

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

January 30, 2014

CERTIFIED MAIL # 7009 3410 0000 2598 4990
RETURN RECEIPT REQUESTED

Andrew Johnson
686 County Road 260
Fort Bridger, WY 82933

Re: Findings of Violation and Administrative Order for Compliance, Docket No. **CWA-08-2014-0012**

Dear Mr. Johnson:

In a letter to you dated May 22, 2013, the United States Environmental Protection Agency (EPA) indicated that you may have violated section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, by discharging dredged and fill material into Six Mile Creek without authorization by a CWA permit issued by the United States Army Corps of Engineers. The EPA's letter invited you to submit, within 21 days of receipt of the letter, information that you believe demonstrates that the EPA's description of the work on Six Mile Creek was incorrect or that the activities did not constitute a violation of the CWA. The letter also asked you to inform the EPA within 21 calendar days of receipt of the letter if you were interested in negotiating the terms of an administrative order on consent (AOC) under which you would take steps to come into compliance with the CWA. The EPA did not receive any response from you to the May 22, 2013, letter.

Based on our review of all available information, the EPA has determined that you are in violation of the CWA. The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, you, or persons acting on your behalf, have discharged dredged or fill material into waters of the United States without authorization under the CWA. These discharges of pollutants occurred in conjunction with the construction of a dam on Six Mile Creek on your property located in the SW 1/4 of the NE 1/4, Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming.

Enclosed is an EPA Region 8 administrative order (Order) that specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. The EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order




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requires you to inform the EPA in writing, within ten (10) days of receipt, of your intent to fully comply with the Order.

The CWA requires the Administrator of the EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any non-compliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this Order does not preclude civil or criminal actions in the U.S. District Court pursuant to section 309(b) or (c) of the CWA, 33 U.S.C. § 1319(b) or (c), or assessment of civil penalties pursuant to section 309(d) or (g) of the CWA, 33 U.S.C. § 1319(d) or (g), for the violations cited in the Order.

Please review the Order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Senior Attorney, at 303-312-6637 and Richard Clark, Enforcement Officer, at 303-312-6748.

Sincerely,


for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Kevin Little, U.S. Army Corps of Engineers

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2014 JAN 30 PM 12:17

IN THE MATTER OF

**Andrew Johnson
686 County Road 260
Fort Bridger, Wyoming 82933**

Respondent.

FILED
EPA REGION VIII
RECORDING CLERK
**FINDINGS OF VIOLATION AND
ADMINISTRATIVE ORDER FOR
COMPLIANCE**
Docket No. CWA-08-2014-0012

I. STATUTORY AUTHORITY

1. This Findings of Violation and Administrative Order for Compliance (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Order is based on the following findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits the discharge of pollutants into waters of the United States except as in compliance with, among other things, section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

2. Andrew Johnson (Respondent) is an individual with a primary place of residence of 686 County Road 260, Fort Bridger, Uinta County, Wyoming 82933.
3. At all relevant times, Respondent owned, controlled, leased and/or operated the property at 686 County Road 260, Fort Bridger, Wyoming in the SW ¼ of the NE ¼, Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming (the Site). The Site includes a section of Six Mile Creek.

4. Six Mile Creek is a perennial tributary of the Blacks Fork River, which is a perennial tributary of the Green River. The Green River is, and was at all relevant times, a navigable, interstate water of the United States.

5. In or about the summer and early fall of 2012, Respondent or persons acting on his behalf began construction activities, without a CWA section 404 permit, within and adjacent to Six Mile Creek that resulted in the discharge of dredged and fill material to the creek below the ordinary high water mark.

6. On October 11, 2012, the United States Army Corps of Engineers (Corps) conducted an inspection of the Site and confirmed that Respondent or persons acting on his behalf had discharged or allowed the discharge of approximately 12 cubic yards of dredged and fill material below the ordinary high water mark of Six Mile Creek during construction of a dam. The work resulted in filling an approximately 40-foot reach of the creek and inundation of an approximately 745-foot reach.

7. On September 5, 2012, the Corps contacted Mr. Johnson by telephone to inquire about the dam construction activities at the Site and authorization for the work. The Corps also informed Respondent of the Corps' CWA regulatory authority and requested that Respondent send information about the dam construction project to the Corps. The Corps did not receive any such information from Respondent following that telephone conversation.

8. , On October 26, 2012, the Corps sent a letter to Respondent notifying him that a standard project-specific CWA permit would have been required prior to the dam construction activities, but that an application for such a permit was never received by the Corps and authorization was never granted. Therefore, the project was performed in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). The October 26, 2012, letter further ordered Respondent to cease and desist any further earth-moving activities at the Site.

9. On February 7, 2013, the Corps referred this case to the EPA for enforcement in accordance with the "*Memorandum of Agreement Between the Department of the Army and the*

Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act,” dated January 19, 1989.

10. On May 30, 2013, the EPA performed an inspection of the Site and verified that an approximately 40-foot reach of Six Mile Creek had been filled during the construction of a dam, impacting approximately 785 feet of the Six Mile Creek channel. The dam was observed to be composed of sand, gravel, clay, and concrete blocks.

11. The activities described in paragraphs 5, 6, and 10, above, were performed using common earthmoving vehicles and equipment that were operated by Respondent and/or by persons acting on his behalf.

