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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

DOUG BLOSSOM,  
Clam Gulch, Alaska,

Respondent.

AMENDED  
CONSENT AGREEMENT AND  
FINAL ORDER

Docket No. CWA-10-2002-0131

**I. AUTHORITY**

1.1. This Amended 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 Amended 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 Doug Blossom hereby agrees to, the issuance of the Final Order contained in Part IV of this Amended CAFO.

1 1.3 The original CAFO resolving this matter was filed in this matter on May 18, 2004.  
2 This Amended CAFO supersedes the original in its entirety.

## 3 **II. PRELIMINARY STATEMENT**

4 2.1. On July 26, 2002, EPA initiated this proceeding against Respondent pursuant to  
5 Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint  
6 (“Complaint”).

7 2.2. The Complaint alleged that Respondent’s violations of the Act had subjected  
8 Respondent to civil penalties. The Complaint proposed that Respondent be assessed an  
9 administrative civil penalty in an amount not to exceed \$35,000.00.

10 2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil  
11 penalty in this amount is set forth in the Complaint and is incorporated herein by reference.

12 2.4. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R.  
13 § 22.38(b), the State of Alaska was given an opportunity to consult with EPA regarding the  
14 assessment of an administrative penalty against Respondent.

15 2.5. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA issued a  
16 public notice to inform the public of its intent to assess an administrative penalty against Respondent  
17 and to invite public comment. EPA received one petition signed by numerous individuals regarding  
18 this proposal to assess a civil penalty.

## 19 **III. CONSENT AGREEMENT**

20 The parties to this action hereby stipulate as follows:

21 3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

22 3.2. Respondent neither admits nor denies the specific factual allegations contained in the  
23 Complaint.

24 3.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances,  
25 extent, and gravity of the alleged violations, Respondent’s economic benefit of noncompliance and  
26 ability to pay the proposed penalty, Respondent’s agreement to perform a wetlands restoration  
27

1 project ("Project"), and other relevant factors, EPA has determined and Respondent agrees that an  
2 appropriate penalty to settle this action is in the amount of ONE THOUSAND DOLLARS (\$1,000).

3 3.4. Respondent consents to the issuance of the Final Order recited herein, to payment of  
4 the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the  
5 Final Order, and to performance of the Project described herein.

6 3.5. Payment under this Amended CAFO shall be made by cashier's check or certified  
7 check, payable to the order of "Treasurer, United States of America" and shall be delivered to the  
8 following address<sup>1</sup>:

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

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

14 3.6. Respondent shall serve photocopies of the check described above on the Regional  
15 Hearing Clerk and EPA at the following two addresses:

16 Regional Hearing Clerk  
17 U.S. Environmental Protection Agency  
18 1200 Sixth Avenue, Mail Stop ORC-158  
19 Seattle, Washington 98101

20 Office of Ecosystems and Communities  
21 U.S. Environmental Protection Agency  
22 1200 Sixth Avenue, Mail Stop ECO-083  
23 Seattle, Washington 98101  
24 Attn: Steve Roy

25 3.7. Should Respondent fail to pay the penalty assessed by this Amended CAFO in full by  
26 its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due  
27 and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect  
28 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.

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<sup>1</sup> Pursuant to the terms of the original CAFO in this matter, filed on May 18, 2004, Respondent  
has already paid the \$1,000 penalty.

1           3.8.     Should Respondent fail to pay the penalty assessed by this Amended CAFO in full by  
2 its due date, Respondent shall also be responsible for payment of the following amounts:

3                 a. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any  
4 unpaid portion of the assessed penalty shall bear interest at the rate established by the  
5 Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the  
6 Final Order contained herein, provided, however, that no interest shall be payable on any  
7 portion of the assessed penalty that is paid within thirty (30) days of the effective date of the  
8 Final Order contained herein.

9                 b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section  
10 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis  
11 the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay  
12 (in addition to any assessed penalty and interest) attorney fees, costs for collection  
13 proceedings, and a quarterly nonpayment penalty for each quarter during which such failure  
14 to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent  
15 (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which  
16 are unpaid as of the beginning of such quarter.

17           3.9.     Respondent shall complete a wetland restoration project located on Respondent's  
18 property, which the parties agree is intended to secure significant environmental benefits.  
19 Respondent shall construct a pond on his "horse pasture," which is an approximately five-acre area  
20 located in approximately the south center of his property, northwest of his house. This area is  
21 identified as the area bounded by the red lines in Complainant's Exhibit 21. The area is  
22 approximately five acres in size. Respondent will forever fence off at least three-fourths of this area  
23 from grazing, and allow it to revert to its natural vegetative state. Working with the U.S.D.A.  
24 Natural Resources Conservation Service ("NRCS"), he will design and construct a pond within that  
25 area of the field that is restricted from grazing. The size and depth of the pond will be at the  
26 discretion of the NRCS. This Project shall be completed within two years of the entry of this  
27

1 Amended CAFO. If, owing to circumstances beyond the control of Respondent, he is unable to  
2 complete the Project within two years, he shall notify EPA as soon as he becomes aware of any  
3 delays, and this Amended CAFO may be modified at a later date to reflect a new deadline for  
4 completion.

