

STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION



In the Matter of:

SOUTHWEST CAPITAL BANK,
LAND DEVELOPMENT 2, LLC,
CLUB RIO RANCHO

Respondents.

WQCC 18-04 (CO)
No.: GWQB 18- (CO)

**RESPONDENT LAND DEVELOPMENT 2, LLC'S AMENDED ANSWER
TO ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE
AND ASSESSING A CIVIL PENALTY AND REQUEST FOR HEARING**

COMES NOW the Respondent LAND DEVELOPMENT 2, LLC ("LD2"), by and through its counsel of record, the Torres Law Firm, LLC (Becky A. Torres), and hereby requests a hearing for its answer (the "Answer") to Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty (the "Order") states as follows:

ANSWER

I. FINDINGS OF FACT

1. Paragraph 1 is a conclusion of law, which requires no response.
2. Paragraph 2 is a conclusion of law, which requires no response.
3. Paragraph 3 is a conclusion of law, which requires no response. Provided however, the Respondents deny any violation of the WQA or DP-1629.
4. Paragraph 4 is a conclusion of law, which requires no response.
5. Paragraph 5 is a conclusion of law, which requires no response.
6. Paragraph 6 is a conclusion of law, which requires no response.

7. Paragraph 7 is a conclusion of law, which requires no response. Provided however, the Respondents deny that any ground water has been contaminated by Respondents.

8. LD2 admits the allegations contained in Paragraph 8 of the Order.

9. LD2 admits the allegations contained in Paragraph 9 of the Order.

10. LD2 admits the allegations contained in Paragraph 10 of the Order.

11. Paragraph 11 is a conclusion of law, which requires no response.

12. For Paragraph 12, the Respondents deny any violation of DP-1629.

13. Respondents deny the allegations contained in Paragraph 13, Mr. Josh Skarsgard is not the Owner of Land Development 2, LLC. Land Development 2, LLC is the owner of the 270 acres (+/-) of land referred to as "Club Rio Rancho". Respondents admit that Josh Skarsgard spoke with the NMED regarding DP-1629, and received a letter on July 25, 2017.

14. For Paragraph 14, it purports to characterize the provisions of Discharge Permit DP-1629, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the Permit's plain language, meaning, or context is denied.

15. For Paragraph 15, it purports to characterize the contents of the NOV, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the NOV's plain language, meaning, or context is denied.

16. Respondents deny the allegations contained in Paragraph 16.

17. For Paragraph 17, it purports to characterize the contents of the email referenced in said Paragraph, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the email's plain language, meaning, or context is denied.

18. For Paragraph 18, it purports to characterize the contents of the NOV and the CHCC Report, which each speak for themselves and are the best evidence of their respective contents.

Any allegations contrary to the NOV's of the CHCC Report's plain language, meaning, or context is denied.

19. For Paragraph 19, it purports to characterize the contents of the CHCC Report, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the CHCC Report's plain language, meaning, or context is denied.

20. For Paragraph 20, it purports to characterize the contents of the response referenced in said Paragraph, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the response's plain language, meaning, or context is denied.

21. For Paragraph 21, it purports to characterize the contents of the email referenced in said Paragraph, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the email's plain language, meaning, or context is denied.

22. For Paragraph 22, it purports to characterize the contents of the Conditional Closure Plan referenced in said Paragraph, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the Conditional Closure Plan's plain language, meaning, or context is denied.

23. Respondents are without sufficient information to admit or deny the allegations contained in the first two sentences of Paragraph 23 and therefore, deny the same.

24. Respondents admit the allegations contained in Paragraph 24.

25. Respondents deny the allegations contained in Paragraph 25.

26. For Paragraph 26, it purports to characterize the contents of the CHCC Report, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the CHCC Report's plain language, meaning, or context is denied.

27. For Paragraph 27, it purports to characterize the contents of the NOV, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the NOV's plain language, meaning, or context is denied.

28. Respondents deny the allegations contained in Paragraph 28.

29. For Paragraph 29, it purports to characterize the contents of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the Permit's plain language, meaning, or context is denied.

30. For Paragraph 30, Respondents are without sufficient information to admit or deny the allegations contained in the first sentence of Paragraph 30, and therefore deny the same; Respondents admit the remaining allegations contained in Paragraph 30.

31. For Paragraph 31, Respondents are without sufficient information to admit or deny the allegations contained in the first sentence of Paragraph 31, and therefore deny the same; Respondents admit the remaining allegations contained in Paragraph 31.

32. Respondents admit the allegations contained in Paragraph 32.

33. For Paragraph 33, LD2 admits the allegations contained in the first sentence of Paragraph 33; LD2 denies the allegations contained in the second sentence of Paragraph 33.

34. For Paragraph 34, the first four sentences purport to characterize the contents of certain written correspondence between NMED and LD2 and its agents, which speaks for itself and is the best evidence of its contents. Any allegations contrary to said correspondence's plain language, meaning, or context is denied. For the final sentence in Paragraph 34, LD2 states that the resubmittal referenced therein has been received by NMED.

35. For Paragraph 35, the first four sentences purport to characterize the contents of certain written correspondence between NMED and LD2 and its agents, which speaks for itself

and is the best evidence of its contents. Any allegations contrary to said correspondence's plain language, meaning, or context is denied. Further, the first four sentences contain legal conclusions to which no response is required. For the final sentence in Paragraph 35, LD2 states that the resubmittal referenced therein has been received by NMED.

VIOLATIONS

Violation 1: Violation 1 contains legal conclusions, to which no response is required. To the extent a response is required, LD2 denies the allegation.

Violation 2: Violation 2 contains legal conclusions, to which no response is required. To the extent a response is required, LD2 denies the allegation.

Violation 3: Violation 3 contains legal conclusions, to which no response is required. To the extent a response is required, LD2 denies the allegation

COMPLIANCE ORDER

- 36. For Paragraph 36, the allegations require no answer.
- 37. For Paragraph 37, the allegations require no answer.
- 38. For Paragraph 38, the allegations require no answer.

CIVIL PENALTY

- 39. For Paragraph 39, the allegations require no answer.
- 40. For Paragraph 40, the allegations require no answer.
- 41. For Paragraph 41, the allegations require no answer.
- 42. For Paragraph 42, the allegations require no answer.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

- 43. For Paragraph 43, the allegations require no answer.
- 44. For Paragraph 44, the allegations require no answer.

45. For Paragraph 45, the allegations require no answer.
46. For Paragraph 46, the allegations require no answer.
47. For Paragraph 47, the allegations require no answer.
48. For Paragraph 48, the allegations require no answer.
49. For Paragraph 49, the allegations require no answer.

FINALITY OF ORDER

50. For Paragraph 50, the allegations require no answer.
51. For Paragraph 51, the allegations require no answer.
52. For Paragraph 52, the allegations require no answer.

SETTLEMENT

53. For Paragraph 36, the allegations require no answer.

AFFIRMATIVE DEFENSES

With respect to the civil penalties proposed by NMED for those findings and/or conclusions admitted by Respondents, they assert the following defenses:

FIRST AFFIRMATIVE DEFENSE

Respondents' Answer and each denial contained therein constitute Respondents' first affirmative defense.

SECOND AFFIRMATIVE DEFENSE

NMED has failed to state a claim against Respondents.

THIRD AFFIRMATIVE DEFENSE

With respect to the civil penalties proposed by NMED for those findings and/or conclusion admitted to by Respondents, they assert the following defenses:

A. NMED failed to consider the good faith efforts of Respondents to comply with the alleged applicable requirements, pursuant to NMSA §74-6-10(D).

B. NMED failed to consider the seriousness of the violations, pursuant to NMSA §74-6-10(D).

C. NMED's imposition of penalties is arbitrary, capricious and without substantial basis in law or in fact;

D. The penalty assessed against the Respondents by NMED is grossly disproportionate to other fines assessed against other permittees operating under Discharge Permits issued pursuant to the New Mexico Water Quality Act.

E. The penalty assessed against the Respondents by NMED is grossly disproportionate to the associated risk of groundwater contamination (identified as "None" in the Order) and potential seriousness of contamination (identified as "None" in the Order).

F. The fine assessed against the Respondents by NMED is based upon improper, duplicative allegations of the Discharge Permit No. DP-1629.

FOURTH AFFIRMATIVE DEFENSE

Respondents cannot fully anticipate at this time all defenses that may be applicable. Accordingly, Respondent reserves the right to assert additional defenses if and to the extent such affirmative defenses are later discovered and found to be applicable.

REQUEST FOR HEARING

Respondents respectfully request a hearing on this matter pursuant to NMED's Adjudicatory Procedures, 20.1.3.19 NMAC.

WHEREFORE, Respondents respectfully request that the determination be made that it did not commit the violations alleged in the Administrative Compliance Order unless specifically admitted to by Respondents in their Answer, that the civil penalties proposed by NMED be denied where the underlying alleged violation has been denied by Respondents in this Answer, that the civil penalties proposed by NMED be reduced or eliminated where the underlying alleged violation has been admitted to by Respondents in this Answer, that the schedule of compliance actions thereunder ordered by NMED be denied and that all other such relief as the Hearing Officer deems just and appropriate be granted.

Respectfully submitted,

TORRES LAW FIRM, LLC

By: /s/ Becky A. Torres

Becky A. Torres

Attorney for LD2

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I HEREBY CERTIFY that the above document was emailed and mailed this 5th day of September, 2018, to the following:

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/s/ Becky A. Torres

Becky A. Torres