12. Respondent is a “person” as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The material discharged into Six Mile Creek is and was at all relevant times “dredged material” and “fill material” as defined in 33 C.F.R. § 323.2(c) and 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

14. Six Mile Creek filled and disturbed by Respondent’s unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, fish, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.

15. The vehicles and equipment described in paragraph 11, above, are and were at all relevant times each a “point source” as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Six Mile Creek is and was at all relevant times a “waters of the United States” as defined in 33 C.F.R. § 328.3(a) and therefore “navigable waters” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. The placement of dredged and fill material into Six Mile Creek constitutes the “discharge of pollutants” as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

19. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters which are defined as waters of the United States.

20. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States, unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

21. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct the activities described in paragraphs 5, 6, and 10 of this Order.

22. The activities conducted by Respondent and/or by persons acting on its behalf as described in paragraphs 5, 6, and 10, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permit constitutes an additional day of violation of section 301(a) of the CWA.

23. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). Restoration and mitigation are appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities.

24. This Order was issued after consultation and coordination with the Corps' Omaha District, Wyoming Regulatory Office.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

25. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

26. Within ten (10) calendar days of receipt of this Order, Respondent shall inform the EPA in writing of his intent to comply fully with this Order. If Respondent has concerns or questions about the requirements of the Order, the EPA requests that he schedule a meeting and/or conference call with the EPA within seven (7) calendar days of receipt of this Order to discuss these concerns or questions. The scheduling of such a meeting and/or conference call shall not alter Respondent's responsibility to meet any of the deadlines specified in this Order unless otherwise clearly stated in a written communication to Respondent by the EPA.

27. Respondent shall conduct restoration and mitigation activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged or fill material at the Site in accordance with the schedule and other requirements set forth in paragraphs 28 to 36, below.

28. Within fourteen (14) calendar days of receipt of this Order, Respondent shall submit to the EPA the name and qualifications, including professional resume, of a consultant experienced in

stream and wetlands restoration who will prepare a restoration plan (Plan) and must directly supervise all work performed pursuant to the Plan, once it is approved by the EPA.

29. Within thirty (30) calendar days of receipt of this Order, Respondent shall submit to the EPA for review, comment, and approval a Plan, prepared by the consultant referenced in paragraph 28, for (1) the removal of all dredged or fill material that was discharged into the waters of the United States at the Site; and (2) the restoration, to their pre-impact condition and grade, of the waters of the United States that were impacted as a result of Respondent's unauthorized discharges of dredged or fill material at the Site.

30. The Plan shall be prepared in accordance with "U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals," attached hereto as Exhibit A. The Plan shall include:

- a. A complete assessment of the impacts to Six Mile Creek due to Respondent's unauthorized discharges of dredged or fill material at the Site;
- b. A Site map at an appropriate scale showing the entire area of unauthorized disturbance. The Site map shall include existing undisturbed natural features that were not impacted (e.g., riparian and wetland areas, riffle and pool complexes) and clearly identify all unauthorized man-made disturbances, fills, channel excavations, road crossings, culverts, structures, and any other work.
- c. A detailed work plan and schedule for all of the work and activities to be accomplished, as specified in the plan, including the application for any required permits, providing for completion of all aspects of the work no later than 60 days after the EPA approves the plan;
- d. Grading, planting and monitoring plans, measurable criteria for success of restoration and provisions for proper disposal of any excess soils or other material generated during removal and restoration:

- e. Detailed professional drawings of the restoration site, including plan and profile drawings with control elevations for current conditions and proposed conditions; and
- f. A description of all costs to complete the restoration work, including the costs of all consultations, permits, construction, and monitoring, etc.

31. The EPA will review the Plan and approve it, approve it with modifications or reject it with comments. If the EPA rejects the Plan, Respondent shall, within thirty (30) calendar days of receipt of the EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by the EPA.

32. Upon receiving the EPA's written approval of the Plan, Respondent shall obtain all necessary permits to implement the Plan and then commence all restoration activities in accordance with the approved Plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits, and any amendments thereto, to the EPA within seven calendar days of issuance of each permit.

33. All restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken under the direct, on-site supervision of the consultant retained pursuant to paragraph 28.

34. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If any such permit is required, Respondent shall obtain such permit(s) and provide a copy or copies to the EPA pursuant to paragraph 32, above, prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Del Range Boulevard, Suite 210
Cheyenne, WY 82009-4942

Telephone: 307-772-2300
Facsimile: 307-772-2920

35. Respondent shall submit the Plan, all notifications under this Order, and related correspondence to:

Richard Clark, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6748
Facsimile: 303-312-7518

A copy of the Plan, all notifications and related correspondence also shall be provided to:

Wendy I. Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Telephone: 303-312-6637
Facsimile: 303-312-6953

A copy of the Plan also shall be provided to the Corps at the address noted in paragraph 34 above.

36. In addition to the notification requirements set forth in paragraph 35, after issuance of any Corps authorization for the restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

37. The Plan and any other deliverables, reports, specifications, schedules, and attachments required by this Order are, upon approval by the EPA, incorporated into this Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits, or attachments shall be deemed a failure to comply with this Order and shall be subject to EPA enforcement.

38. A lease, sublease or transfer of the Site shall not relieve Respondent of any responsibility in this Order unless the EPA, Respondent and the lessee, sublessee or transferee agree in writing to allow the lessee, sublessee or transferee to assume such responsibility. Additionally, at least thirty (30)

calendar days prior to such lease, sublease or transfer, Respondent shall notify the EPA regarding the details of the lease, sublease or transfer at the address specified in paragraph 35 of this Order.

39. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA, the Corps, the U.S. Fish and Wildlife Service, and the Wyoming Department of Game and Fish, or any of the agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to the EPA.

This Order shall in no way limit or otherwise affect the EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

40. This Order shall be effective upon the date of receipt by Respondent.

41. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines or other appropriate relief under the CWA for violations giving rise to the Order.

42. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of the EPA or her delegatee under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA.

43. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of his obligations to comply with any applicable federal, state or local law or regulation.

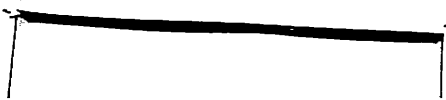
44. Failure by Respondent to complete any of the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

45. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

DATED this 28th day of January, 2014.

for Eddie A. Sierra
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

EXHIBIT 2



NOTE: Do not fold this form. Use typewriter
or print neatly with black ink.

STATE OF WYOMING

OFFICE OF THE STATE ENGINEER

SCANNED MAY 26 2011

J. Cowley

APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER

THIS SECTION IS NOT TO BE FILLED IN BY APPLICANT

Filing/Priority Date

THE STATE OF WYOMING
STATE ENGINEER'S OFFICE } SS:This instrument was received and filed for record on the 28 day of June
20 10 at 9:32 o'clock A M.

John R. Barnes for

State Engineer

Recorded in Book 121 of Stock Reservoir Permits, on Page 88Fee Paid \$ 25.00 Map Filed _____WATER DIVISION NO. 4 DISTRICT NO. 15 TEMPORARY FILING NO. 35 4/74PERMIT NO. 19468 STOCK RESERVOIR

NAME OF FACILITY

THE *Johnson* STOCK RESERVOIR1. Name(s), mailing address and phone no. of applicant(s) is/are 686 County Road 260 Fort Bridger
WY 82933
Andy and Katie Johnson 307-782-6862

E-mail address: _____

(If more than one applicant, designate one to act as Agent for the others)

2. Name & address of agent to receive correspondence and notices SAME

E-mail address: _____

3. The use to which the water is to be applied is in-place stock watering purposes.

4. (a) The area of the high water line of the reservoir is 2.5 acres (If a pipeline to additional points of storage will be used, include form SW4-A.)
(b) The capacity of the reservoir is 11.3 acre-feet.(c) Body of Reservoir: Length 1275 600 Width 170 Average Depth 4.35. The source of the proposed appropriation is 3 mile creek trib. Black's Fork Crk. trib. Snake Creek, trib. Black's Fork River, Trib Green River6. The outlet of the reservoir is located in SW 1/4 NE 1/4 of Section 30T. 15 N., R. 11S W. Surveyed corner tie, if available: bearing _____
feet distant from the _____ corner of Section _____, T. _____ N., R. _____ W.

Lot _____ Block _____ Subdivision Name _____

Latitude (Decimal Degrees) 41° 15' 6.3" N Longitude (Decimal Degrees) 110° 25' 10.8"

