

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF ELK OPERATING SERVICES, LLC CO Capitol Corporate Services, Inc. Registered Agent 2005 East 2700 South, Ste. 200 Salt Lake City, UT 84109	DOCKET NUMBER I19-02 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **ELK OPERATING SERVICES, LLC** (hereinafter "**ELK**") and the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning **ELK's** violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Sections 19-5-101 to 19-5-124*.

1. The **DIRECTOR** has authority to administer the *Act*, as specified in *Section 19-5-106(2)(d)* and to enforce the Utah Water Quality Rules, Utah Administrative Code R317, through the issuance of orders, as specified in Utah Code Section 19-5-106(2)(d) and Section 19-5-111. The **DIRECTOR** also has 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 (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I19-02 (hereinafter the "**NOTICE**"), between **ELK** and the **DIRECTOR**, issued to **ELK** on May 16, 2019, by the **DIRECTOR**. It does not in any way relieve **ELK** from any other obligation imposed under the *Act* or any other State or Federal laws.
4. The parties have reviewed the **NOTICE** and the facts and circumstances surrounding the incident, and now 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 **ELK**.
5. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
6. In resolution of the **NOTICE**;
 - A. **ELK** agrees to pay a penalty in the amount of \$7,334.00 and associated investigative costs in the amount of \$4,262.00 for a total of \$11,596.00, which was calculated and adjusted for circumstances in conformance with the penalty policy outlined in *Utah Administrative Code R317-1-8*.

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. **ELK** agrees to complete all necessary remaining clean up and remediation steps to the San Juan River, as determined by the **DIRECTOR**.
7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions against **ELK** for violations not resolved by this **AGREEMENT**.
8. If an agreement between **ELK** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then **ELK** and the **DIRECTOR** may commence an adjudicative proceeding under the procedures and requirements of Utah Code Ann. Section 19-1-301. Dispositive action taken by the Executive Director following an adjudicative proceeding is subject to judicial review under Utah Code Ann. Section 63G-4-403.
9. Nothing in this **AGREEMENT** shall constitute a waiver by **ELK** 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 **ELK**, 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 _____, 2019.

ELK OPERATING SERVICES, LLC

**UTAH DIVISION OF
WATER QUALITY**

By _____
Authorized Agent for **ELK**

By _____
Erica Brown Gaddis, PhD
Director

DWQ-2019-005787