



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

NOV - 7 2007

Certified Mail: 7000 0520 0025 3711 8836

Return Receipt Requested

Mr. T. A. Staben
P.O. Box 255
Somis, CA 93066-0255

Re: Findings of Violation and Order for Compliance under sections 308 and 309(a) of the Clean Water Act, EPA Docket No. CWA-404-309(a)-08-022

Dear Mr. Staben,

The U.S. Environmental Protection Agency, Region 9 ("EPA") is in receipt of information that between October 2005 and November 2006, fill material was discharged into the Calleguas Creek by you and/or at your direction, without authorization under section 404 of the Clean Water Act. The discharges of fill material included earthen and rock materials and vegetative debris.

EPA issues the enclosed Findings of Violation and Order for Compliance ("Order") pursuant to sections 308 and 309(a) of the Clean Water Act. The Findings describe the nature of the violations and the Order requires you to prepare and implement a removal and restoration plan ("R/R Plan") to remove and legally dispose of the unauthorized material and restore the affected area of the Calleguas Creek to its pre-flood (i.e. 2004) channel and associated floodplain dimensions and configuration.

The R/R Plan submitted to EPA must include the following components:

- Removal of all unauthorized dredged and fill materials from Calleguas Creek;
- Disposal of all removed material at appropriate upland locations, in compliance with all local, state and federal requirements;
- Reconfiguration of Calleguas Creek in a manner that is consistent with the channel and floodplain morphology characteristic of the affected area;
- Installation of erosion and sediment control measures to minimize erosion from the river bank and all other disturbed areas during and after the required removal efforts;

- Avoidance of impacts to native vegetation within and adjacent to Calleguas Creek during removal, re-contouring, and any other associated activities;
- Planting of characteristic native riparian species within the restored channel area and adjacent floodplain terraces;
- A five-year monitoring plan; and
- A schedule for implementing the R/R Plan.

Also enclosed for your information is an EPA information sheet about compliance assistance available to small businesses and the rights of small businesses to comment to the Small Business Regulatory Enforcement Fairness Act ("SBREFA") Ombudsman about EPA's enforcement activity. We provide the information sheet without making a determination whether your business is a small business under SBREFA.

I invite you to work with EPA to resolve this matter. If you have questions, please contact Ms. Mary Butterwick of our CWA Compliance Office at (415) 972-3481, or Ms. Jessica Kao of our Office of Regional Counsel at (415) 972-3922.

Sincerely Yours,

Alexis Strauss
Director, Water Division

Enclosures

1. Findings of Violation and Order for Compliance
2. SBREFA Information Sheet

cc: David Castanon, U.S. Army Corps of Engineers
John Markam, U.S. Army Corps of Engineers
L.B. Nye, Los Angeles Regional Water Quality Control Board

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:

T. A. Staben
P.O. Box 255
Somis, CA 93066-0255

Respondent.

)
) Docket No. CWA-309(a)-08-
)

) **FINDINGS OF VIOLATION**
) **AND ORDER FOR COMPLIANCE**

) Proceeding under Sections 308 and 309(a)
) of the Clean Water Act, 33 U.S.C. §§ 1318
) and 1319(a)
)
)

AUTHORITY

The following Findings are made and Order issued pursuant to the authorities vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, who has in turn delegated them to the Director of the Water Division ("Director") of EPA Region IX.

FINDINGS OF VIOLATION

1. Under CWA section 301(a), 33 U.S.C. §§ 1311(a), it is unlawful for a person to discharge any pollutant from a point source into a navigable water without a permit issued under the CWA.

2. "Pollutant" means, among other things, "dredged spoil, solid waste, biological materials, rock and sand," CWA section 502(6), 33 U.S.C. § 1362(6), and includes "dredged material" and "fill material" as defined by 33 C.F.R. § 323.2(e).
3. "Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." CWA section 502(12), 33 U.S.C. § 1362(12).
4. "Navigable waters" means "the waters of the United States." CWA section 502(7), 33 U.S.C. § 1362(7). The U.S. Army Corps of Engineers ("Corps") and EPA regulations further define "waters of the United States" to include, inter alia: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; and (ii) tributaries to such waters. 33 C.F.R. § 328.3(a)(1) and (5)(Corps regulations); 40 C.F.R. § 230.3(s)(1) and (5)(EPA regulations).
5. "Point source" means "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged." CWA section 502(14), 33 U.S.C. § 1362(14).
6. "Person" includes an individual and various types of business entities. CWA section 502(5), 33 U.S.C. § 1362(5).
7. Under CWA section 404, 33 U.S.C. § 1344, and its implementing regulations at 33 C.F.R. Part 323, the discharge of dredged or fill material into a water of the United States requires a permit ("section 404 permit") issued by the Corps.
8. T. A. Staben ("Respondent") owns, operates or otherwise has control over property located at Longitude -118.98, Latitude 34.27 and Assessor's Parcels #163-0-020-765 and #163-0-020-795 in Ventura County, California, with the address P. O. Box

255, Somis, California (“the Property”). The area of concern (“the Site”) is the portion of Calleguas Creek, also referred to as Arroyo Las Posas, that runs through both parcels. Respondent also owns, operates or has control over a number of California corporations, including T. A. Staben, Inc. that engage in general engineering and contracting work, including construction site preparation, excavating, rough and fine grading, land clearing, erosion control and slope repair.

