

January 4, 2018

VIA FEDERAL EXPRESS OVERNIGHT DELIVERY

Regional Hearing Clerk (6RC-D)
U. S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

FILED
2018 JAN -5 PM 3:30
REGIONAL HEARING CLERK
EPA REGION VI

Re: In the Matter of Jireh Resources, LLC
Docket No. SDWA-06-2017-1110

Dear Sir or Madam:

Enclosed are the original and one copy of Respondent's Motion to Reconsider Final Administrative Order for Alleged Violations of the Safe Drinking Water Act for filing in the referenced matter. Please return a file/received-stamped copy of the Motion to this office in the provided pre-addressed and stamped envelope.

Thank you for your assistance. Please advise if you have questions or need additional information.

Best regards,



Debra Cooper
Legal Assistant to John L. Randolph, Jr.

/dc
Enclosures

U.S. ENVIRONMENTAL PROTECTION AGENCY – REGION 6

FILED

In the Matter of Jireh Resources, LLC,
Respondent

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Docket No. SDWA-06-2017-1110

2018 JAN -5 PM 3:30
REGIONAL HEARING CLERK
EPA REGION VI

**RESPONDENT’S MOTION TO RECONSIDER FINAL ADMINISTRATIVE ORDER
FOR ALLEGED VIOLATIONS OF THE SAFE DRINKING WATER ACT**

Respondent, Jireh Resources, LLC, respectfully requests that the U. S. Environmental Protection Agency, through Ms. Cheryl T. Seager, Director of the Compliance Assurance and Enforcement Division acting under authority delegated from the Administrator of the U.S. Environmental Protection Agency, reconsider the issuance of the Final Administrative Order, dated December 21, 2017, calling for immediate shut-in of Respondent’s Well No. 9, Well No. 4W, and Well No. 18W, as defined in the order (“Final Order”). In support of this Motion, Respondent states:

FACTUAL BACKGROUND

1. On August 10, 2017, Respondent received a proposed order from the U.S. Environmental Protection Agency (“EPA”) Region 6, involving alleged pollution of a tributary of Bird Creek in Osage County, Oklahoma. (See Exhibit 1.) The proposed order alleged that recycling of produced water back into the Mississippi Chat formation by Respondent was causing overpressuring of that reservoir, which was forcing saline waters from that formation up through the ground to emerge into said tributary. The order would cause Respondent to shut in its recycling wells until it could prove the injected water was not escaping containment in the formation - with catastrophic consequences to its business.

2. An informal meeting was held on August 15, 2017 in Dallas, at which EPA personnel presented their case in support of the proposed order. Due to the expedited nature of the

matter, Respondent expressed concern over not having been provided with any actual data, rather than this summary form of information, that supposedly supported the claims made by EPA.

3. On August 30, 2017, Respondent made a formal request for a hearing to present evidence on the proposed order. (Exhibit 2.) Also, Respondent requested that such hearing be delayed “for an appropriate length of time to allow further investigation and discussion.” Inclusion of a request for a delay in the setting of the hearing was made at the suggestion of EPA counsel at that meeting.

4. On September 8, 2017, counsel for Respondent sent a letter to Ms. Ellen Chang-Vaughan, Assistant Regional Counsel to the EPA, Region 6, generally outlining upcoming testing and sampling of the impacted area and making a request for information. (Exhibit 3.) On September 13, 2017, Respondent was advised that EPA records would only be released through a Freedom of Information Act (“FOIA”) request. (Exhibit 4.) Respondent submitted its FOIA request that same day. (Exhibit 5.)

5. On September 12, 2017, Mr. Thomas Rucki, Regional Judicial Officer and Senior Assistant Regional Counsel for EPA Region 6, sent an email informing Respondent that a hearing was forthcoming and that it was to be an “expedited hearing” to be set in early October of 2017. (Exhibit 6.)

6. Upon receiving the email from Mr. Rucki, counsel for Respondent immediately requested clarification of the nature and scope of such hearing, particularly given the previous discussions with other EPA personnel about the need for a reasonable amount of time to examine the relevant evidence and prepare a meaningful response. (Exhibit 7.) Counsel also emailed Ms. Chang-Vaughan requesting an explanation of the apparent change of course regarding the hearing and the parties’ joint efforts at finding a solution to the problem. (Exhibit 8.)

7. Two days later, on September 14, 2017, Respondent received a communication from Mr. Rucki which characterized the nature of the upcoming hearing as a “public hearing” and that it would “not [be] adjudicatory in nature.” (“Rucki Email”). (Exhibit 9.) Mr. Rucki clarified that he was to be “simply acting as the neutral presiding officer for a public hearing ... to allow for the orderly flow of comments/evidence presentation.” The Rucki Email continued,

This public hearing is not adjudicatory in nature, nor is it a trial. I will not rule on motions, allow for cross examination, provide for prehearing exchanges, or conduct this public hearing in any manner like a traditional trial/hearing. Rather, the statute allows for an opportunity for public comments via a public hearing, this is that early step in the process and whatever transpires at this public hearing does not foreclose the ability to bring up any current/prior/new facts/arguments/evidence in future discussions with the EPA counsel or further adjudicatory/administrative proceedings.

If any parties/commenters are still gathering information or waiting on witnesses or experts and that information or those persons are not available for the public hearing, it will not impact your ability to discuss these issues or call witnesses at a later adjudicatory hearing or with EPA counsel in negotiations/discussions. Furthermore, I will not make a decision when the hearing is over – I do not have that authority in this matter. Instead, I will forward the hearing transcript to the decision maker.

Again, this is a public hearing, where I will gather information and nothing more – this hearing was requested is allowed per the statute and that opportunity will now occur. With that said, below is the schedule for the public hearing, which will occur on October 11, 2017, in Tulsa, Oklahoma. Please note that you need not attend this public hearing and that decision to not attend will not have any impact on your position/standing in the case – positive or negative. (Emphasis added).

8. Thus assured that there would be ample opportunity to further evaluate EPA data and prepare a substantive evidentiary response, Respondent prepared limited comments for the hearing from Respondent’s counsel Robert Winters, and from David House and Lanny Woods, Respondent’s corporate representatives.

9. In further reliance on email communication from Mr. Rucki, Respondent did not ask their experts to participate or prepare for the hearing, because it was expected that such an opportunity would be forthcoming and that the investigation was on-going.

10. The hearing took place on October 11, 2017 at the Tulsa County Courthouse and the above-identified Respondent representatives were in attendance and made statements that were prepared in the context of it being a “public hearing” only. No “evidence” other than their general public statements was presented by Respondent. Nor could have Respondent even prepared such testimony and evidence at that time – expert investigations and reports were still being prepared. EPA’s first partial FOIA response was only received on September 21, 2017, marked as an “interim” distribution - a mere nineteen days before the “hearing.”

11. Subsequent to the hearing and in support of Respondent’s view that the investigation and fact disclosure were on-going, Respondent has received two more interim responses from its FOIA request. The second was received on October 17, 2017, one week after the public hearing. A third response arrived on December 14, 2017, just one week before the Final Order was issued. Both responses were also marked as “interim.” The third was accompanied by a cover letter that stated: “This is a partial response to your request, and you may expect to receive a final letter when EPA has concluded its search for responsive records.” (Exhibit 10.) So apparently, Respondent will continue to receive documents supporting EPA’s findings even after the Final Order has been issued and the Record closed.

