

March 2013 Willard Bay Diesel Release Event Summary and Response to Comments; Proposed Settlement Agreement with Chevron Pipeline Company

January 22, 2014

1. BACKGROUND

The Director of the Division of Water Quality (“Director”) is proposing to enter into a Settlement Agreement with Chevron Pipeline Company (“CPL”). The proposed \$5.35 million settlement addresses violations that occurred as the result of a release of diesel fuel on March 18, 2013, which resulted in a Notice of Violation and Compliance Order (“NOV”) being issued by the Director on April 11, 2013. The settlement covers both the monetary penalty assessed under the NOV, along with payment of lost use damages suffered by the Department of Natural Resources, Division of Parks and Recreation (“Parks”) for Parks’ lost use of Willard Bay State Park as a result of the March 18 spill.

In the NOV, Chevron was cited for violating the Utah Water Quality Act (Title 19, Ch. 5 Utah Code Ann.) and associated administrative regulations by: (i) discharging a pollutant into waters of the State; (ii) causing pollution which constituted a threat to public health and wildlife and which impaired the recreational and other beneficial use of water; (iii) discharging oil or other substances, thereby producing undesirable responses in aquatic life; (iv) making a discharge to receiving waters without a valid discharge permit; and (v) discharging substances that interfered with waters’ designated uses.

CPL provided two responses to the NOV, the first on May 10, 2013, and the second on June 7, 2013. DWQ provided a response to CPL’s submissions on August 26, 2013. CPL is currently preparing its final report in response to the NOV, which will be presented to DWQ following the completion of the human health and ecological risk assessment undertaken by DWQ on the area of the spill site.

DWQ, Parks and CPL commenced negotiations regarding the monetary penalty and the damages arising from the release in October 2013. Negotiations regarding the amount of Parks’ lost use damages were conducted separately between CPL and Parks during October and November 2013. The negotiations resulted in a proposed Settlement Agreement, which was signed by CPL on December 13, 2013. Execution of the Settlement Agreement by the Director requires approval of the Water Quality Board and Parks has elected to wait until the Board’s consideration of the Settlement Agreement before executing it. The Board will consider the proposed settlement at its regularly scheduled meeting on January 22, 2014. The authority of the Board, the Director and Parks to settle claims arising under the NOV is outlined below.

The public was notified of the Settlement Agreement on December 17, 2013, through publication in the Salt Lake Tribune and Deseret News, and by posting the notice and a copy of the Settlement Agreement on DWQ's website. Public comment on the Settlement Agreement was solicited, with the public comment period running from December 17, 2013, to January 16, 2014. The responses to all public comments received as of January 16, 2014 appear in Section 10 below.

1.1 Water Quality Board and Director's Authority. The Utah Water Quality Board has authority to administer the Utah Water Quality Act, Utah Code Ann. Title 19, Ch. 5. This includes the authority to review and approve a settlement negotiated by the Director. Utah Code Ann. § 19-5-104. The Director has the authority to issue notices of violation and orders and to exercise all incidental powers necessary to carry out the purposes of the Water Quality Act. Utah Code Ann. § 19-5-106.

1.2 Parks' Authority. The Department of Natural Resources, Division of Parks and Recreation is the parks and recreation authority for the State of Utah. The Division's mission and duties are set forth in Utah Code Ann. Title 79, Ch. 4. The Director of the Division of Parks and Recreation has the delegated authority and incidental powers necessary to carry out the Division's mission and duties, including the compromise and settlement of claims held by the Division. Utah Code Ann. § 79-4-202(3) and (4).

2. THE MARCH 18, 2013 RELEASE

In the afternoon of March 18, 2013, the CPL Control Center in Houston, Texas detected a drop in pressure on the No. 2 product line on the Salt Lake City to Spokane Products Systems Pipeline near Willard Bay State Park. CPL deployed emergency response personnel to the area, who discovered a pipeline leak on the west side of Interstate 15 near northbound Exit 357, close to the Willard Bay State Park North Marina. At the time of the event, the line was transporting diesel fuel. The fuel surfaced and migrated a short distance north from the release point and entered a drainage ditch that flows west under the main Park entrance road.

