



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: ENF

SEP 11 2008

Scott M. Shepherd
Too Buds, LLC
P.O. Box 3393
Jackson, WY 83001

Re: Rafter J Subdivision, Walden Pond, Phase B
Teton County, WY
Administrative Order on Consent
EPA Docket No. **CWA-08-2008-0026**

Dear Mr. Shepherd:

Thank you for obtaining signatures on the Administrative Order on Consent (AOC) concerning restoration of aquatic habitat on the west bank of the Snake River and preservation of Lot 332 of the Replat of the Rafter J subdivision in Teton County as open space. I have signed the AOC, my staff has filed it with EPA Region 8's Regional Hearing Clerk, and a fully executed and file-stamped copy is enclosed.

If you have any questions or comments, please feel free to contact Diane Sipe at 303-312-6391 or Monica Heimdal at 303-312-6359. We look forward to receiving your restoration plan.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Bivner" with "for" written below it.

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

cc: Matthew A. Bilodeau
U.S. Army Corps of Engineers



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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Two Buds, LLC,)
Scott Shepherd,)
Kasey Mateosky,)
Joyce Wilson and Floyd R. King)
doing business as)
the Rafter J Partners,)
The Estate of Jerry L. Wilson,)
and Floyd R. King,)
)
)
Respondents)
_____)

ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT

Docket No. CWA-08-2008-0026

I. INTRODUCTION

This Administrative Compliance Order on Consent (“Consent Order”) is entered into voluntarily between the United States Environmental Protection Agency (“EPA”) and Too Buds, LLC, Scott Shepherd, Kasey Mateosky, Joyce Wilson and Floyd R. King doing business as the Rafter J Partners, the Estate of Jerry L. Wilson, and Floyd R. King (“Respondents”). Its primary concern is restoring aquatic habitat on the west bank of the Snake River in Teton County, Wyoming.

II. STATUTORY AUTHORITY

This Consent Order is issued pursuant to the authority vested in the Administrator of the EPA by sections 308 and 309 of the Clean Water Act (“CWA”), 33 U.S.C. §§1318 and 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Consent Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. §1311(a), which,

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among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. §1344.

III. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and each Respondent, and each Respondent's agents, heirs, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order.

IV. STATEMENT OF PARTIES

Respondents consent to the issuance of this Consent Order, agree to abide by all its terms and conditions, and agree not to challenge the jurisdiction of EPA or the following Findings of Fact in any proceeding to enforce this Consent Order.

V. FINDINGS OF FACT

1. Respondent Two Buds, LLC, is a limited liability company registered with the Secretary of State of the State of Wyoming as of March 16, 2004. Its registered agent for service of process is Donna H. Shepherd, 1055 S. Gregory Lane, P.O. Box 4338, Jackson, Wyoming, 83001.
2. Respondent Scott Shepherd is an individual residing in Jackson, Wyoming.
3. Respondent Kasey Mateosky is an individual residing in Jackson, Wyoming.
4. Respondent Rafter J Partners is a partnership now consisting of Floyd R. King and Joyce Wilson and formerly consisting of Floyd R. King and Jerry L. Wilson.
5. Respondent Floyd R. King ("King") is an individual residing in Jackson, Wyoming.

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6. Respondent Joyce Wilson is an individual residing in Jackson, Wyoming, and the executrix of the estate of Jerry L. Wilson.

7. In 1990, Respondents King and Rafter J Partners, along with Jerry L. Wilson, owned, controlled, and/or operated property in the west ½ of the northeast quarter of Section 18, Township 40 North, Range 116 West, in South Park, Teton County, near Jackson, Wyoming (the "Site").

8. Following inspections of the Site on October 29, 1990, and November 19, 1990, the U.S. Army Corps of Engineers ("Corps") and the EPA determined that the Site contained approximately 4.0 to 4.5 acres of wetlands as defined in 33 C.F.R. §328.3(b) and 40 C.F.R. §230.3(t) that were subject to the Corps' regulatory program as "waters of the United States" as defined in 33 C.F.R. §328.3(a) and 40 C.F.R. §230.3(s).

9. Between approximately July and November, 1990, Respondents King and Rafter J Partners, along with Jerry L. Wilson, contracted for grading and road construction, installation of water and sewer lines and other utilities, and construction of six "twin home" dwelling units on Lots 30-35 at the Site.

