

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 SEP 29 AM 11:57

IN THE MATTER OF )  
 )  
Clearwater Holdings, LLC )  
3411 Mountain Vista Parkway )  
Provo, Utah 84606 )  
Respondent. )  
\_\_\_\_\_ )

FILED  
EPA REGION VIII  
HEARING CLERK

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. **CWA-08-2015-0029**

**I. INTRODUCTION**

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Clearwater Holdings, LLC (Respondent). This Consent Order concerns restoration of alleged environmental damage caused by alleged illegal discharges of dredged or fill material to wetlands and other waters of the United States located in Section 5, Township 8 South, Range 2 East, Utah County, Utah (the Site).

**II. STATUTORY AUTHORITY**

2. This Consent Order is issued under section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The authority to issue this Consent Order 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 following findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, 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**

3. This Consent Order shall apply to and be binding upon the EPA and upon Respondent and Respondent's agents, successors and assigns. Each signatory to this Consent Order certifies that he or she is authorized to execute and legally bind the party he or she represents to this Consent Order.

No change in the ownership of the Site shall alter Respondent's responsibilities under this Consent Order unless the EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, Respondent shall notify the EPA at the address specified in paragraph 33, below.

#### **IV. STATEMENT OF THE PARTIES**

4. The following FINDINGS OF FACT AND OF VIOLATION are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION. As such, and without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order as applied to this enforcement action, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

#### **V. FINDINGS OF FACT AND OF VIOLATION**

5. Respondent is an agricultural and real estate development and holding company incorporated in the State of Utah on December 28, 2010.

6. At all relevant times, Respondent owned, managed, operated on and/or otherwise controlled property within and adjacent to Utah Lake and the Spanish Fork River at the Site.

7. In or around October of 2013, Respondent or persons acting on its behalf filled and/or graded wetlands at the Site, creating berms by pushing material from wetlands along the eastern shore of Utah Lake and the southern shore of the Spanish Fork River into piles along the water's edge. Wetlands east of the berm along Utah Lake were cleared and graded, and drainage ditch construction with sidecasting into the wetlands occurred.

8. On October 24, 2013, the Utah Division of Forestry, Fire and State Lands (FFSL) reported the activity at the Site described in paragraph 7, above, to the U.S. Army Corps of Engineers (Corps).

9. On November 5, 2013, the Corps viewed the Site by boat with FFSL and observed earthwork being performed.

10. On November 21, 2013, the Corps conducted a site visit with Respondent and FFSL. At the time of the visit, the berms described in paragraph 7, above, had been partially leveled.

11. At the November 21, 2013, site visit, Respondent told the Corps that the land was being used for cattle grazing and that the berm along Utah Lake had been constructed to keep the cattle away from the lake where chemical spraying for invasive species control was performed by the State of Utah. Respondent further stated that the berm by the Spanish Fork River was constructed to keep cattle out of the river and to prevent people from accessing his property from the north side of the river.

12. On December 5, 2013, the Corps referred this matter to the EPA for enforcement in accordance with the "*Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act,*" dated January 19, 1989.

13. Construction of the berms, clearing and grading of the wetlands and sidecasting of material into wetlands as described in paragraph 7, above, resulted in discharges of dredged or fill material into wetlands that provide numerous functions and values including aquatic and wildlife habitat, water quality enhancement, flood attenuation and groundwater recharge.

14. The activities described in paragraph 7, above, were performed using common earthmoving vehicles and equipment.

15. Respondent is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. The material discharged at the Site described in paragraph 7, above, is and was at all relevant times “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The vehicles and equipment described in paragraph 14, above, are and were at all relevant times each a “point source” as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. The wetlands referenced above are and were at all relevant times “waters of the United States” as defined in 33 C.F.R. § 328.3(a) and therefore “navigable waters” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. The placement of dredged or fill material into wetlands adjacent to Utah Lake and the Spanish Fork River constitutes the “discharge of pollutants” as 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, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344(a).

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

23. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 7, above.

24. The activities conducted by Respondent and/or by persons acting on its behalf as described in paragraph 7, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

25. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). Restoration is appropriate to address the actual and potential harm to water quality, aquatic habitat and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities.

26. This Consent Order was issued after consultation and coordination with the Corps' Sacramento District, Nevada-Utah Regulatory Branch.

## **VI. ORDER FOR COMPLIANCE**

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION and pursuant to the authority vested in the Administrator of the EPA pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

27. Respondent shall immediately terminate all discharges of dredged or fill material prohibited by law, including by the CWA.

28. Respondent shall conduct restoration activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged or fill material at the Site in accordance with the

schedule and other requirements set forth in the Restoration Plan attached to this Consent Order as Exhibit A (the Plan), which is hereby approved by the EPA.

29. Respondent has submitted to the EPA the name and qualifications, including professional resume, of a consultant experienced in stream and wetlands restoration who will directly supervise all work performed pursuant to the Plan.

