



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

REPLY TO
ATTENTION OF

CERTIFIED MAIL RETURN RECEIPT REQUESTED

RECEIVED

January 17, 2013

Regulatory Division SPK-2012-01268

JAN 18 2013

GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

Mr. Ted Albers
Wand, Incorporated
701 Haughey Road
Craig, Colorado 81625-1041

Mr. P.J. Nichols
Northwest Aggregates, Incorporated
2930 E. US Highway 40, Suite #4
Craig, Colorado 81625

Dear Messrs. Albers and Nichols:

We are writing in response to Mr. Albers comment extension request, received by our office on January 14, 2013, and Mr. Nichols response letter dated January 7, 2013. These letters were sent in response to our December 6, 2012, letter (attached) notifying you of violations of Section 404 of the Clean Water Act (CWA), which resulted from unauthorized work in waters of the United States associated with the creation of the Wand gravel pit. The property is located adjacent to and abutting the Yampa River, 40°30'16.99" north latitude, 107°30'14.32" west longitude, in Section 4, Township 6 North, Range 90 West, approximately two miles east of the town of Craig, Moffat County, Colorado.

Mr. Nichols's January 7, 2013 letter included a letter from Mr. Roger P. Simones, President of Northwest Aggregates, Incorporated, addressed to Congressman Scott Tipton and Senator Michael Bennet. This letter makes a number of assertions, some of which are addressed below:

1. Submission of and Corps response to October 15, 2012 after-the-fact Nationwide General Permit (NWP) 44 application: Mr. Simones' letter asserts that the CWA violation is automatically resolved because 45-days have passed since the submittal of an after-the-fact (ATF) application and a Corps response to the application was not received. That is inaccurate, primarily for two reasons:

A. We have not determined that an ATF permit is an appropriate method to resolve this CWA violation. During our August 23, 2012 site visit, an ATF permit was discussed as one of many various methods which may eventually be used resolve the violation, but the Corps did not at any time require or ask that an ATF permit application be submitted. The submission of an

unsolicited ATF permit during the course of an enforcement investigation does not preclude our enforcement process or otherwise resolve the violation.

B. Had an ATF permit submittal been determined appropriate, NWP 44 has an impact threshold of 0.5 acres to waters of the United States. Based on the ATF application submitted by your consultant (IME), the unauthorized work has impacted approximately 0.77 acres of waters of the United States, including wetlands. As the impacts exceed the threshold limit of NWP 44, this NWP is not applicable to this project. Until the Corps has the opportunity to field verify the October 15, 2012, wetland delineation and impacts report, we cannot confirm the amount of impact. The notification requirement for NWP 44 also was not met.

2. Submission and approval of wetland delineations: The need to field verify any delineation and impact report (which was not available at the time of our August 23, 2012 site visit) in the spring of 2013 was explained by us during our August 23, 2012 site visit. The large size and complexity of the site, nature of the violation, and onset of winter weather made it impracticable to verify the wetland delineation after it was submitted in October of 2012.

3. Addresses on December 6, 2012 Corps' correspondence: The addresses on our December 6, 2012 letter to you were, in fact, incorrect. The addresses on our December 6, 2012 letter have been corrected (attached).

We also received a second wetland delineation on January 7, 2012, for a 34.36 acre site identified as the Northwest Aggregates Wand Pit Expansion Area. As with the October 15, 2012 delineation and impacts report, we will review this submittal this winter, but will not be able to field verify this delineation until Spring 2013.

Mr. Albers has requested an extension of time in order to provide comments to our December 6, 2012 letter. This request is granted. To ensure that all pertinent information is available for our evaluation and included in the public record, you are both invited to provide any additional information which you feel should be considered. Since the information provided will become a part of the public record, it may be presented in any court action that could result from this investigation and will be retained in our files. Any information you wish to provide should reach this office no later than **March 15, 2013**.

You were informed of the Corps' regulatory authorities and the requirement to apply for and secure a Corps permit prior to commencing any discharges within waters of the U. S. (as relayed to you during a site visit made by Nathan Green of this office in March of 2008). Because this work is considered knowing and flagrant, we are required to refer this case to the U.S. Environmental Protection Agency (EPA) to give them the option of assuming lead enforcement agency designation. Upon receipt of EPA's comments, we will advise you of which agency will act as lead enforcement agency to handle this Clean Water Act violation.

Please refer to identification number SPK-2012-01268 in any correspondence concerning this project. If you have any questions, please contact Mr. Steve Moore at the Colorado West Regulatory Branch, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, by email at stephen.a.moore@usace.army.mil, or by telephone at 970-243-1199, extension 13. We appreciate your verbal commitment, made during the August 23, 2012 site investigation, to cooperate with us to resolve this Clean Water Act violation.

Sincerely,

Original Signed

Susan Bachini Nall
Chief, Colorado West Regulatory Branch

Enclosures:

1. December 6, 2012 Corps letter

Copy furnished without enclosure:

Ms. Monica Heimdal and Mr. Richard Clark, 8ENF-W, Water Technical Enforcement Program,
Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection
Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129

Mr. Dustin Czapla, Colorado Department of Natural Resources, Division of Reclamation,
Mining and Safety, 101 South 3rd, Suite 301, Grand Junction, Colorado 81501

Ms. Patty Schrader Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service,
Ecological Services, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506

Mr. William Atkinson, Colorado Parks & Wildlife, 925 Weiss Drive, Steamboat Springs,
Colorado, 80477

Mr. Jerry Hoberg, Moffat County Planning Department, 221 West Victory Way, Suite 110,
Craig, Colorado 81625

Mr. Kent Crofts, IME, P.O. Box 270, Yampa, Colorado 80483