10. In the course of the construction described in paragraph 9, above, Respondents King and Rafter J Partners, along with Jerry L. ^{Wilson} King, discharged at least 3,500 cubic yards of dredged or imported fill material in at least 1.8 acres of the wetlands at the Site, using a backhoe, a bulldozer, and dump trucks. Respondents neither applied for nor received a permit from the Corps allowing such a discharge, as required under section 404 of the CWA, 33 U.S.C. §1344.

11. Following the discovery of the unpermitted discharges on October 29, 1990, the Corps issued a cease and desist letter to Jerry L. Wilson, with copies provided to Respondent

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King and Respondent Rafter J Partners' building contractor. The cease and desist letter stated that the discharge of fill material into wetlands was prohibited without a permit from the Corps.

12. The wetlands filled and disturbed by the unauthorized activities described above provided various functions and values, including: wildlife habitat for birds, mammals, reptiles, and amphibians; water quality enhancement; food chain support; ground water recharge and discharge; and aesthetics.

13. The discharged materials referenced in paragraph 10, above, constitute "pollutants" as that term is defined in section 502(6) of the CWA, 33 U.S.C. §1362(6).

14. The wetlands referenced in paragraph 10, above, were, immediately before the discharges mentioned in paragraph 10, above, waters of the United States as that term is defined in 33 C.F.R. §328.3(a) and therefore "navigable waters" as that term is defined in section 502(7) of the CWA, 33 U.S.C. §1362(7).

15. The discharged dredged material referenced above is and was at all relevant times "dredged material" as that term is defined in 33 C.F.R. §323.2(c) and "pollutants" as that term is defined in section 502(6) of the CWA, 33 U.S.C. §1362(6).

16. The discharged fill material referenced above is and was at all relevant times "fill material" as that term is defined in 33 C.F.R. §323.2(e) and "pollutants" as that term is defined in section 502(6) of the CWA, 33 U.S.C. §1362(6).

17. Each piece of earthmoving equipment used to move the dredged or fill material referenced above is a "point source" as that term is defined in section 502(14) of the CWA, 33 U.S.C. §1362(14).

18. Each Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. §1362(5).

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19. The placement of dredged or fill material into the wetlands referenced above constitutes the “discharge of pollutants” as that term is defined in section 502(12) of the CWA, 33 U.S.C. §1362(12).

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

21. 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.

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

23. The activities conducted by Jerry L. Wilson, Respondent King, and Respondent Rafter J Partners, as described above, violated section 301(a) of the CWA, 33 U.S.C. §1311(a).

24. In response to the violations described above, EPA issued the following administrative enforcement actions to Jerry L. Wilson and to Respondents King and Rafter J Partners:

- a. CWA-VIII-92-06-C, dated October 21, 1991 (the “1991 Restoration Order”), requiring restoration of certain wetlands at the Site, i.e., those wetlands on Lots 37-58 and those portions of Lot 36 not necessary for access to the twinhomes built on Lots 30-35 (the “Restoration Wetlands”),



- b. CWA-VIII-92-07, dated October 21, 1991, requiring mitigation at a nearby site in Tract 2B (Rafters J Ranch Common Area) to compensate for other wetlands lost by the six units that had been built (on Lots 30-35 and part of Lot 36 at the Site) before the cease and desist letter referenced above, and
- c. CWA-VIII-92-03-P11, dated December 3, 1991 (the "Penalty Order"), requiring payment of a \$48,000 administrative penalty for the violations described above.

25. The 1991 Restoration Order required Jerry L. Wilson, Respondent King, and Respondent Rafters J Partners to submit a plan to EPA for restoring the Restoration Wetlands. The plan that Jerry L. Wilson, Respondent King, and Respondent Rafters J Partners submitted was entitled "WETLANDS RESTORATION PLAN" prepared by ECOTONE Environmental Consulting, Inc., and dated June 1993 ("1993 Restoration Plan"). Consistent with the terms of the 1991 Restoration Order, the 1993 Restoration Plan became an enforceable component of the 1991 Restoration Order upon EPA approval.

