

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

75 Hawthorne Street
San Francisco, California 94105



IN THE MATTER OF:) DOCKET NO. CWA-09-2025-0059
)
Nevada Tri Partners, LLC, and) **CONSENT AGREEMENT AND FINAL ORDER**
Damonte Ranch Commerce Center, LLC)
)
Reno, Nevada,) *Class I Administrative Penalty Proceeding under*
) *Section 309(g) of the Clean Water Act, 33 U.S.C. §*
____ Respondents.) *1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18.*

I. INTRODUCTION AND JURISDICTION

1. This is a Class I civil administrative penalty proceeding under Sections 309(g)(1)(A) and (2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and (2)(A), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who, *inter alia*, violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."
3. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of Nevada regarding this penalty action.
5. Complainant and Respondents agree that settling this action without the filing of a complaint or the adjudication or admission of any issue of fact or law is in their respective interest and in the public interest.

II. STATUTORY AND REGULATORY FRAMEWORK

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants, including dredged or fill material, from a point source into waters of the United States, except as authorized by a CWA permit. Under Section 404 of the CWA, 33 U.S.C. § 1344,

the U.S. Army Corps of Engineers (Corps) issues permits for the discharge of dredged or fill material into waters of the United States.

7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include, *inter alia*, a “corporation,” “partnership,” or “association.”
8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, “dredged spoil,” “biological materials,” “rock,” and “sand.”
9. 40 C.F.R. § 232.2 and 33 C.F.R. § 323.2(e)(1) define “fill material” as “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.”
10. 33 C.F.R. § 323.2(f) defines “discharge of fill material” as “the addition of fill material into waters of the United States,” and includes, *inter alia*, “placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”
12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.” See also implementing regulations.
14. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, EPA may assess a Class I civil administrative penalty of up to \$27,378 per day of violation, not to exceed \$68,445 in total, against a person for violations of Section 301(a), 33 U.S.C. § 1311(a), which occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025.

III. COMPLAINANT’S FINDINGS OF FACT AND DETERMINATIONS OF LAW

15. Respondents are Nevada Tri Partners, LLC (“NTP”) and Damonte Ranch Commerce Center, LLC (“DRCC”), both located at 985 Damonte Ranch Parkway in Reno, Nevada. Both Respondents are limited liability companies organized under the laws of Nevada and each is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
16. This proceeding involves the Damonte Ranch master-planned community development located in Reno, Nevada, which includes the “Downtown Damonte Site.”
17. The Downtown Damonte Site is located within Section 16, Township 18 North, Range 20 East, Mount Diablo Meridian, and is bordered by the Damonte Ranch Parkway on the north and east, by the Damonte West Site to the south, and by Interstate 580 on the west. A 2005 delineation

of potential waters of the United States the Downtown Damonte Site identified an unnamed tributary ("WOUS 6A") located on the Site.

18. At all times relevant to this matter, WOUS 6A was an unnamed tributary with relatively permanent flow to White's Creek, which is a relatively permanent tributary to Steamboat Creek, which is a relatively permanent tributary to the Truckee River, a traditionally navigable water (see map, Exhibit 1).
19. On June 28, 2005, the Corps issued CWA Section 404 permit number 199400866 ("Section 404 Permit") to Respondent NTP. The Section 404 Permit authorized impacts to 39.91 acres of potential waters of the United States that had been identified within the Damonte Ranch project, including within the Downtown Damonte Site. The Section 404 Permit authorized NTP to complete authorized work through December 31, 2006, with the potential for extensions. The Section 404 Permit also required Respondent NTP to complete and implement 41.93 acres of compensatory mitigation in perpetuity for the authorized impacts.
20. On February 16, 2011, the Corps determined that Respondent NTP completed the 41.93 acres of compensatory mitigation required by the Section 404 Permit, including compensatory mitigation required for the Downtown Damonte Site. NTP also created an additional 39.56 acres of advanced permittee-responsible mitigation wetlands and 16.89 acres of advance permittee-responsible mitigation stream restoration/reestablishment. The Corps acknowledged Respondent NTP's request that it be awarded proactive mitigation credits for these additional efforts through a mitigation banking process at some future date.
21. Beginning on or around August 2022, Respondents NTP and/or DRCC engaged in earthmoving activities as part of the development of the Downtown Damonte Site.
22. On April 17, 2024, EPA and the Corps inspected the Downtown Damonte Site and observed that Respondents NTP and/or DRCC had used earthmoving equipment such as dump trucks and graders to discharge fill to WOUS 6A.
23. As a result of their earthmoving activities at the Downtown Damonte Site, Respondents discharged earthen materials that constituted "pollutants" under Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and "fill material" as defined at C.F.R. § 232.2 and 33 C.F.R. § 323.2(e)(1).
24. Respondents' discharge of dredged and/or fill material into waters of the United States constitutes a "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and a "discharge of fill material" as defined at 33 C.F.R. § 323.2(f).
25. The earthmoving equipment used by Respondents to discharge fill material to waters of the United States within the Downtown Damonte Site were "point source[s]" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
26. The Truckee River, Steamboat Creek, White's Creek, and the unnamed tributary to White's Creek, i.e., WOUS 6A, are all "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulations.

27. Respondents did not have a currently effective permit authorization under Section 404 of the CWA, 33 U.S.C. § 1344, for their discharges of fill material to 260 linear feet of waters of the United States, i.e., WOUS 6A, located on the Downtown Damonte Site.

