



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105-3901



IN THE MATTER OF:) Docket No. CWA-09-2022-0044
)
IMPERIAL IRRIGATION DISTRICT) COMPLAINT/CONSENT AGREEMENT
Imperial, California) AND FINAL ORDER
)
Respondent.) Class II Administrative Penalty Proceeding under
) Section 309(g) of the Clean Water Act, 33 U.S.C. §
) 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under section 309(g)(1)(A) and (2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), 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 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. Respondent is Imperial Irrigation District, Imperial, California.

4. 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).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. 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.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include a “public subdivision of a State.”
7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, “dredged spoil,” “biological materials,” “rock,” “sand,” and “cellar dirt.”
8. 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.”
9. 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.”
10. 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* 40 C.F.R. §§ 232.2(1)(v) (2015) (definition of tributaries) and 232.2(1)(vi) (2015) (definition of wetlands).
11. Regulations codified at 33 C.F.R. § 323.2(c) define “dredged material” as “material that is excavated or dredged from waters of the United States.” The term “discharge of dredged material” means “any addition of dredged material into, including any redeposit of dredged material other than incidental fallback within, the waters of the United States.” 33 C.F.R. § 323.2(d)(1).
12. Regulations codified at 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.”
13. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, EPA may assess a Class II civil administrative penalty of up to \$23,989 per day of violation, not to exceed \$299,857 in total, against a person for CWA section 301(a) violations that occurred after November 2, 2015, where penalties are assessed on or after January 12, 2022.

III. GENERAL ALLEGATIONS

14. Respondent is a California public agency organized under the California Irrigation District Law and a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
15. On or around August 26, 2019 through at least September 23, 2019, IID engaged in construction of the O-N Drain Connector Project (Project) on an easement it holds over real property (Property) owned by Magma Power Company Inc. (Owner) and located west of Davis Road, north of Schrimpf Road and south of McDonald Road, east of Morton Bay, northwest of the City of Calipatria, in Section 23, Township 11 South, Range 13 East, in Imperial County, California.
16. The Project consisted of the construction of one eastern drain bank and a portion of one western drain bank extending from the drain banks of IID’s “O Drain” at its terminus toward IID’s “N Drain” in a north-to-south direction, stopping at an existing roadway along the northern side of the N Drain. Additionally, a pipeline was installed in that existing roadway to connect the drainage channel of the drain banks to the N Drain. The existing drain banks of the O Drain have eroded and deteriorated

moving the terminus inland and discharges at the terminus of the O Drain no longer reach the Salton Sea. The eastern drain bank was improved by IID with an earthen roadway. The western drain bank was not completed and no water was diverted from the O Drain into the drainage channel. The O Drain continues to discharge at its terminus

17. The Project area contains wetlands which drain northwest towards the Salton Sea. The Salton Sea and its adjacent wetlands are all “waters of the United States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7). *See also* 40 C.F.R. §§ 232.2(1)(v) (2015) (definition of tributaries) and 232.2(1)(vi) (2015) (definition of wetlands).

18. On November 5, 2020, inspectors from EPA Region 9 and the U.S. Army Corps of Engineers (Corps) inspected the Project area and confirmed that Respondent had operated equipment such as dump trucks and graders to conduct earthmoving activities within the Project area that had resulted in the discharge of fill to approximately 1 acre of wetlands. The Project further caused indirect impacts to approximately 20 acres of wetlands located to the east of the Project area by severing the intermittent hydrological connection between those wetlands and Morton Bay.

19. As a result of the earthmoving activity in the Project area, Respondent discharged earthen materials that constituted “pollutants” under section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. Respondent’s discharge of dredged and/or fill materials into waters of the United States referenced in paragraph 18 constitutes a “discharge of pollutants” within the meaning of CWA section 502(12), 33 U.S.C. § 1362(12).

