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UNITED STATES

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REGION 6

REGIONAL OFFICE
EPA REGION VI

In the Matter of

§ DOCKET NO. CWA-06-2018-1786

Town of Red River,
a New Mexico Municipality,

§
§
§ CONSENT AGREEMENT AND
§ FINAL ORDER

Respondent

§

NPDES Permit No. NM0024899

§ Pursuant to 40 C.F.R. § 22.13(b)

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22.

2. On July 10, 2018, EPA Region 6 issued to the Town of Red River ("Respondent") a First Amended Administrative Complaint ("Complaint") under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

3. EPA and Respondent ("Parties") agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms

and conditions of this CAFO resolves only those violations alleged by EPA in the administrative Complaint issued July 10, 2018.

4. Respondent admits the jurisdictional allegations of the Complaint; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. Respondent owned or operated the Town of Red River Wastewater Treatment Plant located at Mile Marker 10 Highway 38, Red River, Taos County, New Mexico (herein "the facility"), and the operation of which was the subject of the Complaint.

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "point source" subject to a "discharge" of "pollutants" to identified "waters of the United States" within the meaning of

Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251–1387, and the National Pollutant Discharge Elimination System (“NPDES”) program; and Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by allowing a caustic soda (“NaOH”) chemical spill at the wastewater treatment plant on January 5, 2018, that resulted in an upset and pass through of the treatment works. The incident caused numerous violations of its NPDES permit limits and a fish kill.

10. With the issuance of the Complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the Complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of one thousand two hundred and fifty dollars (\$1,250.00) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO. 63101
Phone: 314-418-1028

- d. By credit card payments to: <https://www.pay.gov/paygov>
(enter sfo 1.1 in the search field)

"In the Matter of Town of Red River, Docket No. CWA-06-2018-1786" should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

- (b) Chief, NPDES Compliance Section (6ECD-WA)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

- (c) Chief, Water Legal Enforcement Branch (6RCEW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(c). Should a penalty

charge on the debt be required, it shall accrue from the first day payment is delinquent.

31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

B. SUPPLEMENT ENVIRONMENTAL PROJECT

21. Respondent shall implement a supplemental environmental project ("SEP"), the value of which may not be less than three thousand seven hundred and fifty dollars (\$3,750.00),

which the parties agree is intended to secure significant environmental or public health benefit. The goal of the SEP is to restock native brown trout along the natural range of the fish affected by the discharge that is the subject of this action. The SEP is discussed in detail in the attached letter from Respondent ("Exhibit A"). Respondent shall not claim any SEP credit for the stocking non-native species, including but not limited to rainbow trout, nor shall Respondent claim any SEP credit for restocking native species for the purpose of recreational fishing. Respondent shall only claim SEP credit for the restocking of native fish for the purpose of rebuilding native brown trout populations along the natural range of the affected fish.

22. Respondent shall begin implementation of the SEP at the earliest date determined to be appropriate, as determined by Respondent and the New Mexico Department of Game and Fish ("NMDGF"). The SEP shall be completed no later than three years from the effective date of this Order.

23. With regard to the SEP, Respondent certifies the truth and accuracy of the following:
- a. All cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and Respondent in good faith estimates that the cost to implement the SEP is at least \$3,750.00;
 - b. As of the date of the execution of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - c. The SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO;
 - d. Respondent has not received and will not receive credit for the SEP in any other enforcement action;
 - e. Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. For federal income tax purposes, Respondent agrees that it will not deduct any costs or expenditures incurred in performing the SEP;

- g. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
- h. No part of the SEP expenditure shall include federal funds, including low interest federal loans, federal contracts or federal grants.

24. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.

25. If Respondent fails to satisfactorily commence this SEP within one year of the effective date of this CAFO or complete the SEP by the deadline set forth in this CAFO, Respondent shall pay a penalty of three thousand seven hundred and fifty dollars (\$3,750.00), less any documented costs incurred by Respondent and paid to a vendor(s) in relation to compliance with this Order.

26. Respondent shall submit status reports to EPA summarizing the SEP activities. The first status report shall be due within sixty (60) days of commencement of the activities required under this SEP, and additional status reports shall be submitted to EPA within sixty (60) days of completion of each phase of the SEP project.

27. Respondent shall submit a SEP Completion Report to EPA within forty-five (45) days after completion of all SEP activities. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. Documented and itemized costs of the SEP;
- c. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- d. A summary of the benefits associated with this SEP.

28. In the SEP Completion Report, Respondent shall, by its authorized officer, sign and certify under penalty of law that the information contained in the SEP Completion Report is true,

accurate and not misleading. Respondent's authorized officer shall certify to the following language:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based upon my personal knowledge or inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

29. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, if Respondent publicizes the SEP or the results of the SEP, Respondent shall state that the project is being undertaken as part of the settlement of this enforcement action.

30. If an event arises from causes beyond Respondent's control that delays the performance of any SEP obligation despite Respondent's good faith efforts, Respondent shall notify EPA, Region 6, in writing, within fifteen (15) days after Respondent knows that the event might cause delay. Respondent shall include with any notice available documentation supporting a claim that the delay was attributable to an event beyond Respondent's control. If EPA agrees that an actual or anticipated delay is attributed to a cause beyond Respondent's control, the time for performance of the obligations may be extended by written agreement of the parties. SEP obligations shall not be extended due to financial inability to perform any SEP obligation.

IV. GENERAL PROVISIONS

31. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Tucker Henson
Office of Regional Counsel (6RCEW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

32. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

33. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

34. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

35. 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.

36. In recognition and acceptance of the foregoing:

Linda Calhoun
For Town of Red River

11/27/19
Date:

Cheryl T. Seager
Cheryl T. Seager
Director
Enforcement and Compliance
Assurance Division


12-9-19
Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date:

17 Dec. 2019



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2019, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

The Honorable Linda Calhoun
Mayor, Town of Red River
P.O. Box 1020
Red River, NM 87558

with a copy, first class postage prepaid, to:

Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Hari Gudraon