3. VOLUME OF DIESEL RELEASED

The amount of diesel released was calculated by measuring the amount of product in the pipeline following the shutdown of the pipeline, comparing that amount to the anticipated volume of product in the pipeline under normal operating conditions, and then cross-checking that calculation against the measurement of product recovered from the channel, from the plants and soil impacted by the release, the amount of product captured by absorbent material, and the amount of product lost through evaporation and biodegradation. The volume of product released is stated in barrels ("bbls"); for crude oil or any refined petroleum product, a barrel is equivalent to 42 U.S. gallons.

3.1. Calculating the Amount of Product in the Pipeline following Shutdown

The amount of diesel released was an initial estimation of 480 barrels (volume diesel within pipeline before release: 747 bbls, subtracted by 267 bbls pumped out following shut down of pipeline). This was refined to 499 bbls following product recovery, bio-degradation, and evaporation.

3.2. Total Released Volume

The following is a summary of Chevron’s accounting of the fuel recovered as a result of the incident:

<u>Source</u>	<u>Volume (bbls)</u>
• Free Diesel Recovery	313
• Diesel entrained in solid receptors	82
• Diesel recovered in absorbents	81
• Diesel removed through evaporation	20
• Diesel removed by bio-degradation	3
Total	499 (20,958 U.S. Gallons)

4. NOTIFICATION OF THE RELEASE AND COORDINATION OF THE RESPONSE

Upon receiving notification of the release, CPL notified all regional employees and all emergency response contractors. At the same time, formal notification was made to the Utah Division of Environmental Response and Remediation, the U.S. Environmental Protection Agency (“EPA”) and the U.S. National Response Center.

During events of this magnitude, it is standard practice to develop a Unified Command, consisting of representatives from CPL, federal and state agencies, stakeholders and local municipalities. The Unified Command coordinates the response to the incident, allowing all regulators and interested stakeholders to be apprised of the situation simultaneously and to provide input into the response, as well as providing all responders with unified direction regarding the planned response. In this instance, the Unified Command was staffed by the EPA as Federal On-Scene Coordinator, the Utah Department of Environmental Quality as State On-Scene Coordinator, and CPL as the responsible party. Additional stakeholders also included in the Unified Command were the U.S. Bureau of Reclamation (the property owner of Willard Bay) and State Parks.

5. CLEAN UP MEASURES

Decisions regarding clean-up of the spill were made by the Unified Command. The initial actions

taken after the spill were to contain the spill, assess the spill site, recover lost diesel and minimize environmental damage.

5.1. Containment and Initial Site Investigation

CPL observed a pressure drop in the pipeline near the Bear River Block Valve on March 18, 2103, at approximately 14:26 MDT. The pipeline was shut down, site investigations were performed, and spill responders were contacted.

Upon notification of the spill, DWQ conducted a site visit and collected water samples on the reservoir and within the channel complex. DWQ also was a component of Unified Command and gave input and approval for site activities.

5.2. Clean up and Remediation

Chevron used several different clean up measures to capture spilled diesel. These measures included installing underflow dams, utilizing vacuum trucks, and deploying hay bales, booms, and other absorbent material. The main channel was dewatered to allow for excavation of contaminated soil which was then replaced with clean backfill.

6. BIOLOGICAL ASSESSMENTS

CPL hired BIO-WEST, Inc to perform various biological assessments in order to evaluate the impact of the release on local flora and fauna. These assessments included:

- Wetland delineation
- Removing impacted vegetation; replanting with native plants
- Benthic macro-invertebrate sampling
- Frog loggers & wildlife cameras; installation of bat & wood duck boxes

7. RISK ASSESSMENTS

DWQ retained a private consulting firm to perform both a trespasser and human health risk assessment in order to determine whether impacts from the release would require closure or special management of any portion of the Willard State Park or other areas around the spill site.

The intent of a trespasser risk assessment was to evaluate the level of risk a person would experience were they to intentionally trespass beyond the fence line that contains warning signs about potential exposure. The trespasser risk assessment demonstrated that there were no remaining impacts at the spill site and the surrounding areas that would pose a threat to persons who chose to enter the area without permission.

Prior to opening the fenced-off spill site to the public, DWQ developed more stringent criteria for a final human health risk assessment (“HHRA”) on sediments and the soils along the bank of the ponds, channel, beach, or other impacted areas. That data is currently being compiled and a final HHRA report is anticipated in February 2014.

