



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 21 2004

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel Richard G. Thompson
District Engineer, Los Angeles District
Attention: Mr. David Castanon, North Coast Section
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

re: Public Notice (PN) 200300803-MWV; Diamond Rock Aggregate Mine; Cuyama River watershed; Santa Barbara County, CA

Dear Colonel Thompson:

In our letter dated 26 March 2004, we provided you our comments on the proposed Diamond Rock Aggregate Mine. Pursuant to the 1992 Memorandum of Agreement (MOA) between EPA and the Department of the Army prepared under Section 404(q) of the Clean Water Act (CWA), we determined the proposed project **may result** in substantial and unacceptable impacts to aquatic resources of national importance (ARNIs). Also, we observed that the scope of the proposed activities warranted the preparation of an Environmental Impact Statement under the National Environmental Policy Act (NEPA).

Since we made this determination, we have not received any information to indicate that measures have been taken to resolve the adverse environmental effects of the proposed project. As discussed in our detailed comments, the proposed project fails to comply with the Federal Guidelines promulgated under CWA§404(b)(1) in terms of avoidance, minimization, and mitigation (40 CFR 230.10). Therefore, under the procedures described at Part IV, paragraph 3(b) of the aforementioned MOA, we have concluded the proposed project **will have** substantial and unacceptable impacts to ARNIs. This means we are respectfully recommending that the Corps deny the permit, and we have identified the proposed project as a candidate for elevation whereby EPA reserves the option to request a higher-level review of any permitting decisions made by the Los Angeles Corps District.

Thank you for considering our concerns. If you wish to discuss this matter further, please call me at (415) 947-8702, or have your staff contact Tim Vendlinski, Supervisor of our Wetlands Regulatory Office, at (415) 972-3464.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Nastri".

Wayne Nastri
Regional Administrator

Detailed EPA Comments
PN 200300803-MWV for the Proposed Diamond Rock Aggregate Mine

I. Project Description

Troesch Ready Mix, Inc (“the applicant”) is proposing to construct a sand and gravel extraction and processing facility in the Cuyama River channel and floodplain, approximately 1 mile north of the town of Ventucopa in Santa Barbara County, California. The proposed development would directly impact 100 acres of waters on-site.

Approximately 500,000 tons of sand and gravel would be extracted annually and processed at the proposed on-site facility for use in the counties of Santa Barbara, Ventura, and Kern. Proposed construction includes (1) the mechanized clearing of 100 acres of waters of the United States; (2) construction of flood control berms and access roads; (3) construction of a rip-rap weir at the confluence of Deer Park Creek and the Cuyama River; and (4) removal of buried cars along the bank for mitigation (approximately 2 acres).

The mine is proposed to operate year-round and truck loading will occur 24 hours a day, requiring lights for the facility. The applicant anticipates mining for 28 years and has requested a permit for the duration of the operation.

II. Findings of Compliance with the Guidelines

To obtain a Clean Water Act Section 404 permit, an applicant must comply with the 404(b)(1) Guidelines. After reviewing the restrictions on discharges in section 230.10 (a) through (d) of the Guidelines, we find the applicant has failed to demonstrate compliance with any of the requirements and has not completed the necessary analyses to determine compliance with the Guidelines.

Finding 1: The applicant has not demonstrated that the proposed project is the least environmentally damaging alternative [40 CFR 230.10 (a)]

No discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic system. To demonstrate compliance, the applicant must complete a robust 404(b)(1) alternative analysis. A thorough alternatives analysis will consider practicable alternatives both off-site and on-site. Properties not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed must be considered and should include properties in the three counties of Santa Barbara, Ventura, and Kern. Alternatives to be explored include facilities located in upland areas, as well as smaller scale facilities. Although these alternatives may achieve a lower return on investment than the applicant’s preferred alternative, they may be considered practicable for the purposes of 404 permitting. We are aware of successful mining operations in upland areas that have avoided impacts to jurisdictional waterways, and the applicant must explore such options. In the case of special aquatic sites, the Guidelines presume that a less environmentally damaging practicable alternative exists for those projects that are not water-dependent.

