

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
William Gepford) Docket No. CWA-07-2006-0057
)
)
Respondent) RESPONDENT'S
) PREHEARING EXCHANGE
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

RESPONDENT'S PREHEARING EXCHANGE

Comes now, Respondent William Gepford, by and through his attorney, Michael P. Comodeca, and offers the following prehearing exchange for the above-captioned matter, pursuant to the June 14, 2006 Prehearing Order issued by the Presiding Officer, the Honorable William B. Moran, and as required by 40 CFR 22.19:

1. List of Expert and Other Witnesses

a. **Randall A. Root, Senior Project Manager, Burns & McDonnell Engineering Company, Inc.**, 9400 Ward Parkway, Kansas City, Missouri, 64114 (resume attached). Mr. Root visited the Vernon County property and the Bates County property on multiple occasions. In addition, Mr. Root reviewed all of the Exhibits submitted by EPA as evidence in this matter. Mr. Root will testify concerning the activity conducted by Respondent on the properties. He will also testify concerning the extent of the impact of Respondent's activities on any "waters of the United States". Mr. Root will also testify that the wetlands that are the subject of this enforcement action are currently thriving and functioning as wetlands.

b. **Sarah J. Soard, Wetlands Scientist/Botanist, Burns & McDonnell Engineering Company, Inc.**, 9400 Ward Parkway, Kansas City, Missouri, 64114 (resume attached). Ms. Soard visited the Vernon County property and the Bates County property on multiple occasions. In addition, Ms. Soard reviewed all of the Exhibits submitted by EPA as evidence in this matter. Ms. Soard will testify concerning the activity conducted by Respondent on the properties. She will also testify concerning the extent of the impact of Respondent's activities on any "waters of the United States". Ms. Soard will also testify that the wetlands that are the subject of this enforcement action are currently thriving and functioning as wetlands.

c. **William Gepford, Respondent**, 911 Country Club Drive, Butler, MO 64730. Mr. Gepford will testify concerning the activities conducted on the Vernon County and Bates County properties.

d. **Gerald Dirks, shearblade operator**, Route #4, Box 761, Butler, MO 64730. Mr. Dirks will testify concerning the activities conducted on the Vernon County and Bates County properties.

e. **Shannon Gepford, son of William Gepford**, 2001 Stirling Street, Butler, MO 64730. Mr. Gepford will testify concerning the activities conducted on the Vernon County property.

f. **Larry Dean Welston, former owner of the Bates County property**, Route #2, Box 455, Butler, MO 64730. Mr. Welston will testify regarding the condition of the vegetation on the Bates County property.

g. **Fred Hershberger, former owner of the Bates County property**, 24611 Timberlake Dr., Greenwood, MO 64034. Mr. Hershberger will testify regarding the condition of the vegetation on the Bates County property.

h. Any person who may have knowledge relevant to the subject matter of this proceeding, and is hereinafter identified through the exercise of reasonable diligence and designated as a potential witness through an amended disclosure.

i. All witnesses listed by Complainant.

2. **Copies of Documents and Exhibits**

a. Exhibit A - NRCS Conservation Assistance Notes, covering the period from 12/11/87 to 02/07/00;

b. Exhibit B - NRCS Letters to Bill and Shannon Gepford dated 02/27/02;

c. Exhibit C - Email from Mr. Wendleton to Mr. Freeze dated 09/02/02 re Gepford Wetland Conversion;

d. Exhibit D - Letter from Mr. Freeze to Mr. Gepford dated 10/01/2003 re "good faith" and Mr. Gepford's letter to expedite wetland's determination dated 05/22/03;

e. Exhibit E - Memorandum from Mr. Freeze to Mr. Wendleton re Farm #5737 dated 07/09/02 with attached applicable section of COC Minutes;

f. Exhibit F - Mr. Gepford's FSA Appeal Letter dated 10/02/02;

g. Exhibit G - Memorandum from Mr. Hansen to Mr. Freeze regarding Summary of Facts dated 08/13/02;

h. Exhibit H - Warranty Deed dated 10/16/02 between Widhalms, McLain and Bruens;

