

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2012-2710
	§	
Paco Swain Realty, L.L.C.,	§	
a Louisiana Corporation,	§	
	§	Motion to Supplement
Respondent	§	Complainant's Prehearing Exchange

MOTION TO SUPPLEMENT COMPLAINANT'S PREHEARING EXCHANGE

COMES NOW COMPLAINANT, the Director of the Water Quality Protection Division, United States Environmental Protection Agency, Region 6, by and through its attorney, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1–22.52, hereby moves the Administrative Law Judge to supplement Complainant's Prehearing Exchange filed on June 28, 2013. In support thereof, Complainant states the following:

A. Jurisdiction and Legal Authority

1. This is a proceeding to assess a Class II Civil Penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). In accordance with 40 C.F.R. § 22.16, any party may seek relief from the Administrative Law Judge by motion.

2. By the Order Scheduling Hearing dated October 22, 2014, the Administrative Law Judge ordered that any Motion to Supplement Prehearing Exchange be filed no later than December 29, 2014. The Order Scheduling Hearing stated that any motion must explain why the witness or exhibit was not included in the initial prehearing exchange.

B. Factual Background

3. On October 19, 2009, William Nethery, as part of his duties as a Senior Botanist with the United States Army Corps of Engineers ("Corps"), completed an "Approved Jurisdictional Determination Form" ("JD Form") for the property owned by Paco Swain Realty, L.L.C. ("Respondent") known as the Megan's Way subdivision ("subject property"). The JD Form was submitted as part of Complainant's Prehearing Exchange as Exhibit 11. Complainant moved to supplement the Prehearing Exchange with a revised JD Form correcting a clerical error on September 4, 2013, and the motion was granted on February 11, 2014. The revised JD form is listed as Complainant's Exhibit 22.

4. On November 12 and 13, 2014, Mr. Nethery visited the subject property. Mr. Nethery was accompanied by Bob Morgan, Respondent's attorney. During this site visit, Mr. Nethery made additional observations both on and off the property and documented his observations through photographs, two updated JD Forms and a diagram of flows through the subject property. Mr. Nethery updated the original JD Form to create an updated JD Form for the eastern flow to Dick Hill Branch and an updated JD Form for the western flow to Colyell Creek.

5. Complainant seeks to supplement the Prehearing Exchange with the following Exhibits:

- | | |
|----------------------|------------------------------------------------------------------------------------------------------------------------------|
| Complainant's Ex. 23 | Approved Jurisdictional Determination Form dated December 17, 2014 for flow from the eastern portion of the subject property |
| Complainant's Ex. 24 | Approved Jurisdictional Determination Form dated December 17, 2014 for flow from the western portion of the subject property |
| Complainant's Ex. 25 | Photographs taken during November 12-13, 2014 site visit (including a photo index showing locations of photos) |

Complainant's Ex. 26 Flow diagram for subject property prepared by W. Nethery

6. The site visit occurred subsequent to the deadline for the initial Prehearing Exchange. Therefore, the exhibits discussed herein could not have been included in the initial Prehearing Exchange.

7. Complainant did not have sufficient time prior to the filing deadline to allow Respondent to review the motion and exhibits; however, Complainant informed Respondent's counsel of this motion and the contents of the exhibits prior to filing, and Respondent's counsel indicated that he will respond to the motion if Respondent opposes inclusion of these exhibits in the record.

C. Request for Relief

Pursuant to 40 C.F.R. § 22.16, Complainant hereby moves the Administrative Law Judge to enter an Order allowing Complainant to supplement its Prehearing Exchange with the Exhibits listed in Paragraph 5.

DATED this 29th day of December, 2014.

RESPECTFULLY SUBMITTED,

Tucker Henson
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CERTIFICATE OF SERVICE

I certify that the original of the foregoing MOTION TO SUPPLEMENT PREHEARING EXCHANGE was filed with the **Headquarters Hearing Clerk** of the Office of Administrative Law Judges (“OALJ”) via the OALJ E-Filing System, and a true and correct copy was sent to the following on this 29th day of December, 2014, via email to:

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Tucker Henson