COLORADO
Department of Public Health & Environment

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

July 1, 2016

James E. Burns
Linda N. Burns
Wolf Creek Ranch Ski Lodge, LLC
118 Morris Circle
Trussville, AL 35173

Certified Mail Number: 7014 2870 0000 7568 7592

John G. Maddox, President
Wolf Creek Ranch Cabins Owners Association
P.O. Box 1753
Ponca City, OK 74602

Certified Mail Number: 7014 2870 0000 7568 7608

RE: Compliance Order on Consent, Number: DC-160701-1

Dear Mr. and Mrs. Burns and Mr. Maddox:

Enclosed for Wolf Creek Ranch Ski Lodge, LLC's and Wolf Creek Ranch Cabins Owners Association's records, you will find your copy of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 40). Following initiation of the public notice on July 15, 2016, if the Division receives any comments during the subsequent 30-day period we will contact your offices to discuss. Also, please be advised that the first page of the Compliance Order on Consent was changed to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris, Manager
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Mineral County Public Health Agency
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE

COLORADO
Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: DC-160701-1**

IN THE MATTER OF: **WOLF CREEK RANCH SKI LODGE, LLC and WOLF CREEK RANCH CABINS OWNERS ASSOCIATION UNPERMITTED MINERAL 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 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, as well as §25-9-110(3), C.R.S. of the Water and Wastewater Facility Operator Certification Statute ("the Statute") §§25-9-101 to 110, C.R.S., and its implementing regulation, with the express consent of Wolf Creek Ranch Ski Lodge, LLC ("Ski Lodge") and Wolf Creek Ranch Cabins Owners Association ("Association"). The Division, Ski Lodge and the Association 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: DO-130820-1 (the "NOV/CDO"), and Operator Certification Notice of Violation, Number: OW-130820-1 (the "Op Cert NOV"), that the Division issued to the Lodge and Association on August 20, 2013.

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 and 605, C.R.S., and §25-9-110(3), C.R.S., the Division has made the following determinations regarding the Ski Lodge and Association and the Ski Lodge's and Association's compliance with the Act and its implementing permit regulations, and the Statute and its implementing control regulation.

3. At all times relevant to the alleged violations identified herein, the Ski Lodge was an Alabama limited liability company in good standing and registered to conduct business in the State of Colorado.

4. At all times relevant to the alleged violations identified herein, the Association was a Colorado nonprofit corporation in good standing and registered to conduct business in the State of Colorado.

5. The Ski Lodge and Association are "persons" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

6. The Ski Lodge and/or Association owned and operated a wastewater treatment facility located at or near geographic coordinates 37.57884°, -106.74434°, approximately five miles southwest of the Town of South Fork, Mineral County, Colorado, (the "Facility").

7. The Facility included two wastewater lagoons that received sewage (domestic wastewater) from the Ski Lodge and Association. The Facility was originally designed to accept and treat an average wastewater flow of 9,980 gallons/day and discharge treated effluent to the South Fork of the Rio Grande River.

8. The Facility's wastewater treatment system was a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S., §25-9-102(4.5), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(13).

9. The Facility included a "wastewater collection system" as defined by §25-9-102(4.9), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(28).

10. Pursuant to 5 CCR 1003-2, §100.5.2, the Facility's domestic wastewater treatment facility was classified as "Class D."

11. Pursuant to 5 CCR 1003-2, §100.8.2, the Facility's domestic wastewater collection system was classified as "Class 1."

12. Pursuant to §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a), 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.

13. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit is required for all discharges from impoundments unless:

    a. The discharge is exempted under 5 CCR 1002-61, §61.14(1)(b);
    b. The discharge is subject to regulation by one of the implementing agencies described in 5 CCR 1002-61, §61.14(2); or
    c. The impoundment has received a waiver from the Division pursuant to §61.14(9)(a).

