

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
2 **REGION IX**

3  
4 IN THE MATTER OF: ) DOCKET NO. UIC-09-2010-0003  
5 )  
6 Dugan Production Corporation, )  
Navajo Nation, San Juan County, New Mexico )  
7 )  
Respondent. ) **CONSENT AGREEMENT**  
8 ) **AND**  
9 ) **PROPOSED FINAL ORDER**  
10 )  
Proceedings under Section 1423(c) of the Safe )  
Drinking Water Act, 42 U.S.C. § 300h-2(c), )  
and 40 C.F.R. § 22.13(b). )

11 CONSENT AGREEMENT

12  
13 **I. STATUTORY AUTHORITY AND INTRODUCTION**

14 This Consent Agreement and Proposed Final Order is issued under the authority vested in  
15 the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections  
16 1423(c) and 1445(a) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c), 300j-  
17 4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA  
18 Region IX. The Regional Administrator in turn has delegated these authorities to the Director of  
19 the Water Division for EPA Region IX (the “Complainant”).

20  
21 In accordance with the “Consolidated Rules of Practice Governing the Administrative  
22 Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the  
23 Revocation, Termination or Suspension of Permits” (“Rules of Practice”), 40 C.F.R. part 22, a  
24 copy of which is enclosed (**attachment A**), the Director of the Water Division, EPA Region IX,  
25 hereby issues, and Dugan Production Corporation (“Respondent”) hereby agrees to enter into  
this Consent Agreement and Proposed Final Order (“CA/FO”).

1 Respondent and EPA (the “Parties”) agree that settlement of the matters at issue  
2 without litigation, and in accordance with 40 C.F.R. § 22.13(b), will save time and resources, is  
3 in the public interest, is consistent with the provisions and objectives of the Act and applicable  
4 regulations, and that entry of this CA/FO is the most appropriate means of resolving such  
5 matters.

6 A CA/FO commenced pursuant to 40 C.F.R. § 22.13(b) must, in accordance with 40  
7 C.F.R. § 22.18(b)(2), contain the elements of a complaint described at 40 C.F.R. § 22.14(a)(1)-  
8 (3) and (8). Respondent is not obliged under 40 C.F.R. § 22.15 to file an answer in response to  
9 the allegations in this CA/FO and therefore, is not, for purpose of 40 C.F.R. § 22.17, in default  
10 for failure to file an answer pursuant to 40 C.F.R. § 22.15.

## 11 II. STIPULATIONS AND ALLEGATIONS

12 Respondent stipulates and EPA finds as follows:

### 13 A. Statutory and Regulatory Framework

14 1. Part C of the Act, 42 U.S.C. §§ 300h – 300h-8, establishes an underground injection  
15 control (“UIC”) program and includes provisions designed to protect underground sources of  
16 drinking water (“USDWs”).

17 2. Until November 3, 2008, EPA administered the UIC program for Class II wells within  
18 the Navajo Nation pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), 40 C.F.R. part  
19 147 subpart HHH §§ 147.3000-3016 (Lands of the Navajo). EPA approved the Navajo Nation’s  
20 UIC program on November 4, 2008. 73 Fed. Reg. 65556-65565 (Final Rule).

21 3. 40 C.F.R. part 144, subpart A, contains general provisions of the UIC program. 40  
22 C.F.R. § 144.3 defines a USDW as: “[A]n aquifer or its portion: (a)(1) Which supplies any  
23 public water system; or (2) Which contains a sufficient quantity of ground water to supply a  
24 public water system; and (i) Currently supplies drinking water for human consumption; or (ii)

1 Contains fewer than 10,000 mg/l total dissolved solids [“TDS”]; and (b) Which is not an exempt  
2 aquifer.”

3 4. 40 C.F.R. part 144.3 defines a “facility or activity” to mean any UIC injection well that  
4 is subject to regulation under the UIC program, and further defines “owner or operator” to mean  
5 “the owner or operator of any ‘facility or activity.’”

