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**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER QUALITY**

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**IN THE MATTER OF:**

Ogden Canyon DAI, LLC  
1770 Canyon Road Ogden Utah, 84404

**STIPULATION AND CONSENT ORDER**

Docket No. I24-03

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This Stipulation and Consent Order (“Order”) is entered into voluntarily by and between the Director (“Director”) of the Utah Division of Water Quality (“Division”) and Ogden Canyon DAI, LLC (“DAI”), jointly referred to hereinafter as “the Parties.”

By entering into this Order, the Parties wish, without further administrative or judicial proceedings, to stipulate to civil penalties arising out of alleged violations of the Utah Water Quality Act, Utah Code §§ 19-5-101 *et. seq.* (the “Act”), and corresponding regulations in the Utah Admin. Code R317-1-1 *et. seq.* (the “Water Quality Rules”).

**I. STATUTORY AND REGULATORY AUTHORITY**

1. The Director has authority to administer the Act pursuant to Utah Code § 19-1-105(1)(e), and to enforce the Water Quality Rules in Utah Admin. Code R317 through the issuance of orders, as specified in Utah Code §§ 19-5-106(2)(d) and -111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code § 19-5-106(2)(k).

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. DAI is a “person” as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Act and the Water Quality Rules.
2. DAI is the operator of construction activities at 1770 Canyon Road Ogden Utah, 84404.
3. For the purposes of this Order, the Parties stipulate to the findings and violations identified in the May 20, 2024, Notice of Violation and Compliance Order (“NOV/CO”), Docket No. I24-03, and to the findings described below.
4. On May 29, 2024, DAI submitted a report detailing the cause of each violation, specific corrective actions taken or planned to be taken, and how the corrective actions will prevent similar violations for recurring. Additionally, the report detailed specific mitigation and restoration plans for the affected area. This report satisfied and complied with reporting requirements described in the May, 20, 2024, NOV/CO.

### **III. STIPULATION AND CONSENT ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Parties have negotiated this Order in good faith and now wish to fully resolve NOV/CO No. I24-03 without additional administrative or judicial proceedings.

1. In accordance with Utah Admin. Code R317-1-8. Penalty Criteria for Civil Settlement Negotiations, DAI shall pay a penalty of \$2,970.00.
2. Payment in the amount of \$2,970.00 is to be made within thirty (30) calendar days of the Effective Date of this Order, using one of the following options:

- a. CHECK – Payable to the Division. The payment shall be sent to:

Division of Water Quality  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870

- b. OTHER – For other available payment options, please contact the Division's finance staff at [eqwqfinance@utah.gov](mailto:eqwqfinance@utah.gov).
3. If, for any reason, DAI fails to pay the penalty within thirty (30) calendar days and thereby defaults, then the Director reserves the right to rescind this Order and seek the full penalty amount of \$10,000 per violation per day, in accordance with Utah Code § 19-5-115.
  - a. Prior to rescinding this Order, the Director shall provide written notice to DAI of its default and will provide fourteen (14) calendar days to cure the default by remitting payment. If payment is not received within the fourteen (14) calendar day cure period, the Director is authorized, without providing further written notice to DAI, to begin a civil action for all appropriate relief provided under the Act, including seeking the full penalty amount authorized under the Act.

### **IV. GENERAL PROVISIONS**

1. The Parties recognize that this Order has been negotiated in good faith and nothing herein constitutes an admission by any Party. DAI does not admit to, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts and violations alleged in the NOV/CO. DAI further agrees it will not contest the basis or validity of this Order or its terms.
2. The violations described herein will constitute part of DAI's compliance history where consideration of such history is relevant, including any subsequent violations. DAI understands and agrees that this Order is not and cannot be raised as a defense to any other action to enforce any federal, state, or local law.

3. DAI agrees to the terms, conditions, and requirements of this Order. By signing this Order, DAI understands, acknowledges, and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code § 19-1-301; (2) the right to contest the findings in the NOV/CO; and (3) the opportunity for judicial review.
4. This Order is subject to a public notice and comment period of at least thirty (30) days, in accordance with Utah Admin. Code R317-8-1.9. The Parties each reserve the right to withdraw from this Order if comments received during the notice and comment period render this Order inappropriate, improper, or inadequate.
5. The “Effective Date” shall be the date this Order is executed by the Director. The Director will not sign this Order until after the Division has provided public notice of the proposed Order and has solicited and reviewed any public comments received.
6. The dates set forth in the Stipulation and Consent Order section of this Order may be extended in writing by the Director, in the Director’s sole discretion, based on DAI’s showing of good cause. Good cause for an extension generally means events outside of the reasonable control of DAI, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects DAI to employ reasonable means to limit and prevent foreseeable causes of delay. The timeliness of DAI’s request for an extension shall constitute an important factor in the Director’s evaluation.
7. Nothing in this Order shall preclude the Director from taking actions, including additional penalties against DAI, for future violations of State or Federal law.
8. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Order.
9. This Order is binding upon each of the Parties and their respective heirs, successors, and assigns. Any change in ownership or corporate or legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Order.
10. This Order may be amended in writing if signed by both Parties.

#### **V. COMPLIANCE AND PENALTY NOTICE**

As of the Effective Date, this Order shall constitute a final administrative order. Compliance with the provisions of this Order is mandatory. All violations of the Act, the Water Quality Rules, and this Order will be strictly enforced during the time that this Order remains in effect. Utah Code § 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district court judge imposing a civil penalty per day of violation.

## **VI. SIGNATORY**

The undersigned, signing this Order on behalf of Ogden Canyon DAI, LLC represents and warrants that it is duly authorized and has legal capacity to legally bind Ogden Canyon DAI, LLC.

Pursuant to the Utah Water Quality Act, Utah Code § 19-5-101 *et seq.*, and Utah Admin. Code R317, the Parties hereto mutually agree and consent to this Stipulation and Consent Order, as evidenced below:

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

For the State of Utah, Department Of Environmental Quality, Division of Water Quality

\_\_\_\_\_  
John K. Mackey, P.E.  
Director

Date: \_\_\_\_\_

For Ogden Canyon DAI, LLC

\_\_\_\_\_  
Tanner Rosenhan  
Horizontal Construction Manager

Date: 

9/11/24
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