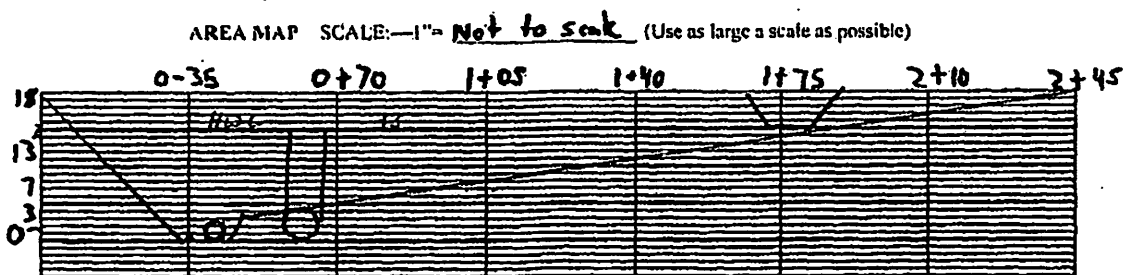
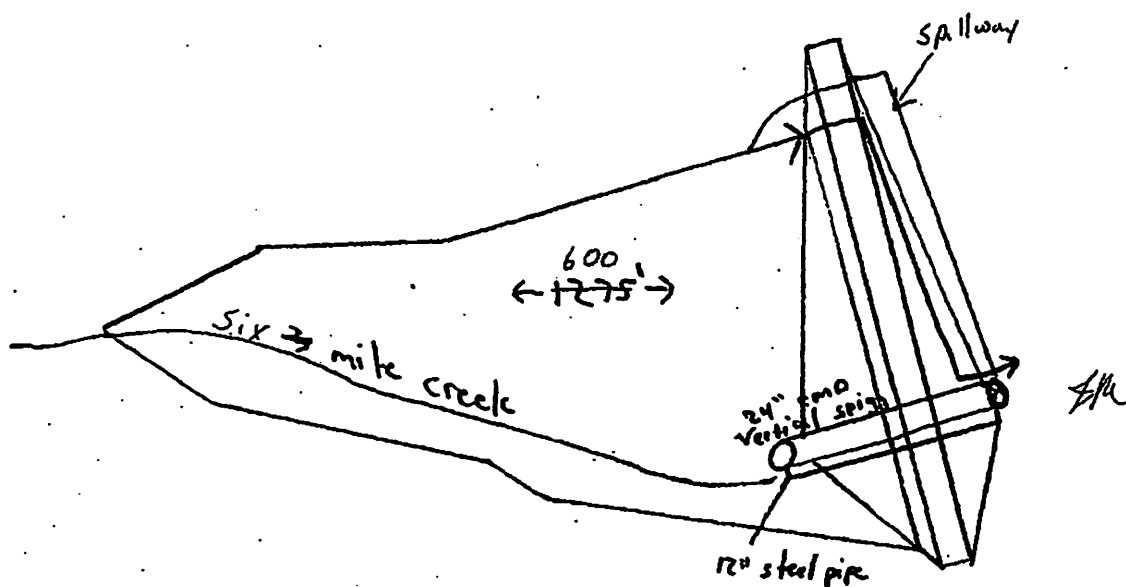
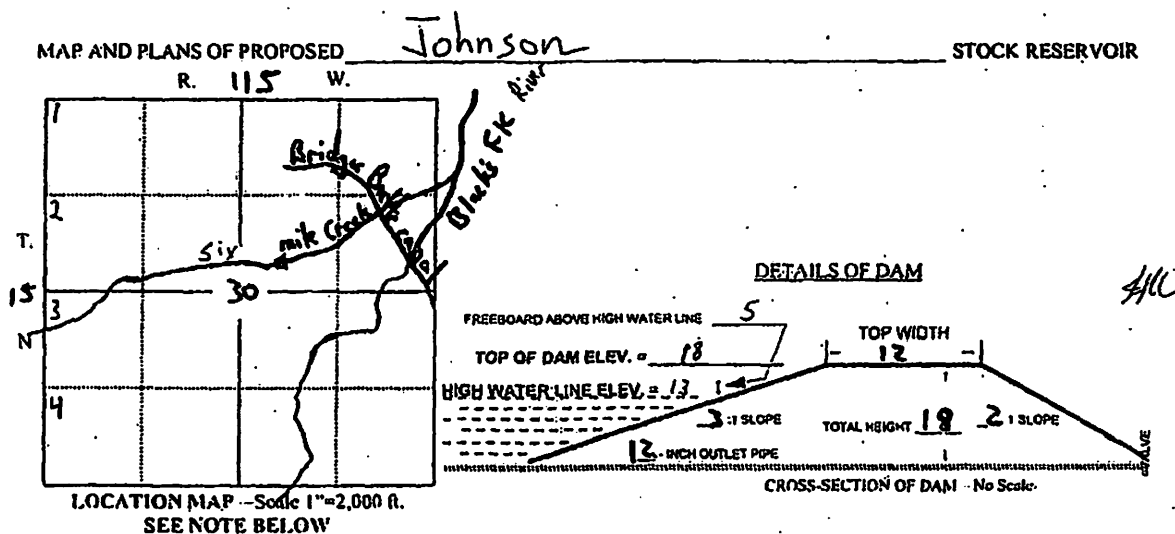
7. Are any of the lands covered by the proposed reservoir owned by the State or Federal government? If so, describe lands and designate whether State or Federally owned.

8. Fill out either (a) or (b).

(a) The reservoir is located in the channel of Snake Creek Six Mile Creek(b) The reservoir is to be filled through the _____
Canal, which has a carrying capacity of _____ cubic feet per second (c.f.s.)9. (a) The dam is to be constructed as follows Earth Fill watered + compacted
contents = _____ cubic yards.(b) The water face of the dam is to be protected from wave action in the following manner: Rock Rip Rap
1' thick(c) Dam Height 18 feet.

10. The accompanying map is prepared in accordance with the State Engineer's Rules and Regulations for filing applications and is hereby declared a part of this application.

11. The estimated time required for completion of construction is 3 yearPermit No. 19468 Sls Res.Page No. 88
(Leave Blank)



PROFILE OF DAMSITE (Looking Upstream) - Scale: Ver. 1"=20'; Hor. 1"= 35'

Capacity = [Area x Depth + 3] = 5.07 12.7 Acre-feet

NOTE: The location map shown above is not required if the application is accompanied by an aerial photograph or a U.S.G.S. quadrangle map, prepared in accordance with the State Engineer's Rules and Regulations. However, the area map, cross-section of dam, profile of damsite and capacity computation must be completed in all applications.

DECLARATION

Under penalties of perjury, I declare that I have examined this application and the information contained herein, and to the best of my knowledge and belief it is true, correct and complete, and that the location of the proposed facility is accurately shown either above or on the aerial photograph or U.S.G.S. quadrangle map accompanying this application.

Andy Johnson

Signature of Applicant or Agent

6-11-2010

Date

THE STATE OF WYOMING }
 STATE ENGINEER'S OFFICE } ss.

TEMPORARY FILING NO. 35474

THIS IS TO CERTIFY that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

This permit grants only the right to use the water available in the stream after all prior rights are satisfied.

If the plans show that no outlet works are contemplated, the State Engineer may, upon proper complaint by other interested water appropriators or appropriator, or when in his judgment it is necessary, require the later installation of such necessary outlet works as will permit proper regulation.

This permit is granted for storage of 5.07 acre-feet of water from all sources in any one year, for stock watering purposes only.

The holder of this permit shall inspect the spillway after each runoff event with the potential to flow through the spillway. Any erosion that has occurred shall be repaired in anticipation of the next runoff event.