30. Respondent shall obtain all necessary permits to implement the Plan and then commence all restoration activities in accordance with the approved Plan, including the time frames specified therein, and all granted permits, provided that if permitting (e.g., by the Corps) is delayed beyond the reasonable control of Respondent, the time for compliance with this Consent Order will be similarly tolled. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits, and any amendments thereto, to the EPA within 14 calendar days of the issuance of each permit.

31. All restoration activities conducted pursuant to the Plan and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in shoreline and wetland restoration under the direct supervision of the consultant retained pursuant to paragraph 29.

32. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps. If any such permit is required, Respondent shall obtain such permit(s) and provide a copy or copies to the EPA pursuant to paragraph 30, above, prior to initiating any work that is to be performed pursuant to this Consent Order.

U.S. Army Corps of Engineers  
Nevada-Utah Regulatory Branch  
533 West 2600 South, Suite 150  
Bountiful, Utah 84010  
Telephone: (801) 295-8380  
Facsimile: (801) 395-8842

33. Respondent shall submit all notifications under this Consent Order and related correspondence to:

Monica Heimdal, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6359  
Facsimile: (303) 312-7518

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

Wendy I. Silver, 8ENF-L  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6637  
Facsimile: (303) 312-6953

34. In addition to the notification requirements set forth in paragraph 33, after issuance of any Corps authorization for the restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

35. The Plan and any other deliverables, reports, specifications, schedules and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.

36. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA, the Corps and FFSL, or any of the agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order 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 the EPA.

This Consent Order shall in no way limit or otherwise affect the EPA's authority or the authority of any other governmental agency to enter the Site, 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.

37. This Consent Order shall be effective upon receipt by Respondent of a fully executed copy.

38. 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 violations giving rise to the Consent Order.

39. The EPA agrees to submit all notifications and correspondence to:

Kyle Bateman  
Clearwater Holdings, LLC  
PO Box 420  
Springville, Utah 84663

and

Cannon Law Group, PLLC  
c/o Cole Cannon, Esq.  
53 South 600 East  
Salt Lake City, Utah 84102

40. Any party hereto may, by written notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.

41. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify the EPA orally as soon as possible and in writing within 10 working days from the date Respondent first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to minimize the delay and a timetable by which those measures will be or have been implemented. Notification to the EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse

the delay or the obligation of Respondent to comply with the requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.

42. If Respondent demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence, and that Respondent has taken all reasonable measures to prevent or minimize such delay, the EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. The EPA's determination on these matters shall be made as soon as possible, and in writing within 10 working days, after the receipt of Respondent's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

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

44. Respondent understands and acknowledges the following:

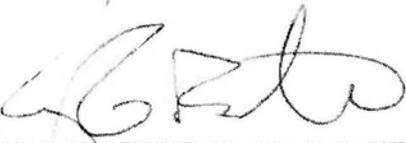
- a. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of an order issued by the Administrator of the EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a).
- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligations to comply with any applicable federal, state or local law or regulation.
- c. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

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

BY: \_\_\_\_\_  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

DATE: \_\_\_\_\_

**FOR CLEARWATER HOLDINGS, LLC**

BY:   
\_\_\_\_\_  
Kyle Bateman  
Manager  
Clearwater Holdings, LLC

DATE: SEP 25, 2015

IN THE MATTER OF: Clearwater Holdings, LLC  
Docket No.

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

BY:   
\_\_\_\_\_  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

DATE: \_\_\_\_\_

**FOR CLEARWATER HOLDINGS, LLC**

BY: \_\_\_\_\_  
Kyle Bateman  
Manager  
Clearwater Holdings, LLC

DATE: \_\_\_\_\_

**Exhibit A**



September 23, 2015

Clearwater Holdings, LLC  
c/o Cole Cannon, Esq. Counsel  
3411 Mountain Vista Parkway  
Provo, Utah 84606

**Subject:** Clearwater Farms Utah Lake Shorelands Property, Utah County, Utah  
Updated Restoration Plan – Approximately 37.4-Acre Project Area

Dear Mr. Cannon:

This letter report describes the updated restoration plan for an approximately 37.4-acre project area located at the Clearwater Farms property on the eastern Utah Lake shorelands north of the town of Lake Shore in Utah County, Utah (Figures 1a and 1b). Clearwater Holdings, LLC (Clearwater) owns the farm property that is managed by Clearwater Farms. The project area is situated in Section 5, Township 8 South, Range 2 East, Salt Lake Base and Meridian. This restoration plan will be voluntarily implemented as part of a consent order agreement between the U.S. Environmental Protection Agency (EPA) and Clearwater Holdings, LLC to restore portions of the project area that were disturbed by efforts to control Phragmites. Phragmites is an invasive non-native reed species that has colonized and formed large monoculture stands along the Utah Lake shorelands. The invasive presence of Phragmites has adversely impacted agricultural land and native plant communities within the project area and elsewhere along the Utah Lake shorelands.

## **BACKGROUND**

Clearwater alleges that since 2011, Clearwater Farms has systematically implemented treatments to remove and control invasive non-native Phragmites and Tamarisk from its agricultural fields bordering Utah Lake in an effort to restore native vegetation. Treatments have included burning, physical removal and managed livestock grazing. The Utah Department of Natural Resources (DNR) and Utah County also implement programs to control and remove Phragmites from the Utah Lake shorelands, which mainly entails airborne spraying of herbicides to kill Phragmites.

