



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

September 28, 2006

Ref: 8ENF-L

Paul R. Vahldiek Jr.
President
#10 Enterprises, L.L.C.
1050 Wilcrest Drive
Houston, TX 77042

Re: High Lonesome Ranch Administrative Order
on Consent, Docket # CWA-08-2006-0046

Dear Mr. Vahldiek:

I am pleased to transmit to you a copy of the Administrative Order on Consent ("AOC") for the High Lonesome Ranch site that has now been signed by Carol Rushin for the U.S. Environmental Protection Agency. Please note that EPA has made the following corrections on page 2 of the AOC:

Paragraph V.1.	Inserted 'do' between 'to' and 'business'
Paragraph V.4.	Replaced 'Corps' with 'U.S. Army Corps of Engineers ("Corps")'
Paragraph V.5.	Replaced 'U.S. Army Corps of Engineers ("Corps")' with 'Corps'

Because of these changes, the page break between pages 2 and 3 occurred at a slightly different location within Paragraph V.5., leading to slight changes to the continuation of that paragraph on page 3. The former page 3 has been replaced with the new one.

I do not anticipate that these changes will be of any concern to you, but if you are troubled by any of them, please feel free to have Rob Pierce call me at 303-312-6637 to discuss them.

Thank you for your cooperation in finalizing this document. EPA looks forward to the commencement of restoration and mitigation activities at High Lonesome Ranch.

Sincerely,

A handwritten signature in cursive script that reads "Wendy I. Silver".

Wendy I. Silver
Enforcement Attorney



Printed on Recycled Paper

cc: Rob Pierce, Dufford, Waldeck, Milburn & Krohn, L.L.P.
Mark Gilfillan, U.S. Army Corps of Engineers
Shawn Zinszer, U.S. Army Corps of Engineers

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2006 SEP 26 PM 12:44

IN THE MATTER OF)
#10 Enterprises, L.L.C.)
1675 Broadway)
Denver, Colorado 80202)
)
Respondent.)
_____)

DOCKET NO. CWA-08-2006-0046

FILED
EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

This Administrative Order on Consent (“Consent Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and #10 Enterprises, L.L.C. (“#10 Enterprises” or “Respondent”). The Consent Order concerns the completion of actions required to compensate for the environmental damages caused by alleged illegal discharges of dredged or fill material at the High Lonesome Ranch, located near the town of De Beque in Garfield County, Colorado (the “Property” or “HLR”).

II. STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of EPA by Sections 308 and 309 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319, and by the Administrator delegated to the Regional Administrator of EPA Region 8, and redelegated by the Regional Administrator of Region 8 to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice. The Consent Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

III. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and shall be binding upon the Respondent, #10 Enterprises, and its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of #10 Enterprises, L.L.C., or HLR shall alter the Respondent’s responsibilities under this Consent Order.

IV. STATEMENT OF PARTIES

The following FINDINGS OF FACT AND OF VIOLATION are made solely by EPA. In signing this Consent Order, the Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION or that it engaged in any wrongdoing. As such, and without any admission of liability, the Respondent consents to the issuance of this Consent Order and agrees to abide by all of the terms and conditions herein and agrees not to challenge the jurisdiction of EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order.

V. FINDINGS OF FACT AND OF VIOLATION

1. #10 Enterprises is a Texas limited liability company registered to do business in Colorado and engaged in cattle, agricultural, and recreational operations.
2. #10 Enterprises owns and controls HLR, which contains streams and wetlands in certain areas. Said streams and wetlands include and are adjacent to the North Dry Fork and the Dry Fork of Roan Creek near the town of De Beque in Garfield County, Colorado. The streams and wetlands in question are specifically located in section 10, Township 8 South, Range 98 West, sections 26 - 30, 35, and 36, Township 7 South, Range 99 West, and section 25, Township 7 South, Range 100 West.
3. The North Dry Fork and the Dry Fork are tributaries to Roan Creek, which is a tributary to the Colorado River. The Colorado River is and was at all relevant times a navigable, interstate water.
4. Following purchase of the Property in 1995 and 1996, Respondent or persons acting on Respondent's behalf discharged dredged or fill material into the North Dry Fork and the Dry Fork of Roan Creek and adjacent wetlands, creating impoundments on the streams at approximately 100 different locations on the Property between 1996 and 2000. Approximately 80 impoundments were constructed on the North Dry Fork (the "Upper Ponds") and approximately 20 impoundments were constructed on the Dry Fork (the "Lower Ponds"). HLR contends that much of the work was performed by David Furr, the Ranch Manager at the time, without the knowledge or permission of Respondent and that unbeknownst to HLR, Mr. Furr had been contacted by the U.S. Army Corps of Engineers ("Corps") regarding multiple CWA Section 301 violations before his affiliation with HLR.
5. On April 15, 2002, the Corps inspected the Property and found that #10 Enterprises or persons acting on its behalf had discharged dredged or fill material into the Dry Fork of Roan Creek and adjacent wetlands, constructed a new pond and dam by discharging dredged or fill material into an unnamed tributary to Dry Fork Creek, and discharged dredged or fill material along the numerous roadways separating the Lower Ponds. HLR voluntarily conducted a review to determine whether other violations may exist on the North Dry Fork of Roan Creek. After