21. The earthmoving equipment used by Respondent to discharge fill material to waters of the United States within the Project area were “point source[s]” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Based on its November 5, 2020 inspection of the Project area, information provided by the Corps, and information provided by the Respondent, EPA alleges that Respondent discharged fill material without authorization under section 404 of the CWA, 33 U.S.C. § 1344, to approximately one (1) acre of wetlands and indirectly impacted approximately 20 acres of wetlands on the Property subject to CWA regulation as “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. EPA alleges that, by discharging fill material into waters of the United States located within the Project area without CWA permit authorization, Respondent violated section 301(a) of the CWA, 33 U.S.C. § 1311(a)

24. On May 23, 2022, EPA entered into an Administrative Order for Compliance, Docket No. CWA-309(a)-22-002 (“Order”) with Respondent that requires the removal of approximately one (1) acre of fill from the directly-impacted waters of the United States that will allow for the restoration of approximately 20 acres of the indirectly impacted waters of the United States at the Property.

IV. ALLEGED VIOLATION

25. As a result of the alleged earthmoving activity within the Project area that occurred on or around August 26, 2019 through at least September 23, 2019, on dates best known to Respondent, Respondent discharged or caused to be discharged fill material 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

26. In consideration of the penalty factors of CWA section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of two hundred ninety-nine thousand, eight hundred fifty-seven dollars (\$299,857) within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

27. Respondent shall pay the penalty by check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at <https://www.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

a. Check Payment:

- i. Checks sent by regular U.S. Postal Service mail shall be made payable to “Treasurer, United States of America” and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

- ii. Checks sent by express mail (non-U.S. Postal Service entities that do not deliver to P.O. Boxes) shall be made payable to “Treasurer, United States of America” and mailed to:

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

- d. On-line Payment: Go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete the required fields.

28. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
r9HearingClerk@epa.gov

Scott McWhorter
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
mcwhorter.scott@epa.gov

29. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.

30. Pursuant to section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the effective date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent’s penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including but not limited to the Debt Collection Act, 31 U.S.C. § 3711.

VI. APPLICABILITY

31. This CA/FO shall apply to and be binding on Respondent, Respondent's 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 Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

32. In accordance with 40 C.F.R. § 22.18(b), solely for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the complaint; (b) neither admits nor denies the specific factual allegations contained in this Consent Agreement; (c) consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above; (d) waives any right to contest the allegations set forth in this CA/FO; and (e) waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

33. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive relief or other equitable relief or criminal sanction for any violations of law.

34. 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. Nothing in this CA/FO shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

IX. ATTORNEY FEES AND COSTS

35. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

36. 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

37. Pursuant to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by

Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

38. Pursuant to section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

AMY MILLER- Digitally signed by AMY
MILLER-BOWEN
BOWEN Date: 2022.05.31 17:04:22
-07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Of counsel:
Richard Campbell
Attorney-Advisor
Office of Regional Counsel

For Respondent Imperial Irrigation District

James C. Hanks, President
Name/Title

5/17/22
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2022-0044) be entered and that Respondent shall pay a civil penalty in the amount of two hundred ninety-nine thousand, eight hundred fifty-seven dollars (\$299,857) in accordance with the terms of this Consent Agreement and Final Order.

**STEVEN
JAWGIEL** Digitally signed by
STEVEN JAWGIEL
Date: 2022.07.18
19:02:40 -07'00'

Steven L. Jawgiel
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint/Consent Agreement and Final Order in the matter of IMPERIAL IRRIGATION DISTRICT (CWA-09-2022-0044) has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Complainant and Counsel for Respondent by email, as indicated below:

COMPLAINANT:

Rich Campbell
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
Email: campbell.rich@epa.gov

RESPONDENT:

Clark Morrison
Cox, Castle & Nicholson LLP
50 California Street
Suite 3200
San Francisco, California 94104
Email: cmorrison@coxcastle.com

Ponly J. Tu
Regional Hearing Clerk
U.S. EPA Region 9

Dated: _____