This permit is conditioned on the holder of this permit securing and/or providing free and unencumbered access to this facility to allow State Engineer personnel to perform their duties as prescribed by Law. These duties include, but are not limited to, construction inspections and water administration.

The permittee is advised that this reservoir will inundate lands irrigated under Permit No. 9325. Pursuant to WS 41-3-107, the permittee has up to five (5) years to change the water rights to irrigate other lands or otherwise prove that the irrigated acreage is not affected by the construction of the reservoir. If the change has not occurred by the end of the five-year period, this fact will be reported to the Board of Control for routine abandonment of the water right attaching to the lands at or below the high water line of the reservoir, consistent with law.

The time for completing the construction of the reservoir shall terminate on December 31, 20 13.

Witness my hand this 25TH day of MAY, A.D. 20 11.


 PATRICK T. TYRRELL, State Engineer

Permit No. 19468 Sdk. Res.

Page No. 88
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PERMIT NO. 19468 STK. RES.

PERMIT STATUS

Priority Date June 28, 2010

Approval Date May 25, 2011

NOTICE

This permit, does not constitute a complete water right. It is your authority to begin construction work.

Notice of completion of the work described in the permit, must be filed in the State Engineer's Office before the expiration of the time allowed in the permit.

If extensions of time beyond the time limits set forth in the permit are required, requests for same must be in writing, stating why the additional time is required, and must be received in the State Engineer's Office before the expiration of the time allowed in the permit.

Once the Notice of Completion has been filed, Proof of Appropriation will be prepared and sent to your Water Division Superintendent. The Superintendent will arrange with you for an inspection of the facility. Should you desire adjudication, the Proof will be considered by the Board of Control, and, if found to be satisfactory, the Board will issue to you a Certificate of Construction which will constitute a completed water right.

The granting of a permit does not constitute the granting of right-of-way. If any right-of-way is necessary in connection with the application it should be understood that this responsibility is the applicant's.

EXHIBIT 3



Kagel Environmental, LLC
Nationwide Wetlands, Waters & Wildlife Consulting
ray@kagelenvironmental.com
susan@kagelenvironmental.com

3879 E 200 N
Rigby, Idaho 83442
Phone (208) 745-0076
Cell (208) 313-3890
Fax (208) 441-4382

April 30, 2014

Daniel B. Frank, Esq.
Frank Law Office, P.C.
519 E. 18th Street
Cheyenne, WY 82001

Dear Mr. Frank:

This is in regard to the field inspection and environmental site assessment that we, Kagel Environmental, LLC (KE), performed for you on the property of Andrew Johnson on Saturday, April 5, 2014. The subject project site is located within an approximate 8-acre farm parcel of land owned by Mr. Johnson, and is described as being within Section 30, Township 15 North, Range 115 West, Uinta County, near Fort Bridger, Wyoming. The purpose of this site assessment was to provide you (Frank Law Office, P.C.), with KE's professional opinion regarding the general identification and location of the extent of any federally regulated waters of the U.S., including wetlands, especially as regards the potential violation of the Clean Water Act as alleged in 2013 by the U.S. Army Corps of Engineers (COE), and the Environmental Protection Agency (EPA). As a former COE senior regulatory project manager and enforcement officer, the methodology KE used to identify the existence of regulated areas and/or impacted aquatic resources, etc., was that approved by the U.S. Army Corps of Engineers and Environmental Protection Agency, including adherence to the official 1987 *Corps of Engineers Wetlands Delineation Manual – Arid West* and/or *Western Mountains, Valleys, and Coast Region Supplement, 2008*.

Before summarizing our site inspection, findings, and conclusions, etc., we'd like to clarify that despite the contention by EPA that they believe the alleged violation site is located in Utah, Mr. Johnson has assured us that his farm is located in the state of Wyoming. In a "Letter of Potential Violation" dated May 22, 2013 addressed to Mr. Johnson and signed by James H. Eppers, Supervisory Attorney and Arturo Palomares, Director, EPA's Office of Enforcement, Compliance and Environmental Justice, EPA stated that the alleged violation site is in the state of Utah. It's therefore reasonable to assume that there may be another alleged Clean Water Act violation in Utah by someone with the same name, or in the alternative, that the EPA simply was unable to accurately identify or determine in which state Mr. Johnson's farm is located.

It's KE's understanding that the Wyoming State Engineer designated the pond for the sole purpose of stock watering. Although it's KE's understanding that such stock ponds are exempt from Section 404 permitting (33CFR Part 323.4), they still require a permit from the state of Wyoming. It's also our understanding that the small creek channel where the pond is located is mostly perennial and identified as Six Mile Creek.



Kagel Environmental, LLC
Wetlands, Wildlife and Permitting Specialists

SITE DESCRIPTION & METHODS

Upon arriving at the Johnson farm, the owner introduced himself and his wife (Katie Johnson), and then politely showed us the entire area of the recently constructed stock pond, including water control structure, culvert pipe, creek channel, erosion controls, and the nearby irrigation canal where the creek terminates. The stock pond is generally described as a rather narrow, oblong (elongated) shaped oval, and appears to have been constructed via a combination of excavation work and berm/dam construction. As calculated by Google Earth Pro Measuring Tools, the pond is approximately 615 feet in length along its east/west axis, and approximately 160 feet at its widest north/south axis. KE also observed that the pond construction did not appear to have required filling of wetlands, but the construction did require the discharge of fill material below the plane of the ordinary high water mark (OHWM) of the creek channel.

