

STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

January 18, 2011

Mr. Theodore W. Brin, Registered Agent
Blue River Construction Management LLC
1601 Blake Street, Suite 305
Denver, Colorado 80202

Certified Mail Number: 7009 1680 0000 2094 4961

RE: Order for Civil Penalty, Number: IP-110118-1

Dear Mr. Brin:

Blue River Construction Management LLC is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Compliance Order on Consent Number: IC-101109-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Kelly Morgan of this office at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: San Miguel County Environmental Health Department

ec: Aaron Urdiales, EPA Region VIII
Jocelyn Mullen, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Michael Beck, FSU, CDPHE
Kelly Morgan, Case Person, CDPHE
Tania Watson, Compliance Assurance, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY

NUMBER: IP-110118-1

IN THE MATTER OF: BLUE RIVER CONSTRUCTION MANAGEMENT LLC
CDPS PERMIT NO. COG-070000
CERTIFICATION NO. COG-072761
SAN MIGUEL COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section, and pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of Eight Thousand Five Hundred Fifty Two Dollars (\$8,552.00) against Blue River Construction Management LLC for the violations cited in the November 9, 2010 Compliance Order on Consent (Number: IC-101109-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. Blue River Construction Management LLC shall pay half of the civil penalty within thirty (30) calendar days of the date of this Order for Civil Penalty and the other half of the penalty within one (1) year of the date of this Order for Civil Penalty as set forth in the Compliance Order on Consent.

"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:

*Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CAS-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530"*

Dated this 18th day of January 2011.

Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

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Colorado Department
of Public Health
and Environment

November 16, 2010

Rick Halevy, Manager
Blue River Construction Management LLC
3275 County Road 100
Carbondale, Colorado 81623

RE: Compliance Order on Consent, Number: IC-101109-1

Dear Mr. Halevy:

Enclosed for Blue River Construction Management LLC's records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 32). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact myself at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kelly Morgan
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: San Miguel County Health Department
Enforcement File
Theodore Brin (1601 Blake Street, Suite 305, Denver, CO 80202)

ec: Aaron Urdiales, EPA Region VIII
Jocelyn Mullen, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION**

COMPLIANCE ORDER ON CONSENT

NUMBER: IC-101109-1

**IN THE MATTER OF: BLUE RIVER CONSTRUCTION MANAGEMENT LLC
CDPS PERMIT NO. COG-070000
CERTIFICATION NO. COG-072761
SAN MIGUEL COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602, 605 and 606, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Blue River Construction Management LLC ("Blue River Construction"). The Division and Blue River Construction may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-090622-1) that the Division issued to Blue River Construction on June 22, 2009.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602, 605 and 606, C.R.S., the Division has made the following determinations regarding Blue River Construction, the Facility and Blue River Construction's compliance with the Act and its implementing permit regulations, and the permit certifications that were issued to Blue River Construction.
3. At all times relevant to the violations cited herein, Blue River Construction was a Colorado limited liability company in good standing.
4. Blue River Construction is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Pursuant to 25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
6. Beginning on or about November 14, 2008, Blue River Construction initiated construction activities associated with the construction of a new single-family residence located at 168 Hemlock Street, Telluride, San Miguel County, Colorado (the "Facility").
7. The construction activities performed at the Facility included foundation excavation that necessitated the dewatering of infiltrating groundwater. Therefore, Blue River Construction applied for and obtained coverage under the Colorado Discharge Permit System General Permit, No. COG-070000, for Construction Dewatering Operations (the "Permit"). Blue River Construction was assigned Facility Certification No. COG-072761 (the "Facility Certification") and certification under the Permit became effective on May 22, 2008.
8. The original Facility Certification authorized Blue River Construction to discharge treated wastewater at an average rate of 10 gallons per minute from the Facility through Outfall 001A, which was physically located at approximately Latitude: 37.936⁰ N, Longitude: -107.805⁰ W, to an unnamed channel on the east part of the property that flows into the San Miguel River.
9. The San Miguel River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
10. Pursuant to 5 CCR 1002-61, §61.8, Blue River Construction must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Unauthorized Discharge

11. On November 25, 2008, in response to discolored (muddy) water entering the San Miguel River, a representative from the Town of Telluride visited the Facility to observe and photograph the discharge from the site to the San Miguel River. The town representative observed that Blue River Construction had constructed a pipe to convey and discharge construction related groundwater from the Facility southeast down and across Hemlock Street, northwest through an alley way towards N. Maple Street, southeast down N. Maple Street to the intersection of N. Maple Street and E. Colorado Avenue. The town representative further observed that very dark and muddy water (loaded with sediment) was discharging at a rate of approximately 800 to 1,000 gallons per minute from the end of the pipe and flowing into the culvert constructed under E. Colorado Avenue and directly into the San Miguel River.
12. On November 25, 2008, a representative from the Town of Telluride advised the Division of the discharge. The Division established that the discharge was unauthorized as it was not in conformance with the discharge authorized by the Facility Certification.

