

ELLEN F. ROSENBLUM
Attorney General



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Attachment 8

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 30, 2014

CERTIFIED MAIL and EMAIL

Martha O. Pagel
Attorney at Law
SCHWABE, WILLIAMSON & WYATT
530 Center St. NE, Ste. 400
Salem, OR 97301
MPagel@SCHWABE.com

Re: Silvies Valley Ranch, LLC/Scott Campbell/Sandra Campbell: Signed Consent Agreement Regarding Oregon Removal-Fill Permit Requirements
DOJ File No. 141033/GN0190-14

Dear Martha,

Enclosed is one of the originals of the Consent Agreement (CA) that the parties executed in duplicate. The Consent Agreement sets out measures to be accomplished by dates that are also set forth in the CA. Timely completion of the measures by Silvies Valley Ranch, LLC, by Dr. Scott Campbell, and by Sandra Campbell is important to resolve the Oregon Removal-Fill issues and will result in the Department of State Lands closing its enforcement file.

I am serving the CA on you as the attorney representing Silvies Valley Ranch, LLC, Dr. Scott Campbell, and Sandra Campbell in this matter. Please contact me as soon as possible at (503) 947-4583 if you have any concerns about accepting service on behalf of your clients.

Please convey to your clients that the Department appreciates their willingness to work through the issues.

Sincerely,

A handwritten signature in cursive script that reads "Lore Benschel".

Lore Benschel
Senior Assistant Attorney General
Natural Resources Section

Enclosure

cc: Kirk Jarvie, DSL
DM#5643934

In about 2002, the Campbells began efforts to restore stream and riparian habitat on a portion of Hay Creek. Later, the Campbells began similar efforts on small streams and drainages within the SVR Property. No such work has been done on the Silvies River. The various projects involved a cumulative total of more than 50 cubic yards of material. SVR and the Campbells do not know the extent to which fill material was placed in the "waters of this state." At the time that SVR and the Campbells undertook the work, they were not aware of the removal-fill permit requirements or the standards prescribed by the Oregon Department of Fish and Wildlife ("ODFW") for in-water work periods and fish habitat. The Campbells also believed that 2011 Or Laws, chapter 686, authorized restoration of riparian areas and meadows at the SVR Property.

In October 2013, the Department notified SVR that there was a potential violation of the Oregon Removal-Fill Law by not obtaining permits that authorized the ABDs and streambank protection activities on Camp Creek on the SVR Property. The Campbells dispute the notice, but have worked cooperatively to resolve the issues and also advised the Department of similar work to construct ABDs and restore riparian vegetation on Hay Creek and on other waterways throughout The Property, other than on the Silvies River.

Since learning of the requirements of the Oregon Removal-Fill Law, SVR and the Campbells have worked cooperatively with the Department to develop this Consent Agreement as a means of resolving the disputes regarding the Department's jurisdiction and any alleged violations that may have occurred. SVR and the Campbells will continue to work cooperatively with the Department for the purpose of implementing this Consent Agreement.

SVR and the Campbells seek to continue with their stream restoration efforts and to explore opportunities to develop a model for a cost-effective approach that could be replicated by other landowners in Eastern Oregon. Toward that end, SVR and the Campbells are working cooperatively with Oregon State University (OSU) to support a multi-year field study on site that will collect baseline data and examine the potential impacts and effects of ABD construction.

SVR, the Campbells and the Department agree that they have a dispute regarding whether and to what extent the Department had or has removal-fill jurisdiction over the waters located on The Property, and to whether at least 50 cubic yards of material was deposited in the waters while the Department has had jurisdiction. SVR, the Campbells, and the Department have agreed to the entry of this Consent Agreement to resolve the disputes.

II. STIPULATED FACTS.

1. SVR and the Campbell family own all of The Property.
2. The Property includes portions of the Silvies River and other streams or intermittent streams that are "waters of this state" within the meaning of statute and of the rules issued by the Department.
3. Since 2002, SVR or the Campbells have filled or altered over 50 cubic yards of material on The Property in waters of this state, as determined by current conditions, and without a removal-fill permit.

