



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 23, 2014

Colonel Michael J. Farrell
District Engineer, Sacramento District
U. S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

Subject: Public Notice (PN) SPK-2008-00909, Aspen VIII & IX Project, Teichert Aggregates,
Sacramento County, California

Dear Colonel Farrell:

Thank you for the opportunity to comment on the subject PN for construction and aggregate mining operations in or adjacent to Elder Creek and Morrison Creek. The proposed project would impact approximately 4.954 acres of waters of the United States, including wetlands (waters). The EPA objects to the actions described in the PN because they fail to meet the restrictions on discharges outlined by the 404(b)(1) Guidelines (Guidelines)(40 CFR 230.10), particularly regarding adequate analysis of alternatives and mitigation.

Under the Guidelines, only the least environmentally damaging practicable alternative (LEDPA) meeting the project purpose can be permitted. The project purpose of conducting aggregate resource extraction to meet regional needs in Sacramento County is not a water dependent activity, and the Guidelines presume practicable alternatives exist to filling wetlands for non-water dependent projects. Although we appreciate the applicant's efforts to reduce environmental impacts and avoid 22.793 acres of waters on the project site, we are concerned that the applicant has not submitted adequate information for determination of the project's compliance with the Guidelines.

For example, the applicant has not submitted a 404(b)(1) alternatives analysis with information about on-site and off-site alternatives. When considering alternatives, the applicant should delineate and characterize waters for each alternative, and demonstrate that their proposal is the LEDPA given practicable measures to reduce or eliminate impacts. Additional information including development plans and drawings is necessary to evaluate the actual and avoided environmental impacts of the proposed project. Screening criteria for practicability should be closely scrutinized, as the regulations allow only costs, logistical and technical criteria to be considered as screening criteria for alternatives. The applicant should look within a reasonable market area for suitable off-site locations that meet the project purpose and have opportunities to develop in the least environmentally damaging way practicable.

In addition to direct impacts, indirect impacts to water quality and quantity should also be evaluated in the LEDPA determination. We are particularly concerned about the potential for the degradation of water quality that could occur from sediment, erosion, excavated materials, and petroleum byproducts.

Finally, compensatory mitigation is not adequately described in the PN as required in the 2008 Mitigation Rule (Rule).¹ Specifically, the PN states the applicant will purchase credits at an approved mitigation bank and/or conduct permittee-responsible mitigation. According to the Rule, the PN must contain a statement explaining how impacts associated with the proposed activity will be compensated. This statement shall include the amount, type, and location of any proposed compensatory mitigation, or indicate the intent to use an approved mitigation bank or in-lieu fee program. Given that most banks in the immediate area have few credits and no new banks are in progress, we suggest the applicant examine more carefully the extent of credits available in the immediate area (in the watershed) as using mitigation banking credits may be more difficult than was implied in the PN.

In summary, there is presently insufficient information to make a determination of compliance with the Guidelines and the EPA recommends permit denial as presently proposed. We recommend that the applicant submit additional information on: (1) on-site and off-site alternatives and screening criteria for practicability; and (2) compensatory mitigation for unavoidable losses of waters, ideally through an established mitigation bank or in-lieu fee program to maximize the long-term environmental benefits to the watershed. Given the complexity of compensatory mitigation, we are concerned about the applicant's ability to independently create, restore, and/or maintain waters of the United States in perpetuity.

Thank you for the opportunity to comment on the PN. As additional information on the proposed project becomes available, please contact Grace Ma at (415) 947-4212 or ma.grace@EPA.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Brush", written in a cursive style.

Jason Brush
Supervisor
Wetlands Section

¹ Department of the Army, Corps of Engineers, 33 CFR Parts 325 and 332, Environmental Protection Agency 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources. Public Review and Comment at 33 CFR 332.4(b).