

**UTAH WATER QUALITY BOARD**

<b>IN THE MATTER OF BILL BARRETT CORPORATION 1099 18th STREET, SUITE 2300 DENVER, COLORADO 80202,  Pinder Property Release,</b>	<b>DOCKET NUMBER I12-03 SETTLEMENT AGREEMENT</b>
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **BILL BARRETT CORPORATION** (hereinafter "**OPERATOR**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **BOARD** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **BOARD** 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 parties 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 the **OPERATOR**.
4. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I12-03 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **BOARD**, issued to the **OPERATOR** on April 12, 2012, by the **BOARD**. 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** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to pay a total penalty amount of \$2,500.00 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah delivered

or mailed to the Division of Water Quality, Department of Environmental Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-8* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit.

7. Nothing contained in this **AGREEMENT** shall preclude the **BOARD** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **EXECUTIVE SECRETARY** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **EXECUTIVE SECRETARY** 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 \_\_\_\_\_, [YEAR].

**BILL BARRETT CORPORATION**

**UTAH WATER QUALITY BOARD**

By \_\_\_\_\_  
Authorized Agent

By \_\_\_\_\_  
Executive Secretary

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,  
BILL BARRETT CORPORATION SETTLEMENT AGREEMENT DOCKET NO. I12-03**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-8*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

**CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS**

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for FACILITY has been calculated as follows:

**Bill Barrett Corporation (BBC)** was installing a 12-inch pipeline to deliver natural gas from the #1-13D-47 BTR well to other BBC facilities in the Strawberry Valley area near Lake Canyon above Starvation Reservoir. The installation process utilized both open trench and directional boring techniques.

**Laney Directional Drilling Co. (Laney)** was the horizontal boring contractor being utilized by **BBC**. Kent Lawler was the **Laney** on-site supervisor for the **BBC** pipeline installation project.

On November 16, 2011 **Laney** was installing a section of the **BBC** pipeline using directional boring techniques at a location approximately 0.75 miles west of the Lake Canyon turnoff on the Strawberry River Road. The boring was crossing underneath the Strawberry River during this time. **Laney** had excavated a working pit alongside the road as part of the pipeline boring process.

On November 17, 2011, Matthew Garn, an environmental engineer with the **Division of Water Quality (the Division)** was contacted by Ms. Jenny Pinder (the land owner) to report a spill on her land associated with the **BBC** pipeline boring project. She reported that there was muddy water with what she assumed contained hydrocarbons running eastward down the Strawberry River Road, and subsequently running eastward across her land and ultimately entering the Strawberry River. Ms. Pinder reported that she believed the event began later in the day on November 16, 2011 and continued during November 17, 2011.

On November 18, 2011, Dennis Ingram, Senior Petroleum Specialist with the **Division of Oil, Gas, and Mining (DOGM)**, made a site inspection at the location of the reported spill. Mr. Ingram reported that a drilling mud mix (a bentonite mix) had run from the working pit east down the Strawberry Valley Road, then across a 400' section of the Pinder Ranch, and then into the Strawberry River. Mr. Ingram took photographs showing where residual sediment from the release was still in place on the bottom of the river bed, at the edge of the river channel where the spill had entered the Strawberry River.

Also on November 18, 2011, Darrin Brown, the Environmental Health Director for the **TriCounty Health Department**, made a site inspection at the location of the reported spill. Mr. Brown reported similar observations as those that Mr. Ingram had reported. It appeared a drilling mud mix had run from the working excavation east down the Strawberry Valley Road, then across a section of the Pinder Ranch, and then into the Strawberry River. Mr. Brown also took photographs showing where the release had run across the Pinder property and into the Strawberry River.

On November 21, 2011, Scott Hacking, the **Department of Environmental Quality (DEQ)** District Engineer for the Uintah Basin, visited the site to collect soil samples. Mr. Hacking also observed the overland flow path of the release, and took more photographs showing where a residual sediment accumulation from the release was still in place on the bottom of the river bed, at the edge of the river channel where the spill had entered the Strawberry River.