26. As described in the Penalty Order, in paragraph 4 under the section "General Provisions," EPA agreed to a temporary stay of the effectiveness of the 1991 Restoration Order, pending the outcome of the Corps' decision on an application for authorization under section 404 of the CWA to fill the Restored Wetlands. The Corps denied that application on April 14, 1993, thereby activating the obligation of Jerry L. Wilson, Respondent King, and Respondent Rafters J Partners to remove fill from and to restore the Restoration Wetlands in accordance with the Restoration Plan.

27. The 1991 Restoration Order remains in effect.

28. Activities to be carried out under this Consent Order are remedial, not punitive, and are achievable as a practicable matter through commonly used construction, digging, filling,

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revegetation, and best management practices. EPA asserts that the actions required by this Consent Order are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," according to section 101(a) of the CWA, 33 U.S.C. §1251(a).

29. EPA has made these FINDINGS OF FACT and issues the following ORDER FOR COMPLIANCE after consultation and coordination with the Corps' Omaha District.

VI. ORDER FOR COMPLIANCE

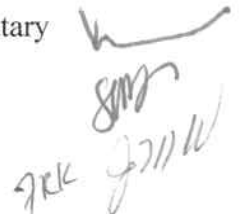
Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, it is hereby ORDERED and AGREED:

1. Respondents shall not discharge any pollutant into wetlands or other regulated waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

2. Respondents shall prepare a plan (the "Aquatic Restoration Plan") for Respondents to restore and improve aquatic habitat along the west bank of the Snake River in Teton County, Wyoming, and to help compensate for the impact of developing the Restoration Wetlands.

a. Within 60 days of the effective date of this Consent Order, 3 copies of the Aquatic Restoration Plan shall be submitted to EPA for review.

b. The Aquatic Restoration Plan shall provide for restoration and enhancement of aquatic habitat in and around the Snake River, including restoration of hydrology for at least 2500 acres of wetlands and riparian habitat along the west bank of the Snake River, between the northern boundary of the Tucker Ranch Subdivision and the confluence of Fish Creek and the Snake River, and along tributary

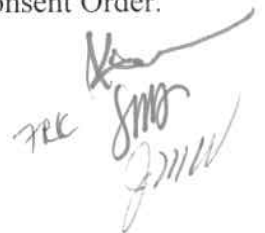
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streams and creeks, in Teton County, Wyoming. It also shall include restoration of hydrology for at least 30,000 linear feet of stream or creek channels. The area covered by the Aquatic Restoration Plan is shown on Attachment 1 of this Consent Order.

- c. The Aquatic Restoration Plan shall be prepared in accordance with the guidelines from EPA Region 8 entitled "Clean Water Act §404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals," a copy of which is attached to this Consent Order as Attachment 2.
- d. The Aquatic Restoration Plan shall include locations of all current wetlands and stream channels included in the restoration/enhancement project area, with a comparison of the extent and character of wetlands and stream channels before execution of the Aquatic Restoration Plan and the anticipated extent and character of wetlands and stream channels after execution of the Aquatic Restoration Plan. Wetlands and stream channels that are most representative of the project area shall be used as reference areas for the purpose of making these comparisons.
- e. The Aquatic Restoration Plan shall include a written demonstration satisfactory to EPA that for the life of the project, Respondents are and will be entitled to access all properties to be restored under the Aquatic Restoration Plan and are able to provide EPA and the Corps with the access required in Paragraph 16, below. This demonstration shall include, but not be limited to, agreements with all appropriate government agencies and landowners allowing Respondents access to the land where restoration, enhancement, or monitoring of wetlands or aquatic habitat is to occur.

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- f. The Aquatic Restoration Plan shall include:
- i. a monitoring plan with measurable criteria for success of restoration and enhancement; at Respondents' discretion, annual fish counts of the Snake River fine-spotted cutthroat trout, to be conducted each month from May through September at pre-determined sampling points, may be employed as one method to measure success of the restoration and enhancement of aquatic habitat in and around the Snake River;
 - ii. a description of any planned grading and/or planting, with provisions for proper disposal of any excess soils or other materials generated during construction and restoration and enhancement;
 - iii. detailed professional drawings of each restoration or enhancement site, including plan and profile drawings with control elevations;
 - iv. a detailed schedule for completion of all phases of the aquatic habitat and wetlands restoration and enhancement, including construction and monitoring; and
 - v. a description of all costs to complete the restoration and enhancement work, including costs of all studies, consultations, permits, monitoring, and construction.
- g. The Aquatic Restoration Plan shall be prepared by a consultant experienced in stream and wetland restoration, who shall directly supervise all work performed pursuant to the Aquatic Restoration Plan. Respondents shall provide EPA with a statement of the consultant's qualifications, including professional resume and business qualifications, within 30 days of the effective date of this Consent Order.