5 3.10. Respondent hereby certifies that, as of the date of this Consent Agreement, he is not  
6 required by any federal, state, or local law or regulation to perform the Project.

7 3.11. Respondent shall notify EPA no later than thirty (30) days following completion of  
8 the Project.

9 3.12. In the event that Respondent fails to comply with any of the terms or provisions of  
10 this Amended CAFO relating to the performance of the Project, Respondent shall be liable for  
11 stipulated penalties in the amount of \$100 per month, for each month after the deadline to complete  
12 the Project, up to a maximum of \$6,000.

13 3.13. The determination of whether the Project has been satisfactorily completed and  
14 whether Respondent has made a good faith, timely effort to implement the Project shall be in the sole  
15 discretion of EPA.

16 3.14. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a  
17 written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in  
18 accordance with the provisions of Paragraphs 3.5 and 3.6 of this Amended CAFO. Interest and late  
19 charges shall accrue as described in Paragraph 3.8 of this Amended CAFO.

20 3.15. All reports and submissions required by this Amended CAFO shall be made to:

21 Office of Ecosystems and Communities  
22 U.S. Environmental Protection Agency  
23 1200 Sixth Avenue, Mail Stop ECO-081  
24 Seattle, Washington 98101  
25 Attn: Steve Roy  
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3.16. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the Project, shall include the following language: "This project was undertaken in connection with settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of the Clean Water Act."

3.17. The penalties described in Paragraphs 3.3 and 3.12 of this Amended CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.18. Except as described in Paragraph 3.8 of this Amended CAFO, each party shall bear its own costs in bringing or defending this action.

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

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

STIPULATED AND AGREED:

William S. Robinson  
For Respondent Doug Blossom

Dated: 6/10/04

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jeffrey Kopp  
Mark A. Ryan  
Assistant Regional Counsels  
For Complainant

Dated: 6/10/04

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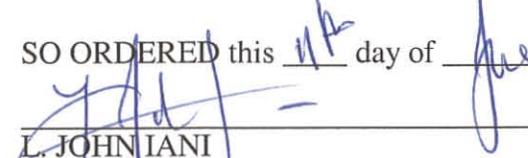
**IV. FINAL ORDER**

4.1. 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.

4.2. This Amended 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 Amended 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 Amended 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.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 11<sup>th</sup> day of June, 2004

  
\_\_\_\_\_  
L. JOHN IANI  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10

# Blossom Property : Clam Gulch, Alaska



2000

0

2000 Feet

-  Approximate Property Boundary
-  2001 New Ditches
-  1990 Photo Interpreted Drainage
-  1990 Photo Interpreted Wetlands

Wetlands and drainage interpreted from the 1990 aerial photography

New ditches observed on the 2001 aerial photography

Sources Reviewed:

Aerial photography: 6-4-90, 5-14-2001

Kenai-Kasilof Area Soil Survey

NRCS Final Technical Wetland Determination

National Wetland Inventory (NWI)

USGS Topographic Map: Kenai (A-4) NW, Alaska

Map Prepared by Peter Stokely EPA/EPIC 703-648-4292

COMPL. EX. NO. 21

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **AMENDED CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Doug Blossom, Clam Gulch, Alaska, DOCKET NO.: CWA-10-2002-0131**, was filed with the Regional Hearings Clerk on June 14, 2004.

On June 14, 2004 the undersigned certifies that a true and correct copy of the document was delivered to:

Jeff Kopf, Esquire  
EPA New England, Region 1  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023

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

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900L  
1200 Pennsylvania Avenue NW  
Washington, D.C. 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 June 14, 2004, to:

Arthur S. Robinson, Attorney at Law  
Robinson & Associates  
35401 Kenai Spur Highway  
Soldotna, AK 99669

DATED this 14<sup>th</sup> day of June 2004.

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

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June 14, 2004

Reply To  
Attn Of: ORC-158

**BY HAND**

Carol Kennedy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 10  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101-1128

Re: In the matter of: Doug Blossom  
Docket No. CWA-10-2002-0131

Dear Ms. Kennedy:

Enclosed for filing in the above-referenced action, please find this Amended Consent Agreement and Final Order (CAFO). Pursuant to paragraph 3.9 of the original Consent Agreement and Final Order, we are amending the original CAFO to allow Respondent more time to complete the wetland restoration project.

Thank you for your attention to this matter.

Sincerely,

*Jeffrey Kopf (sr)*

Jeffrey Kopf  
Assistant Regional Counsel

Enclosure

cc: Arthur S. Robinson, Esq.