



RE: Hearing: Stevenson CWA-06-2011-2709 
 Patrick Rankin to: Chuck Kibler, Russell Murdock
 Cc: Lorena Vaughn

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 2012 OCT 18 PM 1:35
 10/18/2012 01:24 PM
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From: Patrick Rankin/R6/USEPA/US
 To: "Chuck Kibler" <chuck@kiblerlaw.com>, Russell Murdock/R6/USEPA/US@EPA
 Cc: Lorena Vaughn/R6/USEPA/US@EPA

Gentlemen:

As explained at pages 2 - 3 of my September 6 Decision on Motions, a potentially dispositive issue in this matter is the existence of a Regional Condition to the 2007 version of NWP 3 that required submission of a preconstruction notification to the Corps for Respondents' discharges. The record currently contains no documentation of applicable Regional Conditions and such documentation, if any exists, is likely the "written policy" to which Mr. Kibler refers in this email.

In our last prehearing conference, I pointed out to you both that, Regional Conditions (available by google search) that applied to both predecessor and successor versions of the 2007 NWP 3 required preconstruction notification for discharges to cypress-tupelo gum swamps in the Galveston District. I pointed out that Mr. Murdock, should he wish to rely on a similar Regional Condition, would need to introduce documentary evidence of the Condition and expert testimony establishing the wetland at issue is such a swamp. Mr. Murdock may of course submit other evidence, testimony, and argument in support of his case, but establishing that a Regional Condition to NWP 3 required preconstruction notification for the discharges at issue might resolve the issue of whether or not Respondents' discharges were authorized by the 2007 version of NWP 3.

In the attached scheduling order, any supplement to your prehearing exchanges must be provided opposing counsel and Ms. Vaughn no later than November 1. If Mr. Murdock intends to introduce the applicable Regional Conditions and evidence showing one of them required preconstruction notification, a copy of those Regional Conditions and the identify of the expert witness and summary of his/her testimony should be included in such a supplement. If it is not, that evidence will be excluded from the record in the absence of good cause shown. Rebuttal witnesses need not be listed in the prehearing exchanges.

If either of you can't live with the ordered schedule, you may file a request for continuance. In the absence of very good cause, however, I will be disinclined to grant such a motion.

Pat Rankin
 Regional Judicial Officer



scheduling order.pdf

"Chuck Kibler"

Ms. Vaughn,

10/18/2012 10:17:15 AM

From: "Chuck Kibler" <chuck@kiblerlaw.com>
 To: Russell Murdock/R6/USEPA/US@EPA, Lorena Vaughn/R6/USEPA/US@EPA
 Cc: Patrick Rankin/R6/USEPA/US@EPA
 Date: 10/18/2012 10:17 AM
 Subject: RE: Hearing: Stevenson CWA-06-2011-2709

Ms. Vaughn,

As a follow-up to my previous message, I am confirming that my client and expert are available on the date mentioned.

I would like to also bring an issue up which troubles me. During the conference call noted in Mr. Murdock's message below, Mr. Rankin indicated that unless Galveston USCOE had a written policy in effect which required a submission of a written plan, then "this would pretty much decide the issue" (or words to that effect). I have requested such documents or other written proof of the existence of such a policy from Mr. Murdock who (politely, I'll add) responded that he would provide it once he had it. With less than 30 days before the hearing remaining, I am concerned that my client will bear the burden of additional legal and expert fees to attend a hearing which is unnecessary.

I would sincerely appreciate any information about the existence of such a policy (I have looked diligently and found nothing) before my client bears the additional burden of this hearing.

Charles (Chuck) Kibler, Jr.
The Kibler Law Firm
765 N. 5th Street
Silsbee, Texas 77656
(409) 373-4313
Fax (888) 720-1177
<http://www.kiblerlaw.com>

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From: Murdock.Russell@epamail.epa.gov [mailto:Murdock.Russell@epamail.epa.gov]
Sent: Wednesday, October 10, 2012 9:56 AM
To: Vaughn.Lorena@epamail.epa.gov
Cc: Chuck Kibler; Rankin.Patrick@epamail.epa.gov
Subject: Hearing: Stevenson CWA-06-2011-2709

Lorena,

I'm following up on the last conference call Mr. Kibler and I had with Regional Judicial Officer Rankin regarding the hearing in the matter of Henry Stevenson & Parkwood Land Company. After consulting with the Corps of Engineers and Mr. Kibler for potential dates, I believe I have found some dates that should work.

The Corps can provide us a conference room in their Galveston offices on November 13th, 14th, and 15th. I believe the hearing will only take one day, but out of an abundance of caution, I believe setting aside two days would be prudent. Also, given that the 12th is a holiday, I propose that the hearing be scheduled for **Wednesday, November 14th in the Galveston office of the Corps of Engineers** with the relevant room likewise scheduled for the 15th in case the hearing stretches to two days.

I hope this date will work for all parties. If not, I can go back to the Corps and try to negotiate a different time. I apologize for the delay in sending out this e-mail, but I literally just received confirmation from the Corps regarding the conference room in the past 30 minutes.

Russell Murdock
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave. Suite 1200 (6RC-EW)
Dallas, TX 75202
(214) 665-3189
(214) 665-3177 (Fax)
Murdock.Russell@epa.gov

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REGION 6

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In the Matter of:

**Mr. Henry R. Stevenson, Jr.,
and Parkwood Land Co.,**

Respondents

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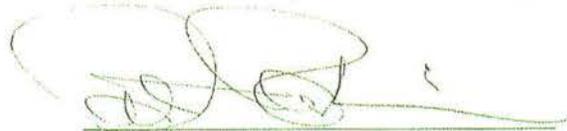
Docket No. CWA-06-2011-2709

ORDER

An evidentiary hearing shall be held in this cause on November 14, 2012 in Conference Room 185 in the offices of the Galveston District of the U.S. Army Corps of Engineers, Jadwin Building, 2000 Fort Point Road, Galveston, Texas 77553. The hearing shall commence at 9:00 AM Central Time. Should the parties be unable to present their cases in a single day, the hearing will reconvene at 9:00 AM on November 15, 2012.

Either party wishing to present testimony or evidence not previously identified in prehearing exchanges shall supplement those exchanges by mail or email no later than November 1, 2012.

November 18, 2012



Pat Rankin
Regional Judicial Officer