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- h. All activities conducted pursuant to the Aquatic Restoration Plan that involve the use of heavy construction equipment shall be undertaken by an equipment operator experienced in stream and wetland restoration. Respondents shall provide EPA with a statement of the equipment operator's qualifications, including professional resume and business references, within 30 days of the effective date of this Consent Order.
 - i. EPA may review the Aquatic Restoration Plan and provide comments or disapprove it. If EPA disapproves or provides comments on the Aquatic Restoration Plan, Respondents shall, within 30 calendar days of receipt of EPA's disapproval or comment letter, submit a revised Aquatic Restoration Plan that corrects each deficiency and addresses each comment EPA has identified or raised.
 - j. If any portion of the work described in the Aquatic Restoration Plan is funded by any governmental entity, Respondents shall immediately notify EPA and, within 30 days of learning of such funding, submit a revised Aquatic Restoration Plan to EPA providing for additional restoration to offset the amount of work performed with government funding.
3. Respondents shall begin implementing the Aquatic Restoration Plan within 30 days after the later of (i) initiating any earth moving activities at the Site or (ii) satisfactorily addressing or correcting any comments raised by or deficiencies identified by EPA concerning the Aquatic Restoration Plan. The project shall be completed according to the schedule contained in the Aquatic Restoration Plan. Respondents must obtain authorization from the Corps prior to undertaking any dredge or fill activities subject to regulation under the CWA in

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the Restoration Wetlands or in any other waters of the United States (including any waters of the United States that may be in the area covered by the Aquatic Restoration Plan).

4. Respondents shall monitor the success of the project in accordance with the schedule contained in the Aquatic Restoration Plan. Annual monitoring shall continue for 10 calendar years after the date of final planting required in the Aquatic Restoration Plan unless, prior to that time, the success of the entire project has been fully demonstrated and accepted in writing by EPA. If an annual monitoring report demonstrates that the project is not making progress toward meeting the criteria for success set forth in the Aquatic Restoration Plan, Respondents shall submit the analysis required in Paragraph 5, below.

5. If any aspect of the project fails to meet the criteria for success in the Aquatic Restoration Plan, Respondents will repair, replace, and maintain any improvements necessary to meet the criteria. Upon realization of any project failure, Respondents shall submit to the Corps and EPA an analysis of the project's failure and a proposed plan for correcting all deficiencies in the project. The proposed plan for correcting these deficiencies shall include provisions for adequately monitoring and reporting the effectiveness of the measures proposed to correct the deficiencies.

6. Respondents may file a Petition to Amend the Aquatic Restoration Plan to move or alter the proposed restoration or enhancement areas without reducing the size thereof as provided above, should circumstances change beyond the control of Respondents that would require an amendment. At any time after the entry of this Order any such application will be subject to EPA and any other governmental permits or other approvals.

7. Respondents shall make good-faith efforts to secure agreements from all owners whose property is within the area covered by the Aquatic Restoration Plan to ensure that the

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property to be restored and enhanced pursuant to this Consent Order shall be protected from development and/or open to public access in perpetuity. These efforts are to be made at the same time Respondents seek property owners' permission to allow additional water to flow through their property as contemplated by the Aquatic Restoration Plan. Property owners' decisions are to be documented by Respondents and provided to EPA. This obligation also shall include filing appropriate easements, notices, and any other associated documents in the deed records of Teton County, Wyoming. Respondents shall provide EPA and the Corps with draft copies of all such documents within 30 days of submitting the Aquatic Restoration Plan to EPA. Respondents shall identify the acres of wetlands and the linear feet along the Snake River that shall be protected from development and/or open to public access in perpetuity in each annual monitoring report that is submitted to EPA and the Corps.

