



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

REPLY TO
ATTENTION OF

February 22, 2013

Regulatory Division (SPK-2006-75266)

Mr. Michael Motiff
Ruby Canyon Estates Homeowners Association
835 Slickrock Drive
Mack, Colorado 81525

Dear Mr. Motiff:

We are responding to your December 3, 2012, request for an after-the-fact Department of the Army permit for the Ruby Canyon Reservoir project. This project involved unauthorized activities in waters of the United States to maintain a previously authorized diversion structure to provide water to Ruby Canyon Reservoir. This action is located on Salt Creek and adjacent Ruby Canyon Reservoir near the Ruby Canyon Estates South Subdivision within the SW ¼ of Section 33, Township 9 South, Range 103 West, Latitude 39.2342°, Longitude -108.8980°, Town of Mack, Mesa County, Colorado.

First, we concur with the amount and location of wetlands and other water bodies on the site as depicted on the enclosed **November 2012 Ruby Canyon Reservoir Waters of the U.S. Boundaries** map prepared by Claffey Ecological Consulting, Incorporated. The 19.23 acres mapped within the survey area are waters of the United States regulated under Section 404 of the Clean Water Act. This preliminary determination has been conducted to identify the potential limits of wetlands and other water bodies which may be subject to Corps of Engineers' jurisdiction at this site.

The Ruby Canyon Reservoir development, led by Jeff Williams of Mack Mesa, LLC, began as construction of a small 6-acre off-stream pond during the spring and summer of 2004 and evolved into a 16-acre reservoir in October 2005. In spring of 2006, the diversion structure was reconstructed at a new inlet location on Salt Creek (which was also subsequently realigned), without proper approvals and violated Section 404 of the Clean Water Act. In 2006, Mack Mesa, LLC, indicated on their after-the-fact permit application that the needs of the reservoir are to provide an aesthetic and recreational amenity to Ruby Canyon Estates, storage of irrigation water, and beneficial use of a conditional water right. If the needs or use of this reservoir have changed in any way, please clarify such changes to us. Since we have received your December 3, 2012, restoration plan, our application review process has involved coordination with other Federal, state, and local agencies.

Based on the information you provided and our coordination with others on this project, we have determined that reconstructing the diversion structure in Salt Creek is authorized by Nationwide General permit number (NWP) 3 - Maintenance. Your work must comply with the general terms and conditions listed on the enclosed NWP information sheets and regional conditions and the following **special conditions**:

- 1. For the next three years, you shall collect duplicate (two) water samples in Salt Creek above, within, and below the reservoir during the months of November, January, and March; two composite samples of macroinvertebrates; and two composite samples of fish from the reservoir between April and May. These samples are necessary to determine the concentrations of selenium and potential wildlife effect caused by the reservoir.**
- 2. The sampling results must be compiled and submitted to us and the United States Fish and Wildlife Service (USFWS) by June 1 of each year for three years. Once data is received and evaluated, sampling will either be discontinued or a meeting with you will be required to discuss contingencies to lower reservoir related elevated selenium levels. This requirement will help determine selenium levels at and near the reservoir site and if additional measures are necessary.**
- 3. You shall maintain the fish screens (installed at the reservoir inlet and outlet) as described in the enclosed August 23, 2006, USFWS Biological Opinion. The screen size shall be ¼ inch. The purpose of this requirement is to prevent non-native adult and juvenile fish from escaping the reservoir, and impacting native and endangered fish species within the Colorado River system.**
- 4. You must maintain the authorized Salt Creek diversion structure. Please provide notice (via email or by telephone) to our office prior to any maintenance or dredging activities. The purpose of this requirement is to ensure structure effectiveness in diverting water into the reservoir and make us aware of these efforts and the frequency they are required.**
- 5. You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work on the diversion structure. Please include a photograph of the completed diversion structure.**

As discussed above in special condition #2, the primary concern is the potential of this reservoir to act as a "selenium sink". As you may know, selenium is a natural poison that accumulates in the food chain and can cause illness and deformities in wildlife, livestock, and people. Not only will high concentrations of selenium affect macroinvertebrates, fish, and migratory birds utilizing the reservoir, but selenium is a cumulative contaminant that will build over time and pose continual contamination risks to the larger environment. This includes threatened and endangered fish species in the downstream portion of Salt Creek and the Colorado River. Through sampling and analyzing results, the selenium risk can be measured and better understood.

This verification is valid for two years from the date of this letter or until the NWP is modified, reissued, or revoked, whichever comes first. Failure to comply with the General and Regional Conditions of this NWP, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

Please refer to identification number SPK-2006-75266 in your future correspondence to our office concerning this project. If you have any questions, please contact Carrie Sheata at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, email Carrie.A.Sheata@usace.army.mil, or telephone (970) 243-1199, extension 14. We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website, www.spk.usace.army.mil/Missions/Regulatory.aspx, under *Customer Service Survey*. We appreciate your efforts, patience, and continued cooperation to find a resolution to this long standing noncompliance action.

Sincerely,



Susan Bachini Nall
Chief, Colorado West Regulatory Branch

Enclosures:

1. November 2012 Ruby Canyon Reservoir Waters of the U.S. Boundaries Map
2. Nationwide General Permit 3 (Maintenance) Summary
3. August 23, 2006 USFWS Biological Opinion
4. Compliance Certification

Copies furnished without enclosures:

Mr. Michael Claffey, Claffey Ecological Consulting, Incorporated, 1371 17 Road, Fruita, Colorado 81521
Ms. Patty Gelatt, U. S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506
Ms. Katie Stevens, Acting Field Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506
Mr. John Hranac, Water Quality Assessor, Water Quality Control Division, 4300 Cherry Creek Drive, South, Denver, Colorado 80246
Ms. Lori Martin, Colorado Parks and Wildlife, 711 Independent Avenue, Grand Junction, Colorado 81505
Mr. Timothy A. Hayashi, Mesa County Planning and Economic Development, Post Office Box 20000, Grand Junction, CO 81502-5022