conducting that review, HLR invited the Corps to a tour of the Property on July 11, 2002. During that tour, HLR's biological consultant, Michael Claffey, directed the Corps to all known fill sites on the North Dry Fork of Roan Creek. The Corps found that, at many of those sites, Respondent or persons acting on its behalf had created the Upper Ponds by discharging dredged or fill material into the North Dry Fork of Roan Creek.

6. Respondent neither applied for nor received a permit from the Corps to discharge such dredged or fill material. Since discharging the dredged or fill material described above, Respondent has not been authorized by any permit issued under CWA Section 404, 33 U.S.C. § 1344, to allow the unauthorized discharges to remain.

7. The adverse impacts of the Respondent's unauthorized activities are presumed to have been avoidable in the terms of the "Practicable Alternatives" analysis set forth in the Section 404(b)(1) Guidelines, 40 C.F.R. § 230.10(a) and required by CWA Section 404(b)(1), 33 U.S.C. § 1344(b)(1).

8. The streams and wetlands filled and disturbed by the unauthorized activities provide various functions and values, including: wildlife habitat for birds, mammals, reptiles, and amphibians; water quality enhancement; flood attenuation; and aesthetics.

9. The discharges described in Paragraphs 4 and 5, above, were performed using common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on Respondent's behalf.

10. The materials referenced in Paragraphs 4 and 5, above, constitute "pollutants" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

11. The vehicles and equipment described in Paragraph 9, above, are each a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

12. #10 Enterprises is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

13. The North Dry Fork and the Dry Fork of Roan Creek and their adjacent wetlands are "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

14. The placement of dredged and fill material into the North Dry Fork and the Dry Fork of Roan Creek and their adjacent wetlands constitutes the "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).

15. CWA Section 301, 33 U.S.C. § 1311, prohibits the discharge of a pollutant from a point source into waters of the United States by a person without a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.
16. #10 Enterprises is not and never has been authorized by a permit issued under CWA Section 404, 33 U.S.C. § 1344, to conduct the activities described in Paragraphs 4 and 5, above.
17. Respondent's activities as described in Paragraphs 4 and 5, above, without such a Section 404 permit constitute violations of CWA Section 301, 33 U.S.C. § 1311.
18. The impact of the violations will continue each day that the dredged or fill material remains in the affected streams and wetlands.
19. In settlement of the violations alleged herein, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its terms and conditions herein and agrees not to challenge the jurisdiction of EPA or these Findings of Fact in any proceeding to enforce this Consent Order. In exchange, EPA waives and agrees to forego any civil action to seek penalties, fines, or other relief from or against the High Lonesome Ranch, #10 Enterprises, LLC, Paul R. Vahldiek, Jr., or Lissa Walls Vahldiek under the CWA related to the discharges of dredged or fill material described in Paragraphs 4 and 5, above. Nothing in this Consent Order shall waive or in any way limit EPA's ability to pursue a civil and/or criminal action against David Furr for those discharges.
20. Activities to be carried out under this Consent Order are remedial, not punitive, and achievable as a practicable matter through commonly used construction, digging, filling, revegetation, and best management practices. The actions required by this Consent Order are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 U.S.C. § 1251(a).
21. These preceding FINDINGS OF FACT AND OF VIOLATION and the ORDER FOR COMPLIANCE below have been made after consultation and coordination with the Corps' Sacramento District.