In the early-autumn of 2013, Clearwater Farms used heavy equipment to remove Phragmites from pastureland that had been recently sprayed with poisonous herbicides by Utah County. The sprayed area was on land that Clearwater Farms manages for livestock grazing. Livestock were grazing the sprayed area at the time of the airborne application of the herbicide. Clearwater alleges, the purpose of the work was to physically remove the sprayed Phragmites to prevent livestock from eating the poisoned plants and to create small earthen berm barriers bordering the Utah Lake waterline and the south bank of the Spanish Fork River to segregate livestock and prevent them from entering areas that were sprayed for Phragmites control.

Frontier Corporation USA  
221 N. Gateway Drive, Suite B  
Providence, UT 84332  
(435) 753-9502

Clearwater Holdings, LLC  
c/o Cole Cannon, Esq. Counsel  
September 23, 2015  
Page 2 of 9

An earthen berm was also graded along the south bank of the Spanish Fork River to create a barrier to deter OHV trespass traffic from the public beach on the north side of the river. The barrier also helped to keep livestock from wandering off the project area.

In addition to the earthen barrier work, two small ditches were excavated with a backhoe to divert water from an existing drainage ditch to accommodate livestock. The existing drainage ditch runs along the southern project area boundary and discharges into Utah Lake (Figure 1b).

In November 2013, Clearwater Farms was notified by the U.S. Army Corps of Engineers (USACE) that the Phragmites removal and ditch work were done in regulated waters of the U.S. Although Clearwater disputes this finding, upon receipt of such notice Clearwater Farms voluntarily began restoration work to remove the earthen berm barriers, restore surface elevations to their approximate pre-disturbance contours, and plugged the two excavated ditches. In December 2013, Clearwater Farms ceased work after it received notice from the USACE that the EPA would take the lead in resolving the situation.

On November 6, 2014, representatives from the EPA, USACE, DNR, Clearwater and Frontier Corporation USA (Frontier) met at the project area to review current site conditions and discuss parameters for completing any remaining restoration work.

## **CURRENT SITE CONDITIONS**

Figure 2 is an aerial map showing current site conditions as they presently exist at the project area. The aerial imagery for the map is dated August 10, 2014 and was obtained online from the Utah Automated Geographic Reference Center (Utah AGRC) ([www.gis.utah.gov](http://www.gis.utah.gov)). The attached photo log depicts current site conditions as observed by Frontier during a March 6, 2015 site visit. Photo point locations and view directions for the photo log are shown on Figure 2. Another site inspection was done on August 24, 2015 to document the progression of natural revegetation within the project area. The August 24, 2015 photos were added to the photolog, and the photo point locations and view directions are shown on Figure 5.

All of the earthen berms along the Utah Lake and Spanish Fork River were removed in late 2013. The great majority of the graded areas have become naturally revegetated with native grass and forb species common to this area of the Utah Lake shorelands. Livestock grazing in these revegetated areas is keeping the presence and spreading of Phragmites under control. There is a centrally located area approximately 12 acres in size that has been slower to revegetate (Figure 2). This is the primary area where the airborne spraying and subsequent removal of dead Phragmites was done in 2013. This area has sandy soils that are periodically flooded by Utah Lake and periodically scoured by winter ice sheets from the lake during high water years, which has also affected slower revegetation rates. As can be seen from nearby, undisturbed areas just to the north of the project area, a sparsely vegetated sandy beach may be the natural condition for

Clearwater Holdings, LLC  
c/o Cole Cannon, Esq. Counsel  
September 23, 2015  
Page 3 of 9

this shorelands area in the absence of invasive Phragmites.

However, by the time of the August 24, 2015 site inspection, much of this area had already achieved more than 70 percent revegetation based on visual estimations. Also, the south bank of the Spanish Fork River was revegetated with more than 80 percent native wetland and riparian plant species based on visual estimation. Areas lacking revegetation were either the two track trail that runs parallel to the Utah Lake shoreline or areas where unauthorized recreational OHV traffic accessed the site from the public beach on the north side of the Spanish Fork River.

Four-wheeler tire tracks were plainly visible on the unvegetated areas within the project area. Areas on the north side of the river that receive high OHV traffic are largely unvegetated sandy beaches; whereas most of the areas on the south side of the river within the project area have become naturally revegetated. The exceptions on the south side are unvegetated areas where soils have been disturbed by unauthorized recreational OHV traffic. Farm-related traffic in these areas is infrequent and light. Clearwater alleges that the OHV disturbances observed within the project area and along the two track trail are due to uncontrolled trespass traffic originating from the public beach. The vegetation on these sandy soils are susceptible to damage due to the looseness and lack of soil cohesion in these sandy soils and lack of near surface groundwater hydrology for prolonged periods when the lake level is low. These soils are also susceptible to ice scour and wave erosion when the lake is at a high level. Photos 20 thru 29 in the photolog show contrasting photos of undisturbed areas that have re-established a significant amount of revegetation versus areas disturbed by OHV traffic.