8. Respondents shall ensure that Lot 332 of the Replat of Rafter J Subdivision, Teton County, Wyoming, according to the Plat recorded November 16, 1982 as Plat No. 526 will remain as undeveloped wetland. This obligation shall not include irrigating Lot 332 or providing supplemental water in the event of a drought. This obligation includes submitting a plan to EPA to plant appropriate wetland vegetation on Lot 332, implementing the plan as approved by EPA, and, within six months of the effective date of this Consent Agreement, filing any appropriate easement(s), notice(s), and other documents in the deed records of Teton County, Wyoming, to ensure that Lot 332 will be protected from development or from any other uses that would impair its wetlands functions. Respondents shall provide EPA and the Corps with draft copies of all such documents within 90 days of the effective date of this Consent Order and shall make all changes to such documents as EPA may reasonably request prior to filing these documents with the county deed records. Respondents may convey Lot 332 or any easement for Lot 332 to the

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Rafter J Homeowners Association or to a private entity specializing in holding real property for conservation purposes, subject to restrictive covenants ensuring that Lot 332 will remain in perpetuity undeveloped, free of land uses that would impair wetlands functions and values, and accessible to the public.

9. Respondents' obligations under this Consent Order are severable. If a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Consent Order, the remainder of the Consent Order shall be fully enforceable.

10. Any submission any Respondent is required by this Consent Order to provide to the Corps is to be sent to:

Matthew Bilodeau and/or Thomas Johnson
U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, WY 82009
Telephone: 307-772-2300
Facsimile: 307-772-2920

11. Any notice any Respondent is required by this Consent Order to provide to EPA is to be provided to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6359
Facsimile: 303-312-7202

A copy of all notifications and related correspondence also shall be provided to:

Peggy Livingston, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6858
Facsimile: 303-312-7202

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12. EPA agrees to submit all notifications and correspondence required by this Consent Order to be provided to any Respondent to:

Scott Shepherd
Scott Shepherd Real Estate
P.O. Box 3393
1055 Gregory Lane
Jackson, WY 83001

Any party hereto may, by notice, change the address to which future notices shall be sent or the identity of the person designated to receive notices hereunder. Actual receipt by an individual specified above of any written notice, whether or not given in accordance with the terms of this paragraph, shall be deemed to be notice given pursuant to the Consent Order.

13. In addition to the notification requirement set forth in this Consent Order, after issuance of any Corps permit required for the work to be performed under the Aquatic Restoration Plan, Respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

14. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Consent Order and subject to EPA enforcement.

15. If any event occurs which causes or may cause delays in the completion of the project as required under this Consent Order, Respondents shall notify and consult with EPA in an expeditious manner. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. If the parties agree that the delay or anticipated delay in compliance with this

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Consent Order has been or will be caused by circumstances beyond the control of Respondents, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

16. This Consent Order, or the signature pages thereof, may be executed in counterparts, all of which shall have full force and effect as an original, including admission into evidence, and facsimile signatures shall constitute originals for all purposes.

17. Respondents shall allow access by any authorized representatives of EPA or its contractors, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the State of Wyoming Department of Environmental Quality, upon proper presentation of credentials, to sites and records relevant to this Consent Order, including all wetlands and aquatic habitat to be restored and enhanced for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Consent Order;
- b. To inspect and monitor compliance with this Consent Order; and
- c. To verify and evaluate data and other information submitted to EPA.

This Consent Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the sites, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

18. If, before they have fulfilled their obligations under this Consent Order, Respondents transfer any ownership or lease interest in any portion of a location where restoration or enhancement has occurred or is to occur under the Aquatic Restoration Plan, Respondents shall provide a copy of this Consent Order and the Aquatic Restoration Plan to the

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transferee or lessee not less than 30 days prior to the transfer or lease. A transfer or lease of interest shall not relieve Respondents of any responsibility in the Consent Order unless EPA, Respondents, and the transferee or lessee agree in writing to allow the transferee or lessee to assume such responsibility. Additionally, 30 days prior to such transfer or lease, Respondents shall notify EPA at the address specified in this Consent Order for notifications to EPA.

19. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in the Restoration Wetlands or in any other part of the waters of the United States. No EPA action on the Aquatic Restoration Plan shall have any bearing on whether the Corps will grant such a permit or any conditions of such a permit or on whether the Corps will perform a jurisdictional determination concerning the Restoration Wetlands. The restoration and enhancement required by this Consent Order is in addition to any other conditions that the Corps may require in any permit.

