

## UTAH DIVISION OF WATER QUALITY

**IN THE MATTER OF  
JONES HOLE NATIONAL FISH  
HATCHERY, USFWS**

**DOCKET NUMBER I17-10  
SETTLEMENT AGREEMENT**

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between the **UNITED STATES FISH & WILDLIFE SERVICE** (hereinafter "**OPERATOR**") and the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **DIRECTOR** has authority to administer the *Utah Water Quality Act, as amended 1953*, as specified in *UCA 19-5-106(2)(d)* (hereinafter the "**ACT**").
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. The **OPERATOR** has responded to the **NOTICE OF VIOLATION** and the facts and circumstances surrounding the incident, and now desires 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 the **OPERATOR**.
4. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I18-10 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **DIRECTOR**, issued to the **OPERATOR** on October 3, 2017, by the **DIRECTOR**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the Act or any other State or Federal laws.
6. In resolution of said **NOTICE** in Paragraph 5 of this **AGREEMENT**;
  - A. The **OPERATOR** agrees to pay a penalty in the amount of \$100.00 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  
P. O. Box 144870  
Salt Lake City, Utah 84114-4870
  - B. The **OPERATOR** further agrees to fund the mitigation project, in the amount of \$28,352.00. The mitigation project funds must be utilized by no later than one year from

the effective date of this **AGREEMENT**.

The **OPERATOR** must submit within ninety (90) days of the effective date of this **AGREEMENT** for **DIRECTOR** approval, a project implementation plan for each project that includes a detailed description of the mitigation project, a cost breakdown showing how the funds will be used, and a plan for implementation of the project, which shall include a time frame for implementation and completion of the project and submission of final document(s) indicating completion of the project. The implementation plan should also include a funding schedule which specifies who receives the mitigation funds and when.

The **OPERATOR** participation in the mitigation projects must fully adhere to *UAC R317-1-8.4*. The **OPERATOR** agrees not to attempt to gain or generate any positive publicity, and further agrees not to deduct or otherwise attempt to obtain a tax benefit from the foregoing funding of the mitigation projects.

- C. If the **OPERATOR** fails to fund the mitigation projects or fails to submit the outlines as described in Paragraph 6.B. above, or if the mitigation projects will not utilize the full funds allotted, the **OPERATOR** shall remit the remaining unspent funds as per the method and address in Paragraph 6.A. within thirty (30) days of demand to do so by the **DIRECTOR**.
- D. The **OPERATOR** must submit all documentation to the **DIRECTOR** including receipts, once the funds have been spent for the approved mitigation project. This information must include who was paid, what the payment was for, and the dates of when the payment was made.
- E. The **OPERATOR** may be required to submit updates, based on the approved project. Updates must be submitted at a minimum of every 3 months. The updates must include how the project is progressing and any known setbacks that may impact the money being spent within a year.
- F. The **OPERATOR** is required to obtain any necessary permits and approvals from all relevant local and state agencies to install and operate a residential septic system, and to obey any relevant local and state regulations appertaining thereunto. The **OPERATOR** will provide within 30 days of the effective date of this **AGREEMENT** a letter from the **TRI-COUNTY HEALTH DEPARTMENT** certifying the system meets their requirements and is operating to their satisfaction.
- G. Using the IDEXX Colilert system, the **OPERATOR** is required to monitor the levels of *E. coli* in Jones Hole Creek upstream and downstream from the hatchery and at the original point of discharge by collecting representative samples at least once weekly, from May 1 to September 30, 2018, in order to verify the system is operating correctly.

7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **DIRECTOR** may commence a proceeding with the **BOARD** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
9. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** 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 the **OPERATOR**, 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 \_\_\_\_\_, 2018.

**GREG GERLICH, USFWS**

**UTAH DIVISION OF  
WATER QUALITY**

By   
Assistant Regional Director  
Mountain-Prairie Region, USFWS

By \_\_\_\_\_  
Director