
UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF Judge Tunnel and Spiro Tunnel UPDES Park City Municipal Corporation 445 Marsac Ave. P.O. Box 1480 Park City, Utah	DOCKET NUMBER M14-01 AMENDED STIPULATED COMPLIANCE ORDER
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PURPOSE

1. This **AMENDED STIPULATED COMPLIANCE ORDER** (“**AMENDED AGREEMENT**”) will supersede and replace the Stipulated Compliance Order (“**AGREEMENT**”) executed by the **DIRECTOR** of the **UTAH DIVISION OF WATER QUALITY** (“**DIVISION**”) and incorporated by reference into Utah Pollutant Discharge Elimination System (“**UPDES**”) Permit No. UT0025925 (Judge Tunnel) and UPDES Permit No. UT0025461 (Spiro Tunnel). This **AMENDED AGREEMENT** will become effective upon incorporation into UPDES Permit No. UT0025925 and UPDES Permit No. UT0025461. This **AMENDED AGREEMENT** amends interim deadlines (amended interim compliance schedule) for the **PARK CITY MUNICIPAL CORPORATION** (“**OPERATOR**”) to come into full compliance with the final effluent limits in UPDES Permit No. UT0025925 and UPDES Permit No. UT0025461, subject to the requirements of the Utah Water Quality Act, Title 19 Chapter 5 of the Utah Code (“**ACT**”), and Rule 317 of the Utah Admin. Code and other applicable law. The compliance schedule for full compliance with final effluent limits (final compliance schedule) is unchanged. The final compliance schedule extends beyond the expiration dates of the permits. Some dates in the amended interim compliance schedule may extend beyond the expiration dates of the permits. This **AMENDED AGREEMENT** may be incorporated by reference into the permits and into future renewal permits.

AUTHORITY

2. The **DIRECTOR** 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 **ACT** pursuant to Rule 317-8-5.

3. 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.¹

4. 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 UPDES.

FINDINGS

5. **OPERATOR** operates a municipal water system in Park City, Utah. Under certain agreements with the owner of historic mine tunnels, known as the Judge Tunnel and Spiro Tunnel, **OPERATOR** manages the water draining from the Judge Tunnel and Spiro Tunnel, to provide domestic water to its water system customers. Excess tunnel waters are discharged into adjacent water courses, including Empire Canyon Creek and the Spiro North and East ditches. These waters eventually discharge into McLeod, East Canyon and Silver Creeks. *See* Park City February 7, 2012, updated application for a UPDES permit in the administrative record.

6. As of 2009, EPA Region 8 and the **DIRECTOR** directed **OPERATOR** to obtain UPDES permits for Judge Tunnel and Spiro Tunnel. In July 2011, **OPERATOR** submitted initial applications to the **DIVISION** for UPDES permits at each source. The **OPERATOR** requested compliance schedules to come into compliance with the final effluent limits to be established in the UPDES permits. Pursuant to Rule 317-8-5.2, a “permit may, when appropriate, specify a schedule of compliance leading to compliance. . .” with the **ACT**. The purpose of this **AMENDED AGREEMENT** is to specify compliance schedules that will be incorporated into the UPDES permits.

7. On June 5, 2012, EPA issued the *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (“*Integrated Framework*”) dated May 2012. The *Integrated Framework* allows a municipality to identify its relative priorities for infrastructure projects required by the Clean Water Act, balancing human health and water quality impacts with financial capability. A copy of the *Integrated Framework* is in the administrative record.

8. Consistent with the *Integrated Framework* and applicable law, a compliance schedule was established in the **AGREEMENT**.

9. Effective November 1, 2014, the **DIRECTOR** issued to the **OPERATOR** UPDES Permit No. UT0025925 (Judge) and UPDES Permit No. UT0025461 (Spiro), both with an

¹ The terms Division and Director may be used interchangeably herein.

expiration date of November 1, 2019. The permits incorporated the **AGREEMENT** compliance schedule.

10. The **AGREEMENT** set forth a final compliance schedule. The **AGREEMENT** in Section 11. H provided in part:

3. No later than July 1, 2033, **OPERATOR** agrees that all discharges related to Judge Tunnel and Spiro Tunnel discharges, and all other Park City drinking water infrastructure related discharges will comply with all applicable UPDES discharge permit limits, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permits and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants.
5. Notwithstanding any other provision in Paragraph H herein, **OPERATOR** agrees that the discharges related to Judge Tunnel will comply with applicable UPDES discharge permit limits no later than January 1, 2024.