The documentation prepared by the applicant does not meet the burden of proof required to rebut

the presumption made by the Guidelines about the availability of a less environmentally damaging practicable alternative. In general, mining projects do not require “access or proximity to or siting within special aquatic sites to fulfill the basic project purpose” [40 CFR 230.10(a)(3)]. This circumstance appears to apply to the proposed project, but the applicant has not submitted a 404(b)(1) alternatives analysis to inform our regulatory decision-making. [40 CFR 230.10(a), 40 CFR 230.12(a)(3)(i), 33 CFR 323.6(a)].

Finding 2: The applicant has not demonstrated that the proposed project will not violate state water quality standards [40 CFR 230.10 (b)]

No discharge shall be permitted if the dredged or fill material causes or contributes to violations of any California water quality standard. The applicant must demonstrate that the proposed project will not violate any of the water quality objectives or numeric standards outlined in the Basin Plan for the Central Coast Regional Water Quality Control Board. The proposed project could result in potentially significant and long-term water quality impacts on the Cuyama River. For example, changes in sedimentation processes in the river could lead to increased erosion downstream from the “hungry water” phenomenon (see enclosed technical paper). At the same time, intrusive activities in the river could increase turbidity in the water column, and risk potential discharges of oil and grease into the river from heavy equipment.

With regard to other water quality parameters and beneficial uses, the applicant must thoroughly analyze the effects of the proposed project on dissolved oxygen concentrations, temperature, and the sediment regime in the project area and on reaches upstream and downstream. These reaches might be inhabited by benthic macroinvertebrate and native fish populations including the arroyo chub, California roach, Pacific lamprey, rainbow trout, speckled dace, and the threespine stickleback. This aquatic life might be sensitive to changes in the water quality parameters.

Finding 3: The applicant has not demonstrated that the proposed project will not jeopardize threatened and endangered species [40 CFR 230.10 (b)]

No discharge shall be permitted if the dredged or fill material jeopardizes the continuance of species listed as endangered or threatened under the Endangered Species Act. We are aware of several federally listed species that may exist on or near the project site. These species include: the blunt nosed leopard lizard, California condor, California jewelflower, California red-legged frog, San Joaquin kit fox, San Joaquin woollythreads, and yellow-blotched salamander. We are concerned that the proposed mining operation may adversely affect threatened and endangered species via both direct destruction of habitat from the mining operation, and secondary effects on the riverine environment. In addition, the proposed project could disturb sensitive animal populations from unnatural lighting and noise throughout the life of the project.

Finding 4: The applicant has not demonstrated that the proposed project will not contribute to significant degradation of the waters of the United States [40 CFR 230.10 (c)]

The Guidelines state that no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of waters. The operation of Twitchell Dam and Reservoir, a 241-foot dam downstream of the project, already contributes to significant environmental degradation in the watershed through the aggradation of sediment behind the dam, and the controlled

releases of water from the dam. "Hungry water" released from the dam has changed channel morphology and sediment transport in the river, and has contributed to a sediment deficit at the Guadalupe-Nipomo Dune Complex, an extremely rare coastal dune-lagoon ecosystem. The channel below the dam is narrower and has changed the natural flooding processes that maintained native vegetation along the river, and the upstream reservoir complex has changed the regional composition of plants and animals. Similar channel changes would likely occur with this mining project.

Given the scale and scope of the proposed mining facility (both spatial and temporal), the project would have long-term adverse effects on river geomorphology and therefore adverse effects on biological communities. The applicant must demonstrate that the proposed project will not cause and contribute to significant degradation of waters and aquatic ecosystems in the project area. A proper analysis would address: (1) anticipated changes to vegetation communities and channel morphology both upstream and downstream of the project; (2) anticipated changes in stream substrate; and (3) potential adverse effects to aquatic and terrestrial life dependent on the aquatic ecosystem. Computer models could help answer these questions, as several studies have already been completed on the fate and transport of sediment in the Santa Maria watershed downstream of Twitchell Dam and Reservoir.

Finding 5: The applicant has not taken the appropriate steps to minimize potential adverse impacts to the aquatic system and has proposed unacceptable mitigation [CFR 230.10 (d)]

No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic system. The 1990 Memorandum of Agreement on mitigation between the Corps and EPA clarified this section of the Guidelines by establishing a mitigation sequence that first avoids adverse effects, then minimizes adverse effects, and finally compensates for unavoidable impacts to waters. Compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been achieved.