**BBC** reported that the excavation which resulted in the water release was where **Laney** was working to locate the end of the line pipe that was being pulled through the borehole. The line pipe had broken free of the wire line during the pulling process. **Laney** had encountered heavy inflow of groundwater at 10 feet below the ground surface. The water

was being pumped out and removed for disposal but the volume over ran the system. The flow stopped when they stopped the work at the site. **Laney** reported that they were never able to locate the end of the pipe through the excavation, and never broke through to the borehole to release any of the drilling fluid.

**BBC** then applied for coverage under the General Permit UTG07000 covering construction dewatering. They were granted permit UTG07419 on November 22, 2011 which became effective on November 28, 2011. This will allow them to resume work at the site when the time comes and deal with the groundwater issue.

The differing accounts of the incident appear to conflict in some places. Most notably in what the nature of the material released. Was it drilling fluid or just sediment loaded groundwater?

Regardless of which it was the impact was the same. A heavy load of sediment was introduced into the river.

All reports agree that the release was limited to two days in length, and that it did make it to the Strawberry River. From this the penalty calculation will be based on two days of violation.

**BBC** has a history of working to maintain compliance and respond rapidly when events happen. When they first started to excavate and ran into groundwater they responded by pumping and hauling the water for disposal, and did not apply for a groundwater discharge permit until after they had a release. These considerations will result in the following adjustments to the penalty calculation.

**BBC** will be given 50% credit for “good faith efforts to comply” in the penalty calculation.

**BBC** will be given 50% credit for “degree of negligence” in the penalty calculation.

**BBC** will be given 50% credit for “history of compliance or non-compliance” in the penalty calculation.

#### **Gravity Component:**

The gravity component of the penalty is based on violation below.

**VIOLATION 1.** Utah Code Annotated (UCA) § 19-5-107(3)(a), and UCA § 19-5-107(1)(a); Utah Administrative Code (UAC) § R317-2-7.1, and UAC § R317-2-7.2 For the unpermitted release of a pollutant from an excavation site near the Strawberry River that proceeded across the Pinder Ranch and into the Strawberry River as described above.

This type of violation can be categorized as either a Category C violation according to *Utah Administrative Code R317-1-8.3*. If the violation is severe enough it can be elevated to a Category B violation. This violation was not severe enough to warrant being upgraded to a Category B, and will be calculated as a Category C violation.

#### **Economic Benefit Justification:**

Economic benefit (BEN) received for VIOLATOR would be calculated based on; 1. Capital investment delayed; 2. Delayed expenditures and; 3. Expenses not incurred. Avoided and delayed expenses would be estimated based on a survey of current market, engineering and product costs.

During the investigation into the release **BBC** and **Laney** could have applied for the construction dewatering coverage prior to excavating and could have prevented the release from being unpermitted. This expense was only

delayed by a few weeks, and would not result in any substantial amount during a BEN calculation. Due to the short term nature of the release and unplanned reason for the work a BEN calculation is not fully warranted in this violation.

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number			FACILITY DESCRIPTION / CONTACT NAMES			
		Date of Analysis			Name of Site Contact:			
		Site Name:			Name of Authorized Official:			
		NOV/SA Docket No.			Telephone Number			
		DEQ Analyst Name						
PERMIT COVERAGE	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance	Credit for Good Faith Efforts	Total Penalty Per Day	No. of Violation Days	Dollar Amount	Total
Category A	\$7,000-\$10,000	0%	0%	0%	\$10,000	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
Category B	\$2,000-\$7,000	0%	0%	0%	\$7,000	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
Category C	\$500-\$2,000	50%	50%	50%	\$1,250	2	\$2,500	\$2,500
	Reduction	-\$250	-\$250	-\$250				
Category D	\$0-\$500	0%	0%	0%	\$500	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
							<b>Total Gravity:</b>	<b>\$2,500</b>
Economic Benefit	Enter Capital Investment Cost (Delayed Capitol)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
(Enter Numbers From BEN worksheet)							<b>Total BEN:</b>	<b>\$0</b>
							<b>Total Penalty:</b>	<b>\$2,500</b>