

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF ALTON COAL DEVELOPMENT, LLC 463 North 100 West, Suite 1 Cedar City, Utah 84720	DOCKET NO. I19-09 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **ALTON COAL DEVELOPMENT, LLC** ("**ACD**") as operator of the Coal Hollow Project Facility and the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**") (hereinafter jointly referred to as "**Parties**"), concerning violations of the Utah Water Quality Act, Utah Code Section 19-5-101 *et seq.* (the "**Act**"), and the implementing regulations, Utah Admin. Code R317-1 *et seq.*

1. The **DIRECTOR** has authority to administer the Act pursuant to Utah Code Section 19-1-105(1)(e), and has authority to enforce rules through the issuance of orders, as specified in Utah Code Section 19-5-106(2)(d) and § 19-5-111. The **DIRECTOR** also has the authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).

2. The **DIRECTOR** has been delegated authority by the U.S. Environmental Protection Agency to administer the National Pollutant Discharge Elimination System permit program under the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* (CWA).

3. The Director issued a **NOTICE OF VIOLATION AND ORDER**, Docket Number 119-09 (hereinafter "**NOTICE**") to **ACD** on September 3, 2019, regarding UPDES permit effluent exceedances for Total Dissolved Solids (TDS) concentrations and for total TDS load, based upon the following:

ACD was issued UPDES modified permit # UT0025992, effective September 1, 2016 ("**Permit**") which has been administratively extended in accordance with Utah Administrative Code R317-8-3.1(4)(d). The Permit authorizes discharges from the Alton Coal Hollow Project Facility in accordance with specific limitations and conditions. **ACD** submitted discharge monitoring report ("**DMR**") forms to the division as required by its permit, which included the period August 2018 through June 2019. Nine **DMR**s indicated Permit effluent exceedances for TDS concentration, and three indicated Permit effluent exceedances for TDS total load.

4. The Parties have discussed the **NOTICE** and the facts and circumstances surrounding the exceedances, and now desire to resolve this matter fully without further administrative proceedings by entering into this **AGREEMENT**.

5. In conjunction with the Permit and in order to meet TDS salt loading limits, and to resolve the **NOTICE**, the Parties have entered into a Funding Agreement (Attachment 1) whereby **ACD** will participate in a salinity offset program through a plan entitled "2019 Colorado River Salinity Offset Program Participation Plan" (included with Attachment 1). The Funding Agreement is executed in furtherance of the Offset Participation Plan. The Funding Agreement and Offset Participation Plan are incorporated into this Settlement Agreement by reference. Funds provided by **ACD** in accordance with the Funding Agreement will be used to finance salinity reduction projects.

6. In full resolution of past compliance issues addressed in the **NOTICE**, the Parties agree that **ACD** will comply with the Funding Agreement which will include the purchase of a total of 135 TDS credit tons ("Credit Tons") for the monetary sum of \$8,910.00.

- A. The **DIRECTOR** agrees to hold in abeyance a penalty in the amount of \$6,750.00 which was calculated and adjusted for circumstances in conformance with the penalty policy outlined in Utah Administrative Code R317-1-8, for the period of six months from the date this **AGREEMENT** is signed by both parties and becomes effective, at which point it will be waived subject to **Part 6.B** of this **AGREEMENT**.
- B. In the event **ACD**'s UPDES Permit limit for TDS concentration is exceeded any time during the period of six months from the date this **AGREEMENT** is signed by both parties and becomes effective, **ACD** agrees to pay a penalty in the amount of \$6,750.00 within thirty (30) days of receiving an invoice form DWQ by way of a check made payable to the State of Utah and delivered or mailed to the address as specified in said invoice. The **DIRECTOR** reserves the right to take additional enforcement action(s), beyond invoicing the penalty amount held in abeyance, for future violations.

7. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by **ACD**. This **AGREEMENT** does not in any way relieve **ACD** from any other obligation imposed under the Permit, Act, or any other State or Federal laws.

8. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions against **ACD** for permit violations not resolved by this **AGREEMENT**.

9. This **AGREEMENT** resolves the **NOTICE**. By signing this **AGREEMENT**, Respondent understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the **NOTICE**, and (3) the opportunity for judicial review.

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 of Utah may have against **ACD**, 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.

11. When final, this **AGREEMENT** is binding upon **ACD** and any corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrants that it is authorized to legally bind their respective principles to this **AGREEMENT**.

AGREED to this 10th day of April, 2020.

ALTON COAL DEVELOPMENT, LLC

By B. Kit Mikola

Its: Environmental Specialist

AGREED to 05/29/2020 (Effective Date).

