



COLORADO
**Department of Public
 Health & Environment**

January 2, 2020

The Corporation Company
 Registered Agent for Union Pacific Railroad Company
 7700E Arapahoe Road
 Ste 220
 Centennial, CO 80112-1268

Certified Mail Number: 7014 2870 0000 7568 9398

RE: Order for Civil Penalty, Number: IP-200102-1

Dear Sir or Madam:

Union Pacific Railroad Company is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division ("Division") pursuant to authority given to the Division by § 25-8-608(2), C.R.S., of the *Colorado Water Quality Control Act*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have questions regarding the Penalty Order or the payment method, please do not hesitate to contact Eric Mink at (303) 692-2312 or eric.mink@state.co.us.

Sincerely,

Eric T. Mink, Enforcement Specialist
 Clean Water Enforcement Unit
 WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region 8
 Kadie Taft, Grand County Environmental Health
 Katherine Morris, Grand County Water Resource Management
 Aimee Konowal, Watershed Section, CDPHE
 Nathan Moore, Compliance & Enforcement Section, CDPHE
 Mark Henderson, Grants and Loans Unit, CDPHE
 Doug Camrud, Engineering Section, CDPHE
 Kelly Jacques, Field Services Section, CDPHE
 Erin Scott, Permits Section, CDPHE
 Kelly Morgan, Clean Water Enforcement Unit, CDPHE
 Tania Watson, Data Management Workgroup, CDPHE





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY

NUMBER: IP-200102-1

IN THE MATTER OF: UNION PACIFIC RAILROAD COMPANY
CDPS PERMIT NO. CO0047554
GRAND COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, pursuant to §25-8-608 C.R.S., I hereby impose a civil penalty in the amount of \$140,000.00 against Union Pacific Railroad Company for the violations cited in the November 14, 2019 Compliance Order on Consent (Number: IC-191114-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within 30 calendar days of the date of this Order for Civil Penalty as set forth in the Compliance Order on Consent.

"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:

*Eric Mink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530"*

Dated this 2nd day of January 2020.

Nicole Rowan, P.E.
Clean Water Program Manager
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A

**COLORADO****Department of Public
Health & Environment****WATER QUALITY CONTROL DIVISION**

COMPLIANCE ORDER ON CONSENT**NUMBER: IC-191114-1**

**IN THE MATTER OF: UNION PACIFIC RAILROAD COMPANY
CDPS PERMIT NO. C00047554
GRAND COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605 C.R.S. of the Colorado Water Quality Control Act ("Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Union Pacific Railroad Company ("Union Pacific Railroad"). The Division and Union Pacific Railroad are referred to collectively as the "Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order / Clean-Up Order, Number IO-180214-1 ("NOV/CDO/CUO") that the Division issued to Union Pacific Railroad on February 14, 2018.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605 C.R.S., the Division has made the following determinations regarding Union Pacific Railroad and Union Pacific Railroad's compliance with the Act and its permit issued pursuant to the Act.
3. At all times relevant to the alleged violations cited herein, Union Pacific Railroad was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.
4. Union Pacific Railroad is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. Union Pacific Railroad conducts railroad operations through the Moffat Tunnel. The East Portal of the tunnel is located near 39.90210 N and 105.64618 W, near the Town of Rollinsville, Gilpin County, Colorado and the West Portal is located near 39.88611 N and 105.76667 W, near the Town of Winter Park, Grand County. Groundwater seeps into the tunnel through fractures in the rock and

Exhibit A

subsequently drains to the portals. Discharge from the East Portal passes through a settling pond for treatment prior to entering South Boulder Creek. Prior to April 30, 2017, discharge from the West Portal was conveyed directly to the Fraser River without treatment. Beginning April 30, 2017, discharge from the West Portal passes through a water treatment system comprised of filtration and precipitation ("Facility"), prior to entering the Fraser River.

