

UTAH WATER QUALITY BOARD

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| IN THE MATTER OF CHEVRON PIPE LINE COMPANY, SALT LAKE City, UTAH | DOCKET NUMBER I10-1 SETTLEMENT AGREEMENT |
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This **SETTLEMENT AGREEMENT** (the “**Agreement**”) is made and entered into this ___ day of _____, 2011, by and among the **UTAH WATER QUALITY BOARD** (the “**Board**”), acting through its Executive Secretary; **SALT LAKE CITY CORPORATION**, a municipal corporation under the laws of the State of Utah (the “**City**”); and **CHEVRON PIPE LINE COMPANY** (“**CPL**”), collectively referred to herein as the “**Parties.**”

RECITALS

A. **Board and Executive Secretary Authority.** The Board has authority to administer the Utah Water Quality Act, Utah Code Ann. Title 19, Ch. 5 (the “**Act**”). The Board has delegated to the Executive Secretary of the Board (“**Executive Secretary**”) authority to issue notices of violation and orders and to exercise all incidental powers necessary to carry out the purposes of the Act. Utah Code Ann. § 19-5-106. The Executive Secretary has authority to employ full time employees to carry out the provisions of the Act (“**Division of Water Quality staff**”). *Id.*

B. **City Authority.** The City has police power authority to protect the health and safety of its citizens and visitors to the City. The City also has the authority to protect and recover damage to its assets, including sources of income. Furthermore, the City has the authority to enforce violations of City ordinances, particularly concerning discharges into its stormwater sewer system in violation of Chapter 17.84 of the City Code.

C. **June 2010 Release.** A release of crude oil from a ruptured pipeline owned by CPL occurred in the vicinity of Red Butte Garden in Salt Lake City on June 11-12, 2010 (the “**June 2010 Release**”). Oil spilled into Red Butte Creek and flowed into Liberty Park Lake and the Jordan River.

D. **December 2010 Release.** A release of condensate and oil mixture occurred from a block valve on a CPL pipeline valve located near the Red Butte Garden Amphitheater on the University of Utah campus in Salt Lake City, Utah, on December 1-2, 2010 (the “**December 2010 Release**”). The June 2010 Release and the December 2010 Release are collectively referred to as the “**Releases.**”

E. **Unified Command.** In response to the June 2010 Release, Salt Lake City, Salt Lake Valley Health Department, the State of Utah Division of Water Quality and CPL set up a Unified Command to coordinate responses to the June 2010 Release. The U.S. Environmental Protection Agency was also onsite to observe progress during the initial response. Salt Lake Valley Health Department and the Division of Water Quality have been conducting ongoing water sampling and the City has been regularly monitoring ground and well water. The Unified

Command continues their coordinated efforts, monitors the implementation of work plans and refers citizens' complaints to CPL for its attention.

F. **City Response to the Releases.** In conjunction with the Unified Command, the City's Fire Department, Police Department, and Public Utilities Department responded to the Releases with the support and supervision of the City's elected officials and senior staff and with the support of other City departments and divisions.

G. **Impacts to City Assets.** The City is the owner of real property, including Liberty Park, Miller Park, Sunnyside Park, and owns or manages certain trails and infrastructure including its stormwater sewer ("City Assets") that were physically damaged and/or experienced lost use and income from the June 2010 Release.

H. **Executive Secretary and Division of Water Quality Responses to the Releases.** The Executive Secretary issued two separate Notices of Violation and Orders to CPL, one dated July 15, 2010 (the "RB1 NOV"), the other dated January 19, 2011 (the "RB2 NOV"). The RB1 NOV and the RB2 NOV are collectively referred to as the "NOVs." The Executive Secretary and Division of Water Quality staff, have provided, and continue to provide, oversight for the ongoing implementation of work plans and other obligations CPL is required to undertake pursuant to the NOVs, in addition to the Division of Water Quality's work in conjunction with the Unified Command.

I. **City's Responses to the Releases.** The City engaged in multiple efforts to assess the impacts of the Releases to the City Assets as well as other community assets. Instead of instituting costly and time consuming formal administrative or legal proceedings against CPL, the City pursued a resolution of potential claims directly with CPL to achieve a timely settlement of such claims.

J. **CPL Response to the Releases.** CPL has taken the following actions in response to the Releases:

i. **Reimbursement of the City.** CPL has paid the City \$508,000, as of July 31, 2011, to reimburse the City for out of pocket direct expenses associated with the Releases.

ii. **Reimbursement of the Department of Environmental Quality (DEQ).** CPL has paid the DEQ \$462,853, as of July 31, 2011, to reimburse the Division of Water Quality for oversight and out of pocket direct expenses associated with the Releases.

iii. **Remediation Efforts.** Under the direction of the Unified Command (comprised of the City, the Executive Secretary, and other federal, state and local agencies), CPL has and continues to undertake remedial activities on and adjacent to Red Butte Creek associated with the June 2010 Release, as described below. Based on CPL's accounting records, CPL has expended approximately \$26,886,000, as of July 31, 2011. CPL has and continues to undertake remedial activities associated with the December 2010 Release, and has expended approximately \$9,724,000, as of July 31, 2011.

iv. **Remediation and Restoration of Spill Sites.** CPL has agreed to pay to the University of Utah the amount of \$1,304,000 to cover additional remediation and restoration of the spill sites associated with the Releases.

v. **Remediation and Restoration of Liberty Park Lake.** Based on CPL's accounting records, CPL has expended approximately \$2,300,000 as of July 31, 2011, for remediation and restoration of Liberty Park Lake.

vi. **Payments to Third Parties.** Based on CPL's accounting records, CPL has paid third parties approximately \$929,000 as of July 31, 2011, as compensation for property damages, personal inconvenience, and alleged personal injury.

vii. **Payment of Civil Penalty to PHMSA.** CPL has paid the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA") a civil penalty in the amount \$424,000 in connection with the June 2010 Release.

viii. **Mitigation of Wildlife Impacts.** Pursuant to an agreement with the Utah Department of Wildlife Resources ("UDWR"), CPL shall fund a fish restocking program to be conducted by UDWR to restock approximately 3,000 Bonneville Cutthroat Trout in a three mile stretch of Red Butte Creek in the Fall of 2011 and 2012. Pursuant to another agreement with UDWR, CPL shall fund one or more waterfowl mitigation projects in the amount of \$100,000.

K. **Additional Payments.** Without any admission of liability, wrongdoing, or negligence, CPL has agreed to make additional payments identified below.

L. **Mutual Interest.** The Parties believe that it is in their mutual best interest to execute an agreement for such compensation and to settle all potential claims relating to the Releases.

TERMS

NOW THEREFORE, IN CONSIDERATION of the mutual covenants set forth herein, the PARTIES agree as follows:

1. **No Admission of Liability.** The Parties now desire to resolve this matter fully without further administrative or legal 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 NOV's, 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 CPL. By entering into this Agreement, CPL withdraws any request for a hearing before the Board. Nothing in this Agreement shall constitute a waiver by CPL to raise in defense any legal or factual contention for future allegations of noncompliance or a waiver by the Executive Secretary or the City to issue Notices or Orders for any future violation or noncompliance with the Act or any other State, Federal or local laws.

2. **Administration by Executive Secretary.** The Executive Secretary shall administer the terms and provisions of this Agreement.

3. **Settlement of NOV's.** This Agreement settles the violations in the NOV's except as provided in ¶8.iii below. This Agreement does not in any way relieve CPL from any other obligation imposed under the Act or any other State, Federal or local laws, except as set forth herein.

4. **Conduct of CPL.** This Agreement takes into account good faith efforts by CPL to resolve the violations cited in the NOV's. The Executive Secretary acknowledges that in response to requests for information and requirements of the NOV's, CPL has addressed and continues to address the alleged violations and has worked cooperatively with Utah Division of Water Quality staff.

5. **CPL Obligations.** CPL agrees to the following settlement terms:

i. **Civil Penalty Paid to the State.** CPL agrees to pay a penalty in the amount of \$500,000, within thirty (30) days of the effective date of this Agreement, by 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

ii. **Funding of Mitigation Projects.** CPL agrees to fund the Mitigation Projects identified pursuant to Paragraph 6 below in the amount of \$3,000,000 as a part of the penalty assessment pursuant to Utah Admin. Code R317-1-8.4. The Executive Secretary, in consultation with the City, will develop mitigation projects to enhance and protect waterways that may have been affected by the Releases or otherwise relate to the Releases.

iii. **Lost Use Damages.** CPL agrees to pay SLC “lost use” damages in the amount of \$1,000,000, within thirty (30) days of the effective date of this Agreement, by check made payable to the City delivered or mailed to:

Salt Lake City Corporation
Gordon Hoskins
Finance Director
451 S. State Street
Salt Lake City, UT 84114-5460

6. **Mitigation Projects**

i. **Selection of Mitigation Projects.** The Executive Secretary, in consultation with the City, shall within ninety (90) days of the effective date of this Agreement, identify mitigation projects that are eligible for funding by CPL. The project proponent of each proposed mitigation project shall develop a mitigation plan 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. The implementation plan shall include a timeline for implementation and completion of the project and submission of final document(s) verifying completion of the project. The implementation plan shall also include a funding schedule which specifies who receives the mitigation funds and when (but in no event shall all mitigation funds be paid in full before completion of the project). Any mitigation project and implementation plan eligible for funding shall require approval from the Executive Secretary (in consultation with the City). The Parties shall agree to the process for soliciting stakeholder and public comment on the Mitigation Projects.

ii. **Performance of Mitigation Projects.** The mitigation project proponent for each Mitigation Project shall be responsible to implement the Mitigation Project once approved by the Executive Secretary. Once approved, the project proponent shall submit periodic invoices, as described in the approved implementation plan, to CPL for reimbursement as the work is performed. All mitigation projects shall be completed within three years from the date of this Agreement.

iii. **Mitigation Project Compliance.** CPL’s participation in the Mitigation Projects must fully adhere to Utah Admin. Code R317-1-8.4. CPL 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 and/or the total penalty amount.

iv. **Funding Mitigation Projects.** CPL shall submit documentation to the Executive Secretary including receipts, once the funds have been spent for each approved Mitigation Project. This information must include who was paid, what the payment was for, and the dates of when the payment was made. CPL shall fund the Mitigation Projects approved by the Executive Secretary (in consultation with the City) up to but no more than the total amount of \$3,000,000. Within 3 years from the date of this Agreement, CPL shall pay any unexpended mitigation funds to the State of Utah as a civil penalty in accordance with Paragraph 5.i.

v. **Submission of Invoices and Documentation.** The project proponent must agree to submit to the Executive Secretary for approval invoices for payment supported by back-up documentation such as time sheets, logs, receipts, invoices, etc. After Executive Secretary Approval, the project proponent shall submit Requests for Payment to CPL to:

Chevron Pipe Line Company
Attn: Jessica Schumaker
4800 Fournace Place, Room E828B
Bellaire, TX 77401

At completion of the project, and before final payment, the project proponent must agree to submit documentation to the Executive Secretary certifying the project has been completed in accordance with the approved implementation plan.

7. **Dispute Resolution**

i. **Disputes Between CPL and the Board.** If a dispute arises between CPL and the Executive Secretary regarding any provision of this Agreement, CPL or the Executive Secretary may request the Board to resolve the dispute.

ii. **Disputes Between CPL and the City.** If a dispute arises between CPL and the City regarding any provision of this Agreement, and if the dispute cannot be settled by direct negotiations, CPL or the City may initiate mediation. If the Parties fail to settle the dispute within ninety (90) days of notice of dispute, either Party may initiate an action in the Third District Court for the State of Utah.

8. **Releases**

i. **General Release by the City.** Except as expressly provided in this Agreement, and except for the exclusions listed below, the City hereby releases and forever discharges CPL and its affiliates from any and all causes of action, claims, demands, charges, penalties, damages, liabilities or losses, at law, under contract, and in equity (whether known or unknown, vested or contingent, past, present or future, whether arising under Salt Lake City ordinance, state law, federal law, or otherwise) accruing up to the date of this Agreement in connection with property damages, natural resource damages, community resource damages, breach of contract damages, tort damages, and all other damages, injuries, or losses of any kind arising under any legal theory associated with or resulting from the Releases. The Parties further agree never to sue each other on the claims released pursuant to this Agreement.

ii. **General Release by the Executive Secretary.** Except for the Parties' obligations contained in this Agreement, and except for the exclusion listed below, the Executive Secretary hereby releases and forever discharges CPL and its affiliates from any and all causes of action, claims, demands, charges, penalties, damages, liabilities or losses, at law, under contract, and in equity (whether known or unknown, vested or contingent, past, present or future, whether arising under state law, federal law, or otherwise) accruing up to the date of this Agreement in

connection with the Releases for natural resource damages, past violations of the Act, and all other damages, injuries, or losses of any kind arising under any legal theory associated with or resulting from the Releases.

iii. **Ongoing Obligations.** Nothing in this Agreement shall constitute or be considered as a release from any obligation CPL has to submit information, conduct sampling and monitoring, implement work plans, or is otherwise required under the NOVs, including completion of a Human Health Risk Assessment and an Ecological Risk Assessment, or to reimburse DEQ for ongoing oversight costs and other work performed under the NOVs. Furthermore, the following are excluded from the foregoing Releases in Paragraphs 8(i) and 8(ii): CPL shall continue to complete all clean up, remediation actions, and mitigation work for Red Butte Creek or any other property that has been, or is in the future, identified by the Unified Command, the Executive Secretary, or the U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration as having been impacted by the Releases, including ongoing monitoring, and clean up of oil contaminated locations, such as those reported by agency monitoring or citizen complaints.

iv. **Northwest Oil Drain.** Nothing in this Agreement shall constitute or be considered as a release from any obligation related to the Northwest Oil Drain.

9. **Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers.** CPL represents that it has not: (i) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (ii) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (iii) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (iv) knowingly influenced, and hereby promise that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

10. **Notices**

All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

The City
City Attorney
Salt Lake City Corporation
P.O. Box 145478
Salt Lake City, UT 84114-5451
Attn: Mayor

CPL
Chevron Pipe Line Company
4800 Fournace Place
Bellaire, TX 77401
Attn: Vice President, Mid-Continent Asset

With a copy to:
Salt Lake City Corporation
City Attorney
451 S. State Street
Salt Lake City, UT 84114-5460

With a copy to:
Tearle Harlan
Chevron Pipe Line Company
Lead Counsel
4800 Fournace Place
Bellaire, TX 77401

Executive Secretary
Walter L. Baker
Utah Division of Water Quality
P. O. Box 144870
Salt Lake City, UT 84114-4870

and
Craig D. Galli
Holland & Hart LLP
222 South Main, Suite 2200
Salt Lake City, UT 84101

With a copy to:
Denise Chancellor
Office of Utah Attorney General
P. O. Box 140873
Salt Lake City, UT 84114-0873

11. **Successors and Assigns.** All of the rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, and their permitted successors.

12. **Authority to Execute.** Each person executing this Agreement individually and personally represents and warrants that he or she is duly authorized to execute and deliver the same on behalf of the entity for which he or she is signing, and that all corporate and/or legislative authority and approvals, as the case may be, have been obtained, and that this Agreement is a binding obligation on such entity.

13. **Entire Agreement.** This Agreement, which includes all recitals and terms hereto, constitutes the entire agreement between the Parties relating to the subject matter of this Agreement, and incorporates all prior correspondence, communications or agreements between the Parties relating to the subject matter of this Agreement and the Releases, and cannot be altered or assigned except in writing signed by both Parties.

14. **Effective Date.** This Agreement shall become operative and effective (the "Effective Date") as of the latest date a Party executes this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.


“The Board”

UTAH WATER QUALITY Board

By: _____
WALTER L. BAKER
Executive Secretary

“CPL”

CHEVRON PIPE LINE COMPANY

By:  _____
TERRY P. DUHON
Vice President, Mid-Continent

“The City”

SALT LAKE City CORPORATION, a Utah municipal corporation

By: _____
Ralph Becker
Mayor

Attest and Countersign:

City RECORDER

Approved as to form:

City Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

"The Board"

UTAH WATER QUALITY Board

By: _____
WALTER L. BAKER
Executive Secretary

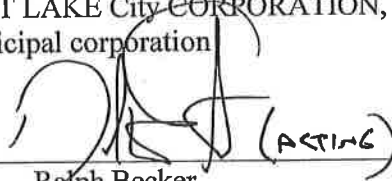
"CPL"

CHEVRON PIPE LINE COMPANY

By: _____
TERRY P. DUHON
Vice President, Mid-Continent

"The City"

SALT LAKE City CORPORATION, a Utah
municipal corporation

By:  (ACTING)
Ralph Becker
Mayor

Attest and Countersign:

City RECORDER

Approved as to form:



Senior City Attorney