On the south side of the project area, the two ditches that were excavated for livestock watering are referred to as the east ditch and the west ditch (Figure 2). The diversions off the main drainage ditch were plugged in late 2013. Approximately 753 feet of the east ditch remains and 845 feet of the west ditch remains. Neither of these ditches has diverted flow since 2013. Although, certain segments of these ditches had standing water at the time of the March 6, 2015 site visit as shown in the photo log. The standing water was probably caused by capture of localized surface runoff from spring rain and snowmelt or interception of a seasonally high water table.

Frontier completed a total of six cross-sections to characterize the east and west ditches (Figure 4). These are primitive ditches excavated in place without any improvements. The east ditch is the smaller of the two and ranges from 0.5 to 1.0 feet deep and 2.0 to 3.0 feet wide. The west ditch ranges from 1.0 to 1.5 feet deep and 8.0 to 12.0 feet wide. The earthen spoil piles for the excavated ditches remain where they were originally placed.

Both the graded area and ditch area are in the Utah Lake shoreline flood zone and are littered by recent deposits of various waterborne trash from the lake, including: various plastic bags, bottles and containers; various boating and fishing materials; chunks of Styrofoam coolers; drift wood,

etc. The presence of this waterborne trash indicates that neither the grading work nor ditch work has prevented the periodic flooding that naturally occurs in these areas.

Common plant species observed in the Phragmites removal area and ditches are listed in Table 1. The plant communities include a mix of facultative wetland indicator species (including invasive Phragmites and Tamarisk) that are commonly found along the shorelands environment.

## **RESTORATION PLAN**

As shown in Table 1, the areas that were disturbed by the grading for the Phragmites removal and ditch work are being recolonized by a variety of wetland indicator species. This indicates that wetland hydrology was not significantly altered by these actions and soils are suitable for revegetation of native shorelands plant species. Work to complete the restoration should be minimal and mostly entail light grading and reseeding to help accelerate the natural revegetation process. A qualified wetlands scientist will periodically conduct site visits to supervise the implementation of the restoration work identified in this plan.

There will be three work areas: (1) the area bordering the south bank of the Spanish Fork River, (2) the approximately 12-acre area that was graded to remove Phragmites, and (3) the south area where the east and west ditches were dug.

Work to restore the south bank of the Spanish Fork River will entail:

- The installation of signage to discourage OHV trespass.
- There are no fill areas to be removed.
- The wetted perimeter of the south river bank and lake shoreline has become naturally revegetated with cottonwood and willow seedlings and herbaceous wetland plants including: alkali bulrush, chairmaker's club-rush (a.k.a three-square), hardstem club-rush, rabbit's foot grass, Baltic rush, saltgrass, swamp pricklegrass, foxtail barley, lady's thumb, reed canarygrass, barnyard grass, curly dock, and other wetland indicator species with minimal amounts of Phragmites and tamarisk. It appears that this area will be 100 percent revegetated to its natural capacity if disturbances from OHV trespass can be effectively controlled.

Work to restore the approximately 12-acre area that was graded to remove Phragmites will include the following:

- There are no fill areas to be removed.
- Approximately 70 percent of the area has already re-established vegetative cover. Waterborne trash will be removed by hand from areas that have become naturally revegetated.
- For the areas lacking vegetative cover, the sandy soils will be raked to disrupt Phragmites rhizomes and remove waterborne trash deposits. The areas will then be lightly graded, if

necessary, and reseeded with a mix of native riparian/wetland grass species suitable for the sandy shoreline environment using a drill seed or broadcast seed method. The native seed mix will be based on the availability of sources from local native seed companies. The native seed mix will be provided to EPA for review and concurrence prior to purchase and application.

- After the reseeded is completed, livestock grazing will be limited during the first growing season to promote the regrowth of vegetative cover.

Work to restore the 753 foot east ditch and the 845 foot west ditch will include the following:

- Backfill the excavated ditches with the existing earthen spoil piles. This will remove the fill piles from the disputed wetland areas.
- The backfilled ditches will be lightly graded to match the natural contours of the adjacent areas that were not disturbed by the ditch work.
- The natural revegetation process will be augmented by re-seeding the area with a native riparian/wetland grass species using a broadcast seed method. The same seed mix used for the shoreline revegetation will be used for the ditch areas.
- Livestock will not be limited within the restored ditch areas because the ditches are situated in a wetter area that has a robust growth of wetland indicator species. A moderate amount of livestock grazing will help disperse native plants within this restoration area.

Livestock grazing will continue in the pasture fields adjoining these two restoration areas as a management tool to control the presence and spreading of Phragmites.

To the extent that there are areas along the bank of the Spanish Fork River where berms have not already been removed, such berms will be flattened and reseeded similar to the other affected areas.

## **MONITORING**

A 3-year monitoring period will begin before the end of the 2015 growing season. The monitoring will be performed by a qualified wetlands scientist. The purpose of the monitoring is to track and verify the successful re-establishment of wetland vegetation in the three restoration areas.