Although the measured distance of the pond beginning at the outfall culvert downstream of the dam, and the upstream western property line, is approximately 615 feet, the actual distance of the *traced channel meanders* totals approximately 690 linear feet. The average stream width measurement is 68-inches (5'8") and the average depth of the channel is 8-inches. All measurements and channel dimensions were taken with a Luftkin steel tape (25 foot) and are referenced from the OHWM of the creek. Since the pond construction resulted in the coverage of nearly 700 linear feet of original channel, KE reasonably determined the average or mean channel dimensions by carefully taking two creek channel measurements downstream of the pond, and two channel measurements upstream where the creek enters the pond (See Figures 1 and 2). After recording each of the [OHWM] measurements, KE averaged the sum of the totals which are presented in our findings herein (See Tables 1 and 2). This methodology provides a reliable tool for calculating a reasonably accurate estimate of channel impacts associated with the pond construction and associated fill material placed within the channel.

FINDINGS

Based upon KE's April 5, 2014 on-site field inspection and data collection of the Johnson stock watering pond, we find and offer the following professional opinions regarding the alleged violation. To begin, KE observed and photo-documented that Six-Mile Creek is not tributary to any other tributary creek, stream, or river channel. After exiting the subject pond, Six-Mile Creek continues flowing for a distance of 0.33 tenths of a mile where it terminates at a relatively large man-made irrigation canal. It's KE's understanding that in the Omaha District of the COE, irrigation canals and ditches, where flows are regulated according to state appropriated water rights and functional water control structures, such irrigation structures are not considered as regulated waters of the U.S. subject to Section 404 permitting requirements.

Upon further research, KE also noted that even if the COE and EPA determined that irrigation canal and ditches are jurisdictional waters of the U.S. in Wyoming, the nearest



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in-fact/traditionally navigable water of the U.S. is the Green River. From tracing the tributary stream and/or small river channels all the way to the nearest confluence with the Green River, the distance appears to be approximately 80-100 miles. Consequently, KE opines that it's beyond any reasonable possibility that a discharge of some clean soil and rock fill material into Six-Mile Creek would have a significant effect upon the physical, chemical, and biological integrity of the Green River located nearly 100 miles away. Therefore, it's overwhelmingly evident in KE's opinion, that it's not even plausible that the discharge of fill material associated with the construction of Mr. Johnson's pond could have a significant nexus to the Green River.

In addition to our observations and findings regarding CWA jurisdiction of Six-Mile Creek per se, KE noted that within jurisdictional waters of the U.S., including wetlands, stock ponds are exempt from needing a Section 404 permit. In accordance to 33 CFR Part 323.4, it's KE's understanding that stock ponds are exempt from regulation provided the work doesn't impair or restrict the flow and circulation patterns (Six-Mile Creek), **and** put the area into a use it wasn't previous subject; *both* "recapture" tests must be met. In regard to flow and reach, we observed that there is as much water flowing out of the pond as there is flowing into the pond (See Photos). The pond appears to temporarily detain the water, probably picks up additional ground water, and then discharges the same or possibly more volume into the original channel. Hence, there is absolutely no observed restriction of flowing water in the channel of Six-Mile Creek downstream of the pond, and the circulation pattern of the channel has not changed. KE observed no diversions, cutoffs, or new/alternate channels created as a result of the stock pond.

In regard to putting the area into a new use, it's KE's understanding, as well as our observations, that the Johnson farm has been in agricultural use for more than a century, and that the use has not changed. KE observed livestock on the farm, irrigation ditches, irrigated pastures, and reviewed documents showing that Johnson has legal [irrigation] water rights, and that the pond is located within legally irrigated land pursuant to his state water right (WY State Engineer May 25, 2011). The use is therefore still agricultural (stock watering), and KE is unaware of any evidence of, or plans for, changing the Johnson farm from agriculture to commercial, residential, or industrial development.

In the event that the COE and the EPA ultimately pursue regulatory jurisdiction for the pond, KE checked to determine if the pond construction is authorized by an existing nationwide permit, most specifically, nationwide permit number eighteen (NWP#18). Please note that NWP#18 authorizes minor discharges of dredged or fill material into waters of the U.S., including wetlands. A minor discharge means 25 cubic yards or less, placed below the plane of the OHWM of a channel or within a jurisdictional wetland. Since all nationwide permits are permits that have previously been authorized on a nationwide basis, there is no need to apply for these permits. However, many of these nationwide permits and/or their conditions require a *pre-construction notification* (PCN) to the COE in order for the agency to verify the applicability of the permit, and/or the need to add special conditions, etc. According to NWP#18, a PCN is only required if there will be a discharge into regulated wetlands, or if the discharge into a stream channel exceeds 10 cubic yards below the OHWM of the channel. Consequently, when the minor



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discharge is less than 10 cubic yards and/or is not placed in wetlands, the work is authorized and there is no need or requirement for notifying the COE prior to commencing with the work. Since KE concurred with the COE's and EPA's prior determination that the pond work didn't impact wetlands, KE took careful measurements and calculations to determine if the pond construction resulted in the discharge of more than 10 cubic yards below the OHWM of Six-Mile Creek.

