



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

REPLY TO  
ATTENTION OF

April 6, 2005

Regulatory Branch (200575106 and 199375014)

Mr. Mark Garcia  
Town of Pagosa Springs  
Post Office Box 1859  
Pagosa Springs, Colorado 81147

Gary Lacey  
Recreation Engineering and Planning  
485 Arapahoe Avenue  
Boulder, Colorado 80302

Gentlemen:

I thank the Town of Pagosa Springs for meeting with Susan Nall of our Grand Junction office on March 30, 2005 and myself on April 5, 2005. Based on this meeting, we are writing to reiterate our findings and request information regarding permit noncompliance in violation of the Clean Water Act for river work performed by the Town of Pagosa in the San Juan River. Our nationwide permit number 3 verification letter dated March 1, 2005, authorized "The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill provided that the structure or fill is not put to uses differing from those uses specified or contemplated for it in the original permit. Minor deviations are permitted provided the adverse environmental effects are minimal." The intent of nationwide permit 3 is to authorize work which is performed consistent to the original permit (199375014). The work performed within the Town between the Hot Springs Boulevard bridge and the pedestrian footbridge exceeded this verification and includes the following:

1. removal of the "W" structure near the Visitors Center;
2. removal of U.S. Geological Survey (USGS) stream gage #9342500 (west bank);
3. failure to notify the USGS per special condition #5 of permit 199375014;
4. installation of a new "U" structure downstream of the "W" removed;
5. use of concrete grout for the new "U" structure;
6. approximately 300 feet of west bank work;
7. removal and reconstruction of portions of the three triangular rock deflectors immediately below the Hot Springs

Boulevard bridge; and

8. installation of large random boulders (6-9) within the river.

We are continuing to investigate these activities and coordinate with the U.S. Environmental Protection Agency. Enforcement and resolution options were discussed and we have decided to accept and process an after-the-fact individual permit for the work performed and additional river work proposed. Please be aware that acceptance of a permit application does not preclude other enforcement actions such as administrative penalties. In order to accept a permit application, you will need to sign the enclosed tolling agreement, which states that potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, which states that any potential defendant agrees not to make a defense against the statute of limitations that may apply during the period of time that the Corps is reviewing the enforcement case.

Please confirm your intentions in writing for submitting an after-the-fact individual permit this spring. Additionally, we wish to obtain information related to this work which you have identified including:

1. pre and post project surveys,
2. photographs,
3. aerial photograph taken in February 2005,
4. drawings and design details, including quantity of material discharged into the river, quantity of material removed from the river, location of the disposal site, type of material used, and a detailed narrative discussing the completed work,
5. hydrologic and/or biological analysis of impacts that this work has on this particular stretch of the San Juan River
6. documented project purpose and need, including an alternative analysis of other structure designs and alternatives considered,
7. any other data collection relating to the river work.

Also, as requested in the meeting with Ms. Nall, please provide the name and address of the equipment operators and owner who performed the work. This information is necessary for our investigative record.

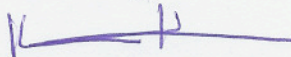
Re-establishment of the USGS stream gage is an immediate concern. We have been in contact w/USGS and the Town has expressed full cooperation on behalf of the Town. According to the April 6, 2005 meeting the USGS has found an appropriate new location for the stream gage. This new location is just upstream of the Pagosa Springs Blvd bridge and a W weir Structure that was authorized in your 199375014 permit. You shall submit a permit

application and plans for the new stream gage. We will continue coordinating this effort and include the National Weather Service and Colorado Division of Wildlife. The importance of this gage cannot be over-emphasized.

Please submit the information data requested above and a signed tolling agreement by May 11, 2005. Also, we anticipate the submittal of your after-the-fact individual permit no later than June 1, 2005. Due to the high runoff expected this year, we ask that you closely monitor the work areas to ensure that the safety and health of the San Juan River is maintained through and within the affected reach. Any problems identified shall be immediately coordinated with our office.

Please contact me if you have any questions or if you wish to discuss this situation further. I may be reached at telephone number (970) 375-9452, email address kara.a.hellige@usace.army.mil, or the address below. Your cooperation in resolving this noncompliance with the Clean Water Act is appreciated.

Sincerely,



Kara A. Hellige  
Chief, Durango Regulatory Office  
278 Sawyer Drive, #1  
Durango, Colorado 81303

Enclosure

1) Tolling Agreement

Copies Furnished without enclosure:

Ms. Pat Dorsey, Colorado Division of Wildlife, 151 East 16th Street, Durango, Colorado 81301  
Mr. David Gray, U.S. Geological Survey, Durango Field Office, 103 Sheppard Drive, Suite 110, Durango, Colorado 81301  
Mr. Brian Avery, National Weather Service, 792 Eagle Drive, Grand Junction, Colorado 81506  
Mr. Al Pfister, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506-3946  
Ms. Diane Sipe, U.S. Environmental Protection Agency, 8ENF-W, 999 18th Street, Suite 300, Denver, Colorado 80202-2466  
Ms. Sarah Fowler, U.S. Environmental Protection Agency, 8EPR-EP, 999 18th Street, Suite 300, Denver, Colorado 80202-2466  
Mr. Ken Beegles, Colorado Division of Water Resources, 701 Camino Del Rio, Suite 205, Durango, Colorado 81301