Monitoring will entail three annual site inspections. The first annual inspection will be done late-September or early-October before the end of the 2015 growing season. The second and third annual monitoring inspections will be completed during the middle of the growing season in late-July or early-August depending on the climatic conditions of any given year. The goal is to complete the monitoring when the majority of vegetation has reached reproductive maturity.

Site documentation to be completed during each monitoring inspection will include:

- A repeat of the photo point documentation shown on Figures 2 and 5 and provided in the attached photolog. Additional photo points will be added to document representative site conditions. The repeat photos will document the progression of the revegetation components.
- Visual inspections to estimate the amount of revegetation, plant species composition and percent cover that has become established within the two restoration areas.
- Completion of 10 randomly placed 5x5-foot vegetation quadrats to document the re-establishment of the plant community in the area that was disturbed along the south bank of the Spanish Fork River. Percent aerial cover of individual plant species will be recorded on customized data forms for the project. Five of these quadrats will be placed in restoration area on the south bank of the river. Five of these quadrats will be placed on the adjacent north river bank reference points for comparison.
- Completion of 20 randomly placed 5x5-foot vegetation quadrats to document the re-establishment of the plant community in the area that was graded for the Phragmites removal. Percent aerial cover of individual plant species will be recorded on customized data forms for the project. Fifteen of these quadrats will be placed in restoration area. Five of these quadrats will be placed in the adjacent field along the eastern restoration boundary as reference points for comparison.
- Completion of 15 5x5-foot vegetation quadrats to document the re-establishment of the plant community in the area that was excavated for the east ditch and west ditch. Percent aerial cover of individual plant species will be recorded on customized data forms for the project. Five quadrats will be placed where the east ditch was restored, five will be placed where the west ditch was restored, and five will be placed in adjacent undisturbed areas for comparison.
- There will be two additional reference sites, each being about 1 acre in size. One reference site will be located along the shoreland on the north side of the Spanish Fork River. One will be located in the vicinity of the excavated ditches on the south side of the restoration project area. The north reference site will be used to compare the central restoration area with similar topographic elevations. The south reference site will be used to compare the central restoration area with similar topographic elevation. The locations and elevations of these two additional reference sites will be identified in the first annual monitoring report.
- Each reference site will have 5 randomly placed 5x5-foot comparison quadrats that will be included in the annual monitoring. Percent aerial cover of individual plant species will be recorded on the same customized data forms that will be used for the restoration monitoring quadrats.

An annual monitoring report will be submitted to the EPA for each monitoring year. The monitoring report will include:

- A schedule identifying the dates when the raking, light grading and reseeding work were

- completed.
- A description of the maintenance or corrective actions that were performed by Clearwater Farms during the monitoring period.
- A narrative describing revegetation progress in the restored areas relative to the success criteria
- Lists of plant species observed in the restoration areas.
- Copies of the vegetation quadrat data forms.
- Photo logs showing the progression of site conditions at the repeat photo point locations.

### **SUCCESS CRITERIA**

Restoration will be determined successful when the following conditions are demonstrated to have been met:

- Total area of plant cover in the three restoration areas is at least 75 percent of its natural coverage at the end of the 3-year post-restoration monitoring period, understanding that natural coverage is a function of lake level, climatic precipitation and other environmental factors that are beyond the control of Clearwater Farms.
- The plant communities documented in the restoration monitoring quadrats have a species composition that is similar, or better, to those documented in the reference quadrats.
- For the first annual monitoring period, the restoration areas shall have at least 25 percent of natural vegetative cover based on coverage observed and recorded at the reference sites.
- For the second annual monitoring period, the restoration areas shall have at least 50 percent of natural vegetative cover based on coverage observed and recorded at the reference sites.
- For the third annual monitoring period, the restoration areas shall have at least 75 percent of natural vegetative cover based on coverage observed and recorded at the reference sites.
- For the third monitoring period, the restoration areas shall have less than 10 percent herbaceous noxious weeds (excluding Phragmites) included on the Utah County Noxious Weeds List. The presence of Tamarisk and Phragmites will be controlled to the extent practicable such that the restoration areas will not have Tamarisk and Phragmites coverage that is significantly greater than the reference sites.

Should vehicular transportation beyond the control of Clearwater Farms interfere with the success criteria listed above then the EPA and Clearwater Farms' management will meet and confer to determine the best course of action.

Appropriate contingency measures and corrective actions will be taken by Clearwater Farms to ensure that the restoration success criteria are achieved. However, neither Clearwater Holdings, LLC nor Clearwater Farms will be held responsible or obligated to replace vegetative damages

Clearwater Holdings, LLC  
c/o Cole Cannon, Esq. Counsel  
September 23, 2015  
Page 8 of 9

caused by vehicular trespass or herbicide applications done by the DNR, Utah County or other federal, state or local agencies, or other third parties unaffiliated with Clearwater Holdings, LLC or Clearwater Farms. Additionally, neither Clearwater Farms nor Clearwater Holdings will be responsible or obligated to replace vegetative damages caused lake level fluctuations, natural drought, natural flooding or other Force Majore events.

## **SCHEDULE**

The project area must be sufficiently dry to implement the backfilling of ditches, raking and light grading to prep the soils for re-seeding. The anticipated schedule is as follows assuming all agency permitting approvals necessary to implement this restoration plan are obtained by October 1, 2015:

- October 31, 2015, or sooner – backfill east and west ditches and reseed.
- October 31, 2015, or sooner – rake, grade and reseed the Phragmites removal area as needed.
- November 30, 2015 or sooner – install electric livestock fencing and signage on south river bank to discourage OHV trespass.
- September/October 2015 – complete first annual monitoring site inspection and submit monitoring report to EPA by November 20, 2015.
- July/August 2016 – complete second annual monitoring site inspection and submit monitoring report to EPA by October 15, 2016.
- July/August 2017 – complete third annual monitoring site inspection and submit monitoring report to EPA by October 15, 2017.
- If the success criteria have not be met by the end of the third monitoring period, Clearwater will continue annual monitoring until the success criteria have been met.

## **NOTIFICATIONS AND REPORTING**

- Clearwater will be responsible for obtaining all federal, state and local permitting notifications that may be required for the implementation of this restoration plan.
- Clearwater Farms will complete the restoration work as soon as the restoration plan has been approved by the EPA and USACE as applicable, and subject to weather, wetness and water level conditions at the site.
- Clearwater Farms will notify the EPA project coordinator within 14 days of completing the restoration work identified in this plan.
- Clearwater Farms will submit the annual monitoring reports to EPA for three post-restoration monitoring years as per the restoration plan schedule.
- EPA will notify Clearwater Farms when it has determined that the restoration has been satisfactorily achieved. EPA reserves the right to inspect the restoration areas once it has received the final post-restoration monitoring report. Regardless, EPA will submit written approval to Clearwater Farms within 200 days of its receipt of the final

Clearwater Holdings, LLC  
c/o Cole Cannon, Esq. Counsel  
September 23, 2015  
Page 9 of 9

post-restoration monitoring report.

Please feel free to contact me by cell phone (435-757-7022) or email (dwenger@frontiercorp.net) if you have any questions about this restoration plan for the Clearwater Farms project area.

Sincerely,

Frontier Corporation USA

Dennis C. Wenger  
Senior Wetlands Ecologist  
Principal

Enclosures:

- Table 1. Common plant species observed at the Clearwater Farms project area
  - Figure 1a. Site vicinity map – 1:24,000 scale topographic base
  - Figure 1b. Site vicinity map – 1:24,000 scale aerial base
  - Figure 2. Current site conditions map
  - Figure 3. Restoration map
  - Figure 4. Representative ditch cross-sections
  - Figure 5. Photo locations for August 24, 2015 site inspection
- Seven page photolog documenting current site conditions at the Clearwater Farms project area.

**Table 1. Common plant species observed in the Clearwater Farms project area.**

Spanish Fork River North Bank Area	Scientific Name <sup>1</sup>	USACE Arid West Indicator Status <sup>2</sup>
Annual rabbit's-foot grass	<i>Polypogon monspeliensis</i>	FACW
Baltic Rush	<i>Juncus balticus</i>	FACW
Barnyard grass	<i>Echinochloa crus-galli</i>	FACW
Common Reed	<i>Phragmites australis</i>	FACW
Coastal salt grass	<i>Distichlis spicata</i>	FAC
Curly dock	<i>Rumex crispus</i>	FAC
Eastern cottonwood	<i>Populus deltoides</i>	FAC
Fox-tail barley	<i>Hordeum jubatum</i>	FAC
Hardstem club-rush	<i>Schoenoplectus acutus</i>	OBL
Lady's thumb	<i>Persicaria maculosa</i>	FACW
Reed canary grass	<i>Phalaris arundinacea</i>	FACW
Rough cocklebur	<i>Xanthium strumarium</i>	FAC
Saltmarsh club-rush	<i>Schoenoplectus maritimus</i>	OBL
Small-flower tamarisk	<i>Tamarix chinensis</i>	FAC
Swamp pricklegress	<i>Crypsis schoenoides</i>	OBL
Willow	<i>Salix sp.</i>	
Phragmites Removal Area	Scientific Name <sup>1</sup>	USACE Arid West Indicator Status <sup>2</sup>
Annual rabbit's-foot grass	<i>Polypogon monspeliensis</i>	FACW
Common Reed	<i>Phragmites australis</i>	FACW
Coastal salt grass	<i>Distichlis spicata</i>	FAC
Creeping wild rye	<i>Elymus repens</i>	FAC
Fox-tail barley	<i>Hordeum jubatum</i>	FAC
Garden orache	<i>Atriplex hortensis</i>	FAC
Lamb's-quarters	<i>Chenopodium album</i>	FACU
Paiuteweed	<i>Suaeda calceoliformis</i>	FACW
Red saltwort	<i>Salicornia rubra</i>	OBL
Reed canary grass	<i>Phalaris arundinacea</i>	FACW
Rough cocklebur	<i>Xanthium strumarium</i>	FAC
Western-wheat grass	<i>Pascopyrum smithii</i>	FAC
East and West Backfill Ditches Area	Scientific Name <sup>1</sup>	USACE Arid West Indicator Status <sup>2</sup>
Annual blue grass	<i>Poa annua</i>	FACU
Annual rabbit's-foot grass	<i>Polypogon monspeliensis</i>	FACW
Baltic Rush	<i>Juncus balticus</i>	FACW
Broad-leaf cat-tail	<i>Typha latifolia</i>	OBL
Coastal salt grass	<i>Distichlis spicata</i>	FAC
Curly dock	<i>Rumex crispus</i>	FAC
Fox-tail barley	<i>Hordeum jubatum</i>	FAC
Garden orache	<i>Atriplex hortensis</i>	FAC
Hard-stem club-rush	<i>Schoenoplectus acutus</i>	OBL
Lamb's-quarters	<i>Chenopodium album</i>	FACU
Paiuteweed	<i>Suaeda calceoliformis</i>	FACW
Red saltwort	<i>Salicornia rubra</i>	OBL
Reed canary grass	<i>Phalaris arundinacea</i>	FACW
Russian olive	<i>Elaeagnus angustifolia</i>	FAC
Rough cocklebur	<i>Xanthium strumarium</i>	FAC
Saltmarsh club-rush	<i>Schoenoplectus maritimus</i>	OBL
Scotch cottonthistle	<i>Onopordum acanthium</i>	UPL