As mentioned earlier, KE employed standard field methods for measuring stream channel impacts for the purpose of obtaining the most accurate estimates practicable. Since the pond and extant fill prevent exactly precise calculations, a reasonably accurate alternative is to take precise channel measurements immediately upstream and downstream of the pond, and then calculate averages for both channel segments (Table 1). In the worst case scenario, i.e. inaccurately weighted toward maximum adverse impacts, only the channel dimensions downstream (below) the pond were also calculated (Table 2). By reviewing our data in both Tables, it is apparent that the maximum discharge of fill material below the OHWM along a 60 linear foot section of the distal end of the pond was significantly less than 10 cubic yards. Consequently, KE opines that if the creek channel was actually a regulated water of the U.S., the discharges of fill material associated with the construction of the Johnson pond was already authorized by NWP#18 and that there was no need for Mr. Johnson (or anyone else) to notify the COE prior to construction.

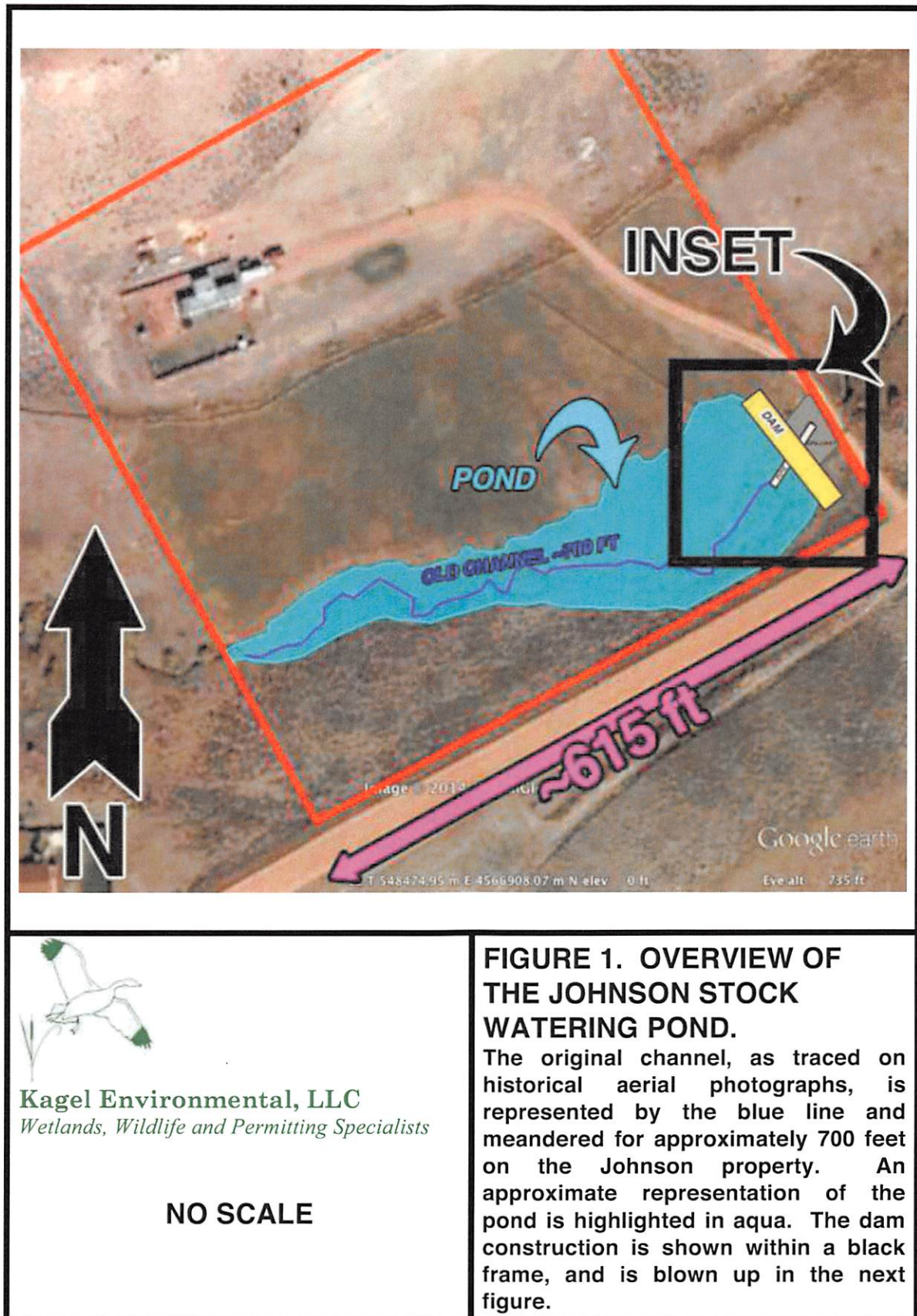
CONCLUSION

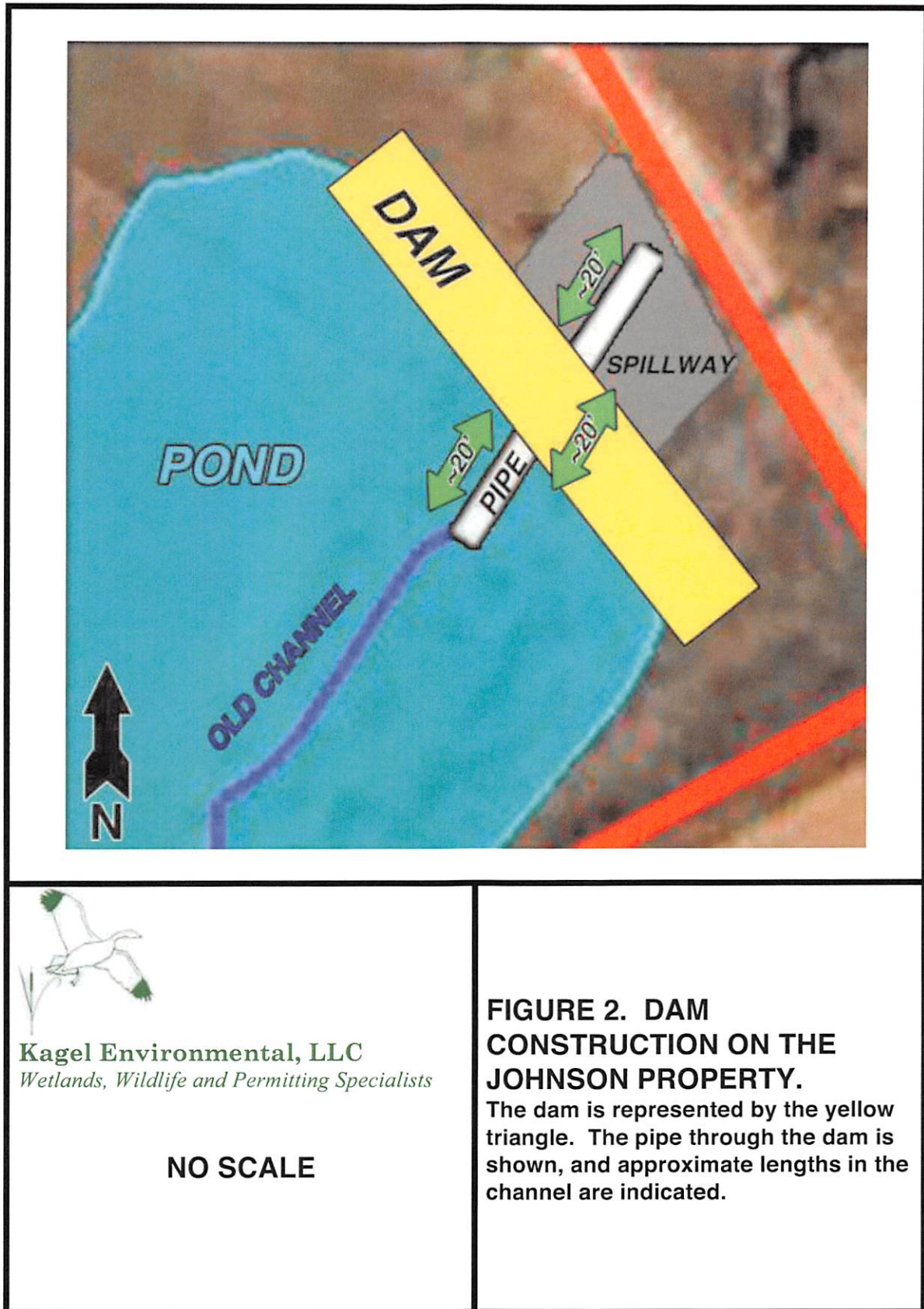
As a former COE federal regulator and enforcement officer specializing in Section 404 Clean Water Act jurisdictional determinations, KE found no evidence of a federal or state violation. Should you have any questions, comments, or need additional information, please feel welcomed to contact us at your convenience.

