UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

2014 MAY 13 AM 9:51

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2014-0018

IN THE MATTER OF:	)	
	)	
ROBERT GREGG SEASE	)	**FINAL ORDER**
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2) and (3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 13th **DAY OF** May**, 2014.**

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF	)	**CONSENT AGREEMENT**
	)	
Robert Gregg Sease	)	Docket No. **CWA-08-2014-0018**
	)	
Respondent.	)	Simultaneous Commencement and
	)	Conclusion of a Proceeding Pursuant
	)	to Section 309(g) of the Clean Water
	)	Act and 40 C.F.R. § 22.13(b).

The United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Robert Gregg Sease (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. The EPA has jurisdiction over this matter pursuant to section 309(a) of the Clean Water Act (CWA or Act), as amended, 33 U.S.C. § 1319(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits," 40 C.F.R. part 22, a copy of which has been provided to Respondent.

2. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained in this Consent Agreement, neither admits nor denies the factual allegations contained in this Consent Agreement, consents to the assessment of the civil penalty, and waives any right to a hearing or appeal before any tribunal and to contest any issue of law or fact set forth herein.

4. Complainant asserts that settlement of this matter is in the public interest, and the parties agree that entry of this Consent Agreement without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter at the least cost and expense to the Respondent and the EPA.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's employees, agents, successors and assigns. Any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

6. This Consent Agreement contains all terms of the settlement agreed to by the parties.

II. GENERAL ALLEGATIONS

7. Respondent is an individual with a primary place of residence of 4413 Orofino Place, Castle Rock, CO 80108. Respondent also owns a place of residence at the Site of 28890 CO Road 33 Ee, Saguache, Colorado 81149.

8. At all relevant times, Respondent owned, leased, controlled and/or operated property located in Sections 5, 7, and 8, Township 45 North, Range 5 East of the N.M.P.M., Saguache County, Colorado including Sheep Creek and its adjacent wetlands (the Site).

9. Sheep Creek is a relatively permanent tributary to San Luis Lake. From the Site, Sheep Creek flows approximately 3.1 miles to Saguache Creek, which flows approximately 60 miles to San Luis Creek, which flows approximately 20 miles to San Luis Lake. San Luis Lake is currently used, or was used in the past, or may be susceptible to use by interstate or foreign travelers, for recreational or other interstate or foreign commerce.

10. Sometime during the week of August 24, 2009, Respondent and/or persons acting on his behalf removed approximately sixty (60) undecreed stream impoundments from within Sheep Creek at the Site. The dredged or fill material removed from Sheep Creek was side-casted along the creek's banks and placed directly within adjacent wetlands at the Site.

11. On September 2, 2009, the U.S Army Corps of Engineers (Corps) conducted an inspection of the Site. The Corps found that the activities described in paragraph 10 had been conducted without a permit under section 404 of the CWA, 33. U.S.C. § 1344, in violation of section 301 of the CWA, 33 U.S.C. § 1311.

12. On January 13, 2010, the Corps referred the CWA violations described in paragraphs 10 and 11 to the EPA for enforcement in accordance with the "Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act," dated January 19, 1989.

13. On June 9, 2011, the EPA issued a Findings of Violations and Administrative Order for Compliance, Docket No. CWA-08-2011-0015 (June 9, 2011, Order), to Respondent for the CWA violations described in paragraphs 10 and 11. The June 9, 2011, Order specified the nature of the CWA violations and described actions necessary for Respondent to achieve compliance with sections 301 and 404 of the CWA.

14. On September 29, 2011, the EPA approved Respondent's Restoration Plan submitted on September 19, 2011, by Bikis Water Consultants, LLC, for the: (1) removal of all dredged or fill material that was discharged into the waters and wetlands at the Site; and (2) restoration, to their pre-impact configuration and/or grade, of the waters and wetlands that were impacted as a result of Respondent's unauthorized discharges of dredged or fill material at the Site.

15. In letters to the EPA dated November 14th and 16th, 2011, Respondent's legal counsel stated that Respondent had advised him that the work set forth in the September 19, 2011, Restoration Plan had been completed, except for some small areas where the work would be completed the next day.

