



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

February 25, 2013

Regulatory Division SPK-2013-00015

Mr. John Duarte
Duarte Nursery
1555 Baldwin Road
Hughson, California 95326

Dear Mr. Duarte:

This letter concerns your unauthorized work in waters of the United States. The work is located on or near Coyote Creek, Sections 24 and 25, Township 26 North, Range 4 West, Mount Diablo Base & Meridian, Latitude 40.08274°, Longitude -122.268048°, Tehama County, California.

Based on available information we have determined that you have discharged dredged or fill material into seasonal wetlands, vernal pools, vernal swales, and intermittent and ephemeral drainages, which are waters of the United States, without a Department of the Army (DA) permit. Section 404 of the Clean Water Act requires that a DA permit be obtained prior to the discharge of dredged or fill material into waters of the United States, including wetlands. Since a DA permit has not been issued authorizing this discharge, the work is in violation of the Clean Water Act.

You are hereby directed to cease and desist all work in waters of the United States until this violation is resolved. We are conducting an investigation to determine the impact of this work as it relates to public interest and the appropriate course of action to remedy the situation. Potential enforcement actions, in addition to or in lieu of fines, penalties and imprisonment, include directing removal of the unauthorized work and restoration of the site to pre-project conditions. 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.

By copy of this letter, we are soliciting the views of appropriate Federal, State, and local agencies, which may also have jurisdiction, regarding this unauthorized activity. Based upon your responses to this notice, comments received from the agencies and any available information, we will determine the appropriate course of action to resolve this violation.

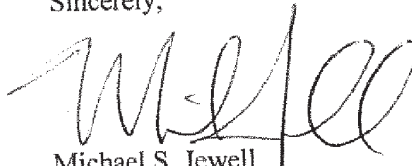
To ensure that all pertinent information is available for our evaluation and included in the public record, you are invited to provide any information which you feel should be

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considered. Your plans for utilization of the completed work and your evaluation of the need to retain this fill may be of particular significance in determining what actions are to be taken. 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 21, 2013. We appreciate your cooperation and timely action on this matter.

Please refer to identification number SPK-2013-00015 in any correspondence concerning this project. If you have any questions, please contact Mr. Matthew Kelley at Redding Regulatory Office, 310 Hemsted Drive, Suite 310, Redding, California 96002, email Matthew.P.Kelley@usace.army.mil, or telephone 530-223-9534. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,



Michael S. Jewell
Chief, Redding Division

Enclosure

Copies furnished with enclosure:

Mr. George Day, California Regional Water Quality Control Board, 364 Knollcrest Drive, Suite 200, Redding, California 96002
Mrs. Donna Cobb, California Department of Fish and Game, 601 Locust Street, Redding, California 96001
Mr. David Wampler, Environmental Protection Agency, WTR-7, 75 Hawthorne Street, San Francisco, California 94105-3901
Mr. Ken Sanchez, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2605, Sacramento, California 95825-1888

Appendix A

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. ...