8. SETTLEMENT

In considering settlement of the monetary penalty and damage claims DWQ had against CPL, DWQ evaluated its legal options, relevant case law and other factors pertinent to its litigation risk and determined that the proposed settlement was reasonable. All of the violations assessed by the Director in the NOV will be settled if the proposed Settlement Agreement is approved by the Board.

Under the Settlement Agreement, CPL agrees to immediately pay a \$350,000 monetary penalty to DEQ that will go into the State General Fund. In addition, CPL will immediately pay Parks \$550,000 as repayment of the damages Parks suffered as a result of the lost use of Willard Bay State Park from March 18, 2013, the date of the release, to July 19, 2013, when the Park reopened.

As a part of the monetary penalty CPL will fund \$4.45 million in environmental mitigation projects. Those projects are to be developed by the Director, consistent with the requirements of Utah Administrative Code R317-1-8.4. The projects may be implemented at Willard Bay State Park or at other properties within the State, as long as they fall within the jurisdiction of the Director and meet the criteria set out in Utah Administrative Code R317-1-8.4. The process for selection and performance of these mitigation projects is set out in the Settlement Agreement at Paragraph 6. The Settlement Agreement provides that CPL will be given credit against the \$4.45 million funding obligation in the amount of \$719,000 for mitigation projects already constructed at the State Park (specifically identified in the Agreement in Paragraph H) and a credit of \$600,000 for CPL’s commitment to fund/construct an ADA-compliant trail and footbridge in the north part of the State Park.

Nothing in the Settlement Agreement relieves CPL of its obligation to continue to submit information, undertake sampling or conduct monitoring as required under the NOV, or to complete any additional cleanup, remediation or mitigation work at the spill site, as directed by DWQ.

9. INFORMATION AND PUBLIC NOTICE REGARDING THE RELEASE AND THE SETTLEMENT AGREEMENT

Information on the Willard Bay spill was posted on the DWQ website, <http://www.deq.utah.gov/locations/willardbay/willardbay.htm>, immediately after the spill and has been periodically updated. Information available on the website includes sampling locations, sampling results, information relating to the NOV, including the NOV itself, press releases, technical documents, and information relating to the remediation of the spill.

After the Settlement Agreement was negotiated, public notice of the proposed Settlement Agreement and a thirty-day public comment period was published in the Salt Lake Tribune and Deseret News on December 17, 2013. The same notice was placed on the DWQ website. Comments on the proposed settlement were accepted until close of business on January 16, 2013. The Director received 29 comments on the proposed Settlement Agreement (all comments were transmitted via email).

10. RESPONSE TO PUBLIC COMMENTS

Comment No. 1: Additional Chevron Reimbursements

- a. *A commenter says, "I am happy to read of the \$5.35 million settlement with Chevron for the Willard Bay oil spill in the Salt Lake Tribune. However, I think you are greatly remiss in not including the Wildlife Rehabilitation Center of Northern Utah among the recipients of the settlement. While Chevron did make a payment to WRCNU initially for the care of the six injured beavers, I estimate WRCNU has spent upwards of \$25,000 of additional money building a beaver water tank rehabilitation center, which currently houses one of the beavers, and in building winter dens and tunnels for release of five beavers in the Uintahs, among other medical, food, staff, and veterinarian expenses. I hope you will contact Buz Marthaler, director of WRCNU, to confirm just how much additional money was spent to rehabilitate these amazing beavers and reimburse the organization. I would also suggest an additional donation to further their work, which benefits many species of Willard Bay."*

Response:

Chevron has already reimbursed the Wildlife Rehabilitation Center of Northern Utah for its costs related to the spill. Chevron reports that the center has been paid \$89,570.56. If further funding is desired by the Wildlife Rehabilitation Center as a mitigation project, a proposal can be submitted in response to the Divisions Request for Proposals that will be issued following approval of the settlement agreement by the Water Quality Board.

- b. *A commenter says, "In addition to penalties announced, Chevron should pay all user fees for 2014 season for the lost use in 2013."*

Response:

Under the Settlement Agreement, Chevron Pipe Line has agreed to pay a monetary penalty and to reimburse the Division of Parks and Recreation for lost use damages arising from closure of the Willard Bay State Park while cleanup was ongoing. Those payments will be made upon approval of the Settlement Agreement by the Water Quality Board. Chevron Pipe Line has also agreed to fund future environmental mitigation projects, which must be submitted to the Director of the Division of Water Quality within 120 days from the date the Agreement is approved by the Board and executed by the Division of Water Quality and the Division of Parks and Recreation. Claims by any other parties relating to the spill are unaffected by the Settlement Agreement. Waiving of entrance fees for the 2014 season presents significant management challenges that are within the realm of State Parks and not appropriate as a part of this settlement agreement. State Parks is considering holding a free entrance day at Willard Bay State Park in 2014 to allow the public to enjoy the park.

