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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
)  
)  
)  
JUG MOUNTAIN RANCH, LLC, ) DOCKET NO. CWA-10-2012-0139  
)  
) CONSENT AGREEMENT and  
Respondent ) FINAL ORDER  
)  
)  
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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2. 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, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Jug Mountain Ranch, LLC (Respondent) agrees to issuance of, the Final Order contained in Part V of this CAFO.

Docket Number: CWA-10-2012-0139  
Consent Agreement and Final Order  
In the Matter of: Jug Mountain Ranch, LLC,

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037

## 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 effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutants by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” “Navigable waters” are defined as “waters of the United States.” Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3.2. Respondent, Jug Mountain Ranch, LLC (JMR), the owner and operator of the Jug Mountain Ranch Wastewater Treatment Plant (JMR WTP), is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. NPDES Permit ID-002802-9 (Permit) was issued to Respondent for the JMR WTP and became effective on August 24, 2004. The Permit was set to expire on July 31, 2009. Respondent submitted a timely and complete application to renew the Permit and the Permit was administratively extended. The Permit is by the administrative extension effective and enforceable until a new Permit is issued.

3.4. The JMR WTP, which was under Respondent's control at all times relevant to this action, discharges pollutants from the wastewater treatment plant located in McCall, Idaho through Outfall 001 to receiving waters named Cold Creek, a tributary of Boulder Creek, a tributary of Cascade Reservoir. Outfall 001 is the discharge point from the wastewater treatment plant to Cold Creek and is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14). Cold Creek and Boulder Creek are each a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and are "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

3.5. Section I.A of the Permit establishes effluent limitations for the discharge from Outfall 001 and includes limits for flow, Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), *Escherichia coli* (*E. coli*) Bacteria, Total Nitrogen, Total Phosphorus, Total Residual Chlorine (TRC), Total Ammonia, and Ortho-Phosphorus.

3.6. Section I.B of the Permit requires Respondent to conduct surface water monitoring for flow, Total Ammonia, Total Nitrogen, Total Phosphorus, Ortho-Phosphorus, *E. coli* Bacteria, pH, and Temperature.

3.7. Section II.B. of the Permit requires Respondent to summarize monitoring results for the JMR WTP each month in a Discharge Monitoring Report (DMR) and to submit those reports and surface water monitoring reports summarizing each sampling event as an addendum to the DMR.

3.8. Respondent's DMRs from February 2007 to December 2011 show that the JMR WTP had 1,012 violations of the effluent limitations set forth in the Permit. Exceedance of a monthly average effluent limit is counted as one violation for each day of the month in which the exceedance occurred. Exceedance of a weekly average effluent limit is counted as one violation for each day of the week in which the exceedance occurred. An exceedance of a maximum daily effluent limit is counted as one violation.

3.9. Section I.A.1. of the Permit specifies that the weekly average BOD discharge shall not exceed 7.5 mg/l. In December 2008, Respondent violated the weekly average effluent limit for BOD, constituting 7 violations of the Permit. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Actual value	units	% Actual Value over Permit	Limit type (M=monthly average) (W=weekly average) (D=daily maximum)
December 2008	BOD	7.50	10.00	mg/l	33.3	W

3.10. Section I.A1. of the Permit specifies that the monthly average for Total Nitrogen (Total Kjeldahl Nitrogen + Nitrate Nitrogen) discharge shall not exceed 10 mg/l. Respondent exceeded the monthly average for Total Nitrogen 7 times between October 2007 and December 2010, constituting 212 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Actual value	units	% Actual Value over Permit	Limit type (M=monthly average) (W=weekly average) (D=daily maximum)
October 2007	Total Nitrogen	10.00	13.00	mg/l	30.0	M
February 2009	Total Nitrogen	10.00	18.20	mg/l	82.0	M
December 2009	Total Nitrogen	10.00	11.10	mg/l	11.0	M
May 2010	Total Nitrogen	10.00	18.00	mg/l	80.0	M
September 2010	Total Nitrogen	10.00	14.70	mg/l	47.0	M
November 2010	Total Nitrogen	10.00	10.90	mg/l	9.0	M
December 2010	Total Nitrogen	10.00	10.80	mg/l	8.0	M

3.11. Section I.A.1. of the Permit specifies that the monthly average Total Suspended Solids (TSS) discharge shall not exceed 5 mg/l. Between February 2007 and October 2011, Respondent exceeded the monthly average for TSS 17 times, constituting 519 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Actual value	units	% Actual Value over Permit	Limit type (M=monthly average) (W=weekly average) (D=daily maximum)
February 2007	TSS	5.0	5.80	mg/l	16.0	M
March 2007	TSS	5.0	5.25	mg/l	5.0	M
June 2007	TSS	5.0	5.80	mg/l	16.0	M
September 2007	TSS	5.0	5.80	mg/l	16.0	M
October 2007	TSS	5.0	7.50	mg/l	50.0	M
November 2007	TSS	5.0	8.0	mg/l	60.0	M

December 2007	TSS	5.0	6.40	mg/l	28.0	M
January 2008	TSS	5.0	7.40	mg/l	48.0	M
March 2008	TSS	5.0	6.00	mg/l	20.0	M
April 2008	TSS	5.0	31.00	mg/l	520.0	M
May 2008	TSS	5.0	13.60	mg/l	172.0	M
January 2009	TSS	5.0	5.80	mg/l	16.0	M
May 2009	TSS	5.0	6.80	mg/l	36.0	M
April 2010	TSS	5.0	5.60	mg/l	12.0	M
July 2010	TSS	5.0	6.00	mg/l	20.0	M
March 2011	TSS	5.0	9.00	mg/l	80.0	M
October 2011	TSS	5.0	5.50	mg/l	10.0	M

