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**HEARINGS CLERK
EPA -- REGION 10**

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2009-0270
)	
Sal Gallucci, JJS Southwest LLC, and)	CONSENT AGREEMENT AND
Whitehawk Land Development Corp. LLC)	FINAL ORDER
Smiths Ferry, Idaho)	
)	
Respondents.)	

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 IV 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 Sal Gallucci, JJS Southwest LLC, and Whitehawk Land Development Corp. LLC (collectively, "Respondents") agree to issuance of, the Final Order contained in Part IV of this CAFO.

Docket Number CWA 10-2009-0270
Consent Agreement and Final Order
In the Matter of: Sal Gallucci, JJS Southwest LLC,
and Whitehawk Land Development Corp. LLC

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

II. PRELIMINARY STATEMENT

2.1 On September 30, 2009, EPA initiated this proceeding against Respondents pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint (“Complaint”).

2.2 The Complaint alleged that Respondents’ violations of the Act had subjected Respondents to civil penalties.

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

2.4 The EPA and Respondents have negotiated this CAFO in good faith as a settlement of a disputed matter. Nothing in this CAFO shall constitute or be construed as an admission of liability, fact or law, or any wrongdoing on the part of Respondents.

III. CONSENT AGREEMENT

3.1 For purposes of this CAFO, Respondents admit the jurisdictional allegations in the Complaint.

3.2 Respondents neither admit nor deny the specific factual allegations in the Complaint.

3.3 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 Respondents’ economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is FIFTY THOUSAND DOLLARS (\$50,000). The penalty and interest will be paid in two installments of \$25,000 and \$25,375.

3.4 Respondents agree to pay the first installment of the civil penalty set forth in Paragraph 3.3 within thirty (30) days of the effective date of the Final Order. The second

installment (which consists of a \$25,000 penalty and \$375 in interest) shall be paid within one hundred and eighty (180) days of the effective date of the Final Order.

3.5. Payments 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 to the following address:

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

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

3.6. Respondents must serve photocopies of the check described in Paragraph 3.5 on 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, WA 98101

Maria Lopez
U.S. Environmental Protection Agency
Region 10 Idaho Office
1435 N. Orchard St.
Boise, ID 83706

3.7. If Respondents fail to pay the penalty assessed by this CAFO in full by the due dates set forth in Paragraph 3.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents 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.

3.7.1. 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 IV, 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.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 3.3, Respondents 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 Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. For purposes of this CAFO, Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part IV.

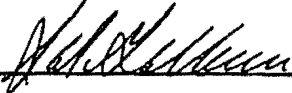
3.12. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

FOR SAL GALLUCCI, JJS SOUTHWEST LLC, AND
WHITEHAWK LAND DEVELOPMENT
CORPORATION LLC

02/24/2010

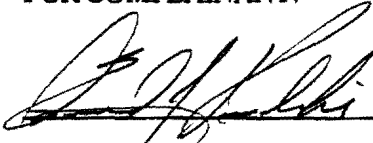


SAL GALLUCCI

DATED:

FOR COMPLAINANT:

2/24/2010



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

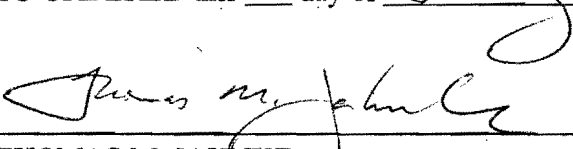
4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4.3. 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 Respondents.

4.4. 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 issued public notice of the Complaint within 30 days following proof of service and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. EPA received no comments on the Complaint.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 25th day of February, 2010.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Sal Gallucci, JJS Southwest LLC, and Whitehawk Land Development Corp. LLC., DOCKET NO.: CWA-10-2009-0270** was filed with the Regional Hearing Clerk on February 25, 2010.

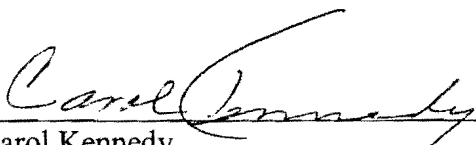
On February 26, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire
US Environmental Protection Agency
1435 North Orchard Street
Boise, ID 83706

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on February 26, 2010, to:

Robert Maynard
Perkins Coie
111 West Jefferson St.
Suite 500
Boise, ID 83702-5391

DATED this 26th day of February 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10