The applicant has not attempted to avoid or minimize impacts to waters. These steps must be taken before mitigation is considered. Once avoidance and minimization have been analyzed, an applicant may propose mitigation to compensate for unavoidable impacts. A proper mitigation plan includes compensation for direct, secondary, and cumulative effects. The proposed mitigation is to enhance 2 acres of jurisdictional waters by removing an unspecified number of cars along the river bank. Clearly, this would be an unacceptable mitigation proposal for the direct loss of 100 acres of waters. The applicant must formulate a mitigation package to compensate for the large-scale indirect, and cumulative impacts. We are confident a large portion of waters can be avoided and have a project that is still practicable. For unavoidable impacts, the applicant should review the national no-net loss goal that was advanced by the Corps' Regulatory Guidance Letter dated 26 December 2002¹.

¹ U.S. Army Corps of Engineers, Regulatory Guidance Letter No. 02-2, December 26, 2002, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899

III. Insufficient Information to make a finding of compliance with the 404(b)(1) Guidelines

The regulations require the District Engineer to make a finding of non-compliance if there is not sufficient information to determine whether a proposed discharge complies with the restrictions on discharges related to an alternatives analysis, water quality, endangered species, significant degradation, and/or mitigation [40 CFR 230.12(a)(3)(iv)]. Presently, the information provided by the applicant is not sufficient to allow the government to make a determination regarding compliance with the Guidelines. We are aware the applicant has just started the CEQA/NEPA process, and it appears premature for the applicant to apply for a permit under CWA§404.

The CEQA/NEPA document should evaluate the effects of the proposed project on the following:

- a. Changes to substrate elevation and bottom contours in the river both upstream and downstream of the project, and anticipated changes to the benthic community;
- b. Changes in water circulation and fluctuations related to all aspects of the project including the weir proposed at the Deer Creek confluence. Consideration should be given to water chemistry, salinity, clarity, color, odor, taste, dissolved gas levels, temperature, nutrients, and eutrophication;
- c. Changes in suspended particulates and turbidity during normal operations and flood events;
- d. Changes in the structure and function of the aquatic ecosystem including aquatic and terrestrial resources;
- e. Cumulative impacts² to the Cuyama watershed including the operation and maintenance of the existing Twitchell reservoir; and
- f. Secondary effects³ to the Cuyama watershed including adverse effects extending beyond the direct 100-acre footprint of the proposed project.

IV. Evaluation of Secondary Effects

The applicant has proposed mining to a maximum depth of 90 feet. This will create an artificial dam affecting both the hydrologic and sediment transport regime of the river. An evaluation of secondary effects should extend to the potential adverse effects on biological, recreational and educational resources (e.g., fishing, rafting, kayaking, canoeing, bird-watching). For the applicant's reference, we have included an article on the effects of mining on river channels.⁴

² Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material [40 CFR 230.11(g)]

³ Secondary effects are those effects on an aquatic ecosystem that are associated with the discharge of dredged or fill materials, but do not result from the actual placement of the dredge or fill material.

⁴Kondolf, Matias G. Hungry Water: Effects of Dams and Gravel Mining on River Channels. Environmental Management Vol. 21. No. 4, pp 533-551.

V. Need for an EIS under NEPA

The significance of the direct discharges (affecting 100 acres) triggers the need for thorough analysis of the proposed project under NEPA. Beyond this consideration, the applicant has not addressed the potential indirect, secondary, and cumulative effects of the proposed project. Given the scale and duration of the proposed project, the spectrum of potential adverse effects are clearly significant under NEPA's threshold of "significance" test (40 CFR 1508.27). Under the applicable federal regulations, the Corps is required to analyze the indirect and cumulative effects of their permit actions [40 CFR 230.11(g) and 33 CFR 320.4(a), and 40 CFR 1508.27(7)]. The impacts of a mining operation extend far beyond the direct footprint of the project. The Corps has "sufficient control and responsibility" over impacts beyond its immediate jurisdiction for the scope of analysis to encompass the entire project, not just the direct discharges (33 CFR 325 Appendix B). We urge the Corps to require the preparation of an EIS for the proposed project.