3.12. Section I.A.1. of the Permit specifies that the weekly average TSS discharge shall not exceed 7.5 mg/l. Between February 2007 and October 2011, Respondent exceeded the weekly average discharge effluent limit for TSS 26 times, constituting 182 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Actual value	units	% Actual Value over Permit	Limit type (M=monthly average) (W=weekly average) (D=daily maximum)
February 2007	TSS	7.50	10.00	mg/l	33.3	W
March 2007	TSS	7.50	12.00	mg/l	60.0	W
June 2007	TSS	7.50	10.00	mg/l	33.3	W
July 2007	TSS	7.50	8.00	mg/l	6.7	W
September 2007	TSS	7.50	9.00	mg/l	20.0	W
October 2007	TSS	7.50	13.00	mg/l	73.3	W
November 2007	TSS	7.50	12.0.0	mg/l	60.0	W
December 2007	TSS	7.50	14.00	mg/l	86.7	W
January 2008	TSS	7.50	12.00	mg/l	60.0	W

February 2008	TSS	7.50	9.00	mg/l	20.0	W
March 2008	TSS	7.50	10.00	mg/l	33.3	W
April 2008	TSS	7.50	111.00	mg/l	1380.0	W
May 2008	TSS	7.50	20.0	mg/l	166.7	W
June 2008	TSS	7.50	58.0	mg/l	673.3	W
November 2008	TSS	7.50	10.0	mg/l	33.3	W
December 2008	TSS	7.50	9.0	mg/l	20.0	W
January 2009	TSS	7.50	11.0	mg/l	46.7	W
May 2009	TSS	7.50	14.0	mg/l	86.7	W
February 2010	TSS	7.50	8.0	mg/l	6.7	W
April 2010	TSS	7.50	19.0	mg/l	153.3	W
July 2010	TSS	7.50	15.0	mg/l	100.0	W
March 2011	TSS	7.50	19.0	mg/l	153.3	W
April 2011	TSS	7.50	10.0	mg/l	33.3	W
May 2011	TSS	7.50	9.0	mg/l	20.0	W
June 2011	TSS	7.50	9.0	mg/l	20.0	W
October 2011	TSS	7.50	13.0	mg/l	73.3	W

3.13. Section I.A4. of the Permit specifies that that monthly average percent removal of TSS shall not be less than 90%. Between April 2008 and June 2008, Respondent violated the monthly average percent removal requirement for TSS 3 times, constituting 91 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Actual value	units	% Actual Value over Permit	Limit type (M=monthly average) (W=weekly average) (D=daily maximum)
April 2008	TSS	90	76.9	%	131.0	M
May 2008	TSS	90	83.9	%	61.0	M
June 2008	TSS	90	86.1	%	39.0	M

3.14. Section I.D.3.b of the Permit specifies that the Quality Assurance Plan (QAP) include a map indicating the location of each sampling point. During the July 21, 2011 inspection of the JMR WTP by IDEQ, the QAP was reviewed and failed to include the required map. The failure to include the map violated Section I.D.3.b. of the Permit.

3.15. Under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), whenever on the basis of any information the Administrator finds that any person has violated any permit condition or limitation implementing any of such sections in a permit issued under Section 1342, the Administrator may assess a Class I or Class II civil penalty.

#### **IV. CONSENT AGREEMENT**

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. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$6,100.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

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

Docket Number: CWA-10-2012-0139  
Consent Agreement and Final Order  
In the Matter of: Jug Mountain Ranch, LLC,

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037



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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Office of Compliance and Enforcement  
Attn: Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. 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 a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and 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.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

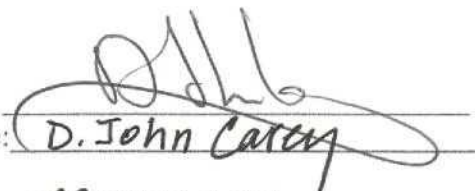
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR JUG MOUNTAIN RANCH, LLC:

7/27/12

Signature: 

Print Name: D. John Carey

Title: Manager

DATED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/14/2012



EDWARD J. KOWALSKI

Director

Office of Compliance and Enforcement

## V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

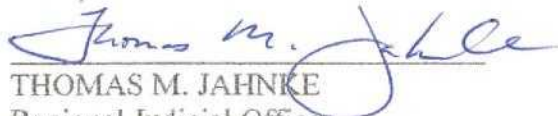
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 27<sup>th</sup> day of September, 2012.



THOMAS M. JAHNIKE  
Regional Judicial Officer  
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 the Matter of: Jug Mountain Ranch, LLC, McCall, Idaho, Docket No.: CWA-10-2012-0139**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Stroh Queitzsch, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

D. John Carey  
Manager  
Jug Mountain Ranch, LLC  
1101 North 3<sup>rd</sup> Street  
McCall, Idaho 83638

Steven J. Milleman, Esquire  
Milleman, Pettenger, McMahan &  
Pemberton, LLP  
706 North First  
P.O. Box 1066  
McCall, Idaho 83688

Amy N. Pemberton, Esquire  
Milleman, Pettenger, McMahan &  
Pemberton, LLP  
706 North First  
P.O. Box 1066  
McCall, Idaho 83688

DATED this 27<sup>th</sup> day of September, 2012

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10