BEFORE THE UTAH WATER QUALITY BOARD

In the matter of: PR Springs Tar Sands Project Ground Water Discharge Permit-by-Rule, No. WQ PR-11-001	**ORDER Approving the ALJ's August 28, 2012, Memorandum and Findings of Fact, Conclusions of Law, And Recommended Order**

The case at issue before the Utah Water Quality Board ("Board") began when Living Rivers ("Petitioner") filed with the Executive Secretary of the Utah Water Quality Board a Request for Agency Action dated March 16, 2011, with corrections dated April 4, 2011. The Petitioner's Request for Agency Action challenged the Executive Secretary's February 15, 2011, determination that proposed changes to U.S. Oil Sands, Inc.'s tar sands mining project did not warrant modification or revocation of the Executive Secretary's 2008 determination that the mining project qualified for permit-by-rule status under Utah Admin. Code R317-6-6.2(A)(25) based on the *de minimis* potential effect on ground water quality.

In accordance with Utah Code Ann. 19-1-301, the case was assigned to an Administrative Law Judge ("ALJ"), who conducted a formal adjudicatory proceeding, including a two-day evidentiary hearing held May 16-17, 2012. On August 28, 2012, the ALJ issued a *Memorandum and Findings of Fact, Conclusions of Law and Recommended Order* ("*Memorandum and Recommended Order*") recommending that the Board adopt the Recommended Order and enter an order affirming the Executive Secretary's 2011 determination of the mining project's *de minimis* potential effect on ground water and denying the relief sought by the Petitioner's in its Request for Agency Action.

On October 24, 2012, at a regularly scheduled meeting, the Board considered the ALJ's *Memorandum and Recommended Order*. The following Board members were present and constituted a quorum of the Board: Paula Doughty (Chair), Steven P. Simpson (Vice Chair), Gregory L. Rowley, Leland J. Myers, Jeffery L. Tucker, Merritt K. Frey, Amanda Smith (Executive Director, DEQ), Clyde L. Bunker, Neal L. Peacock, Daniel C. Snarr, Darrell H.

Mensel, and Myron E. Bateman. The Board was represented by Assistant Attorney General Kimberlee McEwan.

At the Board meeting, the parties were given the opportunity to present oral argument and answer questions from Board members. Assistant Attorney General Paul McConkie represented the Executive Secretary, Charles R. Dubuc represented Living Rivers, and Christopher R. Hogle of Holland & Hart represented U.S. Oil Sands, Inc.

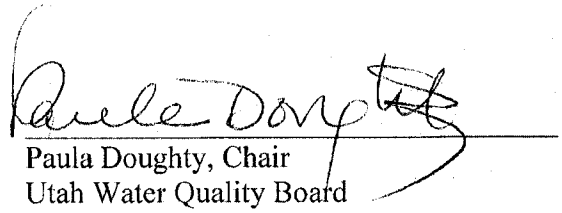
After reviewing the *Memorandum and Recommended Order* and the adjudicative record, hearing oral arguments from all parties, questioning the parties and deliberating, Mr. Clyde L. Bunker moved to approve the ALJ's August 28, 2012, *Memorandum and Recommended Order* in its entirety. After consideration, the motion was seconded by Mr. Myron E. Batemen. Following discussion, the Board voted to approve the motion on a vote of nine members in favor and two members opposed, with Merritt K. Frey and Darrell H. Mensel dissenting.

ORDER

Based on the foregoing, the Board does hereby approve, ratify and uphold the ALJ's August 28, 2012, *Memorandum and Findings of Fact, Conclusions of Law and Recommended Order* as follows:

> Based on the initial record, the Request for Agency Action and the evidence presented in this proceeding, I recommend that the Board adopt the Recommended Decision and enter an order affirming the Executive Secretary's determination of the project's *de minimis* potential effect on ground water and the 2011 Modification Decision and denying the relief sought by Living Rivers in its Request for Agency Action.

Dated this 1 day of November, 2012.



Paula Doughty, Chair
Utah Water Quality Board

Notice of Right to Apply for Reconsideration

Within twenty (20) days after the date this final Order is issued, any party shall have the right to apply for reconsideration with the Board, pursuant to Utah Code Ann. § 63G-4-302. The request for reconsideration should state the specific grounds upon which relief is requested and should be submitted in writing and mailed to the Board at P.O. Box 144870, Salt Lake City, Utah 84114-4870, or delivered to 195 North 1950 West, Third Floor, Salt Lake City, Utah 84116. The request for reconsideration must also be e-mailed to Board counsel at kmcewan@utah.gov, with a copy to DEQAPRO@utah.gov.

The person making the request shall serve a copy of the reconsideration request on each party at the address shown on the service list. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this Order.

Notice of Right to Petition for Judicial Review

Judicial review of this final Order may be sought in the Utah Court of Appeals pursuant to Utah Code Ann. § 63G-4-401 and 403 and the Utah Rules of Appellate Procedure by the filing of a proper petition within thirty (30) days after the date this Order is issued.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2012, I caused a copy of the foregoing ORDER Approving the Memorandum and Findings of Fact, Conclusions of Law and Recommended Order to be served via electronic mail and by postage prepaid first class mail, unless otherwise noted, on the following:

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