



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

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EPA REGION VI

JUN 21 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 1490 0002 3734 0557

Mr. Daniel Rakes, General Counsel
Angel Fire Resort Operations, LLC
10 Miller Lane
P.O. Box 130
Angel Fire, New Mexico 87710

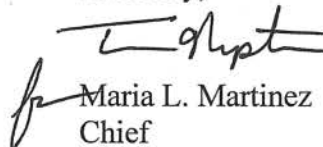
Re: Administrative Order on Consent Docket Number: CWA-06-2016-2701

Dear Mr. Kitts:

Enclosed is your copy of the original, signed EPA Order referenced above. Please observe the time requirements of paragraph 16. Should you need additional time to accomplish any of the required tasks, you may ask for extension(s) of time, but we do ask you make that request before the original end date(s).

Your cooperation in resolving this matter is greatly appreciated. Throughout this process Angel Fire Resort Operations has cooperated in good faith with the COE and EPA. If you have any further questions regarding this matter, please contact Tom Nystrom at (214) 665-8331.

Sincerely,


Maria L. Martinez
Chief
Wetlands Section

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA 06-2016-2701
	§	
Angel Fire Resort Operations, LLC	§	
	§	Proceeding Under § 309(a) of
	§	the Clean Water Act
Respondent	§	

ADMINISTRATIVE ORDER ON CONSENT

I. AUTHORITY

1. The following findings of violations are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATIONS

2. EPA makes the following findings of violations in support of its authority to issue this Order on Consent.

3. Angel Fire Resort Operations, LLC (“Respondent”) is a Limited Liability Company created under the laws of the State of New Mexico and as such, Respondent is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned real property, a tract of approximately 90 acres known as Angel Fire RV Resort, located at 27500 US Highway 64, Angel Fire, Colfax County, New Mexico, 87710 (“subject property”).

5. On multiple dates between approximately June 2013, and approximately June 5, 2015, Respondent's contractor discharged, directed the discharge, and/or agreed with other persons or business entities to discharge "dredged material" and/or "fill material," as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C. F. R. § 232.2, from point sources, including heavy equipment, in, on and into approximately 4 acres of wetlands within the subject property. The impacted wetlands are adjacent to, hydrologically connected to, and have a significant nexus to Cieneguilla Creek, which flows into Eagle Nest Lake, thence the Cimarron River, and thence the Canadian River, a traditionally navigable water of the United States.

6. During site visits on June 5, 2015, and June 16, 2015, U.S. Army Corps of Engineers ("COE") representatives witnessed evidence of the unauthorized mechanized land clearing and filling of the wetlands by Respondent's contractor in the Phase I area of the subject property as described in the diagram attached to this Order on Consent as Exhibit A ("Exhibit A").

7. Each piece of heavy equipment used during the excavation or construction activities which resulted in a discharge acted as a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8. The dredged and fill material referred to in paragraph 5 was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. During the relevant time period, the approximate 4 acres of wetlands referred to in paragraph 5 were adjacent to, hydrologically connected to, or had a significant nexus to "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2, and as such, the 4 acres of jurisdictional wetlands are "waters of the United States" as defined by 40 C.F.R. § 232.2.

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of and in compliance with a permit issued under the Act.

11. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the COE to issue permits for the discharge of dredged or fill material to waters of the United States.

12. At no time during the relevant time period did Respondent have a permit issued by the COE which authorized the discharges alleged in paragraph 5.

13. On June 22, 2015, the COE issued a Cease and Desist Order to Respondent for the unauthorized discharge of fill material at the subject property.

14. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT

15. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest and that issuance of this Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of certain wetlands as described below. Respondent concurs in the issuance of this Order on Consent and agrees to comply with the Order. Respondent neither admits nor denies the findings of violations set forth above.

IV. COMPLIANCE ORDER

16. Based on the foregoing Findings of Violations and pursuant to the authority of

Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS and Respondent agrees to the following:

- a. Respondent shall immediately cease any discharge of dredged and/or fill material to waters of the United States on the subject property.
- b. Within 60 days of the effective date of this Order on Consent, Respondent shall submit to EPA for review and approval a proposed conservation easement to permanently protect the 3.9 acre area known as “Phase II Northwestern Area” as described in Exhibit A. Within 60 days of EPA’s approval of the proposed easement, Respondent shall record the easement in the deed for the tract. This easement shall serve as mitigation for the impacts to wetlands now located beneath the “Phase I Constructed Area” described in Exhibit A.
- c. Within 60 days of the effective date of this Order on Consent, Respondent shall replace fill into the northern section of the excavated trench as described in the diagram attached to this Order on Consent as Exhibit B (“Exhibit B”). This trench restoration should include a small surface berm to redirect surface water flow away from the active RV Resort area.
- d. Within 60 days of the effective date of this Order on Consent, Respondent shall enhance the hydrology of the preserved wetlands in the Phase II easement area by adding worm ditches to disperse the surface flow of water. The approximate location of the worm ditches is shown in Exhibit A.

V. GENERAL PROVISIONS

17. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue or fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 708 of the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

18. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order on Consent.

19. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.


20. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$37,500 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.

21. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.

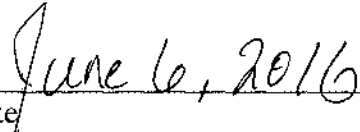
22. The effective date of this Order is the date it is signed and returned by Respondent.

23. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.


In recognition and acceptance of the foregoing:



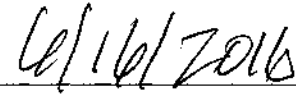
Mr. Daniel Rakes
General Counsel
Angel Fire Resort Operations, LLC



Date



William K. Honker, P.E.
Director, Water Division
U.S. EPA Region 6



Date

CERTIFICATE OF SERVICE

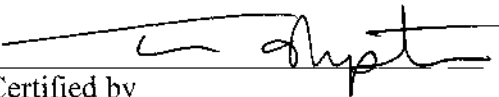
I hereby certify that on the 21st day of June, 2016, the original of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Mr. Daniel Rakes, General Counsel
Angel Fire Resort Operations, LLC
10 Miller Lane
P.O. Box 130
Angel Fire, New Mexico 87710

Copy hand-delivered:

Ms. Kristine Talbot
Office of Regional Counsel (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Certified by

 _____