11. This **AMENDED AGREEMENT** will not alter the final compliance schedule described in Paragraph 10 above. However, this **AMENDED AGREEMENT** will provide an amended interim compliance schedule.

12 In accordance with the **AGREEMENT** and the 2014 Judge and Spiro UPDES permits, the **OPERATOR** has selected a location for a new treatment facility for treatment of Judge and Spiro discharges and developed conceptual designs and cost estimates for the facility. See *Draft Park City Municipal Integrated UPDES Plan – December 2015*; and *Draft Park City Municipal Integrated UPDES Plan – September 2016 Update Required by Utah Division of Water Quality Judge Tunnel and Spiro Tunnel UPDES Stipulated Compliance Order Docket Number M14-01 8-1-14*, and the *Park City Mine Tunnel Water Quality, June 2017* white paper in the administrative record; herein collectively referred to as *Integrated Plan Updates*. On December 20, 2017, **OPERATOR** submitted to the **DIRECTOR** a Letter from Clint McAfee to Kim Shelley, in the administrative record. The Letter references reports which describe **OPERATOR's** decisions and actions with respect to full treatment of the Judge Tunnel discharges. The referenced reports also describe how **OPERATOR** has determined based on engineering studies that the complete demolition and reconstruction of the existing Spiro Water Treatment Plant (SWTP), to be known as the Three Kings Water Treatment Plant, is financially, technically, and operationally superior to expansion of the existing SWTP or the existing Quinns Junction Water Treatment Plant (QWTP). Based on new information which was not available as of the execution of the **AGREEMENT**, **OPERATOR** has requested, and **DIRECTOR** is authorized under U.A.C. R317-8-5 to grant, an extension for good cause of the compliance schedule as outlined in this **AMENDED AGREEMENT**.

13. The **DIRECTOR** and **OPERATOR** have agreed that **OPERATOR** can proceed with design and construction of a proposed water treatment plant with a treatment capacity of a maximum of 3,000 gpm, and will treat all of the Judge Tunnel flow and a portion of the Spiro Tunnel flow. *Letter from Erica Brown Gaddis to Clint McAfee, Sept. 29, 2017 edocs DWQ-2017-009126*, in the administrative record. **OPERATOR** has designed the SWTP and a process for the SWTP such that discharges therefrom will meet effluent limitations in the 2014 permit. Further, the **DIRECTOR** has determined that reduction of Zinc and Cadmium is the first priority, the reduction of Iron is the second priority, and the reduction of Antimony, Arsenic and Thallium is third priority. Based on data available at the time of execution of this **AMENDED AGREEMENT**, **OPERATOR** has identified areas within the Spiro Tunnel that can be isolated and treated for metals reduction to meet these priorities. Subject to legal and physical access to these areas, **OPERATOR** agrees to treat water from these areas consistent therewith, up to the achievement of effluent limitations.

14. The requested amended interim compliance schedule provides the **OPERATOR** and **DIRECTOR** the ability to measure stream water quality improvement resulting from treatment of all of the flow from Judge Tunnel, the portions of Spiro Tunnel flows with higher concentrations of the priority metals, and other best management practices, including by way of example the potential use of water pumped from Rockport Reservoir for irrigation and/or discharge to McLeod Creek in order to increase the quantity of Spiro Tunnel flows that **OPERATOR** is able to treat. A sampling and analysis plan will measure the effectiveness of treatment of a portion of the water discharging from the Spiro Tunnel and inform future permit effluent limitations. The review of the effectiveness of treatment is scheduled to be conducted after each 5-year UPDES Permit term and treatment plant optimization has occurred and sampling data has been collected and analyzed. Optimization may also include a selection of sources within Spiro Tunnel for treatment, land application and stream discharge while monitoring water quality. The **OPERATOR** has also represented that the amended interim compliance schedule will allow the **OPERATOR** to both mitigate the financial impacts of many years of significant water rate increases and reduce pollutant loading in the Silver Creek, McLeod Creek and East Canyon watersheds from the Spiro and Judge Tunnel discharges.