16. Sometime between September 2011 and August 2012, Respondent and/or persons acting on his behalf discharged dredged or fill material into Sheep Creek and its adjacent wetlands at approximately 86 locations over 1.66 miles of Sheep Creek at the Site. Some, if not all, of the

dredged or fill material that was required to be removed as part of the September 19, 2011, Restoration Plan was discharged back into Sheep Creek and its adjacent wetlands at the Site by Respondent and/or persons acting on his behalf.

17. On July 24, 2012, the Colorado Division of Water Resources (CODWR) informed the Corps and the EPA about Respondent's ongoing activities in Sheep Creek and its adjacent wetlands at the Site that CODWR observed during an inspection of the Site on July 18, 2012.

18. On August 29, 2012, a multi-agency inspection was conducted at the Site with Respondent, Respondent's legal counsel, and Bikis Water Consultants, LLC. The agencies participating in this inspection included the Corps, the EPA, and the CODWR. During this inspection, the EPA and the Corps found that the activities described in paragraph 16 were conducted without a permit required by section 404 of the CWA, 33. U.S.C. § 1344, in violation of section 301 of the CWA, 33 U.S.C. § 1311.

19. Respondent is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

20. The activities described in paragraph16 were performed using common earthmoving vehicles and equipment, all of which were operated by Respondent and/or by persons acting on its behalf.

21. The vehicles and equipment described in paragraph 20 are and were at all relevant times each a "point source" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. The discharged dredged or fill material referenced in paragraph 16 above is and was at all relevant times "dredged material" or "fill material" within the meaning of 33 C.F.R.§ 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and "pollutants" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. Sheep Creek and its adjacent wetlands filled and disturbed by Respondent's unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.

24. Sheep Creek and its adjacent wetlands referenced above are and were at all relevant times "waters of the United States" as defined in 33 C.F.R. § 328.3(a) and therefore "navigable waters" as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. The placement of dredged or fill material into Sheep Creek and its adjacent wetlands constitutes the "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

26. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

27. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters which are defined as waters of the United States.

28. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States, unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

29. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 16.

III. DESCRIPTION OF VIOLATION

30. The activities conducted by Respondent and/or by persons acting on his behalf as described in paragraph 16 violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permit constitutes an additional day of violation of section 301(a) of

the CWA. The period of violation for which the EPA is seeking penalties began sometime between May and August 2012 and continues to this day.

31. Removal of the dredged or fill material from Sheep Creek and its adjacent wetlands will be addressed in an Administrative Order on Consent under section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

IV. CIVIL PENALTY

32. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the EPA, after consultation with the State of Colorado, to impose administrative penalties up to $16,000, for each violation of the Act, with a total maximum allowed penalty of $187,500, for Class II violations, as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66643 (November, 6, 2013).

33. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based on the extent of the violations, Respondent's history of similar violations, the degree culpability, and other factors, the EPA has determined that an appropriate civil penalty to settle this matter is $100,000.

34. Complainant will consult with the State of Colorado on the appropriateness of the penalty in this matter during the public notice period required by 40 C.F.R. § 22.45.

V. TERMS AND CONDITIONS

35. Respondent consents and agrees to pay a civil penalty in the amount of $100,000 in the manner described below:

a. The payment of the civil penalty shall be made in three installments. **Payment of $50,000 is due by May 31, 2014; $25,000 is due September 30, 2014; and the final payment of $25,000 is due March 31, 2015.** If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by US Bank described below. Payments received by 11:00 A.M. EST are processed on the same day, those received after 11:00 A.M. are processed on the next business day.

b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case; for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank
Government Lockbox 979077
U.S EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Automated Clearinghouse (ACH) for receiving US currency:

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

Physical location of US Treasury facility:
5700 Riverteeh Court
Riverdale, MD 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express) 800-234-5681

On-line Debit and Credit Card payment:

There is now an On-Line Payment Option available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

A copy of the payment shall be sent simultaneously to:

Kenneth M. Champagne
U.S. EPA Region 8 (ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. In the event a payment is not received by the specified due date, the entire principal sum then unpaid shall be come due and payable without notice or demand, and interest accrues from the date of the Final Order, not the specified due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).

d. In addition, a handling charge of fifteen dollars ($15) shall be assessed the 31st day from the date of the Final Order and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or tax credit.

36. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

37. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

38. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

39. The undersigned representative of Respondent certify that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

40. In accordance with 40 C.F.R. § 22.45, the EPA will provide public notice of this action. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper, or inadequate. Respondent agrees not to withdraw from, oppose the Regional Judicial Officer's entry of a final order, or challenge any provision of this Consent Agreement, unless the EPA has notified Respondent in writing that it no longer supports entry of the Consent Agreement.

41. Unless the EPA determines that comments received during the public comment period require modification of or withdrawal from this Consent Agreement by the EPA, the parties

agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

42. Each party shall bear its own costs and attorney fees in connection with this matter.

43. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for civil penalties for the violations alleged in paragraphs 16 and 18.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant

Date: 03-27-2014

Eddie A. Sierra

for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

ROBERT GREGG SEASE,
Respondent

Date: 03-10-14

R Gregg Sease

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT CONSENT AGREEMENT

Purpose of Public Notice

The purpose of this notice is to announce the United States Environmental Protection Agency's (EPA's) intention to enter into a consent agreement with:

Robert Gregg Sease
4410 Orofino Place
Castle Rock, CO 80108

for alleged violations of the Clean Water Act (CWA) on Sheep Creek, Saguache County, Colorado, and to give the public the opportunity to comment on the proposed consent agreement.

Process Information

Under the CWA, the EPA is authorized to issue orders assessing civil penalties for violations of the CWA. 33 U.S.C. § 1319(g). The EPA may issue such an order after the commencement of an administrative penalty proceeding. As required by law, the EPA is hereby providing public notice of the proposed consent agreement. 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b).

Administrative enforcement proceedings are conducted under the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22. The procedures through which the public may submit written comment on a proposed consent agreement and participate in a proceeding are set forth in 40 C.F.R. § 22.45. The proposed consent agreement has been entered into by the parties for the purpose of simultaneously commencing and concluding this matter as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The deadline for submitting public comment on a proposed consent agreement is forty (40) days after the date of this public notice.

Case Summary

The consent agreement in the matter of Robert Gregg Sease (Respondent), Docket No. CWA-08-2014-0018, was filed on March 27, 2014. A settlement was reached via pre-filing negotiations and formalized in this consent agreement with a proposed penalty of $100,000 for unpermitted discharges of dredged or fill material into Sheep Creek and its adjacent wetlands, near Saguache, Saguache County, Colorado. The unpermitted discharges occurred sometime between September of 2011 and August 2012. Sheep Creek is, and was at all relevant times, a water of the United States.

Further Information and Comments

Persons wishing to receive a copy of any documents filed in these proceedings, comment upon the proposed consent agreement, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk, Tina Artemis, U.S. Environmental Protection Agency, Region 8 (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone: 303.312.6765. Written comments on this proposed consent agreement must be directed to the Regional Hearing Clerk by the deadline set forth above in this public notice. For technical questions, contact Kenneth Champagne, Technical Enforcement Program, at champagne.kenneth@epa.gov, the same EPA address above, or 303.312.6608. Persons with legal questions may contact Jim Eppers, Legal Enforcement Program, at eppers.jim@epa.gov, the same EPA address above, or 303.312.6893. The case docket

for this proceeding is located in the EPA - Region 8 office identified above and the file will be open for public inspection during normal business hours. Written comments submitted by the public are available as part of the case docket, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, no final order assessing a penalty in these proceedings will be issued prior to **40 calendar days after publication of this notice.**

March 27, 2014
Date of Publication

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT** in the matter of **ROBERT GREGG SEASE; DOCKET NO.: CWA-08-2014-0018** was filed with the Regional Hearing Clerk on March 27, 2014; the **FINAL ORDER** was filed with the Regional Hearing Clerk on May 13, 2014.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Jim Eppers, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on May 13, 2014 to:

Robert Gregg Sease, Owner
4410 Orofino Place
Castle Rock, CO 80108

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

May 13, 2014

Tina Artemis
Paralegal/Regional Hearing Clerk

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