14. Pursuant to §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a), no owner of a water treatment facility, water distribution system, wastewater collection system, and/or domestic or industrial wastewater treatment facility shall allow the facility to be operated without the direct supervision of an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the facility as specified in 5 CCR 1003-2, §§100.4 through 100.8.

15. In accordance with 5 CCR 1003-2, §100.18.5, the Ski Lodge and/or Association shall operate the Facility with an operator-in-responsible-charge certified at or above the Class D wastewater treatment and Class 1 wastewater collection certifications.

16. Pursuant to 5 CCR 1003-2, §100.18.4(a), each owner of a water or wastewater facility shall submit in writing to the Division, no later than thirty (30) days following the date the facility is initially placed on-line and, thereafter, no later than thirty (30) days after changes to any of the following information:

    a. Name, mailing address, phone number, and email address (if available) of the facility representative providing the information;
    b. Name, mailing address, phone number, email address (if available) and the classification and expiration of certification of all operator(s)-in-responsible-charge employed by the owner;
    c. Identification of the facility or facilities for which each operator-in-responsible-charge employed or contracted by the owner has responsibility;
    d. The Public Water System Identification (PWSID) number and the Colorado Discharge Permit System (CDPS) permit or certification number for all facilities listed.

17. On October 5, 2011, representatives from the Division (the "Inspectors") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine the Ski Lodge's and/or Association's compliance with the Water Quality Control Act and its implementing regulations. During the inspection, the Inspectors met with representatives of the Ski Lodge and/or Association and performed a physical inspection of the Facility.

18. During the October 5, 2011 inspection, the Inspectors identified that the lagoons at the Facility were constructed within, and discharging domestic wastewater to, the alluvium of the South Fork of the Rio Grande River.

19. The alluvium of the South Fork of the Rio Grande River contains groundwater that is tributary to the South Fork of the Rio Grande River.

20. Groundwater in the alluvium of the South Fork of the Rio Grande 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).

21. The South Fork of the Rio Grande 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).

22. Domestic wastewater, including treated and partially treated sewage, is a "pollutant" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).

23. The Facility's wastewater lagoons are "impoundments" as defined by 5 CCR 1002-61, §61.2(43).

24. The Facility's domestic wastewater treatment works, including its lagoons, are a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (75).

25. The Ski Lodge's and Association's discharge of domestic wastewater from the Facility's lagoons did not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a) and, therefore, was required to be permitted.

26. The Ski Lodge's and Association's discharge of domestic wastewater from the Facility into state waters constituted a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

27. Division records establish that the Ski Lodge and/or Association did not have any permits authorizing discharges of pollutants from the Facility into state waters.

28. The Ski Lodge's and Association's discharges of domestic wastewater from the Facility constituted an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.14(1)(a).

29. Division records establish that the Ski Lodge and/or Association failed to provide the Division with information or documents demonstrating that the Facility was operated under the direct supervision of an operator-in-responsible-charge certified in classification equivalent to or higher than the Class D wastewater treatment and Class 1 wastewater collection certifications.

30. The Ski Lodge's and/or Association's failure to operate their domestic wastewater treatment facility under the supervision of a certified operator with the proper classification constituted violation(s) of §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a) and §100.18.5.

31. The Ski Lodge's and/or Association's failure to operate their wastewater collection system under the supervision of a certified operator with the proper classification constituted violation(s) of §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a) and §100.18.5.

ORDER AND AGREEMENT

32. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and §25-9-110(3), C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO and Op Cert NOV, the Division orders the Ski Lodge and Association to comply with all provisions of this Consent Order, including all requirements set forth below.

33. The Ski Lodge and Association agree to the terms and conditions of this Consent Order. The Ski Lodge and Association agree that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and §25-9-110(3), C.R.S., and is an enforceable requirement of the Act and the Statute. The Ski Lodge and Association also agree not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by the Ski Lodge and Association 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 and the Statute.