6 5. 40 C.F.R. § 144.6(b)(1) defines Class II wells to include “wells which inject fluids ...  
7 brought to the surface in connection with natural gas storage ... or natural gas production [.]”

8 6. 40 C.F.R. part 144, subpart B, includes general UIC program requirements. 40 C.F.R.  
9 subpart B, § 144.12(a), prohibits any UIC well owner or operator from constructing, operating,  
10 or conducting any injection activity in a manner that allows the movement of fluid containing  
11 any contaminant into a USDW, if the presence of that contaminant may cause a violation of any  
12 primary drinking water regulation under 40 C.F.R. part 142 or may otherwise adversely affect  
13 the health of persons.

14 7. 40 C.F.R. part 142, § 142.2, defines national primary drinking water regulation to mean  
15 any primary drinking water regulation contained in 40 C.F.R. part 141. 40 C.F.R. part 141  
16 provides the national primary drinking water regulations, including maximum contaminant levels  
17 (“MCLs”), for organic contaminants such as benzene, toluene, ethylbenzene, and xylenes, at 40  
18 C.F.R. § 141.61, inorganic contaminants such as fluoride at 40 C.F.R. § 141.62, and  
19 radionuclides at 40 C.F.R. § 141.66.

20 8. 40 C.F.R. part 143 provides the national secondary drinking water regulations for  
21 contaminants such as TDS at 40 C.F.R. § 143.3.

22 9. 40 C.F.R. part 144, subpart E, includes conditions applicable to all UIC permits. 40  
23 C.F.R. subpart E, § 144.51(a), provides that any permit or regulatory noncompliance constitutes  
24 a violation of the Act, and is grounds for an enforcement action.

1 10. 40 C.F.R. § 144.51(l)(8) provides that where the permittee becomes aware that it failed  
2 to submit any relevant facts in a permit application, or submitted incorrect information in a  
3 permit application or in any report to the Director, it shall promptly submit such facts or  
4 information.

5 11. 40 C.F.R. § 144.52(a)(1) provides that UIC permits may require that new wells comply  
6 with the construction requirements set forth in 40 C.F.R. part 146 according to the compliance  
7 schedules established as permit conditions pursuant to 40 C.F.R. § 144.53(a).

8 12. 40 C.F.R. § 144.52(a)(3), provides that UIC permits may require that new wells comply  
9 with the operation requirements set forth in 40 C.F.R. part 146 according to the compliance  
10 schedules established as permit conditions pursuant to 40 C.F.R. § 144.53(a).

11 13. 40 C.F.R. § 144.53(a) provides that a UIC permit may, when appropriate, specify a  
12 schedule of compliance leading to compliance with the SDWA and, *inter alia*, 40 C.F.R. parts  
13 144 and 146.

14 14. 40 C.F.R. § 146.22(f) requires Class II well permittees to conduct appropriate logs and  
15 other tests during the drilling and construction of new Class II wells.

16 15. 40 C.F.R. § 146.23(b) requires Class II well permittees to conduct monitoring for  
17 injection pressure.

18 EPA alleges as follows:

19 **B. General Allegations**

20 16. Dugan Production Corporation (“Respondent” or “Dugan”) is incorporated in the State  
21 of New Mexico. According to the records on the New Mexico Public Regulation Commission  
22 website, <http://www.nmprc.state.nm.us>, Respondent’s current mailing address is 709 East  
23 Murray Drive, P.O. Box 420, Farmington, New Mexico 87499-0420.

24 17. On August 13, 2007, Respondent submitted an application to EPA for UIC permit  
25 authorization (the “Application”) to construct and operate a Class II saltwater disposal well on

1 Indian Lands (Navajo Nation) in San Juan County, New Mexico, Section 35, Township 26N,  
2 Range 13W, to be known as the West Bisti Salt Water Disposal (“SWD”) #1 well (the “Well”).

3 18. Respondent’s Application proposed injection to an aquifer in the Entrada Sandstone  
4 Formation (the “Aquifer”) for disposal of produced water from its oil and gas operations.