20. Respondents shall consult with the Corps at the address and telephone number in paragraph 10, above, to determine if any work to be performed related to implementing the Aquatic Restoration Plan requires a permit from the Corps under section 404 of the CWA. If required, Respondents shall obtain each such permit(s) and provide a copy of each such permit to EPA within seven days of issuance of such permit and prior to initiating any work that is to be performed pursuant to the Aquatic Restoration Plan or this Consent Order.

21. EPA agrees that within two weeks of the effective date of this Consent Order, EPA will stay the effectiveness of the 1991 Restoration Order. If Respondents are denied a permit from the Corps to place or discharge dredged or fill material in the Restoration Wetlands, Respondents shall no longer be under any obligation to submit or implement the Aquatic Restoration Plan referenced above or to ensure that Lot 332, referenced above, remains

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undeveloped wetland, and the 1991 Restoration Order will go back into effect immediately. If (a) Respondents are granted a permit from the Corps to place or discharge dredged or fill material in the Restoration Wetlands, or (b) the Corps and/or EPA, upon conclusion of the procedures outlined in the June 5, 2007, memorandum by the Corps and EPA regarding "Coordination on Jurisdictional Determinations (JDs) Under Clean Water Act (CWA) Section 404 in Light of the SWANCC and Rapanos Supreme Court Decisions," find that the Restoration Wetlands are not "waters of the United States" as that term is defined in the CWA, then EPA shall close the 1991 Restoration Order within 30 days of the issuance of such permit or conclusion of the JD process, and Respondents shall retain their obligations to submit and implement the Aquatic Restoration Plan referenced above and to ensure that Lot 332, referenced above, remains undeveloped wetland.

22. Respondents understand and acknowledge that 33 U.S.C. §1319(d) authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the CWA, 33 U.S.C. §1311, and that section 1319(c) of the CWA, 33 U.S.C. §1319(c) authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violation of this Consent Order or of the CWA from and after the date of this Consent Order.

23. Respondents understand and acknowledge that compliance with the terms and conditions of the Consent Order shall not be construed to relieve Respondents of their obligation to comply with any applicable Federal, state, or local law or regulation.

24. Each party shall bear its own costs and attorneys fees in connection with this matter.

ZRK
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25. This Consent Order constitutes the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in this Consent Order. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement of this matter other than those expressly contained in this Consent Order.

26. Each party agrees to execute, approve, and adopt any and all instruments, documents, and resolutions as may be reasonably required to effectuate the terms, conditions, and provisions contained in this Consent Order. Such instruments, documents, and resolutions shall be in form and substance reasonably acceptable to the parties.

27. This Consent Order constitutes the entire agreement of the parties and a complete merger of all prior negotiations and agreements. This Consent Order shall not be modified except in writing signed by all of the parties hereto or their authorized representatives.

28. The effective date of this Consent Order is the latest date of the parties' signatures, below.

**FOR UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 9/12/08

By: Michael T. Bisner
for

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency, Region 8

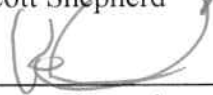
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Date: 8/19/08

FOR RESPONDENT TWO BUDS, LLC

By: 
Scott Shepherd *man*

Date: 8/20/08

By: 
Kasey Mateosky

Date: 8/19/08

FOR RESPONDENT SCOTT SHEPHERD

By: 
Scott Shepherd


Date: 8/20/08

FOR RESPONDENT KASEY MATEOSKY

By: 
Kasey Mateosky

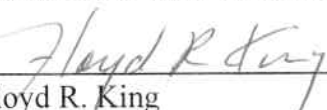
Date: 8-20-08

FOR RESPONDENT THE ESTATE OF JERRY L. WILSON

By: 
Joyce Wilson, Executrix

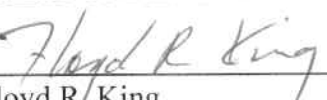
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FOR RESPONDENT FLOYD R. KING

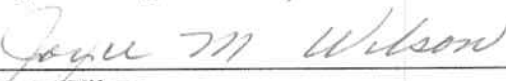
By: 
Floyd R. King

Date: 8-22-08

FOR RESPONDENT RAFTER J PARTNERS

By: 
Floyd R. King

Date: 8-20-08

By: 
Joyce Wilson

bcc:

Monica Heimdal, 8ENF-T
Peggy Livingston, 8ENF-L

cc address:

Matthew Bilodeau
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