

May 13, 2019

**BY EMAIL TO DAVID WATKINS, NATURAL RESOURCES COMMITTEE STAFF
DIRECTOR**

The Honorable Raúl M. Grijalva
Chairman, House of Representatives Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: El Dorado Benson Development – Villages at Vigneto

Dear Chairman Grijalva:

I am an attorney in Washington D.C., recently retained to represent El Dorado Benson, LLC (“El Dorado”), a developer located in Scottsdale, Arizona. El Dorado owns approximately 12,000 acres of desert property located within the municipal limits of Benson, Arizona, which it purchased from Whetstone Partners (“Whetstone”) in 2014. El Dorado plans to develop this property, starting with approximately 8,000 acres, into a residential community called the Villages at Vigneto.

I recently read your public comments to the *Arizona Daily Star* that you and the House Natural Resources Committee (the “Committee”) would be investigating possible political interference with a decision by a U.S. Fish & Wildlife Service (“F&W”) official affecting the development of the Villages at Vigneto.¹ I am writing you today to: 1) categorically deny that El Dorado interfered with any decision-making outside of asking that any decisions be made based on the facts and the law nor are we aware of any such improper interference from the Department of the Interior; 2) assure you that my client will assist with your investigation in any way possible including meeting with you and your staff in the near future; and 3) provide you with brief background information on the Villages at Vigneto and the permitting process to show you that relevant permit decisions were supported by the facts and the law.

Background of the Project and the Decision by the Army Corps of Engineers

On June 21, 2006, Whetstone received a dredge and fill permit from the Army Corps of Engineers (“the Corps”) under Section 404 of the Clean Water Act, based upon an 8,212 acre stand-alone phase of the development now known as the Villages at Vigneto. That permit, upon

¹ Rep. Raul Grijalva to investigate whistleblower's claims about Vigneto project, *Arizona Daily Star*, Tony Davis, May 11, 2019, https://tucson.com/news/local/rep-raul-grijalva-to-investigate-whistleblower-s-claims-about-vigneto/article_d7d1d879-23bb-5fd9-a9c2-e0f6aa6e9fb6.html.

which El Dorado relied as part of its purchase, was transferred to El Dorado as part of its acquisition of the property and, though currently suspended, otherwise remains valid today.

The issuance of the permit has been challenged in U.S. District Court in Tucson twice by various organizations. These challenges rest on the fundamentally flawed theory that because the Corps has the authority to regulate discharge of fill on 51 acres of waters on the site, that authority somehow gives the Corps control and jurisdiction over all 12,000 acres and any future development, including groundwater use by the development. That is simply, legally wrong.

The Corps has correctly concluded that it is only responsible for what is defined under federal law as “waters of the U.S.” and some related activities – *not* for “approving” private developments. The Corps went to lengths to explain its limited jurisdiction in its determination letter of May 26, 2017 to F&W.²

The second lawsuit challenging the permit (the first lawsuit was withdrawn) misleadingly infers that a *new* permit has been sought by El Dorado. That is false. While the original development was eventually put on hold by Whetstone due to economic conditions (i.e., post-2008 real estate/banking meltdown), the same permit issued in 2006 is still in place. Once the second lawsuit’s erroneous factual and legal allegations are disposed of by the court, the project will proceed under this same permit.

The “Villages at Vigneto”

El Dorado plans to develop this 8,212 acre property based on the 2006 permit in an environmentally-sensitive manner. The name of the development, the “Villages at Vigneto,” is intended to evoke the planned Tuscany-style mixed residential community. It has been carefully planned with environmental impacts in mind, including parks, bike paths, golf courses, schools, and shopping, with high priority to retaining the surrounding desert conditions and using water in an environmentally sound fashion for the proposed new residents. The design and data will prove that the development will not have adverse effects on the San Pedro River or on water resources for the future, and allegations to the contrary in the cases filed and in the media are without factual basis.