- i. Exhibit I - Warranty Deed dated 03/31/04 between Widhalms and Five Star Cattle Company, LLC (Book 813);
- j. Exhibit J - Warranty Deed dated 03/31/04 between Widhalms and Five Star Cattle Company, LLC (Book 817);
- k. Exhibit K - Warranty Deed dated 03/10/99 between Cox's and Gepfords;
- l. Exhibit L - Amendment to Contract for Sale of Real Estate dated 03/02/99;
- m. Exhibit M - Contract for the Sale of Real Estate dated 12/31/98 between Hershbergers and Widhalms;
- n. Exhibit N - Full Release of Deed of Trust dated 04/05/04;
- o. Exhibit O - NRCS Mitigation Plan for Vernon County dated 05/01/03;
- p. Exhibit P - Revised NRCS Mitigation Plan for Vernon County dated 06/17/03;
- q. Exhibit Q - Wetland Restoration Plan for Bill Gepford's Farm in Bates County, Missouri, dated 9/18/03;
- r. Exhibit R - 66 Fed. Reg. 4550, Further Revisions to the Clean Water Regulatory Definition of Discharge of Dredged Material; Final Rule;
- s. Exhibit S - 40 CFR Part 232;
- t. Exhibit T - National Association of Home Builders v. U.S. Army Corps of Engineers, 440 F.3d 459 (Fed. Cir. 2006);
- u. Exhibit U - Memorandum: Regulation of Certain Activities in Light of American Mining Congress v. Corps of Engineers, April 11, 1997;
- v. Exhibit V - United States v. Reaves, 923 F.Supp. 1530 (M.D. Fla. 1996);
- w. Exhibit W - In the Matter of Greenfield Bayou Levee & Ditch Conservancy District, Docket No. CWA 5-2001-001, December 13, 2002;
- x. Exhibit X - Corps Field Investigation Report dated 03/27/03;
- y. Exhibit Y - Corps Field Investigation Report dated 04/14/03;
- z. Exhibit Z - Corps Field Investigation Report dated 05/16/03;
- aa. Exhibit AA - Corps Field Investigation Report dated 05/28/04;
- bb. Exhibit BB - Aerial Photos of Bates County and Vernon County properties;

- cc. Exhibit CC - Vernon County Site 1 – Burns & McDonnell Evaluation of the William Gepford Properties;
- dd. Exhibit DD - Vernon County Site 2 – Burns & McDonnell Evaluation of the William Gepford Properties;
- ee. Exhibit EE - Vernon County Site 3 – Burns & McDonnell Evaluation of the William Gepford Properties;
- ff. Exhibit FF - Vernon County Site 4 – Burns & McDonnell Evaluation of the William Gepford Properties;
- gg. Exhibit GG - Vernon County –Streams - Burns & McDonnell Evaluation of the William Gepford Properties;
- hh. Exhibit HH - Bates County Site 1 – Burns & McDonnell Evaluation of the William Gepford Properties;
- ii. Exhibit II - Bates County Site 2 – Burns & McDonnell Evaluation of the William Gepford Properties;
- jj. Exhibit JJ - Bates County Site 3 – Burns & McDonnell Evaluation of the William Gepford Properties;
- kk. Exhibit KK - Bates County Site 4 – Burns & McDonnell Evaluation of the William Gepford Properties;
- ll. Exhibit LL - Revised Section 404 Settlement Penalty Policy, December 21, 2001;
- mm. Exhibit MM - 61 Fed. Reg. 7242, Guidance on the Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast, February 27, 1996.
- nn. Exhibit NN - Resume of Mr. Randall L. Root
- oo. Exhibit OO - Resume of Ms. Sarah J. Soard
- pp. Any document containing information relevant to the subject matter of this proceeding, and is hereinafter identified through the exercise of reasonable diligence and designated as a potential exhibit through an amended disclosure;
- qq. Any and all exhibits provided by Complainant.

3. Respondent's Views Regarding Appropriate Location for the Hearing and Time Estimate for Presenting Its Case. Respondent believes that the hearing should be held in Bates County, Missouri, at the Bates County Courthouse located in Butler, MO. Courtroom facilities with all support services that may be required for a hearing are readily available at the Courthouse. Respondent and three other of Respondent's witnesses live in the vicinity of Bates County and it

would be a great inconvenience for them to have to drive to and from Kansas City in the winter. The Bates County Courthouse is available for two consecutive days on December 11 and 12, 2006.

Absent lengthy cross-examination, Respondent estimates that it will require approximately one full day to present its case in chief.

4. **Availability for Hearing.** All of Respondent's witnesses and counsel are available for hearing on the following dates through December 2006:

November 2,3,6,7,8,9

December 4,5,6,7,8,11,12,13,14,15,18,19,20,21.

5. **Reservation of Rights.** Respondent respectfully reserves the right to call all witnesses called by Complainant and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to Complainant and the Presiding Officer.

Respectfully submitted,



Michael P. Comodeca
Counsel for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true copy of the RESPONDENT'S PREHEARING INFORMATION EXCHANGE was filed with the Regional Hearing Clerk, EPA Region VII, 901 North Fifth Street, Kansas City, Kansas, and that a true copy of the same was sent, via first class U.S. mail, to:

The Honorable William B. Moran
Administrative Law Judge
Office of the Administrative Law Judges
(Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and sent, via first class U.S. mail to:

Steven L. Sanders
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

Date: 9/22/06

By: Michael P Comodora