



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

NOV - 7 2007

Certified Mail: 7000 0520 0025 3711 8867

Return Receipt Requested

Mr. Gerald Berry
Muranaka Farm, Inc.
11018 E. Los Angeles Avenue
Moorpark, CA 93021

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)-08-023

Dear Mr. Berry,

The U.S. Environmental Protection Agency, Region 9 ("EPA") is in receipt of information that between September 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 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 meet the following criteria:

- 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 braided channel and floodplain morphology characteristic of the affected area;
- Installation of erosion and sedimentation 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 within the restored channel area and active floodplain;
- 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

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; 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. Muranaka Farm, Inc. ("Respondent") is a California corporation engaged in the business of agricultural production.

9. Respondent owns property located at Longitude -118.97, Latitude 34.26 and Assessor's Parcel #1630020785, in Ventura County, California, with the address 11018 E. Los Angeles Ave., Moorpark, 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 the parcel.
10. Calleguas Creek drains the 343-square-mile Calleguas Creek watershed. It flows perennially for the stretch upstream of the Site to approximately 1.6 miles downstream from the Site, 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.
11. The Site is at a broad bend in Calleguas Creek. Aerial photographs taken of the Site between 1999 and 2005 show a relatively stable configuration of Calleguas Creek at the Site, with the low flow channel along the south bank and an extensive braided-channel topography along the north bank. The aerial photographs show evidence of surface flows through some of the braided channels.
12. On March 2, 2005, the Corps received an application from the Respondent requesting emergency authorization to perform work at the Site under the Corps' Regional General Permit (RGP) No. 63. The proposed emergency repairs included the installation of a rock groin and the placement of rip-rap on the slope below the barn at the upstream end of the Property. Respondent also proposed to move sand

and debris piles approximately 30 feet to the north to establish the original flow line of Calleguas Creek.

13. On March 8, 2005, the Corps issued authorization under RGP No. 63 for Respondent to construct emergency bank protection, including a rock groin structure and rock slope protection in the vicinity of Respondent's barn, and to push accumulated debris and sand along approximately 1,500 linear feet within Calleguas Creek, consistent with the information provided in the application (File No. 200500890-AJS).
14. On August 22, 2005, the Corps authorized Respondent to reclaim eroded upland property along Calleguas Creek under the Corps' Nationwide Permit No. 3: Maintenance Activities (No. 200500893-AJS). A description of the project is included in the requisite CWA Section 401 Water Quality Certification for the Respondent's Permit No. 200500893-AJS. According to this certification, the subject project was restricted to 585 linear feet of the Creek in the vicinity of the Respondent's barn and would impact 0.08 acre of waters of the United States.
15. In May 2006, the Corps visited the Property and photographed an earthen berm and agricultural field constructed within and adjacent to Calleguas Creek.
16. On November 11, 2006, EPA, accompanied by the Corps and representatives of Respondent, inspected the Property. EPA observed and photographed an earthen berm extending for approximately 2,760 linear feet within the braided channel area of Calleguas Creek. Behind the berm, EPA observed and photographed an area that had been cleared and leveled to prepare an agricultural field, a portion of which was in production. During the inspection, an employee of Respondent stated that the

berm had been there for several years. EPA found no evidence of a berm on aerial photographs of the Property from 1999 to February 1, 2005.

17. In its June 5, 2007 response to EPA's CWA section 308 information request, Respondent stated that accumulated debris and sand were pushed up towards the bank with a bulldozer between March 8 and March 21, 2005, resulting in impacts to approximately 0.4 acres. The response made no reference to the construction of an earthen berm or the preparation of an agricultural field.
18. Based on EPA's field observations on November 11, 2006, aerial photographs of the Site between 1998 and 2006, and 2001 channel cross sections at the Site, EPA estimates that the construction of the berm and agricultural field resulted in the filling of approximately 11.8 acres of the braided channel of Calleguas Creek.
19. Respondent's discharges of sand, other earthen materials, and vegetative debris into Calleguas Creek have adversely affected 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 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 above-described discharges were not authorized by a section 404 permit.
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. 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;
- c. Reconfiguration of Calleguas Creek in a manner that is consistent with the braided 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 existing native vegetation within and adjacent to Calleguas Creek during removal, re-contouring, and other associated activities;
- g. Upon completion of the above tasks, the planting of characteristic native riparian species within restored channel/active floodplain area;
- 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.

29. Respondent shall implement the R/R Plan upon receipt of EPA approval

30. 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

31. 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.

32. 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.
33. 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.

34. 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).
35. This Order shall be binding upon Respondent, and Respondent's agents, servants, employees, heirs, successors and assigns.
36. 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, available to enforce any violation cited in this Order and to enforce this Order.
37. 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.
38. This Order shall become effective upon the date of receipt by Respondent.

Date: _____

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