



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

CERTIFIED MAIL RETURN RECEIPT REQUESTED

March 5, 2020

Regulatory Division (SPK-2019-00889)

Colorado Stone Quarries
Attn: Mr. Daniele Treves, General Manager
300 West Park Street
Marble, Colorado 81623
d.treves@coloradostonequarries.com

Dear Mr. Treves:

We are writing in reference to your unauthorized work in waters of the United States. The work is located on Yule Creek at the Colorado Stone Quarries Mine approximately 3 miles south of the town of Marble, at Latitude 39.036826°, Longitude -107.168673°, Gunnison County, Colorado. Specifically, the activity involved the diversion and filling of approximately 1,500 linear feet of Yule Creek in the fall of 2018 for the stated purpose of constructing a temporary mine road.

Based on available information, including your January 31, 2020, response to our request for information letter dated December 18, 2019, and our site visit on February 11, 2020, we have determined that you have discharged dredged or fill material into 1,500 linear feet (0.45 acre) of Yule Creek, which is a waters of the United States, without a Department of the Army (DA) permit. As stated in our previous letter, Section 404 of the Clean Water Act requires a DA permit be obtained prior to the discharge of dredged or fill material into waters of the United States, including wetlands, unless specifically exempted. The work performed does not qualify for exemption under Clean Water Act Section 404(f)(1)(E) (33 U.S.C. 1344(f)(1)(E)) as it is being utilized for purposes other than moving mining equipment (e.g., hauling mined marble, accessing other portions of the mine, fuel staging area, and performing spill cleanup and monitoring activities) as required by the applicable exemption. Additionally, the subject road does not appear to be temporary, as required by the applicable exemption, because it is being retained after mining equipment has been moved to or from the site. Therefore, the work is violation of the Clean Water Act.

We are continuing to investigate the impact of this work as it relates to public interest and the appropriate course of action to remedy the situation. Potential enforcement actions include directing removal of the unauthorized work and restoration of the site to pre-project conditions or referral to the U.S. Department of Justice for judicial enforcement, which could include fines, penalties, and injunctive relief. An extract of the

law is enclosed. Prompt voluntary restoration of the site in accordance with a Corps-approved plan may preclude some or all of these actions.

We appreciate your cooperation thus far and your willingness to remedy the impacts and restore Yule Creek. This includes ongoing bioremediation efforts to clean up a diesel spill that occurred in October 2019. You have also requested permit processing advice on three alternatives that you believe will bring the project site into compliance including: 1) restoration of Yule Creek, 2) partial restoration of Yule Creek at an elevated alignment, or 3) permanent realignment of Yule Creek in the new eastern alignment. Additionally, you have indicated a need to delay restoration of Yule Creek due to required treatment and monitoring of the adjacent diesel spill which could take at least 2 years. Our preference is alternative #1 above, in which you propose to restore Yule Creek to its pre-disturbance condition as soon as practicable. Whether or not a permit is required is dependent upon the details of the restoration. We are also willing to review alternative proposals #2, #3, or others; however, proposals involving a different vertical or horizontal alignment of Yule Creek may require processing of an Individual Permit to include a detailed alternatives analysis and a full public interest review.

Please respond by **March 19, 2020**, stating your plans to either restore the alignment of Yule Creek as soon as practicable or submit an application to permanently relocate Yule Creek. By copy of this letter and the enclosed maps depicting the project features, we are also soliciting the views of appropriate federal, state, and local agencies, which may also have jurisdiction, regarding this unauthorized activity (additional information is available upon request). Based upon your response to this notice, comments received from the agencies, and any available information, we will determine the appropriate course of action to resolve this violation.

Please refer to identification number SPK-2019-00889 in your response or any correspondence concerning this site. If you have any questions, please contact Benjamin Wilson by email at Benjamin.R.Wilson@usace.army.mil, or telephone at (970) 243-1199 X 1012. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx. Your cooperation to resolve this violation of the Clean Water Act is appreciated.

Sincerely,

Susan Bachini Nall
Chief, CO West Section

Enclosures (4)

cc:

Monica Heimdal, U.S. Environmental Protection Agency, Heimdal.monica@epa.gov

Ann Timberman, U.S. Fish and Wildlife Service, grandjunctiones@fws.gov

Dustin Czapla, Colorado Division of Reclamation, Mining, and Safety,

dustin.czapla@state.co.us

Lori Martin, Colorado Parks and Wildlife, lori.martin@state.co.us

Scott Garncarz, Colorado Department of Public Health and Environment,

scott.garncarz@state.co.us

Marlene Crosby, Gunnison County, MCrosby@gunnisoncounty.org

Ben Miller, Lewicki and Associates, ben@lewicki.biz

Katie Todt, Lewicki and Associates, katie@lewicki.biz

Enclosure 1

THE CLEAN WATER ACT

Section 404 (33 USC § 1344) states in part:

“(a) The ...Chief of Engineers, may issue permits, ... for the discharge of dredged or fill material into the navigable waters...”

Section 301 (33 USC § 1311) states in part:

“(a) Except as in compliance with this section and sections ... 1344... the discharge of any pollutant by any person shall be unlawful.”

Note: Dredged or fill material is considered a pollutant under the Clean Water Act.

Section 309 (33 USC §1319) states in part:

(c) Criminal penalties –

(1) ... (A) Any person who negligently violates Section ... 1311 ... shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both ...

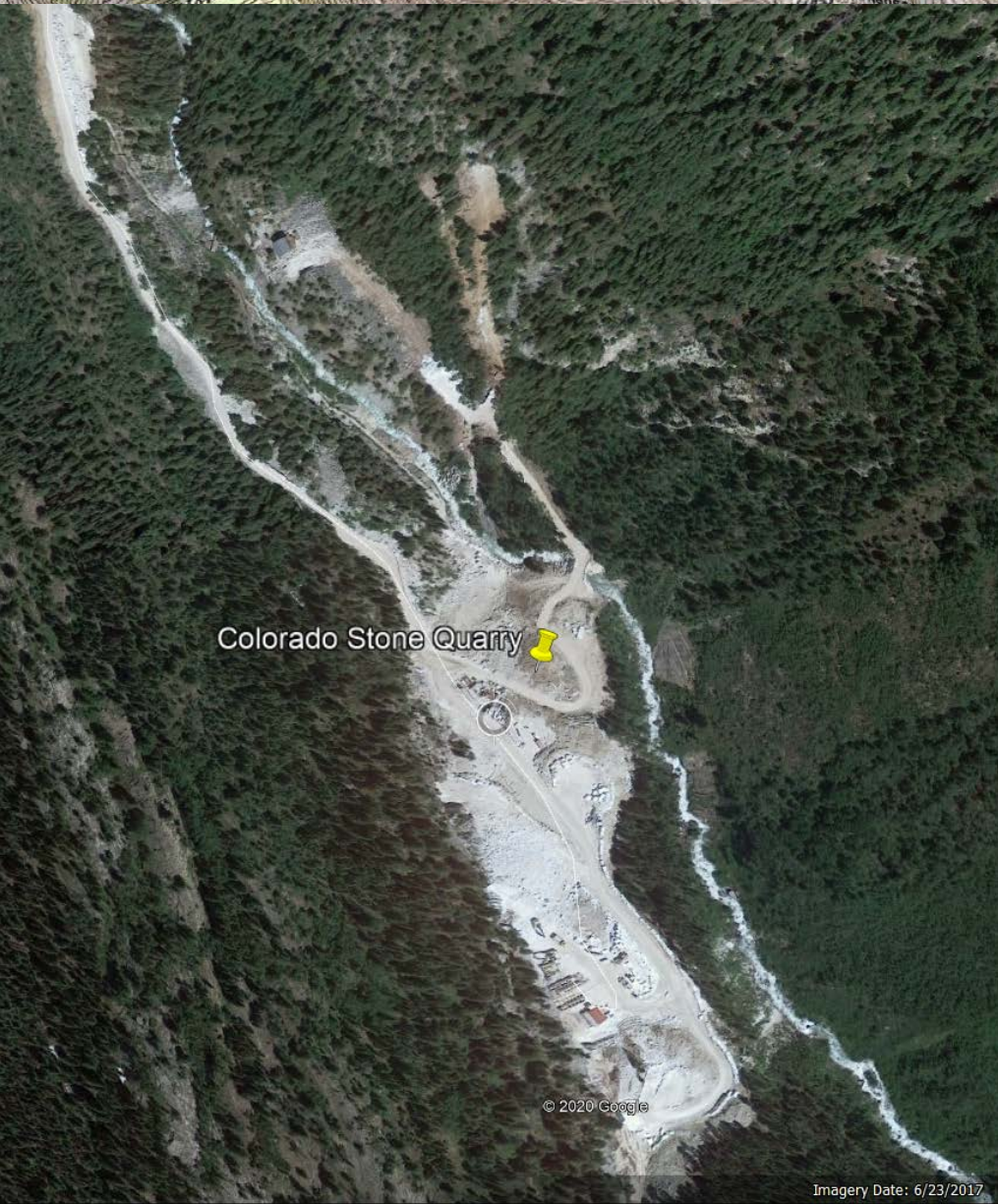
(2) (A) Any person who knowingly violates section ... 1311 ... shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both ...

(d) Civil penalties; ... any person who violates section ...1311...and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed \$ 25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. ...

Colorado Stone Quarry

SPK-2019-00889
Location Map

Enclosure 2



Google Earth

© 2020 Google

1 mile

2018 Drone Image - Plan View (2 of 15)

Pride of America Mine

Colorado Stone Quarries, Inc

DRMS Permit Number: M-1999-058	MSHA ID: 05-04438	Date Code: 200131
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Mine Entry Location: Latitude: 39.036066 Longitude: -107.168677

State: Colorado County: Gunnison Nearest Town: Marble (4.6 Miles)

Section: 1 Township: 12S Range: 88W PM: 6th

Map Scale: 1"=200'

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File Name: PAM 200130.dwg