6. Beginning May 1, 2008, discharge from both the East Portal and West Portal of the Moffat Tunnel were the subject of the Colorado Discharge Permit System ("CDPS"), Permit No. CO0047554 ("2008 Permit"). Beginning October 1, 2016, CDPS permit coverage associated with the Moffat Tunnel outfalls was modified. Because each tunnel discharges to a different watershed and is physically located in different counties, the Division issued a new CDPS permit, Permit No. CO0048986 for the East Portal discharge. The West Portal discharge remained subject to the 2008 Permit until the permit was renewed. The current version of permit associated with West Portal ("2018 Permit") became effective date of October 1, 2018 and expires on September 30, 2023.
7. The 2008 Permit authorized Union Pacific Railroad to discharge wastewater from the Moffat Tunnel through Outfalls 001A and 002A. Outfall 001A is physically located at 39.887568 and -105.761961 near the West Portal of the Moffat Tunnel. Outfall 002A is physically located at 39.902037 and -105.644649 near the East Portal of the Moffat Tunnel.
8. The 2018 Permit authorizes Union Pacific Railroad to discharge treated wastewater from the Moffat Tunnel through Outfalls 001A. Outfall 001A is physically located at 39.88750 and -105.76222, near the West Portal of the Moffat Tunnel.
9. Pursuant to 5 CCR 1002-61, §61.8, Union Pacific Railroad must comply with all the terms and conditions of the permit, and violations of such terms and conditions as specified in the permit may make Union Pacific Railroad subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Comply with Permit Effluent Limitations

10. Pursuant to Part I.A.1. of the 2008 Permit, Union Pacific Railroad's effluent at Outfall 001A shall not exceed the effluent discharge limitations specified in the table below:

Union Pacific Railroad DISCHARGE LIMITATIONS FOR OUTFALL 001A				
Parameter	Limitation			
	30-day Avg.	7-Day Avg	Daily Max	2Type
pH, s.u. (Minimum - Maximum)			6.5 - 9.0	

11. Pursuant to Part I.D.1. of the 2008 Permit, Union Pacific Railroad is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each DMR is to include a certification by Union Pacific Railroad that the information provided therein is true, accurate and complete to the knowledge of Union Pacific Railroad.
12. Union Pacific Railroad's DMRs include, among other information and data, the following pollutant concentration summary data which exceeded the effluent limitations outlined in Part I.A.1. of the 2008 Permit:

Exhibit A

Union Pacific Railroad's EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001A		
pH, s.u.	30-DAY AVG. LIMIT= NA	7-DAY AVG. LIMIT= NA	DAILY MAXIMUM= 6.5 - 9.0
9/1/2012 - 9/30/2012	--	--	9.8
6/1/2012 - 6/30/2012	--	--	9.4
7/1/2015 - 7/31/2015	--	--	6.4

13. pH is a "pollutant," or indicator thereof, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
14. The 2008 Permit does not authorize the pollutant levels identified above in paragraph 11 above. Division records establish that during the reporting periods identified above, Union Pacific Railroad did not have any other permit authorizing such discharge into State Waters.
15. Union Pacific Railroad's failure to comply with the 2008 Permit limitations constitutes violations of Part I.A.1. of the 2008 Permit.

Failure to Properly Monitor and Report

16. Pursuant to Part I.B.1. of the 2008 Permit, Union Pacific Railroad is required to monitor all applicable effluent parameters at the frequencies outlined in Part I.B.1.a. of the 2008 Permit.
17. Pursuant to Part I.D.1. of the 2008 Permit, Union Pacific Railroad is required to report all monitoring results on a monthly basis using Division approved DMRs. Union Pacific Railroad is required to ensure the DMRs are received by the Division no later than the 28th day of the month following the reporting period. The 2008 Permit specifies that if no discharge occurs during the monitoring period, "No Discharge" shall be reported on the DMR. Each DMR is to include a certification by Union Pacific Railroad that the information provided therein is true, accurate and complete to the knowledge of Union Pacific Railroad.
18. Division records establish that Union Pacific Railroad failed to monitor for the parameters listed below:

Union Pacific Railroad DEFICIENT MONITORING		
DISCHARGE MONITORING PERIOD	OUTFALL	INCOMPLETE PARAMETERS
7/1/2012 - 7/31/2012	001A	TSS (30 Day Avg & Max 7 Day Avg) Total Recoverable Fe (30 Day Avg & Daily Max) Dissolved Fe (30 Day Avg & Daily Max) Dissolved Mn (30 Day Avg & Daily Max) Potential Dissolved Mn (30 Day Avg & Daily Max) Potential Dissolved Cu (30 Day Avg & Daily Max) Potential Dissolved Pb (30 Day Avg & Daily Max) Total Natural U (30 Day Avg & Daily Max)
7/1/2012 - 7/31/2012	MON1	Sulfate (30 Day Avg & Daily Max) Cyanide (Daily Max) Chloride (30 Day Avg & Daily Max)