Comment No. 2: Allocation of Mitigation Funds

- a. *A commenter says there should be greater specificity for how \$4,450,000 mitigation project funds will be allocated and rationale for why any potential funds would be diverted from Willard Bay.*
- b. *A commenter would like to see the funds be allocated back to the bay.*
- c. *A commenter says, "Funds from settlement should be allocated to repair the road in back of (west) the dike. At least as far north the boat ramps. Many people use this area for fishing and hunting, and bird watching, but it does not receive any maintenance, making it very hard to take any vehicles back there."*
- d. *A commenter requests that all Chevron mitigation compensation dollars remain at both Willard Bay State Park facilities. A proposed ten year improvement plan has been tendered by interested citizen users in cooperation with Parks personnel in the past year. With the Chevron dollars we could make that ten year plan happen in four years as required by the data available today, using the approximate \$4.5 million published in various media publications.*
- e. *A commenter says, "It would be most beneficial and logical to fund projects at Willard, where there was such a large impact by the diesel spill."*
- f. *A commenter says, "The money from Chevron needs to be spent at Willard Bay to upgrade the old and inept facilities to meet and satisfy the needs of the public. Please allot the money for Willard Bay Projects. Dredging the marinas, updating the bathrooms and new Concession buildings just to name a few projects."*
- g. *A commenter says, "I would like to request that the settlement funds from the Chevron spill be used for Willard Bay. The park has several needs the money could be used for, especially making the Marina's deeper so they're more useable on low water years."*
- h. *A commenter says, "I would like the Chevron funds used in Willard bay. Other parks shouldn't be allowed to use those funds. It ruined my backyard, and I would love to have it fixed."*
- i. *A commenter says, "I'm a resident of Willard and would like to request the funds from the oil spill are used to update Willard Bay."*
- j. *A commenter says, "The spill happened at Willard Bay; therefore, Willard Bay deserves and should get the money to make improvements and to make up for the loss of revenue last year."*
- k. *A commenter says, "Myself and many others I have talked to would really appreciate if the Chevron diesel spill money be used at Willard Bay and not another park that was not affected by the spill."*
- l. *A commenter says, "I found out thru Club Rec that the funds from the chevron spill will not be*

going to the Willard state park, I live in Willard and think this should go to the park. This will help out for a lot of things that needs to be updated at this lake. It is in great need of some updating.”

- m. A commenter says, “The money received because of the spill at Willard Bay should stay at Willard Bay and help the recovery, or diminish the lasting effects of the diesel spill.”*
- n. A commenter says, “I’ve heard the money Chevron paid the state of Utah as compensation for the oil spill at Willard Bay may be spent at other parks. The harm caused by Chevron only impacted Willard Bay and the money should be utilized to only rehabilitate Willard Bay.”*
- o. A commenter says, “I understand the State Park is currently considering how to use the settlement money from the Willard Bay oil spill. I feel it would be prudent to use the money at any of the Utah State Parks, starting with whichever needs it most. Willard Bay State Park, and there are many other State Parks needing the money more.”*
- p. A commenter says, “All monies from the Chevron Settlement should stay at Willard Bay.”*
- q. The Friends of Willard Bay State Park strongly urge those making the decision on this settlement to invest those dollars at Willard Bay State Park – the site that was so devastated by this destructive accident.*
- r. A commenter says, “I am an avid boater from Bountiful that had a lousy summer last year with Willard Bay shut down for most of the summer. We went a couple of times and tried to use the little south beach with most unfavorable results. I think it only fair and LOGICAL that the funds from the Chevron settlement be used for Willard Bay projects. There is plenty of improvement still needed there.”*
- s. A commenter says, “I have been using Willard Bay as a recreation site since 1968. I have experience the growth in the use of this reservoir over the years. Therefore with the many amenities it has and the expected growth in the future, I feel all the money generated by the "beavers" should remain at the bay. Several areas that need expansion are: Day use areas. The current area southeast of the marina could be expanded along the east shore to the rocky shoreline. For boaters, the area on the west bank has a small sandy beach that could be enlarged to accommodate more boaters for day use by waterskiing, swimming and just tanning. The marinas could be dredged to make it deeper in certain areas. I'm sure there are more uses by these are some I think would benefit the bay. KEEP THE MONEY AT WILLARD BAY.”*
- t. A commenter says, “It seems to me that the Chevron settlement money should be used in the area where the infraction occurred. Willard Bay has hard use during the summer months & could use a lot of upgrading to its facilities. There is a large population close to this body of water.”*
- u. A commenter says, “I would like to see the majority of these settlement funds to go to correcting and improving facilities at Willard Bay State Park (WBSP). This park is need of several improvements that have been proposed by the "Friends of Willard Bay" organization. WBSP is easy access for the Wasatch Front sportsmen from Brigham City to Bountiful. This is considerable population in excess of 650,000. The current proposal is written so ambiguous that*