During the buildout period, the Vigneto community will create tens of thousands of new jobs and bring \$23.8 billion of commerce and prosperity to the Benson/Cochise County area and many surrounding communities throughout Southern Arizona. Importantly, it will create a new magnet for the future – to children and grandchildren in the Benson/Tucson/Southern Arizona

² In its letter, the Corps stated: “The Corps does not have regulatory authority over ‘development projects’, or any other ‘types’ of projects, per se. Our regulatory authority under section 404 of the Clean Water Act *only covers discharges* of specific pollutants (dredged or fill material) and only into [what is defined under federal law as] Waters of the United States. As a result, the *Corps’ federal control and responsibility are often, as in this case, limited*. In this case, our federal control and responsibility also defines our ESA [Endangered Species Act] section 7 consultation *onsite* action area as 1,775 acres of Waters of the United States and adjacent upland buffer and preservations areas. Environmental effects of the larger private development beyond our 1,775 acre onsite action area...are beyond the Corps’ authority or discretion to control or regulate.” (Emph. Added).

area to remain here with a future, rather than continue the migration of the new generation that has been an unhappy fact in recent decades for the rural Southeastern Arizona area. After the development is complete, the recurring economic impact to the region is projected to exceed \$1.2 billion annually.

As I stated above, I am writing you, Mr. Chairman, and other leaders and members of the Committee, to categorically deny that any political interference occurred by anyone from El Dorado or anyone else that we know of, and to offer our full cooperation in the conduct of any inquiry. I can state categorically in this letter, and will so document when we meet, that communications between representatives of El Dorado and then Secretary of the Interior Zinke and Deputy Secretary (and now Secretary) David Bernhardt were *confined exclusively to the facts and the law*, consistent with the positions taken in the above-referenced Corps letter dated May 26, 2017. The request was to review whether an earlier decision by the local F&W official, inconsistent with the Corps' legal analysis, was correct or not. That F&W official's *final decision* was, in fact, legally correct, as will be noted below.

We hope we can come in as soon as possible to meet with you and your staff voluntarily and to provide any documents and factual and legal evidence to support our assertion that the decisions were made entirely on the merits, on the facts, and on the law.

We expect to be able to prove to you, with hard evidence and facts, that El Dorado has plans to proceed with its carefully planned and environmentally-sensitive project, with the highest priorities to ensure environmental, water, and endangered species protections consistent with the Clean Water Act and the Endangered Species Act. Politics or ideology has not had and will not have anything to do with El Dorado's actions, nor the decisions of the Corps or F&W as far as we are aware.

Indeed, we can show that the final decision made by the local F&W official in 2017, who is quoted in recent local newspaper accounts, was legally and factually correct. Indeed, despite the "feelings" that he mentioned to a reporter of "pressure" from Washington to reverse a decision the year before on a broader scope of review, he also told the same reporter that since he was not an attorney, he could not question the legality of the final Corps decision, which his "final" decision supported. It is important to note that he also said that the decision by the Corps on the scope of their review "wasn't going to make much of a difference, if any, in the effects on water supplies and wildlife," adding: "I didn't lose any sleep at night...because...the effect on the resource, meaning the San Pedro River and the species that live there, were really not going to be any greater whether we [the F&W local office] consulted or not."

As to why El Dorado decided to proceed under the same permit issued in 2006 rather than going forward without any Corps permit at all, which it could have done under the law, the answer is simply that El Dorado can build an environmentally better project, with a more functional transportation and water infrastructure by building under the permit than it can without it. Therefore, the decision to continue use of the original permit was by far in the best interests of the environment and the future residents of the Villages at Vigneto community and

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surrounding communities. Such environmental advantages of maintaining the current permit from 2006 includes especially, traffic and air pollution concerns and the need for water preservation. Also, the current design with the current 2006 permit will improve the quality of life of the future residents of the new planned development, as we will show with specific facts concerning the road and infrastructure. That all being said, it is a fact that the Vigneto development can proceed without a 404 permit. To do so would present considerable environmental and quality-of-life disadvantages, however.

We look forward to meeting with you in the near future. We certainly hope that before you take any steps regarding scheduling hearings or issuing subpoenas that we can meet first and voluntarily provide you and your staff with all you need to be certain that the Corps has acted properly, that the final decision of the F&W was a proper one under the facts and the law, and that innuendo about political pressure or interference is entirely factually baseless.

Very truly yours,



By: _____
Lanny J. Davis
Co-Founder & Partner
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