5 19. Respondent’s August 13, 2007 Application contained a proposed “Operations Plan,”  
6 which indicated the proposed Well would have an average injection rate of 5,000 barrels of  
7 produced water per day (“bwpd”) with a maximum injection rate of 6,000 bwpd (where one  
8 barrel equals 42 U.S. gallons).

9 20. Respondent’s proposed Operations Plan (Application Part VII.4, p. 9) indicated the  
10 source of injected water would be produced water from its oil and gas wells in the “Fruitland  
11 Coal” and “Gallup Sandstone” formations located in the same Township and Range as the Well.

12 21. Respondent’s Application attached the analytical results of water quality sampling of  
13 produced water from the Fruitland Coal and Gallup wells conducted January 23, 2007.  
14 (Application, attachments VII-4a, VII-4b, and VII-4c.)

15 22. Respondent’s proposed Operation Plan (Application Part VII.4, p. 9) provided: “The  
16 water to be injected is compatible with the water in the disposal zone.”

17 23. On November 2, 2007, EPA issued a Class IID injection Permit (No. NN207000003)  
18 (“Permit”) to Respondent to drill, construct, and operate the Well.

19 24. Part II, Section A, of the Permit (p. 5) contains specific permit conditions applicable to  
20 “Well Construction.”

21 25. Part II, Section A.1, of the Permit (p. 5) required Respondent to provide EPA with  
22 advance notice of casing and cementing operations so that an EPA representative could be  
23 present to monitor those operations.

24 26. Part II, Section A.1, of the Permit (p. 5) required Respondent to revise the Well  
25 schematic included in the Application to include the Well’s final construction details and to

1 provide the revised schematic to EPA within 30 days of completion of casing and cementing the  
2 Well.

3 27. Part II, Section A.2, of the Permit (p. 5) required Respondent to conduct (or “run”) the  
4 following specified open-hole and cased-hole logs and tests, during the Well’s construction  
5 phase:

- 6 • Dual Induction Log (an open hole log),
- 7 • Micro Log (an open-hole log usually taken in combination with the Dual Induction Log),
- 8 • Compensated Density Log (generally considered an open-hole log),
- 9 • Gamma Ray/Compensated Neutron Log (generally considered a cased-hole log), and
- 10 • Cement Bond Log/Gamma Ray (a cased-hole log).

11 Part II, Section A.2, of the Permit (p. 5) also required advance notice of logging operations to  
12 EPA to allow an EPA representative to monitor these operations.

13 28. Part II, Section A.2, of the Permit (p. 5) required Respondent to conduct a pressure Fall  
14 Off Test (“FOT”) on the Well within 30 days of commencing injection activity.

15 29. Part II, Section A.2, of the Permit (p. 5) required Respondent to submit an FOT  
16 completion report to EPA for its review and approval within 5 days of the FOT’s conclusion.

17 30. Part II, Section II.A.2, of the Permit (p. 5) required Dugan to measure and report static  
18 formation pressure of the injection zone prior to injection.

19 31. Part II, Section C.1.b, of the Permit (p. 7) required 30 days advance notice to the  
20 Director of EPA Region 9’s Water Division of a mechanical integrity test (“MIT”) on the Well.

21 32. Part III, Section E.10(e), of the Permit (p. 16) requires Respondent to submit any  
22 relevant facts or information to EPA within two weeks of becoming aware that it failed to submit  
23 all relevant facts in the permit application, or submitted incorrect information in a permit  
24 application or in any report to the Director of the Region’s Water Division.

25 33. Part III, Section E.1 of the Permit (p. 14) provides that Respondent shall comply with all  
conditions of the Permit and any Permit noncompliance constitutes a violation of the Act and is  
grounds for enforcement action, permit termination, revocation and re-issuance, or modification.

1 34. Between November 24, 2007 and December 7, 2007, Respondent cased and cemented  
2 the Well.