VI. ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA under CWA Sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), and by him delegated to the Regional Administrator, and redelegated to the undersigned, it is hereby ORDERED:

1. Respondent is enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its regulations.

2. Respondent shall conduct restoration and mitigation activities, as more fully described below, for impacts to waters of the United States resulting from the unauthorized discharges of dredged or fill material described in Paragraphs 4 and 5 of Section V of this Consent Order.
3. All restoration and mitigation activities shall be conducted in accordance with an EPA-approved restoration and mitigation plan ("Final Plan") prepared by a consultant experienced in stream and wetland restoration and mitigation. The consultant also shall directly supervise all work performed pursuant to the Final Plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within fifteen (15) calendar days of receipt of this Consent Order.
4. All restoration and mitigation activities conducted in waters of the U.S. pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in stream and wetland restoration and mitigation. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within fifteen (15) calendar days of receipt of this Consent Order.
5. Respondent has submitted to EPA a Proposal Regarding the North Dry Fork of Roan Creek and the Furr Ponds dated October 19, 2005. That Proposal includes a Restoration Plan for the North Dry Fork, a Mitigation Plan for the High Lonesome Ranch, a Report Regarding Agricultural Road Crossings, a Restoration Plan for the Furr Ponds, and a Report summarizing the Ecological Benefits of Retaining Ponds at the High Lonesome Ranch (together, "Preliminary Plan"). The Preliminary Plan identifies all fill sites and describes work proposed to restore and mitigate the impacts to waters of the United States resulting from the unauthorized discharges of dredged or fill material described in Paragraphs 4 and 5 of Section V of this Consent Order. A copy of the Preliminary Plan is attached as Exhibit A.
6. EPA has reviewed the Preliminary Plan in detail and, on April 19 and 20, 2006, conducted a field visit to the Property to evaluate the appropriateness of the Preliminary Plan with regard to each fill site. Respondent and EPA agree that the Preliminary Plan defines the general nature and scope of the work to be performed. However, in order to insure that the Final Plan complies with "U.S. Environmental Protection Agency, Region 8 Clean Water Act Section 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals" guidelines, attached hereto as Exhibit B, Respondent shall, within thirty (30) calendar days of the effective date of this Consent Order, submit to EPA for review, comment, and approval a revision to the Preliminary Plan ("Revised Preliminary Plan"), prepared by the consultant referenced in Paragraph 3, above. The Revised Preliminary Plan shall reflect recommended modifications discussed by EPA and Respondent's representatives due to changed conditions observed during the field visit at some of the impoundments referenced in Paragraphs 4 and 5 of Section V of this Consent Order. In addition, Respondent shall, within thirty (30) calendar days of the effective date of this Consent Order, submit to EPA for review, comment, and approval a

supplement to the Revised Preliminary Plan (“Supplement”), prepared by the consultant referenced in Paragraph 3, above. The Supplement shall include:

- a. A detailed work plan and schedule for all of the work and activities to be accomplished, including the application for any required permits, providing for completion of all aspects of the restoration and mitigation work no later than 360 days after EPA approves the Final Plan;
- b. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map of these locations;
- c. Grading, planting, and monitoring plans, measurable criteria for success of the restoration and mitigation, and provisions for proper disposal of any excess soils or other materials generated during construction, restoration, and mitigation;
- d. Detailed professional drawings of the representative restoration and mitigation sites, including plan and profile drawings with control elevations for current conditions and, if different, proposed conditions;
- e. A description of all costs to complete the restoration and mitigation work, including the costs of all consultations, permits, construction, materials, monitoring, etc.

7. EPA will review the Revised Preliminary Plan and Supplement and approve them, approve them with modifications, or reject them with comments. If EPA rejects the Revised Preliminary Plan and/or the Supplement, Respondent shall, within fifteen (15) calendar days of receipt of EPA’s rejection letter, submit a modified Revised Preliminary Plan and/or Supplement that correct(s) the deficiencies identified by EPA. The EPA-approved Revised Preliminary Plan and Supplement shall constitute the Final Plan.

8. Respondent must make a timely application for each permit necessary to implement the Final Plan and for conducting restoration and mitigation in accordance with the Final Plan, including the schedule specified therein, with all granted permits, and with all applicable laws, including Section 7 of the Endangered Species Act . Respondent must demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

9. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. It shall be the responsibility of Respondent to consult with the Corps, at the address and telephone number below, to determine if the activities required by the Final Plan require a permit from the Corps under CWA Section 404. If any such permit is required, Respondent shall obtain such permit(s) and provide a copy or copies to EPA pursuant

to paragraph 8, above, prior to initiating any work that is to be performed pursuant to this Consent Order.

