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EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	
)	Docket No. CWA- 10-2006-0099
City of Blackfoot, 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 V of this CAFO to the Regional Administrator of EPA, 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 City of Blackfoot (“Respondent”) hereby agrees to, the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.2. Respondent is a municipality duly organized under the laws of Idaho. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Upon information and belief, in 2002 and 2005, and at times more fully known to Respondent, Respondent and/or persons acting on its behalf, discharged dredged or fill material below the ordinary high water mark while reconstructing or maintaining diversion structures in the Snake River near the I-15 bridge near the City of Blackfoot. During this time period, Respondent placed dredged and/or fill material into approximately 0.5 acres of riverbed and adjacent riparian areas.

3.4. The Snake River is "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

3.5. Upon information and belief, Respondent and/or persons acting on its behalf used heavy equipment to place the dredged and/or fill material into the Snake River. That heavy equipment is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C.

§ 1362(14).

3.6. The dredged and/or fill material that Respondent and/or persons acting on its behalf caused to be discharged includes, among other things, dirt, spoil, rock, and sand, each of which constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C.

§ 1362(6).

3.7. By causing such dredged and/or fill material to enter waters of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

3.8. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has consulted with the State of Idaho.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances, extent, and gravity of the alleged violations, Respondent’s economic benefit of noncompliance and ability to pay the proposed penalty, and other relevant factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000).

4.4. 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.

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

Mellon Bank
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251.

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

4.6. 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, Mail Stop ORC-158
Seattle, Washington 98101

U.S. Environmental Protection Agency
1435 N. Orchard Street
Boise, Idaho 83716
Attn: Carla Fromm.

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, 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 contained herein.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, 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.

4.9. Except for the payment described in paragraph 4.5, all submissions required by this CAFO shall be made to:

U.S. Environmental Protection Agency
1435 N. Orchard Street
Boise, Idaho 83706
Attn: Carla Fromm.

4.10. The penalties described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA.

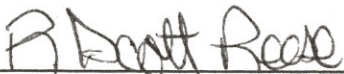
4.11. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own

costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein.

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

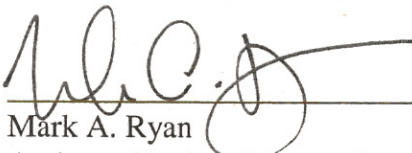
STIPULATED AND AGREED:



Honorable R. Scott Reese
Mayor of City of Blackfoot

Dated: 12-26-05

U.S. ENVIRONMENTAL PROTECTION AGENCY



Mark A. Ryan
Assistant Regional Counsel
For Complainant

Dated: December 21, 2005

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 settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in the Consent Agreement above. 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 and regulations and permits issued thereunder.

5.3. 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 Idaho Department of Water Resources has been given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice to inform the public of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

- 5.5. This Final Order shall become effective upon filing.
- 5.6 In order to avoid the potential for a conflict of interest, this CAFO will be signed by the Deputy Regional Administrator.

SO ORDERED this 27th day of MARCH, 2006.



Ronald Kreizenbeck
Deputy Regional Administrator
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: City of Blackfoot, Idaho, DOCKET NO.: CWA-10-2006-0099** was filed with the Regional Hearing Clerk on March 29, 2006.

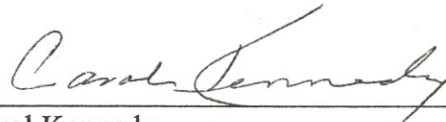
On March 29, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire
Idaho Operations Office
US Environmental Protection Agency
1435 North Orchard Street
Boise, ID 83706

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 March 29, 2006 to:

Daniel R. Acevedo, City Attorney
City of Blackfoot
282 2 West Bridge
Blackfoot, ID 83221

DATED this 29th day of March 2006.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10