IV. ALLEGED VIOLATIONS

28. As a result of the alleged earthmoving activities at the Downtown Damonte Site that commenced in August 2022, on dates best known to Respondents, Respondents discharged or caused to be discharged dredged and/or fill material to 260 linear feet of waters of the United States without authorization under Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. ADMINISTRATIVE PENALTY

29. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondents agree to pay a civil administrative penalty in the amount of Twenty-Five Thousand and Nine-Hundred and Seventy-One Dollars (\$25,971.00) ("Assessed Penalty") within thirty (30) calendar days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").
30. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
31. When making a payment, Respondents shall:
- a. Identify every payment with Respondents' names and the docket number of this Agreement, Docket No. CWA-09-2025-0059.
 - b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve via electronic mail proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 9
r9HearingClerk@epa.gov

Scott McWhorter
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
mcwhorter.scott@epa.gov

and
U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondents’ name.

32. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS large corporate underpayment rate applicable to penalties over \$100,000.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

33. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondents’ licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the

validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

34. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
35. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VI. APPLICABILITY

36. This CA/FO shall apply to and be binding on Respondents, Respondents' officers, directors, partners, agents, employees, contractors, successors, and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondents shall not excuse any failure of Respondents to fully perform their obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondents' obligations under this CA/FO.

VII. RESPONDENTS' ADMISSIONS AND WAIVERS

37. In accordance with 40 C.F.R. § 22.18(b), solely for the purpose of this proceeding, Respondents:
 - a. admit the jurisdictional allegations of this CA/FO;
 - b. neither admit nor deny the specific factual allegations contained in this CA/FO;
 - c. consent to the assessment of the administrative penalty set forth in Section V above and to all conditions specified in the CA/FO; and
 - d. waive any right to contest the allegations and their right to appeal this CA/FO.
38. Respondents waive the right to a hearing under Section 309(g)(2)(B) of the CWA and to any appeal of the Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1319(g)(8)(B).
39. By signing this Consent Agreement, Respondents waive any rights or defenses that Respondents have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the final order accompanying the consent agreement.
40. Nothing in this CA/FO waives, limits, or otherwise affects Respondents' defenses to or arguments against any future enforcement actions brought by any entity for any claimed violations not specifically alleged herein.

VIII. RESERVATION OF RIGHTS

41. In accordance with 40 C.F.R. § 22.18(c), compliance with this CA/FO only resolves Respondents' CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue injunctive or other equitable relief or criminal sanctions for any violations of law or in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
42. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ADDITIONAL TERMS

43. Each party shall bear its own attorney's fees and costs.
44. This CA/FO can be signed in counterparts.
45. The undersigned representative of Respondents certifies they have authority to bind Respondents to this Agreement.
46. By signing this CA/FO, Respondents acknowledges that this CA/FO does not contain any confidential business information (CBI) or waives any claim of CBI.

X. EFFECTIVE DATE

47. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the "Effective Date"), and shall terminate when Respondent has complied with this CA/FO in full.

XI. PUBLIC NOTICE

48. As required by Section 309(g)(4), 33 U.S.C. §§ 1319(g)(4), and 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer or Regional Administrator for approval, the EPA will provide public notice of this Agreement and a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under Section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C).

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9:

**AMY MILLER-
BOWEN**

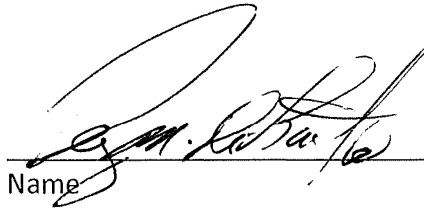
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Date: 2025.05.14 13:26:43
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Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Of Counsel:

Richard Campbell
Office of Regional Counsel
U.S. EPA Region 9

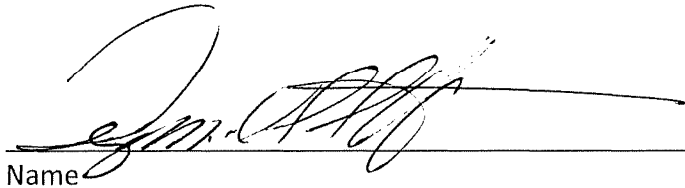
FOR RESPONDENT NEVADA TRI PARTNERS, LLC:


Name

President, Di Loreto South Truckee Meadows, Inc., Manager of
Nevada Tri Partners

Title

FOR RESPONDENT DAMONTE RANCH COMMERCE CENTER, LLC:


Name

Manager, Di Loreto Commerce Center Management, LLC, Manager
of Damonte Ranch Commerce Center

Title

DOCKET NO. CWA-09-2025-0059
CONSENT AGREEMENT AND FINAL ORDER
EXHIBIT 1



FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2025-0059) be entered and that Respondents shall pay a civil penalty in the amount of Twenty-Five Thousand and Nine Hundred and Seventy-One Dollars (\$25,971.00) in accordance with the terms of this Consent Agreement and Final Order.

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Nevada Tri Partners, LLC, and Damonte Ranch Commerce Center, LLC (CWA-09-2025-0059) has been filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

RESPONDENT: Peggy Otum
Wilmer Cutler Pickering Hale and Dorr LLP
50 California Street, Suite 3600
San Francisco, CA 94111
Peggy.Otum@wilmerhale.com

COMPLAINANT: Rich Campbell
Assistant Regional Counsel
U.S. EPA – Region IX
Water Section IV (ORC-2-4)
75 Hawthorne Street
San Francisco, CA 94105
Campbell.Rich@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA – Region IX