U.S. Army Corps of Engineers
Colorado/Gunnison Basin Regulatory Office
402 Rood Avenue, Room 142
Grand Junction, CO 81501-2563
Telephone: 970-243-1199

10. Respondent shall submit three (3) copies of the Revised Preliminary Plan and Supplement, Final Plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6359
Facsimile: 303-312-6409

A copy of the Revised Preliminary Plan and Supplement, Final Plan, all notifications, and related correspondence also shall be provided to:

Wendy Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6637
Facsimile: 303-312-6953

11. EPA agrees to submit all notifications and correspondence to:

Rob Pierce
Dufford, Waldeck, Milburn & Krohn, LLP
744 Horizon Court, Suite 300
Grand Junction, CO 81506

12. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Consent Order and subject to EPA enforcement action.

13. Within ten (10) days of the effective date of this Consent Order, Respondent shall revise all marketing and informational material for HLR, including, but not limited to, websites and

printed material, to delete any and all statements indicating that the ponds at HLR are beaver ponds or are naturally occurring, except for structures number 28 and 60, as described in the Preliminary Plan, which EPA agrees appear to be beaver ponds. No electronic or printed material or verbal communications stating that the ponds are beaver ponds or are naturally occurring shall be distributed or made commencing fifteen (15) days after the effective date of this Consent Order.

14. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of EPA or its contractors, the Corps, the U.S. Fish and Wildlife Service, and the State of Colorado Division of Wildlife, upon proper presentation of credentials, to sites and non-privileged records relevant to this Consent Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Consent Order;
- b. To inspect and monitor compliance with this Consent Order; and
- c. To verify and evaluate data and other information submitted to EPA.

15. This Consent Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to non-privileged records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

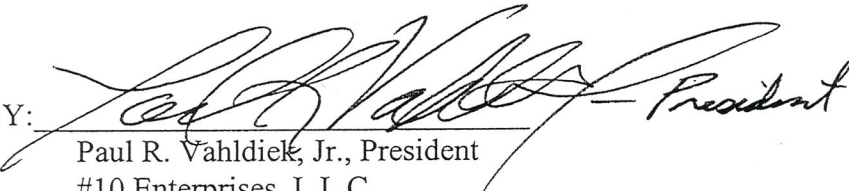
16. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify EPA orally as soon as possible and in writing within ten (10) working days from the date #10 Enterprises first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by #10 Enterprises to minimize the delay, and a timetable by which those measures will be or have been implemented. Notification to EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of #10 Enterprises to comply with the requirements and deadlines of this Consent Order, unless EPA grants in writing an extension of the applicable requirement or deadline.

17. If Respondent demonstrates to EPA's satisfaction that the delay or anticipated delay has been or will be caused entirely by circumstances beyond Respondent's control (or the control of any of Respondent's agents), that #10 Enterprises could not have foreseen and prevented such delay despite due diligence, and that #10 Enterprises has taken all reasonable measures to prevent or minimize such delay, EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. EPA's determination on these matters shall be made orally as soon as possible and in writing within ten (10) working days after the receipt of Respondent's written notification of the event. The parties agree that neither changed economic circumstances nor increased costs for

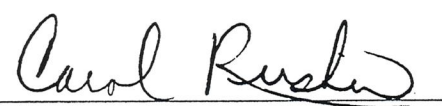
performing the terms and conditions of this Consent Order or for implementing the Final Plan ordered herein shall be considered circumstances beyond the control of #10 Enterprises.

18. This ORDER shall be effective upon execution by the parties. EPA requests that #10 Enterprises meet with EPA and other agencies to discuss concerns or questions about the implementation of this Consent Order.

Please be advised that CWA Section 309(d), 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500.00 per day for each violation that occurred before March 15, 2004, and \$32,500.00 per day for each violation thereafter of CWA Section 301, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under CWA Section 309(a), 33 U.S.C. § 1319(a). Additionally, CWA Section 309(g), 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, CWA Section 309(c), 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. FURTHER, the Criminal Fine Enforcement Act of 1984, P.L. 98-596, provides for fines in excess of the amount specified in the statute under certain circumstances. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations of this Consent Order or of the CWA occurring after the effective date of this Consent Order. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve #10 Enterprises of its obligations to comply with any applicable Federal, state, or local law.

BY:  President
Paul R. Vahldiek, Jr., President
#10 Enterprises, L.L.C.

DATE: 8/27/06

BY: 
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8

DATE: 9/12/06