9. Calleguas Creek drains the 343-square-mile Calleguas Creek watershed. It flows perennially for the stretch upstream of the Site to approximately 1.4 miles downstream from the Site, and then flows intermittently for the next 5 miles to its confluence with Conejo Creek. It resumes perennial flows for the remaining 7.1 miles before joining Revelon Slough near the entrance to Mugu Lagoon. Both Mugu Lagoon and the lower, approximately 6.75-mile reach of Calleguas Creek are subject to the ebb and flow of the tide from the Pacific Ocean.
10. The Site is at a narrow, prominent bend in Calleguas Creek. Aerial photographs taken of the Site between January 1996 and September 2004 show that Calleguas Creek had migrated northward over time, eroding its north bank and establishing a point bar on its south bank, and that, by September 2004, the established position of the low-flow channel at the apex of this bend was over 400 feet north of its January 1996 position.
11. In early January 2005, the Somis area experienced flooding. On January 11, 2005, the Corps received an application requesting emergency authorization to perform work at the Site under the Corps’ Regional General Permit (RGP) No. 63. The emergency repairs proposed by the application, which included redirecting the main

body of water back into the center of the channel and away from the orchard and houses, excavating the silt in the center of the channel and placing it on the banks, and placing rip rap on the banks to protect the new slopes, were for the stated purpose of addressing damage caused by “the recent storms” to the orchard on the Property. However, when identifying the relevant pre-flood channel configuration of Calleguas Creek, the application presented only information of Calleguas Creek’s channel configuration as it had existed in January 1996.

12. On January 12, 2005, based on representations made in the application, the Corps granted authorization under RGP No. 63 to conduct emergency repairs at the Site to redirect flows away from the damaged area, backfill the eroded embankment, and restore the ungrouted rock slope protection (File No. 200500470-AJS). The authorization included the following condition:

This Regional General Permit does not authorize any additional work within the Arroyo Las Posas or other water of the United States other than that required to restore the property and channel embankment to pre-flood conditions. No additional fill or encroachment into Arroyo Las Posas is authorized.

13. On February 1, 2005, the Corps photographed the Site from the south bank of Calleguas Creek. On February 16, 2005, the Corps inspected and took photographs of the Site. The Corps photographs taken on both occasions show the actual pre-flood (i.e. the 2004) channel of Calleguas Creek completely filled with sediment and a new channel excavated from the point bar redirecting surface flows over 400 feet to the south, similar to the Creek’s January 1996 alignment.
14. On October 5, 2005 the Corps again inspected and took photographs of the Site. The photographs show that the entire Site, including the pre-flood channel of

Calleguas Creek, has been filled, graded, and leveled. Mechanized equipment including a Case International tractor pulling leveling equipment, a water truck for dust control, and several other trucks were photographed at the Site.

15. On October 24, 2005, the Corps issued a cease and desist order and notice of violation of the CWA to Respondent (Case No. 200600032-AJS). The Order concluded that the unauthorized discharges, which included the importation, placement and grading of fill material within Calleguas Creek, had occurred at the Site. The Order directed Respondent to immediately cease and desist from discharging additional fill material into waters of the United States on the Property.
16. In December 2005, according to Respondent's June 19, 2007 response to EPA's CWA section 308 Information Request and in violation of the Corps' cease and desist order, Respondent started placing rock to stabilize the Site using an "892 excavator", "650 dozer" and a "980 loader."
17. On November 11, 2006, EPA, accompanied by the Corps, met with Respondent to inspect the Site. EPA observed that the pre-flood bend of Calleguas Creek remained completely filled with earthen material, graded and leveled. EPA observed two extensive stockpiles of large rocks and additional stockpiles of earthen and rock material near or on Calleguas Creek. Respondent stated that since January 2005, he had stockpiled approximately 800 cubic feet of rock at the Site. Respondent also stated that the purpose of the fill on the Site was to reclaim his property that had been lost due to bank erosion over the past 25 years.
18. Based on EPA field observations on November 11, 2006, aerial photographs taken of the Site between 1996 and 2006, and 2001 channel cross sections at the Site,

EPA estimates that Respondent's filling, grading, leveling, and stockpiling activities have resulted in the filling of approximately 4.2 acres of the pre-flood channel of Calleguas Creek.

19. The above-described activities by Respondent at the Site have adversely impacted the Creek's natural floodplain functions and have increased the potential for erosion of the banks of nearby properties.
20. Respondent is a person under CWA section 502(5), 33 U.S.C. § 1362(5).
21. Calleguas Creek is a water of the United States under CWA section 502(7), 33 U.S.C. § 1362(7), and its implementing regulations. The tidally influenced Calleguas Creek, along with Mugu Lagoon and the Pacific Ocean, are waters of the United States under 33 C.F.R. § 328.3(a)(1) and 40 C.F.R. § 230.3(s)(1). In addition, as a tributary to such waters, Calleguas Creek is a water of the United States under 33 C.F.R. § 328.3(a)(5) and 40 C.F.R. § 230.3(s)(5).
22. The sand, rock and vegetative materials placed or caused to be placed in Calleguas Creek are "dredged material(s)" and/or "fill material(s)" under 33 C.F.R. § 323.2(e) and CWA section 404, 33 U.S.C. § 1344, and "pollutant(s)" under CWA section 502(6), 33 U.S.C. § 1362(6).
23. The placement of dredged and/or fill material in Calleguas Creek constitutes the "discharge of pollutants" under CWA section 502(12), 33 U.S.C. § 1362(12).
24. The earthmoving equipment used by Respondent to place dredged and/or fill material in Calleguas Creek is a point source under CWA section 502(14), 33 U.S.C. § 1362(14).

25. The permanent filling of the pre-flood channel of Calleguas Creek, the construction of a permanent berm, and the stockpiling of rock and other earthen materials at the Site are outside the scope of RGP No. 63.
26. By discharging dredged and/or fill material into waters of the United States without and/or in violation of section 404 permit authorization, Respondent has violated CWA section 301(a), 33 U.S.C. § 1311(a).

ORDER

Based on the foregoing findings of violation and pursuant to the authorities of CWA sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), it is hereby ordered:

27. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a section 404 permit.
28. Within forty-five days of receipt of this Order, Respondent shall submit to EPA for approval a Removal and Restoration Plan (“R/R Plan” or “Plan”) for removing the unauthorized discharge and restoring Calleguas Creek to its pre-flood (i.e. 2004) channel/active floodplain dimensions and configuration. It is advisable that the R/R Plan be prepared by a qualified professional(s) with the requisite expertise in stream restoration, fluvial geomorphology, hydrology, biology, and engineering.
29. The R/R Plan shall, at the minimum, address the following tasks and components:
 - a. Removal of all unauthorized dredged and fill materials from Calleguas Creek;
 - b. Disposal of all removed material at appropriate upland locations, in compliance with all local, state and federal requirements;

- b. Disposal of all removed material at appropriate upland locations, in compliance with all local, state and federal requirements;
 - c. Reconfiguration of Calleguas Creek in a manner that is consistent with the channel morphology characteristic of this reach of the Creek.
 - e. Installation of erosion and sediment control measures to minimize erosion from the river bank and all other disturbed areas during and after the required removal efforts;
 - f. Avoidance of impacts to native vegetation within and adjacent to Calleguas Creek during the removal, re-contouring, and other associated activities;
 - g. Upon completion of the above tasks, the planting of characteristic native riparian species within the restored channel area and adjacent floodplain terraces; and
 - h. A five-year monitoring plan, with success criteria and measures for control of exotic and invasive vegetation and for the restoration work;
 - i. A schedule for implementing the R/R Plan, which shall take into account the need to obtain any authorizations required by applicable federal, state and local laws to carry out the R/R Plan.
30. Respondent shall implement the R/R Plan upon receipt of EPA approval.
31. All submittals made pursuant to this Order shall be mailed to the following address:

Mary Butterwick
U.S. Environmental Protection Agency
CWA Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105

32. All submittals required under this Order shall include the following certification signed by Respondent or Respondent's duly authorized representative:

I certify under penalty of law that this document and all attachments were prepared by direct supervision or in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those who manage the system or are directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

33. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits, licenses or orders.
34. EPA has promulgated regulations at 40 C.F.R. Part 2, Subpart B to protect the confidentiality of the business information it receives. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondent may not withhold from EPA any information on the grounds that it is confidential business information.
35. This requirement of information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is

directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).

36. This Order shall be binding upon Respondent, and Respondent's agents, servants, employees, heirs, successors and assigns.
37. Issuance of this Order shall not be deemed an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, to enforce any violation cited in this Order and to enforce this Order.
38. CWA section 309(a), (b), (d) and (g), 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the CWA. In addition, CWA section 309(c), 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA, and for knowingly making false statements.
39. This Order shall become effective upon the date of receipt by Respondent.

Date: _____

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency