

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

In the Matter of:

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,**

WQCC 18-04 (CO)

Complainant,

v.

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

Respondents.



NOTICE OF SETTLEMENT

Pursuant to NMSA 1978, § 74-6-10(G) (1993) and the Water Quality Control Commission's ("Commission") adjudicatory procedures at 20.1.3.22.B(1) NMAC, the New Mexico Environment Department ("Department") hereby notifies the Commission that a Settlement Agreement and Stipulated Final Order, attached hereto, has been fully executed by the parties and signed by the Secretary.

CONCLUSION

For the foregoing reasons, the Department requests that the Commission approve the attached terminate the attached Settlement Agreement and Stipulated Final Order, and terminate this proceeding.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL**

/s/ John Verheul

John Verheul

Assistant General Counsel

New Mexico Environment Department

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Counsel for New Mexico Environment Department

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the WQCC Administrator and was served on the following via electronic mail on July 16, 2019:

Gregory W. Levenson, President
Southwest Capital Bank
1410 Central Ave SW
Albuquerque, NM 87104
glevenson@southwestcapital.com

Joshua Skarsgard, Owner
Land Development 2, LLC
8220 San Pedro NE, Suite 500
Albuquerque, NM 87113
josh@retailsouthwest.com

Respondent

Respondent

John Grubestic
Office of the Attorney General
P.O. Box 1508
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Counsel for the Water Quality Control Commission

/s/ John Verheul
John Verheul

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,**

Complainant,

v.

SOUTHWEST CAPITAL BANK,

Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

This Settlement Agreement and Stipulated Final Order (“Agreement”) is entered into between the Water Protection Division (“Division”) of the New Mexico Environment Department (“NMED” or “Department”) and Southwest Capital Bank (“SWCB” or “Respondent”), pursuant to 20.1.3.22.B NMAC, to resolve alleged violations of the Ground and Surface Water Protection Regulations, 20.6.2 NMAC (“Regulations”) and Ground Water Discharge Permit DP-1629, that occurred at Club Rio Rancho, in Sandoval County, New Mexico.

I. BACKGROUND OF DISPUTE

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico created pursuant to NMSA 1978, Section 9-7A-4 (2005). The Division is an organizational unit of the Department. The Secretary of the Department delegated to the Director of the Division the authority to seek administrative enforcement, including injunctive relief and civil penalties, for violations of the Regulations. The Ground Water Quality Bureau (“Bureau”) is an organizational unit within the Division.

2. Southwest Capital Bank is the holder of Discharge Permit DP-1629, and Land

Development 2, LLC is the owner of lands referred to as “Club Rio Rancho”, and are “persons” within the meaning of NMSA 1978, Section 74-2-2(O) (2001).

B. ALLEGED VIOLATIONS

3. On August 2, 2018, the Department issued an Administrative Compliance Order (“ACO”) to Southwest Capital Bank, Land Development 2, LLC, and Club Rio Rancho. The ACO alleged that the Respondent was in violation of conditions 9, 11, and 28 of DP-1629.

4. The ACO required Respondent to perform certain corrective actions:

- a) Within 45 days of execution of this Order, bring the water quality within the impoundments that currently contain water, including the impoundment located at the north east of Club Rio Rancho up to the standards required by DP-1629 via installation of an aeration system bearing the seal and signature of a licensed New Mexico Professional Engineer.
- b) Within 45 days of the execution of this Order, complete closure of the impoundments that do not currently contain water as originally proposed on December 14, 2017, with the exception of any impoundment(s) subject to the Temporary Restraining Order or Preliminary Injunction in case number D-1329-CV-201801443. Documentation required to be submitted includes any and all permits issued by the City of Rio Rancho pertaining to grading and filling, and certification by a licensed New Mexico Professional Engineer of all filling activities.
- c) Within 30 days of the execution of this Order, provide any delinquent monthly DO and pH monitoring reports, beginning with the reports from June 2018.
- d) Within 30 days of the execution of this Order, provide an acceptable Corrective Action Plan, including effluent quality reports, for the unauthorized releases which

occurred on May 15 and 17, 2018.

- e) Within 30 days of the execution of this Order, submit a comprehensive plan to remove the shoreline vegetation for approval by NMED.

II. COMPROMISE AND SETTLEMENT

5. The parties have engaged in settlement discussions to resolve the allegations contained in the ACO without further proceedings.

6. The parties enter into this Agreement for the sole purpose of settling the Department's allegations that are the subject of the ACO.

7. For purposes of this proceeding, the Department and Respondent admit that the Department has jurisdiction over the subject matter of this Agreement pursuant to the Water Quality Act and the Regulations.

8. In compromise and settlement of the violations alleged in the ACO, and any other alleged violations of the Permit or Regulations that occurred between the issuance of the ACO and the Effective Date, the parties agree to the following:

9. Respondent shall not install an aeration system in the North Westerly pond and shall not be required to have Wildcat Environmental Service, LLC ("Wildcat") conduct any water quality testing in the North Westerly pond. Respondent shall not add water to the North Westerly pond.

10. Respondent shall direct Wildcat to install an aeration system in the North Easterly pond under plans bearing the seal and signature of a licensed New Mexico Professional Engineer and direct Wildcat to resume the water quality testing it had been previously conducting. Engineered drawings shall be submitted to the Department for review and approval no later than (30) days from the Effective Date of this Agreement, prior to installation of the aeration system, and shall complete installation within 30 days of Department approval.

11. Respondent shall not install an aeration system in the West ponds, and shall not be required to have Wildcat conduct any water quality testing in the West ponds as part of this Agreement.

12. Respondent shall direct Wildcat to install an aeration system in the East ponds under plans bearing the seal and signature of a licensed New Mexico Professional Engineer and direct Wildcat to resume the water quality testing it had been previously conducting. Engineered drawings shall be submitted to the Department for review and approval no later than (30) days from the Effective Date of this Agreement, prior to installation of the aeration system, and shall complete installation within 30 days of Department approval.

13. Respondent has completed the “plating” of the West ponds, and the organic pond solids will not be removed at this time. The West ponds shall continue in their capacity to accommodate storm water as required by the City of Rio Rancho and the Southern Sandoval County Arroyo Flood Control Authority (“SSCAFCA”). The Respondent shall submit to NMED, no later than thirty (30) days from the Effective Date of this Agreement, the estimated volume, dry weight, and maximum depth of the organic pond solids in the West Ponds. Respondent has completed the installation of a 6 inch to 12 inch “plate” above the organic pond solids in the West Ponds. Respondent shall not add any water or any reclaimed water to the West Ponds.

14. Respondent has submitted all delinquent monthly DO and pH monitoring reports for the West Ponds. Respondent shall test the ground water monitoring well twice per year starting in 2019 and provide those results to NMED in May and November of each year.

15. No later than sixty (60) days from the Effective Date of this Agreement, Respondent shall submit an Application for a Discharge Permit Modification on the form available on the Ground Water Quality Bureau website (<https://www.env.nm.gov/gwqb/forms/>). The modification

is needed to authorize the change in discharge character and flow characteristics: from storage of reclaimed wastewater in a lined impoundment prior to use for irrigation to retention/infiltration of storm water. The submitted Application shall contain the information in 20.6.2.3106.D NMAC, including: a) a proposed site and method for flow measurement (see 20.6.2.3106.D(5) and 20.6.2.3109.H(1) NMAC), and b) an analysis of the movement and composition of leachate from the ponds through the subsurface, considering the expected storm water inflow to the ponds, the volume of organic pond solids present and concentration of total nitrogen and other contaminants in the pond solids, and subsurface lithology and hydraulic parameters (see 20.6.2.3106.D(7) NMAC).

16. Respondent has submitted a Corrective Action Plan as required for the unauthorized releases which occurred on May 15 and 17, 2018, and it was reviewed and acknowledged by NMED.

17. Respondent has directed Wildcat to prepare a proposal for the partial removal of cattails from the North Easterly pond and the East ponds. No later than 30 days from the Effective Date of this Agreement, Respondent shall submit the proposal for review and approval by the Department, and shall implement the plan within 30 days of Department approval.

18. Respondent shall complete the corrective actions on the North Easterly Pond and East Ponds no later than forty-five (45) days from the Effective Date of this Agreement. Upon completion the Respondent shall provide a report to NMED documenting the actions taken, with photo documentation as appropriate to each action. Respondent shall submit photos of the six to twelve inches of "plating" that have already taken place upon the West Ponds.

19. In recognition for actions completed, the Respondent's good faith efforts to achieve compliance, and to avoid litigation of all alleged violations, the Division hereby suspends the civil

penalty set forth in the ACO.

III. OTHER TERMS AND CONDITIONS

20. Enforcement. This Agreement shall be enforceable by any of the parties by the filing of a civil action in the Thirteenth Judicial District Court in Bernalillo, New Mexico, or other appropriate forum.

21. Binding Effect. This Agreement shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

22. Duration. This Agreement shall remain in effect until Respondent completes construction of the Project and the Respondent has filed a final report with NMED concerning all actions taken.

23. Integration. This Agreement merges all prior written and oral communications between the parties concerning the subject matter of the Agreement, and contains the entire agreement between the parties. The Agreement shall not be modified without the express written consent of the parties.

24. Reservation of Rights and Defenses. The Department retains the right to pursue any relief authorized by the Regulations for any violation not raised in the ACO or not related to any other violations of the Permit conditions identified in the ACO that occurred between the ACO's date of issuance and the Effective Date.

25. Waiver of State Liability. Respondent shall assume all costs and liabilities incurred in its performance of any obligation explicitly agreed to under this Agreement. The Department, on its own behalf or on behalf of the Department or the State of New Mexico, shall not assume any liability for respondent's performance of any obligation under the Agreement.


26. Disclosure to Successors-in-Interest. Respondent shall disclose the Agreement to

any successor-in-interest and shall advise such successor-in-interest that the Agreement is binding on the successor-in-interest until such time as Respondent complies with its terms and conditions or it is terminated by written agreement of the parties.

27. Force Majeure. Force Majeure shall apply to this Agreement. As used herein, Force Majeure shall mean and delay resulting from no fault of Respondent or any cause whatsoever beyond the reasonable control of the party from whom performance is required, or any of such party's contractors, subcontractors, or other representatives. The Respondent shall undertake all reasonable actions to ensure the corrective actions deadlines are timely met.

28. Effective Date. The Agreement shall become effective upon execution by the Chief of the Ground Water Quality Bureau of the Department ("Effective Date").

APPROVED by the Water Protection Division:



Michelle Hunter *Rebecca Roose*
Bureau Chief *Director, Water Protection Division*
~~Ground Water Quality Bureau~~
New Mexico Environment Department

July 10, 2017

Date

APPROVED by

SWCB:

Southwest Capital Bank


By: 

Name: Erik W. Levenson

Title: PRESIDENT : CEO

FINAL ORDER

Pursuant to 20.1.3.22.B NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by the Division and Southwest Capital Bank is hereby APPROVED and ORDERED.



James Kenney, Secretary
New Mexico Environment Department

Date: 7-16-19