



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**

October 12, 2011

Regulatory Division SPK-2011-01016

Laurence (Butch) Gunn  
17158 Chipeta Drive  
Montrose, Colorado 81401

Dear Mr. Gunn:

We are writing to you concerning the unauthorized filling of portions of an unnamed ephemeral drainage located on your property (Ouray County Assessor Schedule Accounts #'s R002355 and R003300). This unnamed drainage is tributary to Burro Creek, and is located at 38.2500° latitude, -107.7088° longitude, approximately 2.5 miles northeast of Ridgway Reservoir, Ouray County, Colorado.

We have determined, based on an August 9, 2011 site visit and review of various sources of publically available information, that you have filled the above referenced unnamed drainage, a waters of the United States, without a Department of the Army (DA) permit. The filling of the drainage occurred as a result of multiple occurrences of dumping tires (and possibly other debris) below the Ordinary High Water Mark (OHWM) of the unnamed drainage and subsequently covering these materials with soil. It appears that this activity has occurred periodically throughout the years, and has only recently halted. Section 404 of the Clean Water Act requires 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 appears to be in violation of the Clean Water Act.

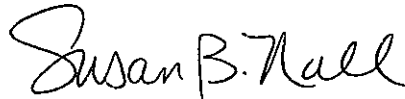
We are conducting an investigation to understand and determine the impact of this work as it relates to the public interest and the appropriate course of action to remedy the situation. Potential enforcement actions, in addition to or in lieu of fines, penalties and imprisonment, include directing removal of the unauthorized work and restoration of the site to pre-project conditions. An extract of the law is enclosed. We appreciate your verbal commitment, stated during the August 9, 2011 site investigation, to cooperate with us to resolve this violation. 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 considered. Your plan for removal of unsuitable fill, remaining tires, trash and debris, and restoration of the drainage is 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 **November 14, 2011**. We appreciate your cooperation and timely action on this matter.

Please refer to identification number SPK-2011-01016 in any correspondence concerning this project. If you have any questions, please contact Mr. Steve Moore at Colorado West Regulatory Branch, 400 Rood Avenue, Room 134, Grand Junction, Colorado 81501, by email at *stephen.a.moore@usace.army.mil*, or by telephone at 970-243-1199, extension 13.

Sincerely,



Susan Bachini Nall  
Chief, Colorado West Regulatory Branch

Enclosure:

1. Appendix A-extract of the law

Copies furnished:

Ms. Monica Heimdal, 8ENF-W, Water Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129  
Mr. Jeff Emmons, Colorado Department of Public Health and Environment, Solid Waste Compliance Assurance Unit, Grand Junction Regional Office, 222 South 6<sup>th</sup> Street, Room 232, Grand Junction, Colorado 81501  
Ms. Connie Hunt, Ouray County Administrator, P.O. Box C, 541 4th St, Ouray, CO 81427  
Mr. Richard Thompson, Environmental Health Manager, 1845 S. Townsend Avenue, Montrose, CO 81402