15. The **DIRECTOR** finds there is adequate support in the administrative record to reasonably find that the amended compliance schedule set forth in Paragraph 17 will lead to compliance with effluent limitations by the end of the amended compliance schedule, that the amended compliance schedule is appropriate given the circumstances, that compliance will be achieved as soon as possible, and that the **OPERATOR** cannot immediately comply with the effluent limitations in the permits.

AMENDED AGREEMENT AND ORDER

THE DIRECTOR HEREBY ORDERS and the **OPERATOR** agrees to the following.

Final Compliance Schedule

16. No later than July 1, 2033, **OPERATOR** agrees all discharges related to Judge Tunnel and Spiro Tunnel discharges, and all other Park City drinking water infrastructure related discharges will comply with all applicable UPDES discharge permit limits, except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), or other circumstances necessary for proper operation, maintenance and replacement of the water system only as allowed in the UPDES permits and the **OPERATOR'S** UPDES General Permit for Drinking Water Treatment Plants. Notwithstanding the foregoing, **OPERATOR** agrees that the discharges related to Judge Tunnel will comply with applicable UPDES discharge permit limits no later than January 1, 2024.

Amended Interim Compliance Schedule

17. Subject to the minimum treatment flows described in Paragraphs 17.O and 17.P, and the metal reduction priorities contained in Paragraph 13, **THE DIRECTOR HEREBY ORDERS** and the **OPERATOR** agrees to the following amended compliance schedule:

OPERATOR Annual Updates

A. Through the end of the term of this **AMENDED AGREEMENT**, **OPERATOR** agrees to submit to the **DIRECTOR** annual updates. The scope of the annual updates shall include descriptions of all projects and work necessary, in as much detail as is known at the time, to bring surface water discharges from the Judge and Spiro Tunnels into compliance with their associated UPDES permits, with schedules, deadlines and other terms consistent with those in this **AMENDED AGREEMENT**. Updates shall be submitted every October 1 for the previous 12 months. The annual updates, at a minimum, will document a summary of progress and milestones achieved in all construction, study and design projects during the previous reporting period, projected progress and milestones scheduled to be completed during the following reporting period, and if the project(s) are on schedule.

Sampling and Analysis Plan

B. No later than 30 days after execution of this **AMENDED AGREEMENT**, **OPERATOR** agrees to submit to the **DIRECTOR** a draft Spiro Tunnel Watershed sampling and analysis plan (SAP).

C. The draft SAP will include a monitoring plan for parameters included in the 2014 Spiro UPDES permit for the effluent and downstream receiving waters.

D. No later than 30 days after **DIRECTOR** approval of the SAP, **OPERATOR** agrees to begin sampling of the parameters in the SAP.

E. **OPERATOR** will submit for approval by the **DIRECTOR** a request to amend or terminate the SAP and related monitoring if the **OPERATOR** believes it is no longer necessary.

Future Permits for Judge Tunnel and Spiro Tunnel

F. (1) At least 180 days prior to the expiration date of the existing permits, **OPERATOR** agrees to apply to renew the 2014 UPDES permits for the Judge and Spiro Tunnels (2019 renewal permits), the future effluent limitations of which shall be substantially similar to the effluent limitations of the 2014 permits. The 2019 renewal permits will (i) cover the period during which reconstruction of the SWTP is underway, (ii) identify interim outfalls that will need to be moved as construction progresses, (iii) accommodate the reconstructed SWTP startup activities which may include bypasses for Spiro and Judge discharges.

(2) At least 180 days prior to the expiration date of the 2019 permits, **OPERATOR** shall apply to renew the 2019 Spiro permit for the combined Judge and Spiro discharges (“2024 Spiro Permit”) for the reconstructed SWTP, the future effluent limitations of which shall be substantially similar to the effluent limitations of the 2014 permits.

Infrastructure for Judge Tunnel and Spiro Tunnel

G. (1) No later than January 1, 2024, **OPERATOR** agrees to complete the reconstruction and optimization of the existing SWTP. **The DIRECTOR** and **OPERATOR** agree that the reconstructed SWTP shall have a maximum treatment capacity of 3,000 gallons per minute (gpm) and be capable of treating combined water discharged from Judge and Spiro Tunnels to effluent limitations of the combined water sources of the 2024 Spiro permit.

