A. PURPOSE

1. This Stipulated Compliance Order (AGREEMENT) is entered into voluntary by and among the Director of the Utah Division of Water Quality (DIRECTOR) and D&S Dairy (DAIRY). The DIRECTOR and DAIRY are jointly referred to hereafter as the (PARTIES). The purpose of this AGREEMENT is to resolve the illicit discharge of manure water to a ditch that connects to a drainage to Cutler Reservoir. The ditch, drainage, and the Cutler Reservoir are waters of the State. The discharge was observed by the Utah Division of Water Quality (DIVISION) on February 13, 2017.

B. AUTHORITY

1. The DIRECTOR of the 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 Utah Water Quality Act (ACT) and Water Quality Administrative Code (CODE).

2. 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 Annotated.

3. 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 the Utah Pollution Discharge Elimination System (UPDES).

4 Utah Code Ann. § 19-5-107(1)(a). “Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge 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 to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.”
C. FINDINGS OF FACT

1. The DAIRY is a medium size animal feeding operation located in Newton, Utah, several miles from the reservoir. The DAIRY confines an estimated 400 cows.

2. The DAIRY has insufficient storage capacity to properly store runoff and wastewater during periods of high precipitation and snow melt.

3. The DAIRY allowed discharges to a roadside ditch that connects to the Cutler Reservoir through an un-named drainage.

4. On February 13, 2017, Don Hall of the DIVISION observed discharges from the DAIRY to the ditch.

5. The ditch, drainage, and Cutler Reservoir are waters of the State per Utah Administrative Code R317-8-1.5(59) and R317-8-10.2. Discharges to state waters violate Utah Code Ann. § 19-5-107(1)(a), as shown in paragraph B.4 above.

6. The DAIRY has not received previous warning letters or enforcement from the DIVISION.

7. The water discharged and the type of discharge that occurred this winter do not meet the definitions of agriculture water or agriculture discharge in UCA § 19-5-102(1) and (2).

8. The DIVISION has determined a penalty for this incident according to the guidelines found in Utah Administrative Code R317-1-8, Penalty Criteria for Civil Settlement Negotiations. The criteria considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willingness, negligence, good faith efforts to comply, and economic benefit of the DAIRY’s delayed compliance.

D. VIOLATIONS

Based on the foregoing Findings of Fact, the DAIRY has violated the following:

1. Utah Code Ann. § 19-5-107(1)(a) for causing pollution which could be harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water and described in the Findings of Fact, paragraphs C.3 and C.4.
E. AGREEMENT

Based on the foregoing FINDINGS OF FACT and VIOLATIONS, the DIRECTOR hereby orders, and the DAIRY agrees to, comply with the requirements and conditions of the AGREEMENT below. The DAIRY is ordered and agrees 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.

2. Immediately cease all feed and manure discharge to waters of the State from the DAIRY’s production area, waste storage areas, and fields.

3. Take immediate action to prevent future discharges to waters of the State from the DAIRY.

4. Report any future discharges to waters of the State to the DIVISION within 24-hours of any discharge.

5. As soon as possible and no later than the deadlines in this AGREEMENT and any compliance schedule, comply with the requirements of the AGREEMENT.

6. Cooperate with the DIVISION in preparing a compliance schedule until the Nutrient Management Plan (NMP) is fully implemented at the DAIRY. A compliance schedule should be complete by July 1, 2017.

7. Prepare and implement the DAIRY’s NMP according to all applicable and current Natural Resources Conservation Service (NRCS) practices and standards.

8. The revised NMP must be approved by a NRCS certified planner. The NMP must be submitted to the DIVISION for review by August 15, 2017 and revised thereafter as needed to meet the DIVISION’s water quality requirements. The DIVISION must approve the NMP prior to full implementation.

9. The NMP must be implemented on or before November 1, 2017 in accordance with all applicable NRCS practices and standards.

10. Submit to the DIRECTOR, within 30 days of receipt of the signed AGREEMENT, a report which includes, but is not limited to, the following:

   a. An account of the conditions and events leading up to, and surrounding the non-compliant discharges described in this AGREEMENT.
   b. The current condition and status of the releases.
   c. The DAIRY’s plan to prevent future discharges.

11. The DAIRY may request a deadline extension to any deadline within this
AGREEMENT for conditions beyond the reasonable control of the DAIRY and at a minimum of 30 days prior to the respective deadline. The DIVISION must approve the deadline for an extension to be granted.

12. The DAIRY agrees to pay a penalty in the amount of $3,836. The penalty will held in abeyance if the DAIRY complies with the requirements of this AGREEMENT. The DAIRY will not be required to pay the penalty unless it fails to comply with this AGREEMENT by the deadline November 1, 2017 or a DIVISION approved deadline extension.

13. Should the DIVISION determine that the DAIRY did not fully comply with the deadlines and requirements of the AGREEMENT, the DAIRY must pay $3,836 as notified by the DIVISION.

14. In addition to the penalty requirements in 12 and 13 above, the DAIRY will be required to pay reimbursement costs to the DIVISION if the DAIRY fails to comply with the AGREEMENT. Any reimbursement costs will be determined after the final November 1, 2017 deadline or DIVISION-approved extension. The DIVISION will track the hours spent on the enforcement case and bill the DAIRY after the final deadline, should the DAIRY fail to comply. Reimbursement cost will be determined by multiplying the number of DIVISION hours by $90 per hour.

15. By executing this AGREEMENT, the DAIRY makes no admissions concerning the findings and denies liability for the findings made within. The PARTIES understand and agree that this AGREEMENT is being entered into in an effort to resolve any dispute between the parties and avoid further dispute, discussion, or action concerning the matters related thereto.

16. Any future disputes arising hereunder are subject to Utah Code Ann. 19-5-112, 19-1-301 and 19-1-301.5; and R305-7 of the Utah Administrative Code, and any other applicable state law.

17. Neither execution of this AGREEMENT, nor the DAIRY's compliance to the conditions and requirements of this AGREEMENT, shall relieve the DAIRY of any future enforcement actions and penalties for future non-compliance to Utah’s water quality statutes and administrative code by the DAIRY.

18. 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.

19. This AGREEMENT is effective upon signature by the DAIRY and DIRECTOR.
IT IS SO AGREED.

[Signature]
Steven Griffin, Owner
D&S Dairy

Date: 7/7/2017

IT IS SO ORDERED.

[Signature]
Kim Shelley, Acting Director
Utah Division of Water Quality

Date: ________________

DWQ-2017-004427