13. On November 25, 2008, at approximately 2:00 pm, the Town of Telluride issued a Stop Work Order to Blue River Construction as a result of Blue River Construction's noncompliance with the Facility Certification.
14. On November 26, 2008, at approximately 4:00 pm, a Division representative contacted Blue River Construction's superintendent and advised the superintendent of the Division's expectations of Blue River Construction to comply with the terms and conditions of the Facility Certification or cease its discharge.
15. Pursuant to Part II.A.6 of the Permit, any discharge to state waters from a point source other than the specifically authorized discharge at Outfall 001A is prohibited.
16. Sediment is a "pollutant" as defined by §25-8-103(15), C.R.S.
17. Blue River Construction's constructed pipe, as described in paragraph 11 above, is a "point source" as defined by §25-8-103(14), C.R.S.
18. Division records establish that Blue River Construction does not have any permits authorizing the discharge of pollutants, as described in paragraph 11 above, into the San Miguel River.
19. Blue River Construction's discharge of sediment, as described in paragraph 11 above, into the San Miguel River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
20. Blue River Construction's discharge of sediment, as described in paragraph 11 above, into the San Miguel River constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.
21. The Division acknowledges that Blue River Construction timely and satisfactorily performed all of the obligations and actions required under the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1).

Failure to Comply with Permit Effluent Limits

22. Pursuant to Part I.B.1. of the Permit, Blue River Construction was required to monitor a minimum and maximum pH, 7- day average and 30-day average Total Suspended Solids ("TSS"), visual oil and grease, daily maximum oil and grease (if necessary), and daily maximum flow.
23. Pursuant to Part I.B.1. of the Permit, and as represented in the Facility Certifications (including minor amendment No. 1), permitted discharges from the Facility were not to exceed the following effluent limitations:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
Total Suspended Solids, mg/l	30	45	N/A
pH, s.u. (minimum-maximum)	N/A	N/A	6.5-9.0
Oil and Grease, mg/l	N/A	N/A	10, No Visual Sheen
Flow, MGD	N/A	N/A	Report

24. Pursuant to Part I.F.2 of the Permit, Blue River Construction is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports (“DMRs”). Each discharge monitoring report is to include a certification by Blue River Construction that the information provided therein is true, accurate and complete to the knowledge and belief of Blue River Construction.
25. Blue River Construction’s DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for Total Suspended Solids which exceed the effluent limitations imposed by the Permit.

Blue River Construction’s EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
TOTAL SUSPENDED SOLIDS		7-DAY AVG. LIMIT = 45 mg/l	30-DAY AVG. LIMIT = 30 mg/l
December 1-31, 2008	001A	53 mg/l	--
January 1-31, 2008	001A	46 mg/l	--

26. Total suspended solids are “pollutants” as defined by §25-8-103(15), C.R.S.
27. Blue River Construction’s failure to comply with the Permit effluent limitations, as identified above in paragraph 23, constitutes violations of Part I.B.1. of the Permit.

ORDER AND AGREEMENT

28. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602, 605 and 606, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-090622-1), the Division orders Blue River Construction to comply with all provisions of this Consent Order, including all requirements set forth below.
29. Blue River Construction agrees to the terms and conditions of this Consent Order. Blue River Construction agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 605 and 606, C.R.S., and is an enforceable requirement of the Act. Blue River Construction also agrees not to challenge directly or collaterally, in any judicial or

administrative proceeding brought by the Division or by Blue River Construction against the Division:

- a. The issuance of this Consent Order;
- b. The factual and legal determinations made by the Division herein; and
- c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

Notwithstanding the above, Blue River Construction does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Blue River Construction pursuant to this Consent Order shall not constitute evidence of fault and liability by Blue River Construction with respect to the conditions of the Facility.

CIVIL PENALTY

30. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Blue River Construction shall pay Eight Thousand Five Hundred Fifty Two Dollars (\$8,552.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Eight Thousand Five Hundred Fifty Two Dollar (\$8,552.00) civil penalty for the above violation(s) and Blue River Construction agrees to pay half of the penalty within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or her designee and to pay the other half of the penalty within one (1) year of the issuance of the Penalty Order by the Executive Director or her designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CAS-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

31. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1).
32. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Blue River Construction each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
33. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or (his or her) designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Blue River Construction, including any

false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

34. Notwithstanding paragraph 30 above, the violations described in this Consent Order will constitute part of Blue River Construction's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Blue River Construction. Blue River Construction agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

35. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
36. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
37. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
38. Upon the effective date of this Consent Order, Blue River Construction releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
39. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

40. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CAS-B2
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Blue River Construction:

Rick Halevy, Manager
Blue River Construction Management LLC
3275 County Road 100
Carbondale, CO 81623

MODIFICATIONS

41. This Consent Order may be modified only upon mutual written agreement of the Parties.

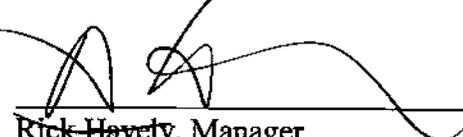
NOTICE OF EFFECTIVE DATE

42. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 33. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

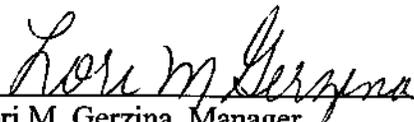
43. This Consent Order is binding upon Blue River Construction and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR BLUE RIVER CONSTRUCTION MANAGEMENT LLC:



Rick Halevy, Manager
Rick HALEVY
Date: 9-23-10

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION
Date: 11/9/10



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: IC-101109-1

IN THE MATTER OF: BLUE RIVER CONSTRUCTION MANAGEMENT LLC
CDPS PERMIT NO. COG-070000
CERTIFICATION NO. COG-072761
SAN MIGUEL COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602, 605 and 606, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Blue River Construction Management LLC ("Blue River Construction"). The Division and Blue River Construction may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

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DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602, 605 and 606, C.R.S., the Division has made the following determinations regarding Blue River Construction, the Facility and Blue River Construction's compliance with the Act and its implementing permit regulations, and the permit certifications that were issued to Blue River Construction.
3. At all times relevant to the violations cited herein, Blue River Construction was a Colorado limited liability company in good standing.
4. Blue River Construction is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Pursuant to 25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
6. Beginning on or about November 14, 2008, Blue River Construction initiated construction activities associated with the construction of a new single-family residence located at 168 Hemlock Street, Telluride, San Miguel County, Colorado (the "Facility").
7. The construction activities performed at the Facility included foundation excavation that necessitated the dewatering of infiltrating groundwater. Therefore, Blue River Construction applied for and obtained coverage under the Colorado Discharge Permit System General Permit, No. COG-070000, for Construction Dewatering Operations (the "Permit"). Blue River Construction was assigned Facility Certification No. COG-072761 (the "Facility Certification") and certification under the Permit became effective on May 22, 2008.
8. The original Facility Certification authorized Blue River Construction to discharge treated wastewater at an average rate of 10 gallons per minute from the Facility through Outfall 001A, which was physically located at approximately Latitude: 37.936⁰ N, Longitude: -107.805⁰ W, to an unnamed channel on the east part of the property that flows into the San Miguel River.
9. The San Miguel River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
10. Pursuant to 5 CCR 1002-61, §61.8, Blue River Construction must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Unauthorized Discharge

11. On November 25, 2008, in response to discolored (muddy) water entering the San Miguel River, a representative from the Town of Telluride visited the Facility to observe and photograph the discharge from the site to the San Miguel River. The town representative observed that Blue River Construction had constructed a pipe to convey and discharge construction related groundwater from the Facility southeast down and across Hemlock Street, northwest through an alley way towards N. Maple Street, southeast down N. Maple Street to the intersection of N. Maple Street and E. Colorado Avenue. The town representative further observed that very dark and muddy water (loaded with sediment) was discharging at a rate of approximately 800 to 1,000 gallons per minute from the end of the pipe and flowing into the culvert constructed under E. Colorado Avenue and directly into the San Miguel River.
12. On November 25, 2008, a representative from the Town of Telluride advised the Division of the discharge. The Division established that the discharge was unauthorized as it was not in conformance with the discharge authorized by the Facility Certification.

13. On November 25, 2008, at approximately 2:00 pm, the Town of Telluride issued a Stop Work Order to Blue River Construction as a result of Blue River Construction's noncompliance with the Facility Certification.
14. On November 26, 2008, at approximately 4:00 pm, a Division representative contacted Blue River Construction's superintendent and advised the superintendent of the Division's expectations of Blue River Construction to comply with the terms and conditions of the Facility Certification or cease its discharge.
15. Pursuant to Part II.A.6 of the Permit, any discharge to state waters from a point source other than the specifically authorized discharge at Outfall 001A is prohibited.
16. Sediment is a "pollutant" as defined by §25-8-103(15), C.R.S.
17. Blue River Construction's constructed pipe, as described in paragraph 11 above, is a "point source" as defined by §25-8-103(14), C.R.S.
18. Division records establish that Blue River Construction does not have any permits authorizing the discharge of pollutants, as described in paragraph 11 above, into the San Miguel River.
19. Blue River Construction's discharge of sediment, as described in paragraph 11 above, into the San Miguel River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
20. Blue River Construction's discharge of sediment, as described in paragraph 11 above, into the San Miguel River constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.
21. The Division acknowledges that Blue River Construction timely and satisfactorily performed all of the obligations and actions required under the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1).

Failure to Comply with Permit Effluent Limits

22. Pursuant to Part I.B.1. of the Permit, Blue River Construction was required to monitor a minimum and maximum pH, 7- day average and 30-day average Total Suspended Solids ("TSS"), visual oil and grease, daily maximum oil and grease (if necessary), and daily maximum flow.
23. Pursuant to Part I.B.1. of the Permit, and as represented in the Facility Certifications (including minor amendment No. 1), permitted discharges from the Facility were not to exceed the following effluent limitations:

Parameter	Discharge Limitations:		
	30-Day Average	7-Day Average	Daily Maximum
Total Suspended Solids, mg/l	30	45	N/A
pH, s.u. (minimum-maximum)	N/A	N/A	6.5-9.0
Oil and Grease, mg/l	N/A	N/A	10, No Visual Sheen
Flow, MGD	N/A	N/A	Report

24. Pursuant to Part I.F.2 of the Permit, Blue River Construction is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each discharge monitoring report is to include a certification by Blue River Construction that the information provided therein is true, accurate and complete to the knowledge and belief of Blue River Construction.
25. Blue River Construction's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for Total Suspended Solids which exceed the effluent limitations imposed by the Permit.

TOTAL SUSPENDED SOLIDS		7-DAY AVG. LIMIT 45 mg/l	30-DAY AVG. LIMIT 30 mg/l
December 1-31, 2008	001A	53 mg/l	--
January 1-31, 2008	001A	46 mg/l	--

26. Total suspended solids are "pollutants" as defined by §25-8-103(15), C.R.S.
27. Blue River Construction's failure to comply with the Permit effluent limitations, as identified above in paragraph 23, constitutes violations of Part I.B.1. of the Permit.

ORDER AND AGREEMENT

28. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602, 605 and 606, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-090622-1), the Division orders Blue River Construction to comply with all provisions of this Consent Order, including all requirements set forth below.
29. Blue River Construction agrees to the terms and conditions of this Consent Order. Blue River Construction agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 605 and 606, C.R.S., and is an enforceable requirement of the Act. Blue River Construction also agrees not to challenge directly or collaterally, in any judicial or

administrative proceeding brought by the Division or by Blue River Construction against the Division:

- a. The issuance of this Consent Order;
- b. The factual and legal determinations made by the Division herein; and
- c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

Notwithstanding the above, Blue River Construction does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Blue River Construction pursuant to this Consent Order shall not constitute evidence of fault and liability by Blue River Construction with respect to the conditions of the Facility.

CIVIL PENALTY

30. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Blue River Construction shall pay Eight Thousand Five Hundred Fifty Two Dollars (\$8,552.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Eight Thousand Five Hundred Fifty Two Dollar (\$8,552.00) civil penalty for the above violation(s) and Blue River Construction agrees to pay half of the penalty within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or her designee and to pay the other half of the penalty within one (1) year of the issuance of the Penalty Order by the Executive Director or her designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CAS-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

31. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1).
32. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Blue River Construction each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
33. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or (his or her) designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Blue River Construction, including any

Blue River Construction Management LLC
Compliance Order on Consent

false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

34. Notwithstanding paragraph 30 above, the violations described in this Consent Order will constitute part of Blue River Construction's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Blue River Construction. Blue River Construction agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

35. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the June 22, 2009, Notice of Violation / Cease and Desist Order (Number: IO-090622-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
36. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
37. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
38. Upon the effective date of this Consent Order, Blue River Construction releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
39. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

40. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CAS-B2
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Blue River Construction:

Rick Halevy, Manager
Blue River Construction Management LLC
3275 County Road 100
Carbondale, CO 81623

MODIFICATIONS

41. This Consent Order may be modified only upon mutual written agreement of the Parties.

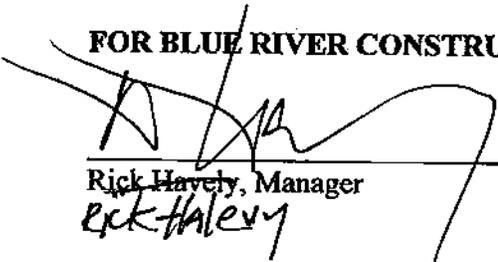
NOTICE OF EFFECTIVE DATE

42. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 33. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

43. This Consent Order is binding upon Blue River Construction and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR BLUE RIVER CONSTRUCTION MANAGEMENT LLC:


Rick Halevy, Manager
Rick Halevy

Date: 10-5-10

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:


Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Date: 11/9/10