UTAH DIVISION OF WATER QUALITY

By Eric B. Shook

Its: Director

DWQ-2020-008862

ATTACHMENT 1

Funding Agreement with Salinity Offset Plan

FUNDING AGREEMENT
to
2019 Colorado River Salinity Offset Program Participation Plan

This Funding Agreement, dated effective as of 05/29/2020 (“Effective Date”), is between the Utah Division of Water Quality (“DWQ”), as part of the Department of Environmental Quality, by and through the DWQ Director (“Director”) and Alton Coal Development, LLC (“ACD”) as operator of the Coal Hollow Mine.

Recitals

A. ACD is the operator of the Coal Hollow Mine, located in Kane County, Utah (collectively referred to as the “ACD” or the “Mine”). ACD holds Utah Pollutant Discharge Elimination System (“UPDES”) Permit UT0022995 (“UPDES Permit”). The UPDES Permit is issued and managed by DWQ.

B. In conjunction with the UPDES Permit and in order to meet total dissolved solids (“TDS”) salt loading limits, ACD shall participate in a Colorado River Salinity Offset Project according to a plan entitled “2019 Colorado River Salinity Offset Program Participation Plan,” a copy of which is attached as Exhibit A hereto (“Offset Participation Plan”). The Offset Participation Plan requires ACD to fund an account pursuant to a funding agreement to purchase salinity credits as offsets against discharges made under the UPDES Permit.

C. This Funding Agreement is executed in furtherance of the Offset Participation Plan.

NOW, THEREFORE, for and in consideration of the covenants set forth in the Offset Participation Plan, the terms of this Funding Agreement, and other good and valuable consideration, the parties agree as follows:

1. Offset Participation Plan. The Director, along with representatives of the Utah Department of Agriculture and Food (“UDAF”) and the Colorado River Basin Salinity Control Forum (“CRBSCF”), approve and ratify the Offset Participation Plan and acknowledge that the Plan establishes a salinity offset program under which ACD is purchasing a total of 135 TDS credit tons (“Credit Tons”) for the monetary sum of \$8,910.00 (“Credit Funds”). The number of Credit Tons purchased is based on ACD’s current calculation of the number of Credit Tons required to meet permit requirements for 2019, as calculated in Table 1 of the Offset Participation Plan. ACD is purchasing Credit Tons to account only for 2019 offsets because ACD does not anticipate exceeding TDS salt annual loading limits in the future. If Credit Tons are needed in subsequent years, then ACD shall purchase additional Credit Tons through a modification of this, or a separate, Funding Agreement.

2. Payment. ACD shall pay the Credit Funds in one payment of \$8,910.00 payable within sixty (60) days from the Effective Date of this Funding Agreement. DWQ will provide ACD a separate invoice for the payment amount. Payment of the Credit Funds shall be made either by (i) certified check payable to the Utah Division of Water Quality delivered by a generally acceptable overnight delivery service to the address shown herein, or (ii) by using the payment portal at <https://deq.utah.gov/payment-portal> and selecting the Water Quality Shopping Cart and then selecting Invoice Payment. ACD shall include the invoice number with either method of remittance.

3. Fund Account. DWQ has established an account (“Account”) in the Operating Budget of the Department of Environmental Quality, within the State of Utah General Fund. The Credit Funds shall be dispersed from the Account by DWQ pursuant to procedures established by DWQ and consistent with any agreement between DWQ and UDAF for the purposes of funding certified Colorado salinity offset programs. ACD shall have no responsibility for the Credit Funds once the funds have been paid to DWQ pursuant to this Funding Agreement.

4. Monitoring and Reporting. ACD shall continue to monitor and report TDS concentrations and TDS loading in its Mine water discharges through UPDES Discharge Monitoring Reports (“DMR”), as specified in the UPDES permit. ACD will make the TDS calculations as follows:

- a. ACD will calculate each month the total number of TDS tons released by the Mine. This number will be based on statistically appropriate methods which consider effluent outflows as measured and sampling of those outflows for TDS.
- b. ACD will calculate annually the TDS tons for the Mine as part of the December DMR requirements.

ACD shall show the calculations described in this paragraph and shall be made in substantially the form illustrated in Table 1 of the Offset Participation Plan.

5. Colorado River Salinity Program. DWQ shall be solely responsible for use of the Credit Funds and approval of projects to apply the Credit Funds in accordance with applicable law and requirements of the Colorado River Salinity Program.

6. Termination. This Funding Agreement will terminate on January 1, 2025, or earlier if agreed upon by the undersigned parties. The five-year term will provide ACD the opportunity to purchase additional Credit Tons in the future if needed through a modification of this Funding Agreement.