3 35. On January 25, 2008, Respondent performed Aquifer water quality sampling at the Well.

4 36. On January 30, 2008, Respondent completed construction of the Well.

5 37. On January 31, 2008, Respondent's contracted laboratory provided Respondent with the  
6 analytical results of water quality sampling of the Aquifer performed on January 25, 2008,  
7 indicating TDS levels in the Aquifer below 10,000 mg/L.

8 38. On February 5, Dugan informed EPA's Region 9 Ground Water Office of a MIT test  
9 scheduled for February 13, 2008.

10 39. On February 13, 2008, Respondent conducted a MIT on the Well.

11 40. On February 21, 2008, Respondent commenced injection activity at the Well.

12 41. On March 5, 2008, EPA issued a Notice of Violation ("NOV") to Respondent. The NOV  
13 notified Respondent of its following Permit violations: failure to provide advance notice to EPA  
14 of casing and cementing operations, failure to conduct open-hole logs (i.e., the Dual Injection  
15 Log, Micro Log, and Compensated Density Log), failure to conduct the Cement Bond  
16 Log/Gamma Ray test, and failure to conduct a FOT.

17 42. On April 2, 2008, Respondent conducted a FOT.

18 43. On April 7, 2008, Respondent conducted a Gamma Ray/Compensated Neutron Log.

19 44. On April 8, 2008, Respondent provided a revised Well schematic to EPA, which  
20 provided EPA for the first time with the analytical results of water sampling performed by  
21 Respondent on January 25, 2008.

22 45. On June 5, 2008, Respondent reported the results of the FOT to EPA.

23 46. On September 9, 2008, EPA issued a second NOV to Respondent indicating that: "[T]he  
24 Entrada formation at this location qualifies as an Underground Source of Drinking Water" and  
25 that "[c]ontinued injection [to the Well] ... constitutes a violation of 40 CFR § 144.12 which

1 prohibits the movement of any contaminated fluid into USDWs. Dugan is therefore subject to an  
2 enforcement action, and penalties, pursuant to [the Act].”

3 47. On September 18, 2008, Respondent ceased injection activity at the Well.

4 48. On or around February 18, 2009, Respondent submitted its Annual Disposal/Injection  
5 Well Monitoring Report to EPA indicating that from February 21, 2008 to September 18, 2008,  
6 Respondent injected approximately 154,022 barrels of produced water to the Well.

7 49. Produced water from oil and gas operations may contain contaminants subject to  
8 national primary drinking water regulations at 40 C.F.R. part 141 such as benzene, fluoride,  
9 toluene, ethylbenzene, xylenes, and radionuclides, and contaminants subject to secondary  
10 drinking water standards at 40 C.F.R. part 143 such as TDS.

### 11 C. Violations

12 EPA alleges as follows:

#### 13 (1) Violation of Prohibition of Movement of Fluid to USDW

14 50. Complainant repeats and re-alleges paragraphs 1 through 49 above as if set forth fully  
15 herein.

16 51. 40 C.F.R. § 144.12(a) prohibits any UIC well owner or operator from constructing,  
17 operating, or conducting any injection activity in a manner that allows the movement of fluid  
18 containing any contaminant into a USDW, if the presence of that contaminant may cause a  
19 violation of any primary drinking water regulation under 40 C.F.R. part 142 or may otherwise  
20 adversely affect the health of persons.

21 52. Respondent is a corporation and a “person” as that term is defined in Section 1401(12)  
22 of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 144.3.

23 53. Respondent owns and operates a UIC “Class II well” as that term is defined at 40 C.F.R.  
24 § 144.6(b)(1), and is an “owner or operator” of a “facility or activity” subject to regulation under  
25 the UIC program, as those terms are defined at 40 C.F.R. § 144.3.



1 54. On November 2, 2007, EPA authorized Respondent to drill, construct, and operate a new  
2 Class IID injection well, i.e., the Well at issue.

3 55. On January 25, 2008, Respondent performed water quality sampling at the Well of water  
4 moving up the Well's borehole from the Aquifer.

5 56. On January 31, 2008, Respondent's contracted laboratory provided Respondent with the  
6 analytical results of water quality sampling performed at the Well on January 25, 2008,  
7 indicating TDS levels in the Aquifer were below 10,000 mg/L.

8 57. The Aquifer contains "fewer than 10,000 mg/l [TDS]" and is a "USDW" as that term is  
9 defined at 40 C.F.R. § 144.3.

10 58. On February 21, 2008, Respondent commenced injection of produced water to the Well.  
11 at a projected rate of 5,000 bwpd.

12 59. On September 18, 2008, Respondent ceased injection activity at the Well.

13 60. From February 21, 2008 to September 18, 2008, Respondent injected approximately  
14 154,022 barrels of produced water to the Well. On information and belief, this injection activity  
15 resulted in the movement of fluid, i.e., produced water from Dugan's oil and gas operations, to a  
16 USDW.

17 61. Produced water from oil and gas operations may contain contaminants such as benzene,  
18 fluoride, toluene, xylenes, ethylbenzene, and radionuclides.

19 62. Produced water containing contaminants such as benzene, fluoride, toluene, xylenes,  
20 ethylbenzene, and radionuclides may cause a violation of primary drinking water regulations at  
21 40 C.F.R. part 142, or may otherwise adversely affect the health of persons, if allowed to move  
22 to a USDW.

23 63. Each day from February 21, 2008 to September 18, 2008 that Respondent conducted  
24 Injection activity at the Well, allowing for the movement of fluid to the USDW, together  
25 constitutes up to 237 days of violation of the prohibition against movement of fluid to a USDW

1 at 40 C.F.R. § 144.12(a), and the Act.

2 (2) Failure to Comply with UIC Permit Requirements

3 64. Complainant repeats and re-alleges paragraphs 1 through 63 above as if set forth fully  
4 herein.

5 65. Following receipt of permit coverage on November 2, 2007, Respondent failed to  
6 comply with the Permit as alleged below:

7 Failure to Provide Advance Notice of Casing and Cementing Operations

8 66. The Permit (Part II, Section A.1, p. 5) required Respondent to provide advance notice to  
9 EPA Region 9's Ground Water Office Manager of casing and cementing operations at the Well  
10 so that an EPA representative could be present to monitor those operations.

11 67. Between November 24, 2007 and December 5, 2007, Respondent cased and cemented  
12 the Well, without advance – or any – notice to any EPA personnel.

13 68. Respondent's failure to provide advance notice of casing and cementing operations prior  
14 to November 24, 2007, constitutes a single day of violation of the Permit (Part II, Section II.A.1,  
15 p. 5). A violation of the Permit is a violation of the Act, pursuant to 40 C.F.R. § 144.51(a).

16 Failure to Timely Provide a Revised Well Schematic to EPA

17 69. The Permit (Part II, Section A.1, p.5) required Respondent to revise the Well schematic  
18 to include the Well's final construction details and provide the revised Well schematic to EPA  
19 within 30 days of completing the Well.

20 70. On January 30, 2008, Respondent completed construction of the Well, and 69 days later,  
21 on April 8, 2008, Respondent provided a revised Well schematic to EPA.

22 71. Respondent's failure to provide the revised Well schematic to EPA within 30 days of  
23 completing the Well, or by February 29, 2008, constitutes up to 39 days of violation (February  
24 29 – April 8, 2008) of the Permit (Part II, Section A.1, p. 5). Each violation of the Permit is a  
25 violation of the Act in accordance 40 C.F.R. § 144.51(a).



1 78. Respondent's failure to conduct a Gamma Ray/Compensated Neutron Log until after the  
2 Well's completion constitutes at least a day of violation of the Permit (Part II, Section A.2, p. 5).  
3 A violation of the Permit is a violation of the Act in accordance with 40 C.F.R. § 144.51(a).

