

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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HEARINGS CLERK  
EPA--REGION 10

In the matter of: )  
)  
)  
Bruneau Cattle Co., ) DOCKET NO. CWA-10-2007-0016  
)  
Owyhee County, Idaho, )  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
Respondent. )  
\_\_\_\_\_ )

**I. AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the undersigned Regional Judicial Officer, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent Bruneau Cattle Co. hereby agrees to the issuance of the Final Order contained in Part V of this CAFO.

**II. PRELIMINARY STATEMENT**

2.1 On December 6, 2006, EPA initiated this proceeding against Respondent pursuant

to Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint (“Complaint”).

2.2. The Complaint alleged that Respondent’s violations of the Act had subjected Respondent to civil penalties.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

2.4. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Idaho was given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent.

2.5. In accordance with Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA issued a public notice to inform the public of its intent to assess an administrative penalty against Respondent and to invite public comment. EPA received no public comments.

## **II. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

3.2. Respondent enters this CAFO without admitting or denying liability or the facts alleged by EPA to establish violations of the Act, and further does so to compromise and settle the Complaint without further proceedings in this matter.

3.3. Respondent expressly waives the right to contest the allegations contained in the Complaint and to appeal the Final Order contained herein.

3.4. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of

FORTY THOUSAND DOLLARS (\$40,000). This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

3.5. Respondent consents to the issuance of the Final Order recited herein, to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

3.6. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000.

Respondent shall note on the check the title and docket number of this case.

3.7. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101-3140

Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ECE-133  
Seattle, Washington 98101-3140  
Attn: Chae Park.

3.8. If Respondent fails to pay the penalty assessed by this CAFO in full by the due

date set forth in Paragraph 3.5, above, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.5, above, Respondent shall be responsible for payment of the amounts described below:

3.9.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part IV, below, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

3.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the amount of the penalty set forth in Paragraph 3.4, above, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.10. The penalty described in Paragraph 3.4, above, including any additional costs incurred under Paragraph 3.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.11. Respondent agrees to apply process waste wastewater to the north field at agronomic rates and will maintain adequate documentation at its facility that the north field is not being overloaded with nutrients from land application of process wastewater. The north field is depicted in the facility map attached to this CAFO as Exhibit A.

3.12. Respondent will maintain a diversion structure to divert all process waste water that would be released from the pond in the north field during significant storm events to the northwest field for land application or for storage in a pond. If Respondent constructs a storage pond in the northwest field it will be designed and constructed to avoid any discharges of process waste water to waters of the United States. The north field and northwest fields are depicted in the facility map attached to this CAFO as Exhibit A. Nothing in this paragraph is intended to require Respondent to divert agricultural storm water discharges or return flows from irrigated agriculture as those term are defined under the Clean Water Act.

3.13. The undersigned certifies that he is fully authorized to enter into the terms and conditions of this CAFO and he is bound by this document.

3.14. Except as described in Subparagraph 3.9.2, above, each party shall bear its own costs in bringing or defending this action.

3.15. The provisions of this CAFO shall bind Respondent and his agents, servants, employees, successors, and assigns.

3.16. The above provisions are STIPULATED AND AGREED upon by Respondent

and EPA.

STIPULATED AND AGREED:

BRUNEAU CATTLE CO.

*Brunseau Cattle Co.*  
*by: Eric R. Davis*  
Eric Davis

Dated: 10-20-07

U.S. ENVIRONMENTAL PROTECTION AGENCY

*MA Ryan For*  
MARK A. RYAN  
Assistant Regional Counsel

Dated: OCT. 25, 2007

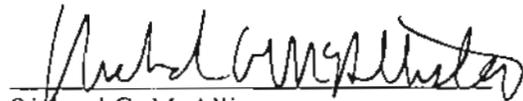
## V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

4.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued thereunder.

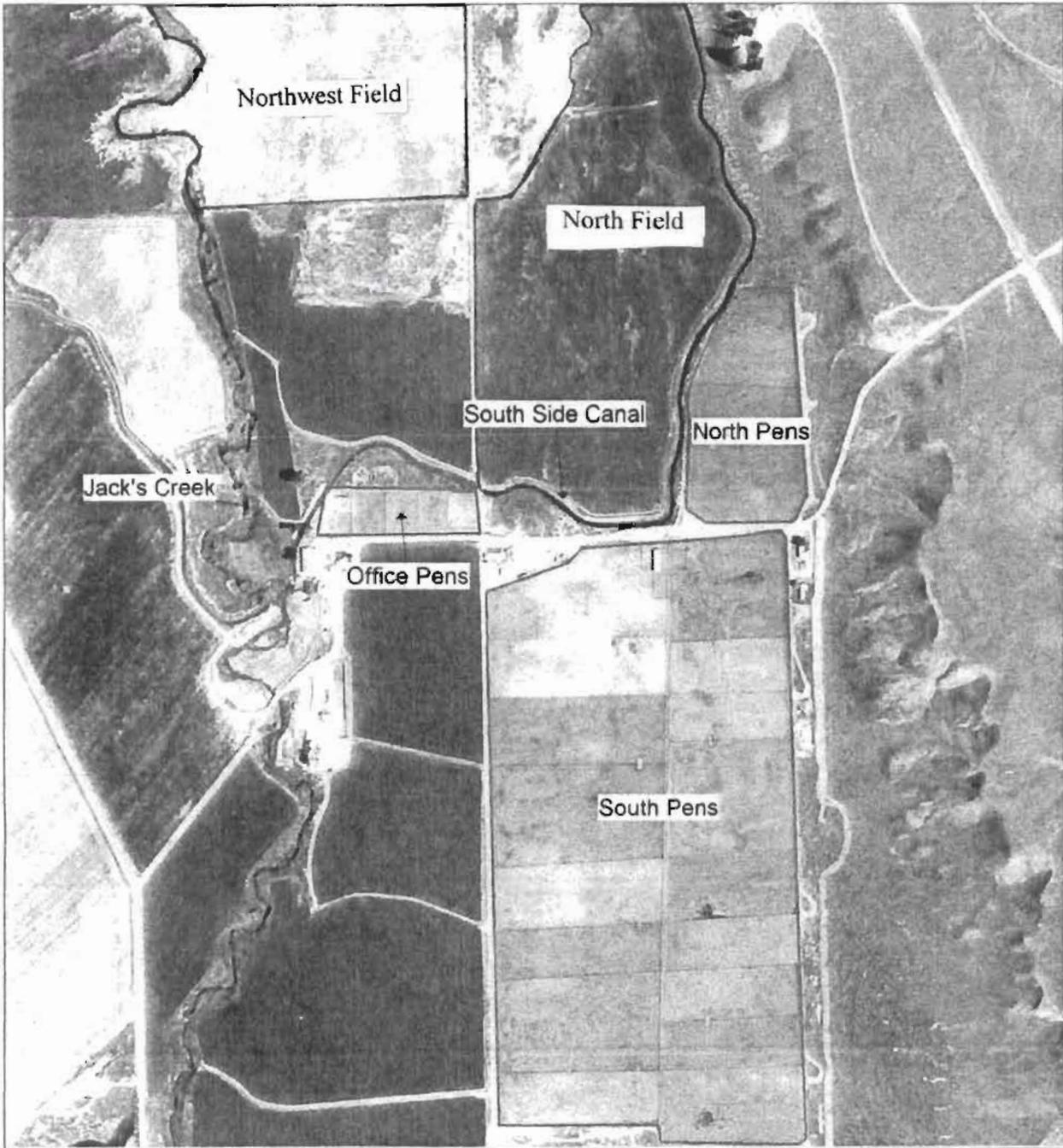
4.3. This Final Order shall become effective upon filing.

SO ORDERED this 25<sup>th</sup> day of October, 2007.



Richard G. McAllister  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

EXHIBIT A



North Field . Location of Pens and Streams at Bruneau Ranch.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Bruneau Cattle Co., DOCKET NO.: CWA-10-2007-0016** was filed with the Regional Hearing Clerk on October 25, 2007.

On October 25, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire  
U.S. Environmental Protection Agency  
1435 North Orchard Street  
Boise, Idaho 83706

Judge Spencer Nissen  
U.S. EPA  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, NW  
M/C 1900L  
Washington, DC 20460

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on October 25, 2007 to:

Kevin Beaton  
Stoel Rives LLP  
101 S. Capitol Blvd.  
Boise, Idaho 83702

DATED this 25<sup>th</sup> day of October 2007.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10