Exhibit A

Union Pacific Railroad DEFICIENT MONITORING		
DISCHARGE MONITORING PERIOD	OUTFALL	INCOMPLETE PARAMETERS
		Total As (30 Day Avg & Daily Max) Total Recoverable Cr (30 Day Avg & Daily Max) Potential Dissolved Zn (30 Day Avg & Daily Max) Potential Dissolved Ag (30 Day Avg & Daily Max) Potential Dissolved Cd (30 Day Avg & Daily Max) Potential Dissolved Ni (30 Day Avg & Daily Max) Potential Dissolved Se (30 Day Avg & Daily Max) Total Hg (30 Day Avg & Daily Max)

19. Division records establish that Union Pacific Railroad failed to submit a DMR to the Division for the reporting period listed below:

Union Pacific Railroad DELINQUENT DMRS	
DISCHARGE MONITORING REPORTING PERIOD	OUTFALLS
Annual 2015 (1/1/2015 - 12/31/2015)	001X, 01YX

20. Division records establish that Union Pacific Railroad failed to submit a complete DMR to the Division by the 28th day of the month following the end of the reporting period identified below:

Union Pacific Railroad DEFICIENT DMRS		
DISCHARGE MONITORING PERIOD	OUTFALL	INCOMPLETE PARAMETER
4/1/2014 - 4/30/2014	001A	Dissolved Iron (Daily Max)

21. Union Pacific Railroad's failure to complete all monitoring at the required frequencies, as identified above in paragraph 18, constitutes violations of Part I.B.1. of the 2008 Permit.
22. Union Pacific Railroad's failure to submit complete DMRS to the Division by the 28th day of the month following each reporting period, as identified above in paragraphs 19 and 20, constitutes violations of Part I.D.1. of the 2008 Permit.

Failure to Notify of Change in Discharge

23. As noted above, natural groundwater seeps into the tunnel and drains to both portals. The 2008 Permit authorizes Union Pacific Railroad to discharge the groundwater, containing natural concentrations of metals as well as suspended solids and metals associated with coal fines, to South Boulder Creek and/or the Fraser River, in accordance with the terms and conditions of the 2008 Permit.
24. Pursuant to Part II.A.2. of the 2008 Permit, Union Pacific Railroad is required to provide advance notification to the Division, in writing, of any planned alteration or addition that could significantly change the nature or increase the quantity of pollutants discharged.

Exhibit A

25. Union Pacific Railroad conducted maintenance activities within the Moffat Tunnel during the months of September 2016 and October 2016 which included but was not limited to track repair, track replacement, and ballast replacement. Discharges associated with tunnel maintenance and repair activities are not contemplated in the 2008 Permit.
26. Records provided by Union Pacific Railroad, summarized in the table below, establish that Union Pacific Railroad began maintenance and repair activities on the Moffat Tunnel on September 1, 2016 and the aforementioned repair work significantly increased the quantity of pollutants being discharged at the outfall.

Union Pacific Railroad's EFFLUENT SELF-MONITORING DATA	
DATE	HIGHEST DAILY TURBIDITY MEASUREMENTS AT OUTFALL 001A
TURBIDITY REPORTED IN NTUs	TURBIDITY RANGE ASSOCIATED WITH NORMAL TUNNEL OPERATIONS = 3 to 150 NTUs
9/1/2016	518.4
9/6/2016	529.4
9/7/2016	325.9
9/8/2016	177.9
9/9/2016	501.64
9/12/2016	740.6
9/13/2016	325.7
9/14/2016	478.1
9/15/2016	507.9

27. Turbidity is a "pollutant" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).
28. Union Pacific Railroad failed to notify the Division, in writing, of the tunnel maintenance and repair activities that significantly increased the turbidity in the discharge, on the dates listed in the table in Paragraph 26.
29. Union Pacific Railroad's failure to notify the Division, in writing, prior to the tunnel maintenance and repair activities, that the tunnel maintenance and repair activities could significantly increase the quantity of pollutants discharged, as identified above in paragraph 26, constitutes violations of Part II.A.2. of the 2008 Permit.

Discharging Without a Permit

30. Pursuant to §25-8-501(1), C.R.S., and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
31. On September 23, 2016, the Division received notification from Grand County that sediment laden water was discharging to the Fraser River from a black pipe coming from Union Pacific Railroad's operations near the West Portal of the Moffat Tunnel. Upon investigation, it was discovered that on September 23, 2016, Union Pacific Railroad diverted the West Portal's sediment laden water from Outfall 001 through a filter bag system and into a corrugated metal pipe approximately six (6) inches in diameter that discharged the water directly in to the Fraser River across from the

Exhibit A

permitted outfall. The water flow from the pipe into the Fraser River was estimated at 200 gallons per minute and lasted until 1:50 PM on September 26, 2016.