4 Failure to Timely Conduct a Fall-Off Test ("FOT")

5 79. Pursuant to 40 C.F.R. § 144.52(a)(3), UIC permits may require that new wells comply  
6 with the Class II operating requirements set forth in 40 C.F.R. part 146. 40 C.F.R. part 146, §  
7 146.23(b), requires Class II well permittees to conduct monitoring for injection pressure.

8 80. The Permit (Part II, Section A.2, p. 5) required Respondent to conduct a pressure FOT  
9 within 30 days of commencing injection activity.

10 81. On February 21, 2008, Respondent commenced injection activity at the Well, but did not  
11 conduct the FOT until 42 days later on April 2, 2008.

12 82. Respondent's failure to conduct a FOT within 30 days of commencing injection activity,  
13 or by March 21, 2008, constitutes at least 12 days of violation (March 21 – April 2, 2008) of the  
14 Permit (Part II, Section A.2, p. 5), and 40 C.F.R. § 146.23(b). Each violation of the Permit is also  
15 a violation of the Act in accordance with 40 C.F.R. § 144.51(a).

16 Failure to timely report FOT to EPA

17 83. The Permit (Part II, Section A.2, p. 5) required Respondent to report the results of the  
18 FOT to EPA within 5 days of completing the FOT.

19 84. On April 4, 2008, Respondent completed the FOT, and reported the results to EPA 61  
20 days later on June 5, 2008.

21 85. Respondent's failure to report the FOT results to EPA within 5 days of completing the  
22 FOT, or by April 9, 2008, constitutes at least 56 days of violation (April 9 – June 5, 2008) of the  
23 Permit (Part II, Section A.2, p. 5) of the Permit. Each violation of the Permit is a violation of the  
24 Act in accordance with 40 C.F.R. § 144.51(a).

1                   Failure to measure and report static formation pressure prior to injection

2           86. The Permit (Part II, Section II.A.2, p. 5), required Respondent to measure and report  
3 static formation pressure of the injection zone to the Director of EPA Region 9’s Water Division  
4 prior to injection.

5           87. On February 21, 2008, Respondent commenced injection activity at the Well without  
6 first measuring and/or reporting static formation pressure to the Director of EPA Region 9’s  
7 Water Division, or any other EPA personnel.

8           88. Respondent’s failure to measure and report static formation pressure of the injection  
9 zone to EPA prior to injection constitutes at least a single day of violation of the Permit (Part II,  
10 Section A.2, p. 5). Each violation of the Permit is a violation of the Act in accordance with 40  
11 C.F.R. § 144.51(a).

12                   Failure to give adequate notice to EPA of Mechanical Integrity Test

13           89. The Permit (Part II, Section C.1(b), p. 7) required Respondent to notify the Region’s  
14 Water Division Director of Respondent’s intent to conduct a MIT on the Well at least 30 days  
15 prior to the official test.

16           90. On February 13, 2008, Respondent conducted a MIT on the Well without providing the  
17 Region’s Water Division Director, or any EPA employee, with at least 30 days prior notice.

18           91. Respondent’s failure to provide at least 30 days prior notice of the February 13, 2008  
19 MIT constitutes at least a day of violation of the Permit (Part II, Section C.1(b), p. 7). A violation  
20 of the Permit is a violation of the Act in accordance with 40 C.F.R. § 144.51(a).

21                   Failure to promptly report relevant information

22           92. 40 C.F.R. § 144.51(l)(8) provides that where the permittee becomes aware that it failed  
23 to submit any relevant facts in a permit application, or submitted incorrect information in a  
24 permit application or in any report to the Director of the Region’s Water Division, the permittee  
25 shall promptly submit such facts or information.

1 93. The Permit (Part III, Section E.10(e), p. 16) requires Respondent to submit any relevant  
2 facts or information to EPA within two weeks of becoming aware that it failed to submit all  
3 relevant facts in the permit application, or submitted incorrect information in a permit application  
4 or in any report to the Director of the Region's Water Division.

5 94. On or around January 31, 2008 (and prior to Respondent's commencement of injection  
6 activity at the Well on February 21, 2008), Respondent's contracted laboratory provided  
7 Respondent with the analytical results of aquifer water quality sampling performed January 25,  
8 2008, which revealed TDS levels in the aquifer under 10,000 mg/l.

9 95. Respondent failed to notify EPA of this relevant information (i.e., the analytical results it  
10 received on January 31, 2008) until April 8, 2008, when Respondent included this information in  
11 its response to an information request made by EPA in its March 5, 2008 NOV. Respondent's  
12 submittal of this relevant information came nearly nine weeks after receiving it from its  
13 contracted laboratory and at least 45 days after commencing injection activity at the Well on  
14 February 21, 2008.

15 96. Respondent's failure to promptly report the analytical results of water quality sampling  
16 within two weeks of receiving the results from its laboratory, or by February 14, 2008,  
17 constitutes at least 49 days of violation of the Permit (Part III, Section E.10(c)(e), p. 16), and 40  
18 C.F.R. § 144.51(l)(8). Each violation of the Permit is also a violation of the Act in accordance  
19 with 40 C.F.R. § 144.51(a).

### 20 III. ADMINISTRATIVE CIVIL PENALTY

21 97. To settle this matter, Respondent agrees to pay the United States a civil penalty of one-  
22 hundred eight thousand, five hundred dollars (\$108,500) no later than thirty (30) days following  
23 the effective date of the Final Order (hereinafter referred to as the "due date").

24 98. The civil administrative penalty referred to in paragraph 97 above shall be made  
25 payable in accordance with any acceptable method of payment listed in the attached "EPA

1 Region IX Collection Information” sheet (**attachment B**) which is incorporated by reference as  
2 part of this CA/FO.

3 99. A copy of the payment made pursuant to paragraphs 97 and 98 above shall be sent  
4 simultaneously by Respondent, via certified mail, to each of the following:

5 Steven Armsey  
6 Regional Hearing Clerk (ORC-1)  
7 U.S. Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, CA 94105

10 and

11 Rich Campbell  
12 Office of Regional Counsel (ORC-2)  
13 U.S. Environmental Protection Agency, Region IX  
14 75 Hawthorne Street  
15 San Francisco, CA 94105

16 The copy of payment shall reference the title and docket number of this case. Payment must be  
17 received on or before the due date specified in paragraph 97.

18 100. If the full payment is not received on or before the due date, interest shall accrue  
19 on any overdue amount from the due date through the date of payment, at the annual rate  
20 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late  
21 payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any  
22 portion thereof) following the due date in which the balance remains unpaid. A six percent (6%)  
23 per annum penalty will also be applied on any principal amount not paid within ninety (90) days  
24 of the due date. Respondent shall tender any interest, handling charges, or late penalty payments  
25 in the same manner as described above assessment.

101. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if  
Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 97  
of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the

1 amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity,  
2 amount, and appropriateness of such penalty shall not be subject to review in accordance with 42  
3 U.S.C. § 300h-2(c)(7).

#### 4 IV. GENERAL PROVISIONS

5 102. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42  
6 U.S.C. § 300h-2(c)(3) with respect to the allegations made by EPA in this CAFO. Respondent  
7 waives any right to contest the allegations contained in the Consent Agreement, or to appeal the  
8 CA/FO.

9 103. For the purpose of this proceeding, Respondent admits the jurisdictional  
10 allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial  
11 forum, EPA's jurisdiction to enter into this CA/FO.

12 104. Except as provided in paragraph 103, Respondent neither admits nor denies the  
13 allegations set forth in the Stipulations and Allegations section of this Consent Agreement.

14 105. Respondent consents to the issuance of this CA/FO and the conditions specified  
15 herein, including payment of the administrative civil penalty in accordance with the terms of this  
16 CA/FO. Full payment of the penalty forth in this Consent Agreement and Final Order shall only  
17 resolve Respondent's liability for federal civil penalties for the SDWA violations specifically  
18 alleged in the Consent Agreement.