4. Since learning of the requirements of the Oregon Removal-Fill Law, SVR and the Campbells have been working cooperatively with the Department to resolve the matter. In addition, SVR and the Campbells will work cooperatively with the Department and ODFW to comply with the Oregon Removal-Fill Law.
5. SVR and the Campbells have:
 - a. Stipulated to the facts recited in this Consent Agreement;
 - b. Agreed to the imposition of the requirements set forth in this Consent Agreement;
 - c. Waived their rights to contest this Consent Agreement and waived any and all claims against the State of Oregon and all of its agencies arising from the Consent Agreement or application of the Oregon Removal-Fill Law to the situation described in the Consent Agreement;
 - d. Agreed that they would have paid \$10,116 in application fees if they had submitted applications for removal-fill permits and agreed to be jointly and severally liable for the payments assessed in this Consent Agreement; and
 - e. Agreed not to contest the findings of this Consent Agreement.

III. ULTIMATE FACTS AND CONCLUSIONS OF LAW.

Based on current conditions on The Property, a removal-fill permit was required for at least one of the ABDs.

IV. AGREEMENT.

1. By August 15, 2014, SVR and the Campbells shall submit a preliminary inventory to the Department of all ABDs and any other removal-fill activities on The Property from 2002 to the present. SVR and the Campbells shall also submit a copy (with color photographs, if any) to the ODFW. The primary, but not sole purposes of the preliminary inventory will be to assist the Department in identifying which, if any, of the waters on The Property are "waters of this state," and assist the Department and ODFW in beginning to identify ABDs and other potential removal-fill activities located in waters that were "waters of this state" at the time they were constructed and for which immediate modifications may be needed to ensure fish passage in accordance with ODFW requirements such as ORS 509.580 *et seq.* and OAR chapter 635, division 412. The preliminary inventory shall include at least the following information:

- a. The name of or a description of each water on which one or more ABDs have been constructed, the approximate number of ABDs on each water, and the year(s) that the ABDs were constructed;

- b. The name of or a description of all waters on which removal-fill activities other than ABDs have occurred, a description of the activities on each water, and the year(s) that the activities occurred;
- c. General description of the extent of fish presence or use of each water as habitat for at least a portion of the year, if known;
- d. Photographs, to the extent available, of each ABD, each removal-fill activity other than ABDs, and each water; and
- e. Detailed maps of the SVR Property and of the Hay Creek Property that are suitable for locating boundaries and all ABDs or other removal-fill activities on The Property.

2. By November 30, 2014 SVR and the Campbells will submit to the Department a detailed inventory of "priority waters" as described in this section. A list of priority waters will be developed jointly by SVR, the Campbells and the Department following the site visit described in IV.5 and using information from the preliminary inventory provided under IV.1. The purpose of identifying priority waters will be to focus on those waters and ABD locations most likely to be subject to permitting requirements under the Removal-Fill Law under current conditions or at the time of construction. The list of priority waters will also avoid the need for SVR and the Campbells to compile detailed inventory information on ephemeral streams or other waters not likely to be subject to permit requirements. Identification of priority waters under this section does not constitute a determination by DSL as to jurisdiction on any waters and the Department may require additional detailed inventory information for waters not otherwise included in the list of priority waters in order to make jurisdictional determinations. By April 30, 2015 the Department will notify SVR and the Campbells of any such additional inventory requirements. SVR and the Campbells will provide the additional inventory information, if any, to the Department by June 30, 2015. This section is intended to reflect a good faith effort to cooperate in compiling information needed for effective implementation of this Consent Agreement. The complete inventory shall include the following:

- a. The total number of ABDs or other removal-fill activity on each water;
- b. For each ABD:
 - (1) The name or description of the water on which the ABD has been constructed;
 - (2) An identifier for the ABD;
 - (3) The location of the ABD site (at minimum identified on GoogleEarth as .kmlfile);