34. Notwithstanding the above, the Ski Lodge and Association do not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by the Ski Lodge and Association pursuant to this Consent Order shall not constitute evidence of fault and liability by the Ski Lodge and Association with respect to the conditions of the Facility. The Ski Lodge and Association expressly reserve their rights to deny any of the Division's factual or legal determinations or defend themselves in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY

35. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, the Ski Lodge and Association shall pay Sixty Two Thousand Dollars ($62,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Sixty Two Thousand Dollar ($62,000.00) civil penalty for the above violations and the Ski Lodge and Association agree to make the payment through nine (9) installment payments as described in subparagraphs 35a and 35b below:

    a. The Association shall make the payment of Thirty One Thousand Dollars ($31,000.00) within thirty (30) calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee; and

    b. The Ski Lodge shall make the payment of Thirty One Thousand Dollars ($31,000.00) through eight (8) installment payments as described in the table below:

Payment	Amount	Due Date
1	$3,875.00	October 1, 2016
2	$3,875.00	January 1, 2017
3	$3,875.00	April 1, 2017
4	$3,875.00	July 1, 2017
5	$3,875.00	October 1, 2017
6	$3,875.00	January 1, 2018
7	$3,875.00	April 1, 2018
8	$3,875.00	July 1, 2018

36. 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:

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

37. Failure to submit full payment of any installment by the due date described in paragraph 35b above shall be deemed a violation of this Consent Order by the Ski Lodge.

38. In the event that the Ski Lodge fails to comply with any of the terms or provisions of this Consent Order relating to payment of the civil penalty as described in paragraph 35b, the Ski Lodge shall be liable for payment of the outstanding balance of the civil penalty within thirty (30) calendar days of receipt of written demand by the Division. 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 the address specified in paragraph 36 above.

SCOPE AND EFFECT OF CONSENT ORDER

39. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO and Op Cert NOV.

40. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty day public comment period. The Division, Ski Lodge and Association 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.

41. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by the Ski Lodge and Association, 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.

42. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

43. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

44. Notwithstanding paragraph 34 above, the violations described in this Consent Order will constitute part of the Ski Lodge's and Association's compliance history.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

45. 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 NOV/CDO and Op Cert NOV. 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.

46. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

47. The Ski Lodge and Association reserve their rights and defenses regarding the Facility other than proceedings to enforce this Consent Order.

48. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

49. The Ski Lodge and Association release 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 or for any injuries or damages to persons or property resulting from acts or omissions of the Ski Lodge and Association, or those acting for or on behalf of the Ski Lodge and Association, including their officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. 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

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

For the Division:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-3598
E-mail: michael.harris@state.co.us

For the Ski Lodge:

James E. Burns
Linda N. Burns
Wolf Creek Ranch Ski Lodge, LLC
118 Morris Circle
Trussville, AL 35173

For the Association:

John G. Maddox, President
Wolf Creek Ranch Cabins Owners Association
P.O. Box 1753
Ponca City, OK 74602

MODIFICATIONS

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

Received
JUN 14 2016
Water Quality Control

NOTICE OF EFFECTIVE DATE

52. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 40. 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

53. This Consent Order is binding upon the Ski Lodge and Association and their 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 another 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 WOLF CREEK RANCH SKI LODGE, LLC:

James E. Burns Date: 6/1/16
James E. Burns, Managing Member

Linda N. Burns 6/1/16 Date:
Linda N. Burns, Managing Member

FOR WOLF CREEK RANCH CABINS OWNERS ASSOCIATION:

Date:
John G. Maddox, President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Date: 7/1/16
Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION

Received
JUN 08 2016
Water Quality Control

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FOR WOLF CREEK RANCH SKI LODGE, LLC:

_____ Date: _____
James E. Burns, Managing Member

_____ Date: _____
Linda N. Burns, Managing Member

FOR WOLF CREEK RANCH CABINS OWNERS ASSOCIATION:

John G. Maddox Date: 6-1-16
John G. Maddox, President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: _____
Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION