



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

December 18, 2014

Ref: 8ENF-L

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Matthew R. Vezza  
Newfield Production Company  
1001 17<sup>th</sup> Street, Suite 2000  
Denver, CO 80202

Re: Administrative Order on Consent  
Docket No. CWA-08-2015-0008

Dear Mr. Vezza:

Enclosed is a copy of the Administrative Order on Consent (AOC) that has now been signed by Suzanne J. Bohan for the U.S. Environmental Protection Agency (EPA) and filed with the EPA Region 8 Hearing Clerk. The AOC becomes effective upon your receipt of this letter and the enclosed AOC, so the time frames and deadlines in the AOC will be calculated based on the day on which you receive this.

If you have any questions relating to the requirements of the AOC, please feel free to call me or have your attorney call me at 303-312-6637 to discuss them. Any technical questions relating to the work required under the AOC should be directed to Ken Champagne, Section 404 Enforcement Program, at 303-312-6608.

The EPA greatly appreciates Newfield's time, effort and cooperation in working to resolve this matter.

Sincerely,

A handwritten signature in cursive script that reads "Wendy I. Silver".

Wendy I. Silver  
Senior Attorney

Enclosure

cc: Eric Waeckerlin, Davis Graham & Stubbs, LLP



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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2014 DEC 17 PM 12: 20

FILED  
EPA REGION VIII  
HEADQUARTERS  
DENVER, COLORADO

**IN THE MATTER OF** )  
 )  
**Newfield Production Company** )  
**1001 17<sup>th</sup> Street, Suite 2000** )  
**Denver, Colorado 80202** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. **CWA-08-2015-0007**

**I. INTRODUCTION**

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Newfield Production Company (Newfield). This Consent Order concerns restoration of environmental damage caused by allegedly illegal discharges of dredged or fill material to wetlands and other waters of the United States in Township 3 South, Ranges 1, 2, and 3 West, Uintah Meridian, Duchesne and Uintah Counties, 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 Newfield and Newfield'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 Newfield's responsibilities under this Consent Order unless the EPA, Newfield, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than thirty (30) calendar days prior to such transfer, Newfield 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, Newfield neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION. As such, and without any admission of liability, Newfield consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Newfield waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Newfield may have with respect to any issue of fact or law set forth in this Consent Order, 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. Newfield 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. Newfield is an independent crude oil and natural gas exploration company headquartered in The Woodlands, Texas. The company was originally incorporated on September 19, 1997, under the name Inland Production Co. Effective September 1, 2004, the company became known as Newfield Production Company. Newfield is authorized to conduct business in the State of Utah.

6. At all relevant times, Newfield or its predecessor Harvest (US) Holdings, Inc. (Harvest) owned, leased, controlled and/or operated well pads, pipelines, and access roads at the Site containing drainages preliminarily determined to be tributary to the Duchesne River and/or wetlands preliminarily determined to be adjacent to the drainages and/or the Duchesne River.

7. The Duchesne River is a perennial tributary to the Green River, a navigable, interstate water of the United States.

8. In 2012, Newfield performed a voluntary internal environmental audit and self-evaluation (Audit) concerning the CWA compliance status of certain oil and gas facilities owned or operated by Newfield in Utah's Central Basin. The Audit found potential non-compliance with the CWA at 19 facilities at the Site, including the construction of well pads, access roads, and pipelines, due to discharges of dredged or fill material to wetlands and drainages without authorization by a CWA section 404 permit. Four of the 19 facilities were constructed and previously owned by Harvest.

9. On June 1, 2012, Newfield provided a copy of the Audit to the U.S. Army Corps of Engineers (Corps) and stated that it was doing so pursuant to the "*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*," 65 Fed. Reg. 19,618 (April 11, 2000) and amendments (EPA Self-Audit Policy), and consistent with its understanding of the procedures under 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 (1989 MOA). Newfield further stated that it understood that the Corps would advise it if the Audit also needed to be forwarded to the EPA. Newfield did not provide a copy of the Audit to the EPA.

10. On September 10–12, 2012, the EPA and the Corps conducted an inspection of the 19 facilities identified in the Audit. The Corps also performed preliminary jurisdictional determinations and concluded that the impacted wetlands and drainages may be waters of the United States. No final jurisdictional determinations were made.

11. On January 24, 2013, the Corps sent a notice of violation to Newfield notifying it that it had discharged dredged or fill material into waters of the United States, including wetlands, at the Site in violation of the CWA.

12. On March 21, 2013, the Corps referred this matter to the EPA for enforcement in accordance with the 1989 MOA.

13. Construction of the well pads, access roads, and pipelines described in paragraph 8, above, resulted in discharges of dredged or fill material into wetlands and drainages 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 8, above, were performed using common earthmoving vehicles and equipment.

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

16. The material discharged at the 19 facilities at the Site described in paragraph 8, 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. For purposes of this Consent Order, Newfield does not dispute that the drainages and 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 drainages tributary to the Duchesne River and wetlands adjacent to the tributaries and the Duchesne 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. Newfield and/or Harvest are not and never have 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 8, above.

24. The activities conducted by Newfield, Harvest, and/or by persons acting on their behalf as described in paragraph 8, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source 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 and mitigation are 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 Newfield'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. Newfield shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

28. Newfield shall conduct restoration and mitigation 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 Removal and Restoration Plan and the Wetland Mitigation and Monitoring Plan attached to this Consent Order as Exhibits A and B (the Plans) which are hereby approved by the EPA. Newfield has voluntarily agreed to conduct restoration and mitigation work in connection with the sites disturbed by Harvest, even though Harvest is principally responsible for any unpermitted activities at those sites.

29. Within fourteen (14) calendar days of receipt of this Consent Order, Newfield shall submit 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 Plans.

30. Newfield shall obtain all necessary permits to implement the Plans and then commence all restoration and mitigation activities in accordance with the approved Plans, including the time frames specified therein, and all granted permits. Newfield 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 receipt of each permit.

31. All restoration and mitigation activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken under the direct, on-site 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. Newfield 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 under section 404 of the CWA. If any such permit is required, Newfield 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, UT 84010  
Telephone: 801-295-8380  
Facsimile: 801-395-8842

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

Kenneth M. Champagne, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: 303-312-6608  
Facsimile: 303-312-7518

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

Wendy I. Silver, 8ENF-L  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 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 and mitigation work, Newfield shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

35. The Plans 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 Plans, 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. Newfield shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA, the Corps, the U.S. Fish and Wildlife Service, and the Ute Indian Tribe, or any of the agencies' or Tribe's 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 Newfield 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:

Andrew Bremner, Esq.  
Newfield Exploration Company  
1001 17<sup>th</sup> Street, Suite 2000  
Denver, CO 80202

40. Any party hereto may, by 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, Newfield shall notify the EPA orally as soon as possible and in writing within ten working days from the date Newfield first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Newfield'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 Newfield 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 Newfield to comply with requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.


42. If Newfield demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Newfield's control (or the control of any of Newfield's agents) that Newfield could not have foreseen and prevented despite due diligence, and that Newfield 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 ten working days, after the receipt of Newfield's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Newfield.

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

44. Newfield understands and acknowledges the following:
- a. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), 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 Newfield of its obligations to comply with any applicable federal, state or local law or regulation.
  - c. Failure by Newfield to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Newfield to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
Complainant**

Date: December 17, 2014

  
\_\_\_\_\_  
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
1595 Wynkoop Street  
Denver, CO 80202

**NEWFIELD PRODUCTION COMPANY,  
Respondent**

Date: November 13, 2014

  
\_\_\_\_\_  
Matthew R. Vezza

# **EXHIBIT A**

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# REMOVAL AND RESTORATION PLAN

## NEWFIELD CENTRAL BASIN CWA 404 AUDIT

DUCHESNE AND UINTAH COUNTIES, UTAH

MAY 2014

REVISED AUGUST 2014

PREPARED FOR:



Newfield Production Company  
1001 17<sup>th</sup> Street, Suite 2000  
Denver, Colorado 80202

PREPARED BY:



OUTLAW Engineering, Inc.  
PO BOX 1800  
Roosevelt, Utah 84066

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Table 3b. Non-Compliant Newfield Sites Over 0.5 Acre

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# **EXHIBIT B**

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# WETLAND MITIGATION AND MONITORING PLAN

FOR THE NEWFIELD WETLAND MITIGATION SITE

DUCHESNE COUNTY, UTAH

OCTOBER 2014

PREPARED FOR:



Newfield Exploration Company  
10530 South Country Road 33  
Myton, Utah 84052

PREPARED BY:



OUTLAW Engineering, Inc.  
PO BOX 1800  
Roosevelt, Utah 84066

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