19 106. Each undersigned signatory to this Consent Agreement certifies that he or she is  
20 duly and fully authorized to enter into and ratify this Consent Agreement.

21 107. The provisions of this CA/FO shall apply to and be binding upon Respondent, its  
22 officers and directors in their official capacities, and its successors or assigns. Action or inaction  
23 of any persons, firms, contractors, employees, agents, or corporations acting under, through, or  
24 for Respondent shall not excuse any failure of Respondent to fully perform its obligations under  
25 this CA/FO.





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FOR THE CONSENTING PARTIES:

For Dugan Production Corporation:

Date: [original signed April 30, 2010]      [original signed by Kurt Fagrelius]\_\_\_\_\_

Name

[Vice President, Exploration]\_\_\_\_\_

Title

For the United States Environmental Protection Agency, Region IX:

Date: [original signed 5 May 2010]      [original signed by Alexis Strauss]\_\_\_\_\_

Alexis Strauss, Director  
Water Division

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
2 **REGION IX**

3 IN THE MATTER OF: ) DOCKET NO. UIC-09-2010-0003  
4 )  
5 Dugan Production Corporation, )  
Navajo Nation, San Juan County, New Mexico )  
6 Respondent. ) **FINAL ORDER**  
7 )  
8 Proceedings under Section 1423(c) of the Safe )  
Drinking Water Act, 42 U.S.C. § 300h-2(c), )  
9 and 40 C.F.R. § 22.18(b)(2). )

10 The United States Environmental Protection Agency Region IX (“EPA”), and Dugan  
11 Production Corporation (“Respondent”), having entered into the foregoing Consent Agreement,  
12 and EPA having duly publicly noticed the Stipulations and Allegations and proposed Final Order  
13 regarding the matters alleged therein,

14 **IT IS HEREBY ORDERED THAT:**

- 15 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-  
16 2010-0003) be entered; and  
17  
18 2. Respondent shall pay an administrative civil penalty of one hundred eight  
19 thousand and five hundred dollars (\$108,500) to the Treasurer of the United States of America in  
20 accordance with the terms set forth in the Consent Agreement.

21 This Final Order shall become effective on the date that it is filed. This Final Order  
22 constitutes full resolution of this proceeding pursuant to 40 C.F.R. § 22.13(b).

23  
24 \_\_\_\_\_ Date: \_\_\_\_\_  
25 Steven Jawgiel  
Presiding Officer  
U.S. Environmental Protection Agency  
Region IX

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**ATTACHMENT A**

In the Matter of Dugan Production Corporation

“Consolidated Rules of Practice Governing  
the Administrative Assessment of Civil Penalties and  
the Revocation or Suspension of Permits,” 40 C.F.R. part 22 (“Part 22”)

**ATTACHMENT B**

**EPA REGION 9 COLLECTION INFORMATION:**

Cincinnati Accounts Receivable Branch of U.S. EPA receives payments for regional civil penalties. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank.

<b>Type of Payment</b>	<b>Payment Information</b>		
<b>Debit and Credit Card Payments</b>	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a> Instructions: Enter SFO 1.1 in the search field, then open form and complete required fields.		
<b>Checks from U.S. Banks</b>		<b>U.S. Postal Service</b>	<b>UPS, Federal Express, or Overnight Mail</b>
<b>Finance Center Contacts:</b>  Craig Steffen (513-487-2091) Eric Volck (513-487-2105)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028
<b>Checks drawn on foreign banks with no USA branches (any currency)</b>	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati OH 45268-0001		
<b>Wire Transfers (any currency)</b> <a href="#">Details on the format and content of wire transfers.</a>	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727		

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	SWIFT address: FRNYUS33 33 Liberty Street New York NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
<b>ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:</b>  John Schmid (202-874-7026)  REX (Remittance Express), 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  Physical location of US Treasury facility: 5700 Rivertech Court Riverdale MD 20737