Small-flower tamarisk	<i>Tamarix chinensis</i>	FAC
Swamp pricklegass	<i>Crypsis schoenoides</i>	OBL
Toad rush	<i>Juncus bufonius</i>	FACW
Indicator Status	Designation	Definition
Obligate (OBL)	Hydrophyte	Almost always occur in wetlands
Facultative Wetland (FACW)	Hydrophyte	Usually occur in wetlands; but may occur in non-wetlands
Facultative	Hydrophyte	Occur in wetlands and non-wetlands
Facultative Upland (FACU)	Non-hydrophyte	Usually occur in non-wetlands, but may occur in wetlands
Upland (UPL)	Nonhydrophyte	Almost never occur in wetlands
<sup>1</sup> Common names and scientific names as per USACE 2014 Arid West Regional Plants List.		
<sup>2</sup> Indicator status is identified in the USACE 2014 Arid West Regional Plants List.		



Figure 1a. Site Vicinity Map -1:24,000 Scale Topographic Base.



Figure 1b. Site Vicinity Map -1:24,000 Aerial Base.





Clearwater Farms  
 Lake Shore, Utah County, UT  
 Restoration Plan

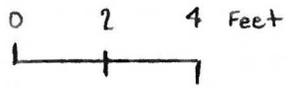
Frontier Corporation USA  
 September 2015