these funds could be diverted extensively also believe that final disbursement of these funds needs to be made public once completed.”

- v. *A commenter says, “Speaking for myself, and having a broad view of Willard Bay use, it seems appropriate that this money be reinvested back into Willard Bay State Park. The park is well located in the populous northern region and is also accessible to the tourist community, and has the potential of being a premier recreational destination.”*
- w. *A commenter suggests utilizing a certain individual as a stakeholder on the RFP selection committee, if created.*
- x. *A commenter says, “I would like to voice my opinion that mitigation funds should be prioritized in the geographic region, and within Weber River Basin. Projects should also be prioritized based on habitat functions restored and reclaiming the wildlife values that were damaged from the spill.”*
- y. *A commenter says, “The Weber River, which feeds Willard Bay has long been impacted by habitat degradation and fragmentation. I would like to see the money prioritized for habitat restoration and fish passage within the Weber River basin, under the guidance of the Utah Division of Wildlife Resources northern region personnel.”*
- z. *A commenter says, “I would like the money from the oil spill spent at and only on Willard bay to make it a better place.”*

Response:

The settlement agreement provides that, while environmental mitigation projects will be funded by Chevron, the review and approval of these projects will be made by DWQ. Upon approval of the settlement agreement by the Water Quality Board, DWQ will issue a request for proposals (RFP) for mitigation projects to utilize the funds identified in paragraph 5(ii) of the settlement. This RFP will be public noticed for a specific time frame and will include eligibility requirements and the evaluation process and criteria that will be used to consider proposed projects. All proposals submitted will be available for review on the Division's website along with the amount of funds awarded to each proposal. (For an example of how this was done in the Red Butte spill incident, see the Division's web page at: <http://www.deq.utah.gov/locations/redbutte/awardedfundinghtm.html>)

Selection of mitigation projects will follow the specifications outlined in the settlement agreement and the RFP that will be issued by DWQ for use of mitigation project funds. Those projects are to be selected and managed by the Director of DWQ, consistent with Utah Administrative Code R317-1-8.4. The projects may be implemented at Willard Bay State Park or at other locations, as long as they fall within the jurisdiction of the Director and meet the criteria set out in the settlement agreement and Utah Administrative Code R317-1-8.4. (There is no requirement that all mitigation funds be spent within the State Park.)

Willard Bay State Park has received significant upgrades as a result of Chevron's activities associated with cleanup from the spill (see paragraph H of settlement agreement). Chevron has agreed to complete one future additional mitigation project as identified in the settlement agreement (installation of an ADA compliant and engineered trail & footbridge). The total cost of these projects is \$1,319,000. DWQ

believes that conditions at Willard Bay State Park are significantly improved from pre-spill conditions as a result of this work. Proposals in response to the RFP for mitigation projects for further work within the state park will be considered by DWQ based on the criteria that will be spelled out for these future projects.

Other than the projects identified in the settlement agreement that have already been completed or are planned for the state park, no funding decisions for mitigation projects have been made. All funding decisions for mitigation project proposals will be made in accordance with the terms of the settlement agreement and the Division's RFP.

Comment No. 3: Public Notice Format

a. A commenter says that the Settlement Agreement posted online is not word searchable.

Response:

DWQ posts public notices as per UAC R317-8-1.9. It is not required by UAC to provide public notice documents in a searchable format. However, DWQ can provide this if a GRAMA request is submitted. (DWQ provided a searchable version of the SA to this individual)