



Public Notice

US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Number: 200050022

Date: October 25, 2004

Comments Due: November 24, 2004

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) and Utah Division of Water Quality are evaluating a permit application (after-the-fact) to retain the discharge of fill material (estimated at 3,000 cubic yards) in Duck Creek and adjacent wetlands. This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States and Section 401 for water quality certification.

APPLICANT: Mr. Gary Raymond Halverson
1700 Redrock Street
Las Vegas, Nevada 89146

LOCATION: The project site is located the applicant's property, known as High Meadow Ranch and owned since 1965, near Duck Creek Village in Section 8, Township 38 South, Range 7 West, Kane County, Utah.

PROJECT DESCRIPTION: In December of 1999, the applicant constructed a private airstrip (2,350 feet long and 40 feet wide) across Duck Creek (two 6-foot round culverts) and in adjacent wetlands (approximately 0.67 acre). The work also serves as a roadway access for farm/ranch machinery to support and maintain irrigated pasture for livestock. According to the applicant, the Federal Aviation Administration and the State of Utah were notified of his intention to have a airstrip on his property and no exception was taken. The attached drawings provide additional project details.

ADDITIONAL INFORMATION:

Environmental Setting. The site is at about elevation 8,400 feet mean sea level. Mean annual precipitation in the project area ranges from approximately 18 to 36 inches. Much of the precipitation arrives as snowfall in the winter, but the area is also subject to high intensity thunderstorms in the summer. Summer home development is considerable. Public land ownership i.e., Dixie National Forest, is primary. Duck Creek supports a rainbow trout fishery, and experiences high angling pressure. Most of this fishing pressure is concentrated on the segment of stream between Duck Lake and Aspen Mirror Lake well upstream of the applicant's project site. On the applicant's property, the Duck Creek channel meanders considerably and is moderately down-cut. Adjacent areas are relatively broad, flat meadows with wetlands

dominated by grasses and grass-like species e.g., sedges and rushes, with subtle changes in ground elevation giving rise to upland shrubs, grasses and forbs e.g., sagebrush, brome, poa, and yarrow, ultimately giving way to the dominant spruce/fir forest cover in higher elevations. The applicant irrigates the meadow area for pasture and hay production. According to the applicant, irrigation of this area historically dates prior to 1900. He also states that Duck Creek at the project site flows little, or not at all, in most years by the end of July until the following spring runoff.

Alternatives. The no action, or permit denial, alternative is available. This alternative would result in either partial or total removal of fill from waters of the U.S. likely eliminating use as a airstrip. However, a vehicular/machinery road crossing for access might still be available under a partial removal scenario. The applicant maintains that airplane access saves six hours travel time to his ranch. The applicant points out that vehicular/machinery access to this west side of his property was previously via State Highway 14 past Duck Creek Village then on Village Road through a residential area and ultimately, to the north gate of his property. Increased traffic in the area and safety issues (in light of the slow speed of his machinery) plus the time and fuel savings were major contributing factors in the applicant's need for more direct access to his west meadow.

Mitigation. The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. If the applicant is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation. The applicant maintains that his irrigation practices since 1965 (and for more than a 100 years if one accounts for previous owners) have enhanced and created wetlands by at least 20 acres. This cannot be verified by the Corps of Engineers.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Utah Division of Water Quality, is required for this project. The Utah Division of Water Quality intends to issue certification, provided that the proposed work will not violate applicable water quality standards. Projects are usually certified where the project may create diffuse sources (nonpoint sources) of wastes which will occur only during the actual construction activity and where best management practices will be employed to minimize pollution effects. Written comments on water quality certification should be submitted to Mr. William O. Moellmer, Utah Division of Water Quality, 288 North 1460 West, Post Office Box 144870, Salt Lake City, Utah 84114-4870, on or before November 24, 2004.

HISTORIC PROPERTIES: Based on the available information, cultural resources are not within the project's area of potential effect.

ENDANGERED SPECIES: The project will not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 200050022, must be submitted to the office listed below on or before November 24, 2004:

Grady L. McNure, Project Manager
US Army Corps of Engineers, Sacramento District
St. George Regulatory Office
321 North Mall Drive, Suite L-101
St. George, Utah 84790-7310
Email: Grady.McNure@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Grady L. McNure, 435-986-3979, Grady.McNure@usace.army.mil.

Attachment: Drawings