(2) At the completion of the SWTP reconstruction called for in Paragraph 17.G.1, and with commencement of treatment of Judge Tunnel water called for in Paragraph 17.H.,

(a) **OPERATOR** shall operate under UPDES General Permit for Drinking Water Treatment Plants, Permit #UTG640044: Park City Municipal Corp -Judge Tunnel).

(b) all surface water discharges from the Judge Tunnel outfall locations identified in the 2014 Judge permit into Empire Creek shall cease except in cases of upset or emergency condition, as described in Rule 317-8-4.1(14), and

(c) **OPERATOR's** Judge Tunnel Discharge Permit #UT002925 shall be terminated by the "2024 Spiro Permit".

Judge Tunnel Treatment Operations

H. No later than January 1, 2024, **OPERATOR** will convey all water previously discharged from the Judge Tunnel through an existing pipeline to the reconstructed SWTP for treatment and discharge to either the City's drinking water distribution system or to the Outfall locations identified in the 2024 Spiro Permit or both. **OPERATOR** retains the authority to operate the reconstructed SWTP at varying flow rates, consistent with the goals of meeting future effluent limitations and balancing costs, while also employing other methods of optimization.

Phase I Spiro Tunnel Treatment Operations

I. No later than January 1, 2024, **OPERATOR** agrees to treat a portion of the total amount of water discharging from the Spiro Tunnel as described in Paragraph 17.P. **OPERATOR** may choose to isolate, convey, and prioritize treatment of water from the areas within the Spiro Tunnel believed on the basis of the best available data to have high concentrations of the priority metals, provided the **OPERATOR** has legal and physical access to these areas. **OPERATOR** shall discharge treated water to either the City's drinking water distribution system or to the Outfall locations identified in the 2024 Spiro Permit, or both. **OPERATOR** retains the authority to operate the reconstructed SWTP at varying flow rates, consistent with the goals of meeting future effluent limitations and balancing costs, while also employing other methods of optimization.

J. Consistent with the terms of the **AGREEMENT** and this **AMENDED AGREEMENT**, Spiro Tunnel water that is not treated at the treatment facilities shall discharge to the Park City East Ditch and North Ditch Golf Course Ponds (Ponds).

Phase II Spiro Tunnel Treatment Operations

K. At least 180 days prior to the expiration date of the existing permit, based on water quality data collected and analyzed under the Spiro Tunnel Watershed SAP,

OPERATOR and the **DIRECTOR** as part of the renewal of the 2024 Spiro Permit in 2029 will identify:

- (1) locations, including downstream locations, where water quality standards and effluent limitations for the Spiro Permit are achieved;
- (2) patterns and causes of exceedances, if any, of effluent limitations;
- (3) the applicability of bypass conditions and feasible options to minimize bypass for reasonably foreseeable bypass scenarios as described in Rule 317-8-4.1(13);
- (4) all authorized outfall locations that will be included in the permit;
- (5) variance(s), Use Attainability Analyses (UAAs), site specific standards, and/or similar measures, if and to the extent necessary; and
- (6) other considerations that affect effluent limitations.

L. If needed and to the extent identified by the review in Paragraph 17.K, and no later than November 1, 2029, **OPERATOR** agrees to increase the amount of water treated from the Spiro Tunnel if needed to meet water quality standards as described in Paragraph 17.P. **OPERATOR** shall discharge treated water to either the City's drinking water distribution system or to the Outfall locations identified in the Spiro Permit or both.

Phase III Spiro Tunnel Treatment Operations

M. No later than July 1, 2033, based on water quality data collected under the Spiro Tunnel Watershed SAP, **OPERATOR** and the **DIRECTOR** will review the 2029 Spiro Permit. The review will identify:

- (1) locations, including downstream locations, where water quality standards for the parameters in the Spiro Permit are achieved;
- (2) patterns and causes of exceedances, if any, of permit limits;
- (3) the applicability of bypass conditions and feasible options to minimize bypass for reasonably foreseeable bypass scenarios as described in Rule R317-8-4.1(13);
- (4) alternative points of compliance, if and to the extent necessary;
- (5) variance(s), Use Attainability Analyses (UAAs), site specific standards, and similar measures, if and to the extent necessary; and
- (6) other considerations that affect effluent limitations.

