construed as an **AGREEMENT** to indemnify, hold harmless, or in any way to assume liability for personal injury, death or property damage caused by the negligence of another party.
14. **OPERATOR** shall supply to the **DIVISION** all requested information in order to assure compliance with this **AGREEMENT**, the **ACT**, associated rules and permit requirements.

15. **OPERATOR** shall perform the requirements of this **AGREEMENT** within the time frames set forth herein except as may be modified in accordance with Rule 317-8-5.6(1)(d) and other applicable law.

16. Disputes arising hereunder are subject to Sections 19-5-112, 19-1-301 and 19-1-301.5 of the Utah Code, Rule 305-7 of the Utah Admin. Code, and other applicable law.

17. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this **AGREEMENT** and to bind the party they represent to this **AGREEMENT**.

18. This **AGREEMENT** shall be effective the day upon which it has been fully executed by the parties.

IT IS SO AGREED.

Park City Municipal Corporation

_____ Date: _____
By:
Clint McAfee, P.E., Water and Streets Director
Park City Municipal Corporation

IT IS SO ORDERED.

_____ Date: _____
Walter L. Baker, P.E., Director
Utah Division of Water Quality