- (4) A description of the ABD site (at minimum, the approximate height, length, width, year constructed, and materials used);
 - (5) An estimate of the total volume of material in the ABD;
 - (6) An estimate of the total volume of material in the ABD that is located below the line of ordinary high water;
 - (7) At least one representative ground-level color photograph of the ABD site; and
 - (8) Space for miscellaneous notes.
- c. For each removal-fill activity other than an ABD, if any:
- (1) The name or description of the water on which the removal-fill activity occurred;
 - (2) An identifier for the removal-fill activity;
 - (3) The location of the removal-fill activity site (at minimum identified on GoogleEarth as .kmlfile);
 - (4) A description of the removal-fill activity site (at minimum, the approximate height, length, width, year conducted, and materials used);
 - (5) An estimate of the total volume of material filled or removed for the removal-fill activity;
 - (6) An estimate of the total volume of material filled or removed for the removal-fill activity that is located below the line of ordinary high water;
 - (7) At least one representative ground-level color photograph of the removal-fill activity site; and
 - (8) Space for miscellaneous notes.
3. SVR and the Campbells may combine ABDs together for the complete inventory if:
- a. Each of the ABDs in the combination contains less than 1 cubic yard of material;
 - b. All fish that use the water as habitat are currently able to pass over or through all of the ABDs that are combined; and
 - c. All of the ABDs that are combined are located on one water.

4. SVR and the Campbells shall provide reasonable access to The Property for the Department, ODFW and other natural resource or environmental agencies as requested by the Department, to inspect ABDs, other removal-fill activities, and stream bank restoration sites for the purposes of this Consent Agreement or to foster cooperation in stream restoration efforts. SVR and the Campbells may arrange to have a representative accompany agency representatives during all inspections and cooperation efforts. The general access under this paragraph shall extend until the Department closes the enforcement file.

5. In addition to the general access described above, by September 15, 2014, SVR and the Campbells shall facilitate a joint site visit on The Property for the Department and ODFW for the specific purposes of a) beginning to assess whether there is a priority need for near-term action to modify any of the existing ABDs in order to address priority fish passage concerns and b) viewing the site of the proposed research study on Cottonwood Creek to provide input on the study and to discuss whether a removal-fill permit may be required for stream work associated with the study.

- a. Near-term Fish Passage: Following the facilitated site visit, SVR and the Campbells will cooperate with ODFW and the Department in developing a near-term plan if needed to address priority fish passage concerns on jurisdictional waters. Priority fish passage work will focus on waters where fish are located at the ABD at the lowest point of the waterway. Priority work shall begin and be completed as soon as practicable, pursuant to a schedule to be developed by SVR, the Campbells, and the Department. Work that is included in the near-term plan and approved in writing by the Department may be completed without a removal-fill permit. To the extent possible, measures for addressing fish passage concerns will be incorporated into the remedial action plan described below.
- b. OSU Study: It is the intent of SVR and the Campbells that if study activities will require a removal-fill permit, an appropriate entity will submit a complete application to the Department before the activities begin and no later than February 1, 2015.

6. By August 30, 2015, the Department will review the complete inventory and other available information to provide comments to SVR and the Campbells regarding the content of the Remedial Action Plan (RAP) described below. The Department's comments will include jurisdictional determinations for the waters on The Property where ABDs have been constructed or other removal or fill activities have occurred. The Department's jurisdictional determinations will, where possible, reflect consideration of the conditions at the time that the ABDs were constructed or the removal or fill activities occurred.

7. By January 15, 2016, SVR and the Department shall negotiate in good faith a deadline for submission by SVR and the Campbells of a proposed RAP as described below. The deadline shall be no later than June 1, 2016. The deadline shall be determined with due consideration to gathering and incorporating preliminary data that may be available as a result of the on-going OSU study on Cottonwood Creek.

8. SVR and the Campbells shall submit a proposed RAP to the Department so that it is received by the Department by the date negotiated pursuant to paragraph 7. The proposal shall include preliminary information and recommendations developed as a result of the OSU study on Cottonwood Creek (to the extent available). The proposed RAP shall also provide a detailed description of remedial actions and mitigation that may be indicated for each ABD or other removal fill activity, as a result of the study, on the advice of expert advisors to SVR and the Campbells, or comments received from the Department. For example, the RAP will include necessary modifications, if any, for each ABD (e.g. removing any excessive rock or incorporating woody debris) but SVR will not be required to remove material in a manner that would make the structure unstable such that it could fail or cause erosion. The RAP shall specifically include measures for addressing fish passage concerns identified by the Department, and mitigation as may be needed to address any unavoidable adverse effects of the ABDs or other removal-fill activities.