N. If necessary as a component of the Final Compliance Schedule required by Paragraph 16, then concurrent to the review described in Paragraph 17.M and subject to Paragraph 21, the **DIRECTOR AND OPERATOR** will determine an appropriate period to implement regulatory or physical changes, a new sampling and analysis plan, and monitoring periods for such changes, if any. Monitoring periods shall be lengthy enough to capture at least one full 5-year permit cycle. If further treatment beyond 3,000 gpm is needed after 2033, the **DIRECTOR AND OPERATOR** will establish a timeline to develop a future compliance schedule based on a modified SCO and/or modified permit with new effluent limitations based on water quality standards.

Minimum Treatment Requirements

O. **OPERATOR's** total treatment capacity for the combined Judge Tunnel and Spiro Tunnel flows shall not be required to exceed 3,000 gallons per minute. *Letter from Erica Brown Gaddis to Clint McAfee, Sept. 29, 2017 edocs DWQ-2017-009126.*

P. Beginning January 1, 2024 the **OPERATOR** will treat 100% of the Judge Tunnel flow, estimated at 850 gpm, and partial Spiro Tunnel flow, estimated at 500 gpm, for a total 30-day average treated flow minimum rate of 1,350 gpm. After November 1, 2029, and subject to the review in Paragraph 17.K of this **AMENDED AGREEMENT**, the **OPERATOR** agrees to increase the amount of treatment of the water discharging from the Spiro Tunnel to achieve a total 30-day average treated flow minimum rate of 1,850 gpm.

General Provisions

18. Nothing in this **AMENDED AGREEMENT** shall constitute a waiver by **OPERATOR** of any claims it may have against third parties for costs, damages or other relief associated with pollutants in Judge and Spiro Tunnel discharges. Further, nothing in this **AMENDED AGREEMENT** shall prohibit or limit in any way **OPERATOR's** ability to seek contribution or cost recovery from third parties under Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, Clean Water Act, or other laws or regulations. **OPERATOR** reserves all rights to any remedy not expressly prohibited by this **AMENDED AGREEMENT**.

19. **OPERATOR** acknowledges that this **AMENDED AGREEMENT** waives governmental immunity as to the **DIRECTOR** and State of Utah relating to this **AMENDED AGREEMENT**. Nevertheless, the **OPERATOR** is not waiving any defenses or immunity as to any other party that may be available under the Utah Governmental Immunity Act (Chapter 63G-7, Utah Code) nor does the **OPERATOR** waive any limits of liability currently provided by the Utah Governmental Immunity Act. Subject to all provisions of this **AMENDED**

AGREEMENT, and as may be applicable to third parties, nothing herein shall be deemed a waiver by the **OPERATOR** of any immunity provided by law to the **OPERATOR** or an extension of any limits of liability applicable to the **OPERATOR**. This **AMENDED AGREEMENT** shall not be construed as an **AMENDED AGREEMENT** to indemnify, hold harmless, or in any way to assume liability for personal injury, death or property damage caused by the negligence of another party.

20. **OPERATOR** shall supply to the **DIRECTOR** all requested information in order to assure compliance with this **AMENDED AGREEMENT**, the **ACT**, associated rules and permit requirements.

21. **OPERATOR** shall perform the requirements of this **AMENDED AGREEMENT** within the time frames set forth herein except as may be modified in accordance with Rule 317-8-5.6(1)(d) and other applicable law.

22. Disputes arising hereunder are subject to Sections 19-5-112, 19-1-301 and 19-1-301.5 of the Utah Code, Rule 305-7 of the Utah Admin. Code, and other applicable law.

23. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this **AMENDED AGREEMENT** and to bind the party they represent to this **AMENDED AGREEMENT**.

24. This **AMENDED AGREEMENT** will become effective upon incorporation into UPDES Permit No. UT0025925 and UPDES Permit No. UT0025461.

IT IS SO AGREED.

Park City Municipal Corporation

Date: _____

By: _____

Clint McAfee, P.E., Public Utilities Director
Park City Municipal Corporation

IT IS SO ORDERED.

Erica Brown Gaddis, Ph.D., Director
Utah Division of Water Quality

Date: _____

DRAFT