12. The Final Order was issued without prior notice to Respondent that the window for submitting further evidence or testimony, as explained by Mr. Rucki in his email, would soon be closing and that Respondent needed to submit anything further by a stated deadline. Because of this abrupt end, Respondent was effectively denied a reasonable opportunity to defend itself, to identify flaws in the proposed order, and to attack the sufficiency of the data used to support its conclusions. The Order was issued, and the Record in this matter (whatever that might be - Respondent has no way of knowing until it is certified for appeal) is closed. (Exhibit 11 - partial reproduction; EPA response to public comments omitted.)

ARGUMENTS AND AUTHORITIES

A. Standard of Review

While the proceeding is not explicitly subject to Title 40 CFR Part 22 – The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, the nature and outcome of the Final Order operates as a de facto suspension of Respondent’s permit. Therefore, Respondent looks to Title 40 CFR Part 22.32, entitled motion to reconsider a final order. The Environmental Appeals Board (“EAB”) has stated the purpose of Part 22.32 is “to provide a mechanism to bring ... attention [to] a manifest error, such as simple oversight, or a mistake of law or fact, or a change in the applicable law.” *In the Matter of Martex Farms, S.E.*, 2005 EPA ALJ Lexis 67, 11-12 (E.P.A. October 21, 2005).

The EAB went on in *Martex Farms* to quote an earlier decision of the appellate tribunal, stating,

A motion for reconsideration should not be regarded as an opportunity to reargue the case in a more convincing fashion. It should only be used to bring to the attention of this office clearly erroneous faction or legal conclusions. Reconsideration is normally appropriate only when this office has obviously overlooked or misapprehended the law or facts or the position of one of the parties.

Id. quoting *City of Detroit*, TSCA App. No. 89-5 (CJO Feb. 20, 1991), slip op. at 2.¹ The standard articulated by the EAB is similar in scope to that used by the Federal trial courts under Fed. R. Civ. P. 60(b), with which courts may grant relief from judgment for, *inter alia*, “mistake, inadvertence, surprise, or excusable neglect.”

¹ Starting with the first sentence, this motion can hardly be considered as trying to “reargue the case in a more convincing fashion” - Respondent never got to argue the matter in a substantive manner, despite the assurances of Mr. Rucki in his email.

B. Respondent was not provided a reasonable opportunity to be heard as required under Section 1423(c)(3)(A) of the Safe Drinking Water Act

In compliance with Part 22.23, this Motion for Reconsideration is timely filed within 10 days after the service of the Final Order, which was served on Respondent on December 28, 2017. Without commenting on the substantive findings in the Order, Respondent asserts that the Final Order was issued prematurely because Respondent was not given proper notice that the Record on this matter was closing and, therefore, Respondent was not given a proper opportunity to present evidence and be heard as required under Section 1423(c)(3)(A) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)(3)(A).

Given its earlier discussions with EPA in Dallas, the advice that a hearing date was to be set as early as October 10, 2017 was an alarming development for Respondent. Respondent sought clarification of the nature and scope of the hearing. EPA responded with reassurance that the hearing was only for public comment, and that there would be further opportunity to present evidence and argument in future discussions with EPA or at an adjudicatory hearing. It was never made clear by the EPA that the “public hearing” was the Respondent’s sole opportunity to be heard and present evidence pursuant to Section 1423 Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c). If not for the Rucki Email, Respondent would have prepared differently for the hearing. Respondent would have presented testimony from the experts who have been engaged to investigate the matter (albeit such testimony and analysis would have been limited and impaired as to effectiveness, because EPA had not yet shared the complete basis for its findings).

While it is true that some time has passed since the hearing, the parties have been engaged in continued discussions about identifying the source of contamination at the site. Respondent went so far as to participate in a vacuuming/flushing operation at the site in early December 2017, to remove some portion of contaminated water that had settled in the lone pool showing elevated salinity.

Complete analysis of testing and other data from that work is ongoing. Despite these efforts, which clearly demonstrate that Respondent has cooperated in developing as much information as possible about the site, it never got the chance to tell its side of the story, in direct contravention of the explanation provided in the Rucki Email, upon which Respondent relied.

As a matter of due process, Respondent should at least have been provided some advance notice that the record on this matter would be closing at some stated future date - a reasonable follow-up to the Rucki Email to warn that there was a forthcoming deadline for submission of evidence and argument. That is the only way that Respondent's right to a fair opportunity to be heard could have been fulfilled. The so-called public hearing simply cannot be used to support a finding of fairness and reasonableness. The representations made in the Rucki Email created a reasonable expectation that Respondent would have an opportunity in the future to present its case, whether informally in discussions with the EPA, or in an adjudicatory hearing, before any final order would be issued.

This fundamental lack of a fair opportunity to be heard violates Respondent's due process rights. The Final Order is a *de facto* suspension of its disposal permit and regulatory authority to conduct its business and threatens the financial viability of the business. "The 'right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.'" *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). The public hearing conducted in October did not rise to the level of a full and fair opportunity to be heard prior to severe agency action against Respondent, particularly given the reassurances contained in the Rucki Email. "The fundamental requisite of due process of law is the opportunity to be heard. The hearing must be at a meaningful time and in a

meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)(internal citations omitted).

Because of the Rucki Email, any full and fair opportunity to be heard has yet to occur.

C. Because the Record was closed abruptly without prior notice, Respondent has been denied a legitimate opportunity to appeal the issuance of the Final Order.

Perhaps the more serious result flowing from this abrupt termination of the "opportunity to be heard" without notice of any kind is the downstream effect of the action. Now that the Order has issued, the Record is closed. There is precious little to be found in the Record from Respondent, due to decisions made in reliance on the Rucki Email and statements from EPA of continued cooperation and productive communication. For this reason, Respondent has been materially and effectively prevented from seeking any sort of pre-enforcement relief through the appeal process. The Order says, "Comply," that is, shut in your wells until you can prove a negative - that Respondent is not responsible for the salinity of the fluids in the creek. Given the current, substantially incomplete, and one-sided Record as it now stands frozen by the issuance of the Order, a District Court sitting in review would only need a short time with the "Record" to find no abuse of discretion and plenty of evidence to support EPA's actions.²

The United States Supreme Court has recently established a clear rule that a party should be given a meaningful appellate path to review of agency action before any sort of compliance enforcement occurs. The EPA for years had argued that it should be allowed in all instances to issue compliance orders that could be enforced immediately. The Supreme Court finally put a stop to that practice in *Sackett v. EPA*, 132 S. Ct. 1367 (2012), involving a compliance order under the Clean Water Act. In like manner here, while there is a statutory right to appeal the Final Order under Section 1423(c), Respondent has been deprived of any fair opportunity to pursue an appeal because

² Again, there is a bit of speculation involved here, because Respondent really has no idea what is in the Record. For example, has EPA submitted all of its FOIA response data for inclusion in

the Record is so incomplete. Respondent relied on the Rucki Email and deferred a complete response to the EPA until such time as it had been provided with all of the relevant data from the EPA (which, as noted above, continues to trickle in) and a reasonable time to review, seek expert analysis and submit a substantive response.

These material mistakes of law resulted in the premature issuance of the Final Order and resulting closing of the Record, and together should require a re-visitation of its issuance on these procedural grounds alone.³

CONCLUSION

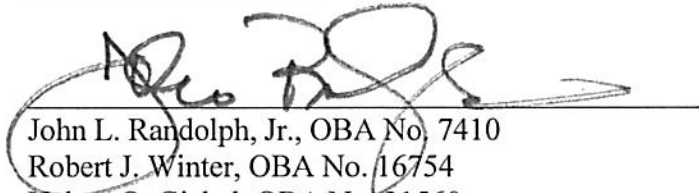
Respondent respectfully requests that the EPA, through Ms. Cheryl T. Seager, Director of the Compliance Assurance and Enforcement Division acting under the delegated authority from the Administrator of the U.S. Environmental Protection Agency, reconsider the Final Administrative Order, dated December 21, 2017, withdraw the same and provide Respondent a reasonable opportunity to present evidence and be heard as required under Section 1423(c)(3)(A) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)(3)(A).

Alternatively, at a minimum, Respondent respectfully requests that the record be opened for a limited thirty day window so that it can be supplemented with such evidence as is available at this “interim” point in the proceedings, together with the written reports and testimony of the experts engaged by Respondent.

the Record? This data would have been used by Respondent to refute the conclusions drawn by the EPA.

³ As mentioned earlier, this Motion is not intended to address the substantive findings in the Final Order. Let it merely be said that Respondent is prepared to submit materially substantial evidence to refute the assertions of the EPA, including data analysis and expert opinion and reports. As this matter now stands, those materials are probably not in the Record (except as briefly summarized at the October public hearing), but they are available for consideration at the appropriate time, if Respondent is given that opportunity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Randolph, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

John L. Randolph, Jr., OBA No. 7410

Robert J. Winter, OBA No. 16754

Valery O. Giebel, OBA No. 31560

PRAY WALKER, P.C.

100 W. 5th St., Suite 900

Tulsa, OK 74103

Tel: (918) 581-5500

Fax: (918) 581-5599

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was deposited with a public carrier, Federal Express, charges prepaid; and transmitted via electronic mail, for delivery to the following on the 4th day of January, 2018:

Cheryl T. Seager, Director (via Federal Express overnight delivery)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Regional Hearing Clerk (6RC-D) (via Federal Express overnight delivery)
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Via Email:

Jann Hayman, Director
Osage Nation Environmental and Natural Resources
jannhayman@osagenation-nsn.gov

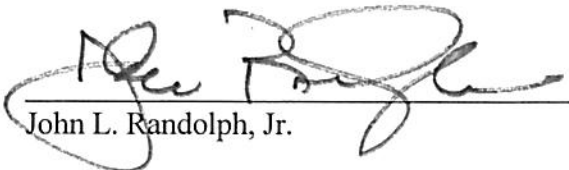
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Osage BIA
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Eddie Streater, Regional Director
BIA Eastern Oklahoma
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John L. Randolph, Jr.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733**

August 4, 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 4257

Mr. Lanny Woods, Vice President
Jireh Resources, LLC
PO Box 701230
Tulsa, OK 74170

Re: Notice of Proposed Administrative Order and Opportunity to Request a Hearing
Well Numbers: 9 (OS0922); 4W (OS0924); 18W (OS6320)
Docket Number: SDWA-06-2017-1110

Dear Mr. Woods:

Enclosed is a Proposed Administrative Order (Order) issued to Jireh Resources, LLC for violation of the Safe Drinking Water Act (SDWA). The violation is for violation of 40 CFR § 2912(c), failure to confine injected fluids to the authorized injection zone for Well Numbers 4W and 9 and violation of 40 CFR § 2920(d) for Well No. 18W. The enclosed Order does not assess a monetary penalty; however, it does require compliance with SDWA requirements. The enclosed Order requires that the referenced wells above be shut-in until the failure has been identified and corrected.

You have the right to request a hearing regarding the violations alleged in the Order pursuant to Section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A). Note that should you fail to request a hearing within thirty (30) days of your receipt of this Order, you will waive your right to such a hearing, and may be subject to the compliance terms without further proceedings. Whether or not you request a hearing, we invite you to confer with us informally. If you choose not to request a hearing, we will review any comments on the proposed Order received from you and the public and determine whether the Order will become final. In the event you fail to request a hearing within thirty (30) days of your receipt of this Order, and no public comments are received, the Order will become final. Should this occur, the Environmental Protection Agency (EPA) will send you a letter memorializing the finalization of the Order.

Also enclosed is an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission. The EPA is committed to ensuring compliance with the requirements of the Underground Injection Control program, and my staff will assist you in any way possible.

Re: Jireh Resources, LLC
SDWA-06-2017-1110

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Questions regarding this Order should be addressed to Ms. Ellen Chang-Vaughan
at (214) 665-7328.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Seager', with a long, sweeping horizontal line extending to the right.

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: BIA, Minerals Branch

Osage Nation Environmental and
Natural Resources Department

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
PROPOSED ADMINISTRATIVE ORDER
(NOT A FINAL ORDER)

In the Matter of Jireh Resources, LLC, Respondent
Docket No. SDWA-06-2017-1110

STATUTORY AUTHORITY

The following findings are made and Administrative Order ("Order") issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. §§ 300h-2(c). The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. Jireh Resources, LLC ("Respondent") is a limited liability company doing business in the State of Oklahoma and, therefore, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all times relevant to the violations alleged herein, Respondent operated injection wells which are Class II wells (collectively, "the wells") authorized to inject in the Mississippi Chat formation located in Osage County, Oklahoma, as described below:

Well No.	Inventory No.	Location	Hereinafter Referred to as
		Quarter Section Township Range	
9	OS0922	Northwest 01 27 North 7 East	"Well No. 9"
4W	OS0924	Southwest 01 27 North 7 East	"Well No. 4W"
18W	OS6320	Southwest 01 27 North 7 East	"Well No. 18W"

3. Respondent is subject to underground injection control ("UIC") program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule ("ABR") or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term "permit" is defined at 40 C.F.R. § 147.2902.

5. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

6. Regulations at 40 CFR § 147.2912(c), require that ABR injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-down, until the failure has been identified and corrected.

7. Regulations at 40 CFR § 147.2920(d), require that permitted injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-in, until the failure has been identified and corrected.

8. On April 12, 2012, EPA issued UIC permit number 06S1261P6320 ("permit") to Well No. 18W.

9. Wells No. 9 and No. 4W are regulated as ABR wells.

10. On August 16, 2016, EPA initially observed contamination in a tributary of North Bird Creek ("tributary") and North Bird Creek. Water located in the tributary at Latitude 36.8322 N and Longitude -96.4984 W, measured over 80,000 parts-per-million (ppm) Total Dissolved Solids (TDS). Also residual oil was observed on the surface and along the banks of the creek. These observations are consistent with impacts associated with oil and gas operations. Since then, EPA has conducted at least 20 inspections and has observed continued contamination.

11. On October 5, 2016 and June 27 - 29, 2017, samples were collected for cation/anion analyses in order to help identify the source(s) of contamination. Grab samples were taken at certain locations including the following: several locations throughout the tributary and North Bird Creek; and Jireh Resources, LLC well 18W. Cation/anion analyses of the samples show a correlation between the tributary samples and produced fluids from this well. In addition, EPA noted elevated temperatures at the bottom of the water column of the tributary and North Bird Creek.

12. On May 25, 2017, in-stream fluid monitoring began in the tributary and North Bird Creek. In-stream monitors were placed in the tributary at ten different monitoring locations measuring the levels of TDS and temperature in the tributary and North Bird Creek.

13. Based on data from in-stream monitors, several stations continue to show elevated TDS and temperature levels. The patterns of TDS and temperature readings, the quick rebound of TDS and temperature levels to pre-event levels after precipitation events, and cyclical variations seen in the data indicate that the presence of these elevated TDS and elevated temperature are consistent with oil field related activities.

14. From June 9 – 20, 2017, a coordinated “static shut-in” of the six closest injection wells in the area occurred which included Respondent’s 9, 4W and 18W Wells. The following are the observations which resulted from the shut-in:

(a) Due to the measured static fluids being 500 – 750 feet below ground surface, the static fluids cannot migrate from depth to the surface without additional pressure buildup, which was provided by the injection operations.

(b) A correlation was seen between injection operations and in-stream water quality TDS before and after the coordinated shut-in event.

(c) Amplitude (degree of variability) of short term concentration fluctuations at some stations diminished during the shut-in period.

15. From EPA investigations including those discussed in paragraphs 10 through 14 of this Order, EPA has made the determination that injected fluids from Respondent’s wells are no longer confined to the authorized injection zone.

16. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2912(c) and 147.2920(d) by exhibiting failure to confine injected fluids to the authorized injection zone.

SECTION 1423(c) COMPLIANCE ORDER

17. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:

Immediately shut-in and/or shut-down and disconnect injection pipelines from the wellhead for Well Nos. 9, 4W and 18W until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING ON THIS PROPOSED ORDER

18. Respondent may request a hearing to contest the issuance of this Section 1423(c) Proposed Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). A request for a hearing must be submitted to the Regional Hearing Clerk (6RC-D); U.S. EPA, Region 6; 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202 within thirty (30) days of the date of receipt of this Proposed Order. Such hearing shall not be subject to Section 554 or 556 of the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, but shall provide a reasonable opportunity to be heard and to present evidence.

19. A Respondent who wishes to request a hearing should include the request in a timely response to this Proposed Order. Respondent must file a timely response in order to preserve the right to a hearing or to pursue other relief.

20. EPA has notified the public of the filing of this Proposed Order at www.epa.gov/publicnotices and has afforded the public thirty (30) days in which to comment on

the Proposed Order as required by Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B). At the expiration of the notice period, EPA will consider any comments filed by the public.

21. Should a hearing be requested, members of the public who commented on the issuance of this Proposed Order during the public comment period would have a right to be heard and present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

GENERAL PROVISIONS

22. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart III, which remain in full force and effect.

23. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

24. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

SETTLEMENT OF THIS PROPOSED ORDER

25. EPA encourages all parties against whom an administrative order is proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Proposed Order, please contact Ms. Ellen Chang-Vaughan at (214) 665-7328.

26. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

27. This Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

August 9, 2017
Date

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

PW PRAY WALKER
ATTORNEYS & COUNSELORS AT LAW

JOHN L. RANDOLPH, JR.
DIRECT DIAL (918) 581-5599
JR.RANDOLPH@PRAYWALKER.COM

August 30, 2017

Regional Hearing Clerk (6RC-D)
U. S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Re: Request for Hearing
Regarding Proposed Administrative Order for
Well Nos. 9 (OS0922); 4W (OS0924); 18W (OS6320)
Docket No. SDWA-06-2017-1110

To the Regional Clerk:

This firm represents Jireh Resources, LLC ("Jireh") regarding the referenced matter. We acknowledge receipt of correspondence from the Director of the Compliance Assurance and Enforcement Division dated August 4, 2017, enclosing a copy of the proposed order identified above. Please accept this letter as the formal request of Jireh for a hearing to contest the issuance of the proposed order and for an opportunity to present evidence in support of its position against the proposed order.

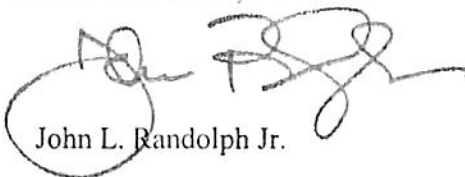
Regarding the setting of the hearing, Jireh representatives met with EPA personnel in Dallas earlier this month and discussed the matter at some length. At that meeting, EPA presented certain data and information in support of its position that Jireh had violated regulations contained in the notice and proposed order. Jireh made clear its intention to request a hearing in the matter. The parties agreed to schedule additional meetings and exchange further information to attempt to resolve the matter and avoid the need for a contested hearing. The parties also discussed that Jireh, in its hearing request, should ask that the hearing be deferred to give the parties the opportunity to schedule and hold these additional meetings. To that end, Jireh requests that the hearing on this matter be deferred for an appropriate length of time to allow further investigation and discussion.

Regional Hearing Clerk (6RC-D)
U. S. EPA, Region 6
August 30, 2017
Page 2

If you need anything further in this regard, please feel free to contact the undersigned. Meanwhile, we will continue communicating with Ms. Ellen Chang-Vaughan about our discussions and fact-finding. We look forward to achieving a satisfactory solution in the referenced matter.


Very truly yours,

PRAY WALKER, P.C.



John L. Randolph Jr.

cc: Cheryl T. Seager
Ellen Chang-Vaughan
Bureau of Indian Affairs, Minerals Branch
Osage Nation Environmental and Natural Resources Department
David House
Lanny Woods
Robert J. Winter

 Shipment Receipt

Address Information

Ship to:	Ship from:
Regional Hearing Clerk	John L. Randolph, Jr.
(6RC-D)	
US EPA, Region 6	PRAY WALKER, P.C.
1445 Ross Avenue, Suite	100 W 5TH ST, STE 900
1200	
	Suite 900
DALLAS, TX	TULSA, OK
75202	74103
US	US
214-665-2200	9185815500

Shipment Information:

Tracking no.: 770140987752
 Ship date: 08/29/2017
 Estimated shipping charges: 11.51 USD

Package Information

Pricing option: FedEx Standard Rate
 Service type: Priority Overnight
 Package type: FedEx Envelope
 Number of packages: 1
 Total weight: 0.50 LBS
 Declared Value: 0.00 USD
 Special Services:
 Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:

Bill transportation to: Pray Walker-008
 Your reference: 015071-005
 P.O. no.:
 Invoice no.:
 Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income, interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

JOHN L. RANDOLPH, JR.
DIRECT DIAL (918) 581-5509
JRANDOLPH@PRAYWALKER.COM

September 8, 2017

Ellen Chang-Vaughan
Assistant Regional Counsel
U. S. EPA, Region 6
Office of Regional Counsel (6RC-EW)8174
1445 Ross Avenue
Dallas, TX 75202

Re: Bird Creek Salinity Issues
Jireh Resources, LLC
Docket No. SDWA-06-2017-1110

Dear Ms. Chang-Vaughan:

As part of our continuing investigation into the possible causes of elevated salinity levels in upper Bird Creek, we would like to request that you provide certain information for review by our clients and consultants. The list of requested information accompanies this letter.

Also, as mentioned in an earlier email, please be advised that the attempted testing of bottom hole pressures and other tests have been delayed by technical issues. Apparently the company conducting the testing lost a tool down the hole, causing a delay of several weeks. We hope to resume that effort shortly. Despite this, we have retained consultants who are assisting us in reviewing the various data in hand, providing insights into possible causes of this circumstance, and providing valuable guidance as we work through this problem.

Finally, in coordination with Warren American, we intend to collect several samples from the impacted areas (probably at MS2 and MS6) in the near future. We understand that Warren American is resuming its production and disposal operation, and the intent is to get a baseline reading and then a reading following such resumption to track any impact on the affected areas. We will advise you of the actual dates and times of these samplings as they are scheduled.

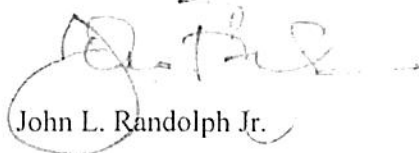
September 8, 2017

Page 2

I would imagine your resources are being stretched to the limit with the devastation caused by Hurricane Harvey. We are thinking of your team, appreciate your services, and hope that all will remain safe and sound through this process.

Very truly yours,

PRAY WALKER, P.C.

A handwritten signature in black ink, appearing to read "John L. Randolph Jr.", with a circular flourish around the first few letters.

John L. Randolph Jr.

Request for Data and Information
Jireh Resources, LLC

1. Dates, times and measurement values, and analyses results of any and all fluid (water, oil, emulsions, etc.) soil, or plant properties obtained or observed from direct field measurement (including but not limited to in situ temperature, density, TDS content, salinity, etc.) and/or subsequent laboratory analyses (including but not limited to any and all compositional analyses) obtained from the vicinity of North Bird Creek and/or tributaries of North Bird Creek deemed relevant to the EPA's Notice of Proposed Administrative Order of August 4th, 2017 issued to Jireh Resources LLC for violation of the Safe Drinking Water Act (SWDA), Docket Number SWDA-0602017-1110.
2. The data in #1 above, obtained either directly by the EPA or indirectly through another source, including but not limited to a governmental agency such as the Bureau of Indian Affairs "BIA", or through private 3rd Party contractor, or an offset oil and gas operator.
3. The data in #1 and 2 above, obtained either prior to, near, or after the EPA's August 16th, 2016 initial observation of "...contamination in a tributary of North Bird Creek..." but deemed pertinent by the EPA pursuant to the subject Proposed Administrative Order.
4. Corresponding to the data in #1, 2, and 3 above, a brief description of how any physical specimen samples were obtained, measurements taken, etc., accompanied by a brief description of the devices, instrumentation, etc. involved in such sampling and measurement.
5. Corresponding to the data in #1, 2, and 3 above, a brief description of the sampling site location and conditions. For example, when the EPA took salinity and temperature measurements at specific confined pools along the North Bird Creek tributary, what was the actual time of day, ambient air temperature, and the specific aerial location (latitude and longitude, etc.) within the pool were the measurements made? For a given aerial location, at what vertical depth below the surface of the pool were the measurements made? What was the total depth of the pool where the measurements made? What are the estimates of the dimensions of, and hence the contained volume within, each given pool from which measurements were obtained? Obviously, for (even temporarily) confined pools of relatively fresh water, factors such as evaporation must be taken into account. For example, any lists, tables, or maps showing the location of TDS check points in the immediate area would partially satisfy this request.
6. All data from the 10 monitoring stations, both raw data and any interpretations thereof (including but not limited to charts, graphs, tables, etc.).
7. All offset Operator Cumulative Production/Injection (Oil, Gas, Water Production and Water Injection) values by Lease and, if available, by Well; all historic (through current) Monthly Production/Injection (Oil Gas, Water Production, Water Injection Rates & Pressures) values by Lease and, if available, by Well; all available Fluid level and bottom hole pressure survey data.
8. What did the BIA find after its initial evaluation of the area on and immediately after 8/16/2016? Were there any surface indications of a flow leak? How far downstream did the saltwater extend on or about mid-August and 8/31/2016? When did the second "hot spot" occur (date)?

9. Results from the EPA measuring the near surface conductivity to locate a sub-surface saltwater plume, and any resultant interpretations thereof, including but not limited to, any maps, graphs, charts, etc.

10. Data, interpretations thereof, and the methodology description supporting the EPA's hypothesis that the subject Miss Chat reservoir is currently (and on or before 8-16-2016 became) over-pressured (i.e., "super-charged") and how two or more injection wells (all capable of taking produced formation water on a vacuum) can super-charge the said reservoir.

11. Data to support that only 230 - 240 pounds is needed to lift the subject formation water to the surface.

12. Data to support that the Jireh Resources' McComb 18W well had an average 240 pounds pressure in September 2016 and 80,000 bbls of water was injected.

13. Data to document the average static fluid level throughout the subject POA area is at 500 to 750 feet from the surface. What wells were used in this calculation? How was it determined this was the static fluid level? Could the fluid levels had gone down after the readings were taken?

14. Given the fact that Jireh's subject injection wells have been actively disposing of normal daily volumes of produced water both before 8-16-2016 thru the time of this writing, please explain, and provide data, analyses, and documentation supporting EPA's proposed finding citing "...Jireh Resources, LLC for violation of the Safe Drinking Water Act ...for...failure to confine injected fluids to the authorized injection zones..." subsequent to the EPA's recent discovery that the initial pool in question (e.g., "...the tributary at Latitude 36.8322 N and Longitude -96.4984 W...", and thus the site of the subject 8-16-2016 POA at which contamination "...measured at over 80,000 parts-per-million [ppm] Total Dissolved Solids [TDS]..." is now clean, with TDS levels at or below "potable" levels?? That is, please explain why the EPA continues to assert a cause-effect relationship between Jireh's Miss Chat injection and the subject SWDA violation when the "cause" has remained consistently active, and yet the "effect" at the original site no longer exists.

John Randolph

From: Chang-Vaughan, Ellen <Chang-Vaughan.Ellen@epa.gov>
Sent: Wednesday, September 13, 2017 12:22 PM
To: John Randolph
Subject: RE: Jireh Resources

John,
Would you be able to do a FOIA request for the data? We require that a formal request be made for our records. Sorry about the inconvenience. As soon as I receive the request, we can release the information. Thanks.

<https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>

From: John Randolph [mailto:jrandolph@praywalker.com]
Sent: Wednesday, September 13, 2017 11:03 AM
To: Chang-Vaughan, Ellen <Chang-Vaughan.Ellen@epa.gov>
Cc: Gillespie, David <Gillespie.David@epa.gov>; Robert Winter <rwinter@praywalker.com>
Subject: RE: Jireh Resources


Ellen,

Thanks for the input. We'll try to sort things out with Mr. Rucki.

I assume you have received Jireh's data request. We will be supplementing that with info requested by our consultant. I know you mentioned that EPA is not ready to release the data that was summarized in our meeting last month. Can you give any indication as to when this will be provided to the parties?

Thanks,

John

 **John L. Randolph, Jr. | Attorney | PRAYWALKER**
100 West Fifth Street, Suite 900 | Tulsa, Oklahoma 74103-4292
Direct: 918.581.5509 | Cell: 918.520.0041 | jrandolph@praywalker.com

From: Chang-Vaughan, Ellen [mailto:Chang-Vaughan.Ellen@epa.gov]
Sent: Wednesday, September 13, 2017 7:22 AM
To: John Randolph
Cc: Gillespie, David
Subject: RE: Jireh Resources

Dear John,

Thank you for your email. I can understand your alarm and disappointment, and I truly have appreciated your cooperation with me. However, I did not have a say on Mr. Rucki's email for the expedited hearing. He works independently of me and I try to maintain a separation. I have told my management that we had a productive meeting in August and that Jireh and Warren wanted to work with EPA. I will convey the same message to Mr. Rucki.

I have copied David Gillespie who was the other attorney sitting in the back.

From: John Randolph [mailto:jrandolph@praywalker.com]
Sent: Tuesday, September 12, 2017 5:05 PM
To: Chang-Vaughan, Ellen <Chang-Vaughan.Ellen@epa.gov>
Cc: Robert Winter <rwinter@praywalker.com>
Subject: Jireh Resources

Ellen,

I assume you have received a copy of my response to Mr. Rucki's email calling for an expedited hearing in the Bird Creek matter. My client is both alarmed and very disappointed that the EPA has reversed its course of action in this matter. We have been proceeding in reliance on those discussions to retain a consultant, discuss various plans aimed at isolating the source of the contamination, requesting information from the EPA, scheduling testing of the subject property, and working with the EPA toward a solution. I have kept you apprised every step of the way. If we had been warned in Dallas of the imminent approach of an expedited hearing as early as mid-October, we would have conducted the matter at an entirely different and frankly fevered pace in an attempt to prepare a sufficient response in so short a time frame.

Can you shed some light on what has happened to cause this radical change? I thought we were headed forward in a spirit of cooperation and am extremely disappointed in this reversal with no apparent justification. My hope is that Mr. Rucki got this file independently, merely read the proposed order and, upon seeing the proposed finding of continuing contamination, put this in the "to be expedited" file without the benefit of being apprised of our earlier discussions regarding a deferred hearing. This would be understandable and could be easily corrected.

However, if there is another cause, I would appreciate some elaboration on why this occurred. With no more explanation than that given by Mr. Rucki, we will, of course, strenuously object to an expedited hearing. If one were to occur despite these facts, Jireh will effectively be denied a reasonable chance to be heard in a meaningful way, without adequate time to collect, interpret and prepare evidence for a substantive hearing.

I would appreciate your thoughts on this and look forward to an appropriate resolution of this issue. I would also request that you forward this to the second attorney who attended the informal meeting, sat against the back wall, and commented favorably, along with others, in response to my specific inquiry about a deferred hearing date. I do not have my notes with his email address, or I would have copied him with this directly. Thank you.

John Randolph



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John Randolph

From: r6foia@epa.gov
Sent: Wednesday, September 13, 2017 4:41 PM
To: John Randolph
Subject: [Possible Spam] FOIA Request EPA-R6-2017-011461 Submitted

Importance: Low

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-R6-2017-011461
- Requester Name: John L. Randolph Jr.
- Date Submitted: 09/13/2017
- Request Status: Submitted
- Description: All documents, including without limitation, all data, testing, sampling, analyses, reports, graphs, graphic presentations, communications, and all other information compiled by EPA in connection with EPA's Notice of Proposed Administrative Order of August 4th, 2017 issued to Jireh Resources LLC for violation of the Safe Drinking Water Act (SWDA), Docket Number SWDA-0602017-1110. More specifically, that list of information contained in a letter dated September 8, 2017, from John L. Randolph Jr. to Ellen Chang-Vaughan, Ass't Reg. Counsel, Reg. 6, requesting disclosure of information regarding the subject Docket Number. If, due to the volume of data requested, the fee exceeds \$1,000 and is not waived, please advise and we may increase the agreed fee amount.

John Randolph

From: Rucki, Thomas <Rucki.Thomas@epa.gov>
Sent: Tuesday, September 12, 2017 10:39 AM
To: jhtucker@rhodesokla.com; smcnamara@mcnamara.com; John Randolph
Cc: Chang-Vaughan, Ellen; Vaughn, Lorena
Subject: SDWA 06-2017-1110, SDWA 06-2017-1111, SDWA 06-2017-1112 - hearing schedule

Good morning. Regarding the above referenced cases and the request for a hearing, please let me know availability for a morning or afternoon pre-hearing call on Friday, September 15. Due to the fact that EPA has set forth in its Administrative Order that injected fluids are no longer being confined to the authorized injection zone, an expedited hearing in this matter is necessary. However, the hearing is not adjudicatory in nature; rather, it will provide for an opportunity to be heard and also present evidence. I anticipate an early October hearing in Tulsa, Oklahoma, where I will consolidate the cases for purposes of the hearing, with each party having an equal opportunity to present its case and any evidence. Such October date can be discussed on the pre-hearing call. Once a date is finalized, I will inform the commenters of their right to attend and participate in the hearing. Thank you for your prompt attention to this matter.

Regards,
Tom Rucki

Tom Rucki
Regional Judicial Officer
Senior Assistant Regional Counsel
Office of Regional Counsel (6RC-EC)
U.S. EPA - Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
PHN: (214) 665-2759
FAX: (214) 665-7449
Email: rucki.thomas@epa.gov

John Randolph

From: John Randolph
Sent: Tuesday, September 12, 2017 4:44 PM
To: 'Rucki, Thomas'; jhtucker@rhodesokla.com; smcnamara@mcnamlaw.com
Cc: Chang-Vaughan, Ellen; Vaughn, Lorena; David House (david@dwhouse.net); 'Lanny Woods' (lannywoods@jirehresourcesllc.com); Stephen McNamara; Brian Inbody (BInbody@mcnamlaw.com); Robert Winter
Subject: RE: SDWA 06-2017-1110, SDWA 06-2017-1111, SDWA 06-2017-1112 - hearing schedule

Mr. Rucki,


We represent Jireh Resources, LLC and are in receipt of your email this morning concerning the referenced matter. Please allow me to respond.

Your announcement of an intent to conduct an expedited hearing in this matter is in direct conflict with what we were told in our informal meeting with the EPA team in Dallas last month. In response to my specific inquiry on this subject, all involved, including the two EPA counsel present, agreed that it would be appropriate for Jireh to request a deferral of the hearing date for a period of time to allow the respondents to gather information and take further steps in defining the scope of the problem and presenting various options for a solution to the EPA.

We would appreciate an explanation for this reversal of EPA's apparent agreement that a deferral would be appropriate, given the level of cooperation by Jireh and Warren American. EPA personnel were aware at that meeting that EPA had collected some data which it believed indicated a continuation of contamination into Bird Creek (a position with which we disagree, based on recent monitoring results). So that issue was known at the meeting when all agreed that a deferral of the hearing was appropriate. It does not seem appropriate to use that belief now as a basis for reversal of the parties' discussions.

Thank you for any light you can shed on this disturbing development.

John Randolph
Counsel for Jireh Resources, LLC

 **John L. Randolph, Jr. | Attorney | PRAYWALKER**
100 West Fifth Street, Suite 900 | Tulsa, Oklahoma 74103-4292
Direct: 918.581.5509 | Cell: 918.520.0041 | jrandolph@praywalker.com

From: Rucki, Thomas [mailto:Rucki.Thomas@epa.gov]
Sent: Tuesday, September 12, 2017 10:43 AM
To: jhtucker@rhodesokla.com; John Randolph; smcnamara@mcnamlaw.com
Cc: Chang-Vaughan, Ellen; Vaughn, Lorena
Subject: RE: SDWA 06-2017-1110, SDWA 06-2017-1111, SDWA 06-2017-1112 - hearing schedule

Please note the incorrect e-mail address on the original e-mail for Stephen McNamara. It has been corrected. My apologies for the oversight.

Regards,
Tom Rucki

From: Rucki, Thomas

Sent: Tuesday, September 12, 2017 10:39 AM

To: 'jhtucker@rhodesokla.com' <jhtucker@rhodesokla.com>; 'smcnamara@mcnamara.com' <smcnamara@mcnamara.com>; 'jrandolph@praywalker.com' <jrandolph@praywalker.com>

Cc: Chang-Vaughan, Ellen <Chang-Vaughan.Ellen@epa.gov>; Vaughn, Lorena <Vaughn.Lorena@epa.gov>

Subject: SDWA 06-2017-1110, SDWA 06-2017-1111, SDWA 06-2017-1112 - hearing schedule

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John Randolph

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John Randolph



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John Randolph

From: Rucki, Thomas <Rucki.Thomas@epa.gov>
Sent: Thursday, September 14, 2017 2:53 PM
To: John Randolph; jhtucker@rhodesokla.com; smcnamara@mcnamlaw.com
Cc: Chang-Vaughan, Ellen; Vaughn, Lorena; David House (david@dwhouse.net); 'Lanny Woods' (lannywoods@jirehresourcesllc.com); Stephen McNamara; Brian Inbody (BInbody@mcnamlaw.com); Robert Winter
Subject: SDWA 06-2017-1110, SDWA 06-2017-1111, SDWA 06-2017-1112 - hearing schedule

Good afternoon. It appears there is some confusion regarding the nature and scope of the coming public hearing, so please let me clarify what I intended to convey via my proposed telephone conference. In this matter, I am simply acting as the neutral presiding officer for a public hearing. I am present at the public hearing to allow for the orderly flow of comments/evidence presentation. Each party involved in the case, as well as any public commenters, is afforded an opportunity to present during the hearing - I am otherwise not involved in the matter after the hearing.

This public hearing is not adjudicatory in nature, nor is it a trial. I will not rule on motions, allow for cross examination, provide for prehearing exchanges, or conduct this public hearing in any manner like a traditional trial/hearing. Rather, the statute allows for an opportunity for public comments via a public hearing. This is that early step in the process and whatever transpires at this public hearing does not foreclose the ability to bring up any current/prior/new facts/arguments/evidence in future discussions with EPA counsel or further adjudicatory/administrative proceedings.

If any parties/commenters are still gathering information or waiting on witnesses or experts and that information or those persons are not available for the public hearing, it will not impact your ability to discuss these issues or call witnesses at a later adjudicatory hearing or with EPA counsel in negotiations/discussions. Furthermore, I will not make a decision when the hearing is over – I do not have that authority in this matter. Instead, I will forward the hearing transcript to the decision maker.

Again, this is a public hearing, where I will gather information and nothing more – this hearing was requested and is allowed per the statute and that opportunity will now occur. With that said, below is the schedule for the public hearing, which will occur on October 11, 2017, in Tulsa, Oklahoma. Please note that you need not attend this public hearing and that decision to not attend will not have any impact on your position/standing in this case - positive or negative. If you do choose to attend, however, each party will be allowed 1.5 hours to present, as set forth below. If you do not need the allocated 1.5 hours, please provide as such and I can adjust the schedule accordingly. If you are unable to attend, you can always submit any documents or evidence to EPA counsel.

Please let me know whether or not you plan to attend and participate in the public hearing.

All further communications in this manner should be directed to EPA counsel in this matter, unless there are questions or responses related only to the public hearing procedures, location, or similar public hearing matters (such as informing whether or not you will attend).

Tulsa County Courthouse
500 S. Denver Avenue
Room 119
Tulsa, Oklahoma 74103-3844

10:15-11:45: Jireh Resources, LLC

11:45-12:45: lunch

12:45-2:15: Warren American Oil Company, LLC

2:15-3:45: Novy Oil and Gas, Inc.
3:45-4:45: public comments

Regards,

Tom Rucki
Regional Judicial Officer
Senior Assistant Regional Counsel
Office of Regional Counsel (6RC-EC)
U.S. EPA - Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
PHN: (214) 665-2759
FAX: (214) 665-7449
Email: rucki.thomas@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

EXHIBIT

10

DEC 14 2017

VIA FOIAonline

Mr. John L. Randolph, Jr.
Pray Walker, P.C.
100 West 5th St.
Suite 900
Tulsa, OK 74103

RE: Freedom of Information Act (FOIA) Request EPA-R6-2017-011461

Dear Mr. Randolph:

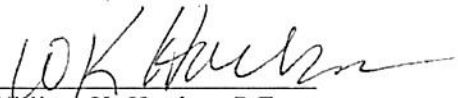
This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency on September 14, 2017, in which you requested "all documents, including without limitation, all data, testing, sampling, analyses, reports, graphs, graphic presentations, communications, and all other information compiled by EPA in connection with EPA's Notice of Proposed Administrative Order of August 4th, 2017 issued to Jireh Resources LLC for violation of the Safe Drinking Water Act (SWDA), Docket Number SWDA-0602017-1110. More specifically, that list of information contained in a letter dated September 8, 2017, from John L. Randolph Jr. to Ellen Chang-Vaughan, Ass't Reg. Counsel, Reg. 6, requesting disclosure of information regarding the subject Docket Number."

EPA Region 6 is providing you an interim release of responsive records from the Water Quality Division, Compliance, Assurance and Enforcement Division, and the Office of Regional Counsel. The records have been uploaded to the FOIAonline system. You will soon receive an email from the FOIAonline system notifying you that the records are available for your review and providing the direct link thereto.

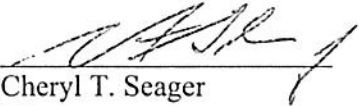
This is a partial response to your request, and you may expect to receive a final response letter when EPA has concluded its search for responsive records. If you have any questions concerning this response, you may contact the Regional FOIA Officer, Leticia Lane, who can be reached at (214) 665-7202 or lane.leticia@epa.gov.

EPA-R6-2017-011461

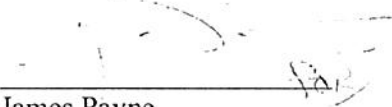
Sincerely,



William K. Honker, P.E.
Director
Water Division



Cheryl T. Seager
Director
Compliance Assurance and Enforcement
Division



James Payne
Regional Counsel
Office of Regional Counsel

John Randolph

From: r6foia@epa.gov
Sent: Friday, December 15, 2017 8:53 AM
To: John Randolph
Subject: [Possible Spam] Interim Release, Request EPA-R6-2017-011461

Importance: Low

EPA-R6-2017-011461 has been approved for an interim release.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: [View Records](#). Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

21 DEC 2017

CERTIFIED MAIL: 7007 3020 0000 1522 8625

Mr. Lanny Woods, Vice President
Jireh Resources, LLC
P.O. Box 701230
Tulsa, OK 74170

Re: Final Order
SDWA-06-2017-1110

Dear Mr. Woods:

The Environmental Protection Agency ("EPA"), Region 6, is issuing the enclosed final order pursuant to Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. § 300h-2(c). EPA issues this Final Order to address violations of the Act and its Underground Injection Control ("UIC") Program requirements at 40 C.F.R. Part 147, Subpart GGG at Wells No. 9, 4W and 18W in Osage County, Oklahoma. This Final Order, as proposed, was subject to public notice and comment, and an opportunity to request a hearing. A hearing was provided in Tulsa, Oklahoma, on October 11, 2017. At the hearing, you were provided an opportunity to be heard and present evidence, in accordance with Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). After considering the testimony and evidence, EPA has decided to proceed with the issuance of the Final Order as it was proposed, with some non-material revisions.

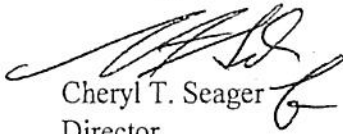
You may appeal this Final Order pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. 300h-2(c)(6).

Please note that the Small Business Regulatory Enforcement and Fairness Act provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an EPA enforcement action. The attached link provides information on this right as well as information on compliance assistance.

<http://nepis.epa.gov/Exe/ZyPDF.cgi/P100BYAV.PDF?Dockey=P100BYAV.PDF>.

Questions regarding this Order should be addressed to Jerry Saunders at (214) 665-6470.

Sincerely,



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosures:

Final Order
Response to Comments
Interim Final Report
Map
Charts
Public Notice

Cc:

John L. Randolph Jr.
Pray Walker
100 West Fifth St.
Suite 900
Tulsa, Oklahoma

BIA, Minerals Branch

Osage Nation Environmental and Natural Resources Department

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
ADMINISTRATIVE ORDER

In the Matter of Jireh Resources, LLC, Respondent
Docket No. SDWA-06-2017-1110

FILED

2017 DEC 21 PM 4: 54

REGIONAL HEARING CLERK
EPA REGION VI

STATUTORY AUTHORITY

The following findings are made, and Administrative Order ("Order") issued, under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. §§ 300h-2(c). The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. Jireh Resources, LLC ("Respondent") is a limited liability company doing business in the State of Oklahoma and, therefore, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all times relevant to the violations alleged herein, Respondent operated injection wells which are Class II wells (collectively, "the wells") authorized to inject in the Mississippi Chat formation located in Osage County, Oklahoma, as described below:

Well No.	Inventory No.	Quarter	Location Section	Township	Range	Hereinafter Referred to as
9	OS0922	Northwest	01	27 North	7 East	"Well No. 9"
4W	OS0924	Southwest	01	27 North	7 East	"Well No. 4W"
18W	OS6320	Southwest	01	27 North	7 East	"Well No. 18W"

3. Respondent is subject to underground injection control ("UIC") program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule ("ABR") or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term "permit" is defined at 40 C.F.R. § 147.2902.

5. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

6. Regulations at 40 C.F.R. § 147.2912(c), require that ABR injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-down, until the failure has been identified and corrected.

7. Regulations at 40 CFR § 147.2920(d), require that permitted injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-in, until the failure has been identified and corrected.

8. On April 12, 2012, EPA issued UIC permit number 06S1261P6320 ("permit") to Well No. 18W.

9. Wells No. 9 and No. 4W are regulated as ABR wells.

10. On August 16, 2016, EPA initially observed contamination in a tributary of North Bird Creek ("tributary") and North Bird Creek. Water located in the tributary at Latitude 36.8322 N and Longitude -96.4984 W, measured over 80,000 parts-per-million ("ppm") Total Dissolved Solids ("TDS"). Also residual oil was observed on the surface and along the banks of the creek. These observations are consistent with impacts associated with oil and gas operations. Since then, EPA has conducted at least 20 inspections and has observed continued contamination.

11. On October 5, 2016 and June 27 - 29, 2017, samples were collected for cation/anion analyses in order to help identify the source(s) of contamination. Grab samples were taken at certain locations including the following: several locations throughout the tributary and North Bird Creek; and Jireh Resources, LLC well 18W. Cation/anion analyses of the samples show a correlation between the tributary samples and produced fluids from this well. In addition, EPA noted elevated temperatures at the bottom of the water column of the tributary and North Bird Creek.

12. On May 25, 2017, in-stream fluid monitoring began in the tributary and North Bird Creek. In-stream monitors were placed in the tributary at ten different monitoring locations measuring the levels of TDS and temperature in the tributary and North Bird Creek.

13. Based on data from in-stream monitors, several stations continue to show elevated TDS and temperature levels. The patterns of TDS and temperature readings, the quick rebound of TDS and temperature levels to pre-event levels after precipitation events, and cyclical variations seen in the data indicate that the presence of the elevated TDS and elevated temperature are consistent with oil field related activities.

14. From June 9 – 20, 2017, a coordinated “static shut-in” of the six closest injection wells in the area occurred which included Respondent’s 9, 4W and 18W Wells. The following are the observations which resulted from the shut-in:

(a) Due to the measured static fluids in injection wells being 500 – 750 feet below ground surface, the static fluids cannot migrate from depth to the surface without additional pressure buildup, which was provided by the injection operations.

(b) A correlation was seen between injection operations and in-stream water quality TDS before and after the coordinated shut-in event.

(c) Amplitude (degree of variability) of short term concentration fluctuations at some stations diminished during the shut-in period.

15. From EPA investigations including those discussed in paragraphs 10 through 14 of this Order, EPA has made the determination that injected fluids from Respondent’s wells are no longer confined to the authorized injection zone.

16. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2912(c) and 147.2920(d) by exhibiting failure to confine injected fluids to the authorized injection zone.

17. On August 4, 2017, EPA Region 6 issued a proposed order to Respondent and provided Respondent an opportunity to request a hearing on the order pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

18. On August 8, 2017, EPA Region 6 provided public notice of its proposal to issue an order for compliance in this matter in accordance with Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

19. On October 11, 2017, EPA Region 6 administered a public hearing on this matter in Tulsa, Oklahoma, which provided Respondents and persons who had commented on the proposed order a reasonable opportunity to be heard and to present evidence in accordance with Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

20. EPA summarized its determinations in its Interim Final Bird Creek Investigation and Injection Well Response Action Plan dated August 4, 2017, and its Overview and Response to Comments dated December 21, 2017.

SECTION 1423(c) COMPLIANCE ORDER

21. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:

Immediately shut-in and/or shut-down and disconnect injection pipelines from the wellhead for Well Nos. 9, 4W and 18W until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.

GENERAL PROVISIONS

22. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart III, which remain in full force and effect.

23. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

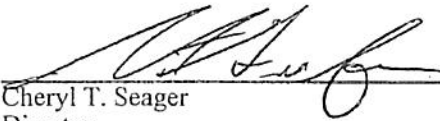
24. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

EFFECTIVE DATE

25. This Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

12-21-17

Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail
return receipt requested: Mr. Lanny Woods, Vice President
Jireh Resources, LLC
PO Box 701230
Tulsa, OK 74170

First class mail: John L. Randolph Jr.
Pray Walker
100 West Fifth St.
Suite 900
Tulsa, Oklahoma 74103

Copy by email: Jann Hayman, Director
Osage Nation Environmental and Natural Resources
jannhayman@osagenation-nsn.gov

Robin Phillips, Superintendent
Osage BIA
robin.phillips@bia.gov

Eddie Streater, Regional Director
BIA Eastern Oklahoma
eddie.streater@bia.gov

Bill Lynn, Director
Osage Minerals Council
william.lynn@osagenation-nsn.gov

Charles Babst, Senior Attorney
U.S. Department of the Interior, Tulsa Field Solicitor's Office
charles.babst@sol.doi.gov

Kristen Kokinos, Attorney
U.S. Department of the Interior, DC Solicitor's Office
kristen.kokinos@sol.doi.gov

Dated: 12/21/2017 