9. Within 60 days after receiving the proposed RAP, the Department will review the proposed RAP and provide comments to SVR and the Campbells. The Department, SVR, and the Campbells shall work together in good faith to develop a final RAP, provided that the Department shall retain sole discretion as to final approval of the RAP. SVR and the Campbells shall submit a final RAP to the Department no later than November 1, 2016. Work that is included in a final RAP approved in writing by the Department may be completed without a removal-fill permit. SVR and the Campbells shall complete all of the work that is included in the final RAP by November 2017.

10. SVR and the Campbells shall be responsible for all design, construction, maintenance, monitoring, or other actions required to remediate or mitigate any of the removal-fill activities described in this Consent Agreement, including but not limited to actions described in the near-term plan or the final RAP.

11. Prior to approval and implementation of a final RAP, SVR and the Campbells will not undertake any removal or filling in waters of this state of any amount without first obtaining a removal-fill permit from the Department, except that SVR and the Campbells may take reasonable and necessary actions to maintain (but not reconstruct) ABDs identified in the inventory as provided by ORS 196.905(9), OAR 141-085-0510(51) and (79) (definitions of "maintenance" and of "reconstruction"), and OAR 141-085-0530(4).

12. Once all remediation and mitigation work described in the approved final RAP is completed and reviewed by the Department, SVR and the Campbells may maintain and reconstruct the existing ABDs as provided in ORS 196.905(9), OAR 141-085-0510(51) and (79) (definitions of "maintenance" and of "reconstruction"), and OAR 141-085-0530(4).

13. The Department may impose civil penalties for apparent violations of the Oregon Removal Fill Law. SVR and the Campbells oppose the imposition of any civil penalty in this matter. However, to facilitate resolution of the issues described in this Consent Agreement, SVR and the Campbells are willing to pay the Department \$10,116 for deposit in the Common School Fund and use by the Department pursuant to ORS 196.895(3). SVR and the Campbells shall

make the payment to "The State of Oregon, Department of State Lands" so that it is received by the Department no later than August 22, 2014. The payment should be mailed to the Department of State Lands, 775 Summer St. NE, Suite 100, Salem, Oregon 97301-1279. If any of the requirements of this Consent Agreement is not performed by SVR or the Campbells, the Department may take any enforcement action that is available to it based upon default of this Consent Agreement.

14. This Consent Agreement replaces all previous agreements between the Department and SVR or between the Department and that Campbells that relates directly to the work described in this Consent Agreement.

15. When SVR and the Campbells satisfy the requirements by the deadlines set forth in this Consent Agreement (including those to be negotiated), the Department will close the enforcement file on these violations.



KIRK JARVIE
Northern Region Manager
Removal-Fill Program
Department of State Lands

7/30/14
Date

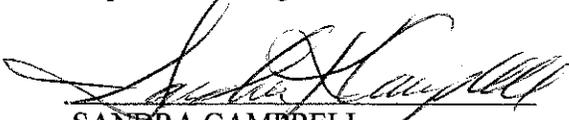
Stipulated and Agreed to:



DR. SCOTT CAMPBELL

7/21/14
Date

Stipulated and Agreed to:



SANDRA CAMPBELL

7/21/14
Date

Stipulated and Agreed to:

SILVIES VALLEY RANCH LLC

Silvies Valley Ranch
By: Scotty Johnson, Pres.

7/21/14
Date

I certify that on the 30th day of July, 2014, I served this order by certified U.S. Mail and by email upon the addressee:

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
530 Center St. NE, Ste. 400
Salem, OR 97301
Of Attorneys for Silvie's Valley Ranch LLC,
Dr. Scott Campbell, and Sandra Campbell
MPagel@SCHWABE.com

DATED: July 30th, 2014.



Lore Bensch # 891646
Senior Assistant Attorney General
Natural Resources Section
Department of Justice