32. On October 10, 2016, the Division received notification from Union Pacific Railroad that sediment laden water was discharging to the Fraser River from Union Pacific Railroad's operations near the West Portal of the Moffat Tunnel. Upon investigation, it was discovered that on October 10, 2016, sediment laden water from the West Portal overflowed Union Pacific Railroad's diversion weir and filter bag system and discharged via a concentrated flow over ground and directly into the Fraser River across from the permitted outfall. The water flow into the Fraser River ranged from 164 to 387 gallons per minute in the times surrounding the incident but was not estimated during the height of the incident. The discharge lasted until at least 3:10 AM on October 11, 2016.
33. The water discharged from the West Portal of the Moffat Tunnel into the Fraser River contained, among others, mercury, iron, lead, manganese, uranium, copper, zinc, total dissolved solids ("TDS"), and total suspended solids ("TSS").
34. Mercury, iron, lead, manganese, uranium, copper, zinc, TDS, and TSS are "pollutants" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).
35. The Fraser River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
36. The discharge pipe and concentrated flow over ground from Union Pacific Railroad's West Portal operations are each a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (75).
37. Pursuant to Part II.A.8. of the 2008 Permit, any discharge to state waters from a point source, other than the specifically authorized Outfall 001A is prohibited.
38. Union Pacific Railroad did not have any other permits authorizing the discharge of pollutants from the Facility and into the Fraser River at the locations referenced in paragraphs 31 and 32.
39. Union Pacific Railroad's discharge of mercury, iron, lead, manganese, uranium, copper, zinc, TDS, and TSS into the Fraser River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
40. Union Pacific Railroad's discharge of mercury, iron, lead, manganese, uranium, copper, zinc, TDS, and TSS from the Moffat Tunnel into the Fraser River from point sources other than Union Pacific Railroad's permitted outfall, constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and Part II.A.8. of the 2008 Permit.

Failure to Comply with Basic Surface Water Standards

41. Pursuant to 5 CCR 1002-31, §31.11(1)(a), all surface waters of the state shall be free from substances attributable to human-caused point source or nonpoint source discharge in amounts, concentrations, or combinations which: can settle to form bottom deposits detrimental to beneficial uses; produce color, odor, or other conditions in such a degree to create a nuisance or harm existing beneficial uses; or are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life.

Exhibit A

42. Union Pacific Railroad conducted repair activities within the Moffat Tunnel, during the months of September, October, and November 2016, which included but may not be limited to track repair, track replacement, and ballast replacement.
43. Records provided by Union Pacific Railroad, summarized in the table below, establish that Union Pacific Railroad began repair activities on the Moffat Tunnel on September 1, 2016 and continued on each of the days shown in the table. Upon investigation, the aforementioned repair work significantly increased the turbidity of the discharge.

Union Pacific Railroad's EFFLUENT SELF-MONITORING DATA	
DATE	HIGHEST DAILY TURBIDITY MEASUREMENTS AT OUTFALL 001A
TURBIDITY REPORTED IN NTUs	TURBIDITY RANGE ASSOCIATED WITH NORMAL TUNNEL OPERATIONS = 3 to 150 NTUs
9/1/2016	518.4
9/6/2016	529.4
9/7/2016	325.9
9/8/2016	177.9
9/9/2016	501.64
9/12/2016	740.6
9/13/2016	325.7
9/14/2016	478.1
9/15/2016	507.9
9/16/2016	317.4
9/22/2016	305.87
9/23/2016	374.76
9/24/2016	326.24
9/25/2016	435.8
9/26/2016	407.26
9/27/2016	688.87
10/10/2016	>1,000
10/11/2016	>1,000
10/12/2016	375.83
10/13/2016	289.77
10/14/2016	209.51
11/2/2016	178.15

44. Representatives of the Division conducted site visits on September 26, 2016 and October 11, 2016. The purpose of these site visits was to investigate ongoing issues stemming from the discharge of sediment laden water associated with Union Pacific Railroad's work within the Moffat Tunnel. Observations from both site visits are outlined in a memorandum from Eric Mink dated January 20, 2018 and led to the findings described in paragraphs 42 and 43.
45. During the September 26, 2016 and October 11, 2016 site visits, Division representatives observed a significant amount of black deposits on the bottom of the Fraser River. These deposits began at Union Pacific Railroad's permitted outfall and were visible for at least ¼ of a mile downstream. The Division representatives observed no black deposits on the bottom of the Fraser River upstream of the Union Pacific Railroad's permitted outfall.

Exhibit A

46. During the September 26, 2016 and October 11, 2016 site visits, Division representatives observed a gray cloudy discharge coming from Union Pacific Railroad's permitted outfall. This discharge entered into the Fraser River turning the river a cloudy gray.
47. Union Pacific Railroad's permitted outfall enters into a segment of the Fraser River that is classified for aquatic life cold 1, recreation E, agriculture, and water supply. These beneficial uses are reserved for water segments with Colorado's highest water quality. The gray cloudy discharge and black deposits associated with Union Pacific Railroad's sediment laden discharge creates a nuisance and is detrimental to the applicable beneficial uses.
48. The Fraser River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
49. Union Pacific Railroad's West Portal Outfall 001 and the unpermitted discharge pipe identified in paragraph 31 above are each a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (75).
50. Union Pacific Railroad's discharge of high turbidity water into the Fraser River from a point source constitutes harm to the beneficial uses of a state water in violation of 5 CCR 1002-31, §31.11(1)(a).
51. The NOV/CDO/CUO imposed a number of required corrective actions. The Division confirms that Union Pacific Railroad has completed all of the corrective actions required in the NOV/CDO/CUO.
52. The Union Pacific Railroad water treatment plant in Winter Park began operations on April 30, 2017. This plant was designed to enable Union Pacific Railroad to meet all 2008 Permit and 2018 Permit limitations.

ORDER AND AGREEMENT

53. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605 C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO/CUO, the Division orders Union Pacific Railroad to comply with all provisions of this Consent Order, including all requirements set forth below.
54. Union Pacific Railroad agrees to the terms and conditions of this Consent Order. Union Pacific Railroad agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605 C.R.S., and is an enforceable requirement of the Act. Union Pacific Railroad also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Union Pacific Railroad against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
55. Notwithstanding the above, Union Pacific Railroad does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Union Pacific Railroad pursuant to this Consent Order shall not constitute evidence of fault or liability by Union Pacific Railroad with respect to the conditions of the West Portal Outfall or Facility. Union Pacific Railroad expressly reserves its rights to deny any of the Division's factual or legal determinations or defend

Exhibit A

itself in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY

56. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Union Pacific Railroad shall pay \$140,000.00 in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the \$140,000.00 civil penalty for the above violation(s) and Union Pacific Railroad agrees to make the payment within 30 calendar days of the issuance of an Order for Civil Penalty by the Executive Director or her designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Eric T. Mink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

57. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO/CUO.
58. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a 30 day public comment period. The Division and Union Pacific Railroad each reserve the right to withdraw consent to this Consent Order if comments received during the 30 day period result in any proposed modification to the Consent Order.
59. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Union Pacific Railroad, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
60. Notwithstanding paragraph 55 above, the violations described in this Consent Order will constitute part of Union Pacific Railroad's compliance history.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

61. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO/CUO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

Exhibit A

62. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
63. Union Pacific Railroad reserves its rights and defenses regarding the Facility, other than proceedings to enforce this Consent Order.
64. Nothing in this Consent Order shall preclude the Division from effectuating the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
65. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

66. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Eric Mink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2312
E-mail: eric.mink@state.co.us

For Union Pacific Railroad Company:

Stephen L. Preston
Manager, Environmental Field Operations
1400 W 52nd Avenue
Denver, CO 80221
Telephone: 303-405-5072
E-mail: slpresto@up.com

MODIFICATIONS

67. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

68. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 58. If the penalty as described in this

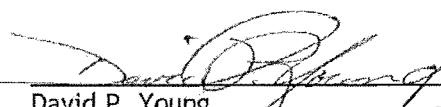
Exhibit A

Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

69. This Consent Order is binding upon Union Pacific Railroad and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR UNION PACIFIC RAILROAD COMPANY:




David P. Young
Vice President - Law
Union Pacific Railroad Company

Date:

Nov. 13, 2019

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Nathan Moore
Clean Water Compliance and Enforcement Section Manager
WATER QUALITY CONTROL DIVISION

Date:

11/14/19