7. Miscellaneous.

a. All notices or required communications under this Funding Agreement shall be in writing, and shall be addressed as follows:

If to ACD:

Alton Coal Development, LLC
463 North 100 West, Suite 1
Cedar City, UT 84720
Attention: B. Kirk Nicholes

If to DWQ:

Division of Water Quality
195 North 1950 West
PO Box 144870
Salt Lake City, UT 84114-4870
Attention: Director

Any party may change its address by notice to the other parties. If applicable, notices or other communications to DWQ or the Director must be received at the offices of the DWQ by 5 p.m. on the date they are due.

b. This Funding Agreement may not be altered or amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the party or parties to be changed with such amendment or waiver.

c. No provision of this Funding Agreement shall, nor shall it be interpreted to, amend, modify or waive any provision of the UPDES Permit. No provision of this Funding Agreement, including paragraph 7.a. shall, nor shall it be interpreted to, amend, modify or waive the right of the Director to modify or terminate the UPDES Permit as permitted by law.

d. ACD may assign or transfer ACD's interest in and to this Funding Agreement in conjunction with approved sale or transfer of the UPDES Permit or sale or transfer of the Mine.

e. This Funding Agreement, together with the Offset Participation Plan, shall be incorporated by reference into Settlement Agreement, Docket No. I19-09, This Funding Agreement is entered into independent of the Settlement Agreement, as part of the UPDES Permit compliance requirements. No representation, warranty, covenant, agreement, promise, inducement or statement, whether oral or written, has been made by the parties that are not set forth in this Funding Agreement, or Settlement Agreement, Docket No. I19-09.

f. This Funding Agreement may be executed in multiple counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

g. This Funding Agreement and all of its terms and provisions shall be governed by and interpreted according to the laws of the State of Utah. Any judicial action brought under this Agreement shall be brought in a court of appropriate jurisdiction within the State of Utah.

THE UNDERSIGNED PARTIES have executed this Funding Agreement as of the Effective Date.

**Division of Water Quality
Department of Environmental Quality
State of Utah**

By: *Eric B. Judd*
Director

Alton Coal Development, LLC

By: *B. Kitt Nichola*

Its: *Environmental Specialist*

JOINED AND RATIFIED for the sole purposes of Paragraph I herein:

Utah Department of Agriculture and Food Representative

By: *R.J. Spencer*
RJ Spencer

And;

Colorado River Basin Salinity Control Forum Representative

By: *James Harris*
James Harris (May 29, 2020 11:50 MDT)

James Harris

DWQ-2020-006970

Exhibit A of Funding Agreement

2019 Colorado River Salinity Offset Program Participation Plan

2019 Colorado River Salinity Offset Program

Participation Plan Alton Coal Development, Inc.

Introduction

Alton Coal Development, Inc. (ACD), operates the Coal Hollow Mine (CHM) that hold an active Utah Pollutant Discharge Elimination Systems (UPDES) Individual Permits for discharging intercepted groundwater and/or storm water runoff to waters of the State. The UPDES permit program is operated by the Utah Department of Environmental Quality's Division of Water Quality (DWQ). Because the receiving waters for all of these facilities are ultimately tributary to the Colorado River, the UPDES permits also incorporate Colorado River Basin Salinity Control Forum (CRBSCF) salinity standards and relevant implementation policies.

The UPDES individual Permit for this facility is listed below.

FACILITY	UPDES PERMIT No.	RECEIVING WATER
Coal Hollow Mine	UT0025882	Lower Robinson Creek, Sink Valley Wash and Kanab Creek

This permit incorporates a CRBSCF requirement that limits salt load to no more than one ton/day. Salt load is a function of the quantity (rate) of water discharged and its total dissolved solids (TDS) concentration. All water that has been discharged historically at the CHM is groundwater that has been intercepted during mining and stormwater runoff. The groundwater must be pumped out of mine workings in order to maintain a safe and viable mine operation.

DWQ and the CRBSCF recognize that neither the quantity nor quality of groundwater intercepted by the mine can be easily controlled. They also recognize that discharging intercepted groundwater is a different situation than discharging many other industrial wastewaters. One of the CRBSCF implementation policies that apply to intercepted groundwater is to allow salt offset. The DWQ administers a Colorado River Salinity Offset Program wherein salinity credits can be purchased as offsets against UPDES-permitted discharges. This program enables mines to continue to operate when salt load limits cannot be met. The Individual UPDES permit for facility stipulate that if the TDS load limit cannot be met, participation in the Offset Program must be pursued.

Therefore, ACD plans to participate in the program by funding a salinity offset project. This will generate TDS credits so that mine operations can continue. The following information describes how ACD proposes to meet those.

Discharge History

The Salinity Offset Program operates on a ton-for-ton basis. This means that offset needs (over the above and allowable one ton/day) must be estimated for each facility using existing or

projected discharge rate and TDS concentration data. The Coal Hollow facilities and their discharge history is briefly described below.

Coal Hollow Mine

The Coal Hollow Mine has been operating since 2010. Originally, the mine was covered by the UPDES General Permit for Coal Mine Discharges. Currently, it is covered under an individual UPDES Permit (#UT0025992), with a permit term from September 1, 2016 through July 31, 2018. There are nine permitted discharge points for this facility located on two separate leases, the South Private Lease (SPL) and the North Private Lease (NPL) : For the SPL, Outfall 001 is located immediately downstream from the sediment pond1 that collects all surface runoff from the mine surface facilities; Outfall 001B is located immediately downstream of Pond 1B that collects all surface runoff from the mine access road not collected by Pond 1; Outfall 002 is located immediately downstream of Pond 2 that collects surface runoff from the primary haulage roads and soil stockpiles at the SPL; Outfall 003 immediately downstream of Pond 3 that collects surface runoff and discharges intercepted groundwater from the mine workings; Outfall 004 is located immediately downstream of Pond 4 that collects surface runoff and discharges intercepted groundwater from the mine workings in the southern portion of the SPL; Outfall 005 immediately downstream of Pond 5 that collects surface runoff from pits 1-3 of the NPL; Outfall 006 immediately downstream of Pond 6 that collects surface runoff from pits 4-8 of the NPL; and Outfall 007 immediately downstream of Pond 7 that collects surface runoff from pits 9- 21 and discharges intercepted groundwater from mine workings. Outfall 008 has never been built. The receiving stream for discharges from Outfalls 001-003 is Lower Robinson Creek, which is tributary to Kanab Creek. The receiving stream for Outfall 004 is the Sink Valley Wash, which is a tributary to Kanab Creek. The receiving stream for Outfall 005-007 is to unnamed ephemeral streams that are tributary to Kanab Creek. All discharges have been intermittent, dependent on storm related events and/or intercepted ground water from open pit mining.

The Coal Hollow Mine has been in operation since November of 2010, in the 110 months of operation there have been only 4 months with reported discharge in excess of the allowable one ton/day. February 2017 with 2,139 lbs/day, August 2018 with 2,479 lbs/day and both April and May 2019 with 16,377 and 17,882 lbs/day respectively. The February 2017 and April/May 2019 events were related to springtime runoff and the August 2018 after a rain event.

Offset Plan Elements

ACD, after discussions with DWQ staff, proposes to participate in the Salinity Offset Program by contributing monies to the state's special revenue Salinity Offset Fund. This alternative has been chosen over the other potential mechanism for obtaining salt offset credits – that of designing, constructing, and implementing an offset project. Funds provided by ACD will be used to finance salinity reduction projects that will be provided to result in a ton-for-ton salt reduction.

As the Coal Hollow Mine discharge history shows that the mine not only discharges intermittently but, also infrequently, ACD proposes that the funding amount be based off of Table 1, Summary of All Discharges from the Coal Hollow Mine in 2019 for the current excesses, and that future excesses be similarly tabulated and invoiced at the end of each calendar year

The unit costs that DWQ will assess to ACD will be according to the salinity-control unit in which the discharges are located. The Coal Hollow Mine is in the Lower Colorado River Basin's Kanab Unit.

Plan Monitoring Schedule

In addition to the routine monitoring and reporting via Discharge Monitoring Reports (DMRs) that is currently required for each of the UPDES permits, ACD will also need to closely track its use of salt discharges in excess of the one ton per day. The basis for this tracking will be the average daily TDS load for each month, which is reported as tons per day on the monthly DMRs. In addition to the facility submitting DMRs each month, ACD will submit a tracking spreadsheet to DWQ each month. The spreadsheet will be similar to the one attached to this plan. It will include an accounting of the salt discharges in excess of the one ton per day by the facility for the current month; a cumulative, running total of salt discharges up to and including the current month.

The tracking spreadsheet will be evaluated regularly by ACD and by DWQ as it will be an attachment to the monthly DMR forms for the facility, which is to be submitted by the 28th of each month. ACD and DWQ will review on at least an annual basis beginning in Quarter 4 2019, the salt discharges to. When and if discharges of salt in excess of the one ton per day become more frequent, a renewed assessment of purchasing future salt credit needed by ACD will be undertaken. ACD understands that the cost of any additional needed credits will be based upon cost data in effect at the time, which is likely to be greater than the cost basis for credits purchased under this current plan.