# CLEARWATER FARMS RESTORATION PLAN

LAKE SHORE, UTAH COUNTY, UT

XSECTIONS FOR EAST AND WEST DITCHES TO BE BACKFILLED

APRIL 23, 2015



1 inch = 4 feet

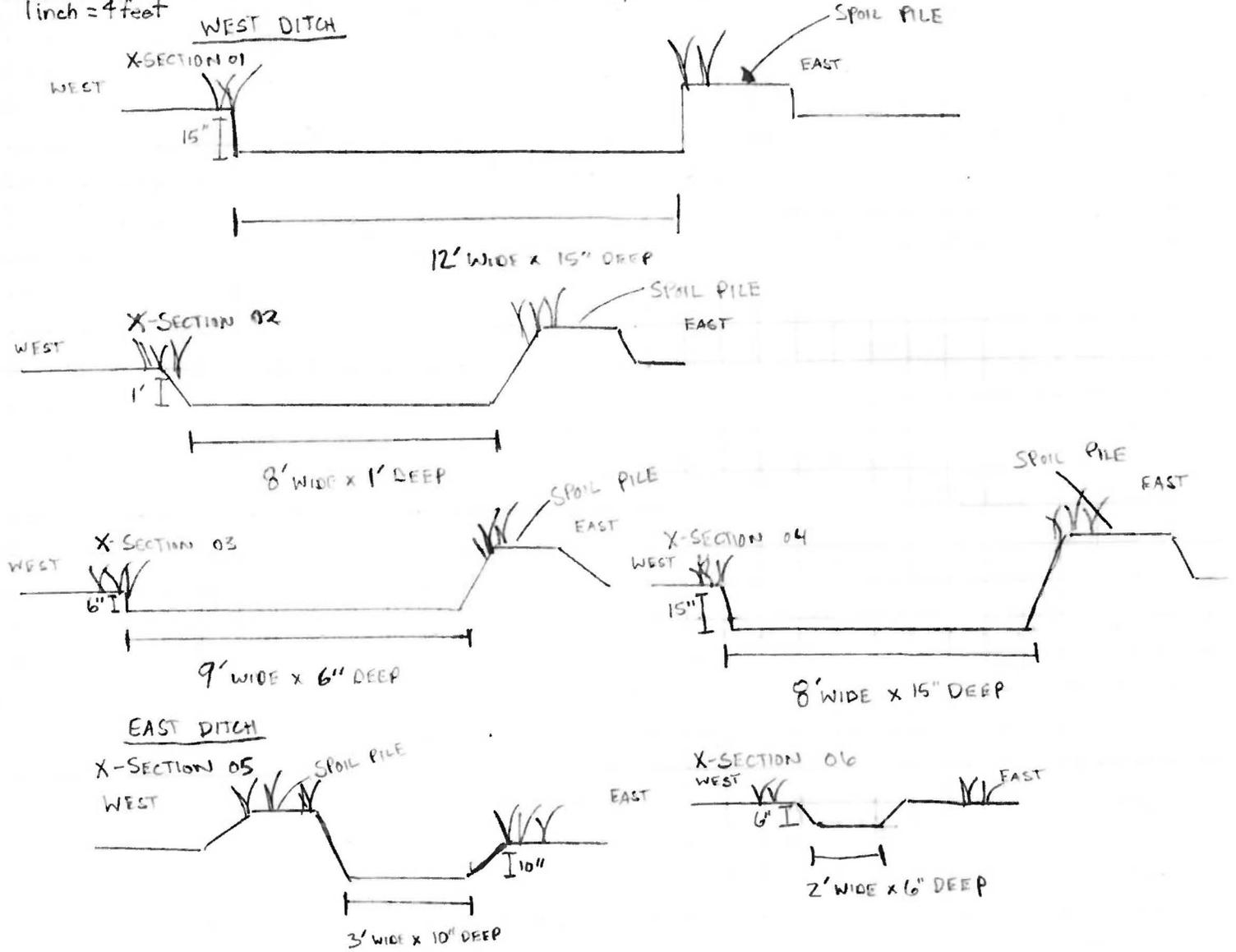


Figure 4. Representative Ditch X-Sections



Figure 5. Photo Locations for August 24, 2015 Site Inspection

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 1  
Photos taken: March 6, 2015



Photo 1. South view of man-made excavated ditches dug in wetlands taken from the fence at the north terminus of the excavation.



Photo 2. South view of X-section 01 in man-made excavated West Ditch.



Photo 3. South view of X-section 02 in man-made excavated West Ditch.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 2  
Photos taken: March 6, 2015



Photo 4. South view of cross section 03 in man-made excavated West Ditch.



Photo 5. North view of X-section 04 in man-made excavated West Ditch.



Photo 6. South end of West Ditch excavation where it connected to the existing Drainage Ditch.



Photo 7. West view of existing Drainage Ditch and spoil pile berm.



Photo 8. East view of existing Drainage Ditch and spoil pile berm.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 3  
Photos taken: March 6, 2015



Photo 9. North view of man-made excavated East Ditch from the south end. Taken from berm along existing Drainage Ditch.



Photo 10. North view of X-section 05 in man-made excavated East Ditch.



Photo 11. North view of X-section 06 in man-made excavated East Ditch.



Photo 12. North view of East Ditch on the north end terminus near the fenceline.



Photo 13. North view of area that was scraped for Phramites removal.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 4  
Photos taken: March 6, 2015



Photo 14. North view of scraped area along the Utah Lake waterline.



Photo 15. South view of scraped area along the Utah Lake waterline.



Photo 16. Northwest view of existing shoreline conditions.



Photo 17. South view of existing shoreline conditions.



Photo 18. South view of shoreline area that was scraped for Phragmites removal.



Photo 19. North view of shoreline area that was scraped for Phragmites removal.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 5  
Photos taken: August 24, 2015



Photo 20. East view of vegetative cover along the south bank of the Spanish Fork River in the northern portion of the Project Area.



Photo 21. West view of vegetative cover along the south bank of the Spanish Fork River in the northern portion of the Project Area.



Photo 22. Southwest view of vegetative cover along the south bank of the Spanish Fork River in the northern portion of the Project Area. Areas of bare soil at left of photo from OHV traffic. Recreational users dismantle fence to access Project Area.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 6  
Photos taken: August 24, 2015



Photo 23. East view of vegetative cover along the south bank of the Spanish Fork River in the northern section of the Project Area. Photo taken near the Utah Lake shoreline.



Photo 24. South view of vegetative cover in the northern section of the Project Area.



Photo 25. 180 degree panoramic of the Project Area facing East from the northwest corner near the inflow of the Spanish Fork River to Utah Lake.

Clearwater Farms Restoration Plan  
Lake Shore, Utah County UT - Photolog 7  
Photos taken: August 24, 2015



Photo 26. South view of vegetative re-growth in the central portion of the area that was scraped for Phragmites removal.



Photo 27. South view of vegetative cover in the northern portion of the Project Area.



Photo 28. South view of vegetative cover along in the central portion of the Project Area along the Utah Lake shoreline.



Photo 29. North view of vegetative re-growth in the southern portion of area that was scraped for Phragmites removal.