Program Costs and Payment Schedule

The total cost for ACD to participate in 2019 in the Salinity Offset Program by purchasing salt offset credits will be determined by DWQ and assigned upon approval of this agreement.

ACD will contribute this dollar amount to the state's special revenue Salinity Offset Fund based upon the terms set forth in a Funding Agreement to be developed by ACD and DWQ. Upon written request to DWQ to exercise this provision, ACD will contribute this dollar amount to the state's special revenue Salinity Offset Fund based upon the terms set forth in a Funding Agreement to be developed by ACD and DWQ.

Table 1

Summary of All Discharges from Coal Hollow Mine in 2019

Month Ending	Outfall	Parameter	Permit Limit mg/L	Reported Measure mg/L	Discharged		flow @Sampling (gpm)	Total Discharge	lbs TDS	Total Tons for month	Average Tons per day of discharge	Tons exceeding 1 ton/day limit	Number of days	Monthly Total Tons over limit of 1 ton /day	Yearly Total Tons over limit of 366/year	Reason for Discharge			
					From	To													
1/31/2019	9	7	TDS	0	1580	1/4/2019	9	656	50	1,968,000	25,950	12.97	0.47	0.00	27.3	0	13.0	Dewatering Wells	
2/28/2019	9	1	TDS	0	776	2/26/2019	2/28/2019	9	72	0.022	96	1	0.00	0.00	0.00	3.0	0	0.0	snow melt/rain events
2/28/2019	9	3	TDS	0	1010	2/17/2019	2/28/2019	9	274	50	822,000	6,929	3.46	0.30	0.00	11.4	0	3.5	snow melt/rain events
2/28/2019	9	7	TDS	0	1460	2/1/2019	2/28/2019	9	672	50	2,016,000	24,564	12.28	0.44	0.00	28.0	0	12.3	Dewatering Wells
3/31/2019	9	1	TDS	0	448	3/1/2019	3/21/2019	9	490	1.6	24,004	90	0.04	0.00	0.00	20.4	0	0.0	snow melt/rain events
3/31/2019	9	1B	TDS	0	1060	3/5/2019	3/21/2019	9	382	1.2	26,965	239	0.12	0.01	0.00	15.9	0	0.1	snow melt/rain events
3/31/2019	9	2	TDS	0	512	3/4/2019	3/26/2019	9	523	1.1	33,032	141	0.07	0.00	0.00	21.8	0	0.1	snow melt/rain events
3/31/2019	9	3	TDS	0	1010	3/1/2019	3/31/2019	9	744	50	2,232,000	18,813	9.41	0.30	0.00	31.0	0	9.4	snow melt/rain events
3/26/2019	9	4	TDS	0	468	3/5/2019	3/26/2019	9	504	0.002	31,832	124	0.06	0.00	0.00	21.0	0	0.0	snow melt/rain events
3/31/2019	9	5	TDS	0	1830	3/5/2019	3/16/2019	9	260	7	111,410	1,701	0.85	0.08	0.00	10.8	0	0.9	snow melt/rain events
3/31/2019	9	7	TDS	0	1390	3/1/2019	3/31/2019	9	744	50	2,232,000	25,891	12.95	0.42	0.00	31.0	0	12.9	Dewatering Wells, snow melt/rain events (started large pumps 4/1/2019)
4/30/2019	9	3	TDS	0	856	4/1/2019	4/30/2019	9	658	50	1,974,000	14,102	7.05	0.26	0.00	27.4	0	7.1	snow melt/rain events
4/30/2019	9	7	TDS	0	1100	4/1/2019	4/30/2019	9	720	1200	51,840,000	475,888	237.94	7.93	6.93	30.0	208	237.9	Dewatering Wells, snow melt/rain events (started large pumps 4/1/2019)
5/31/2019	9	7	TDS	0	1240	5/1/2019	5/23/2019	9	538	1200	38,736,000	400,852	200.43	8.94	7.94	22.4	178	200.4	large pump had run from 4/1/2019 to 5/23/2018 April's sample was below 1200, Mays slightly above
6/30/2019	9	3	TDS	0	1520	6/3/2019	6/11/2019	9	191	50	573,000	7,269	3.63	0.46	0.00	8.0	0	3.6	3.37 inches rain in may were pumped from pit 10 sump to pond 3

Total Tons:	386	501
Cost /credit:	TBD	
	#VALUE	
Total Cost:	1	
or		
Total Tons:	135	
Cost /credit:	TBD	
	#VALUE	
Total Cost:	1	