Sincerely,

Ray L. Kagel, Jr., M.S.
Professional Wetland Scientist #2234
Wildlife Biologist

Susan W. Kagel, M.S., Ph.D.
Wetland Scientist
Project Manager







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Table 1. Calculations of actual fill placed below the Ordinary High Water Mark (OHWM)

Downstream			Upstream	
Width 1	84 in	Average 68.5 in	58 in	Average 54 in
Width 2	53 in		50 in	
Depth 1	6 in	Average 8 in	5 in	Average 6 in
Depth 2	10 in		7 in	
Stream Width =		Average of 68.5 in and 54 in = 61.25 in		
Stream Depth =		Average of 8 in and 6 in = 7 in		
Fill Volume Calculations				
$61.25 \text{ in} \times 7 \text{ in} \times (60 \text{ ft} \times 12 \text{ in}) = 308,700 \text{ in}^3$				
$308,700 \text{ in}^3 \div 1,728 \text{ in}^3/\text{ft}^3 = 178.65 \text{ ft}^3$				
$178.65 \text{ ft}^3 \div 27 \text{ ft}^3/\text{yd}^3 = \mathbf{6.6 \text{ yd}^3 \text{ of fill below the OHWM}}$				

Table 2. Calculations of *Worst Case Scenario of fill placed below the Ordinary High Water Mark (OHWM)**

Measure	Width	Depth	Fill Volume Calculations
1	84 in	6 in	$84 \text{ in} \times 6 \text{ in} \times 60 \text{ ft} \times 12 \text{ in}/\text{ft} = 362,880 \text{ in}^3$
			$362,880 \text{ in}^3 \div 1,728 \text{ in}^3/\text{ft}^3 = 210 \text{ ft}^3$
			$210 \text{ ft}^3 \div 27 \text{ ft}^3/\text{yd}^3 = \mathbf{7.8 \text{ yd}^3 \text{ Fill below OHWM}}$
2	53 in	10 in	$53 \text{ in} \times 10 \text{ in} \times 60 \text{ ft} \times 12 \text{ in}/\text{ft} = 381,600 \text{ in}^3$
			$381,600 \text{ in}^3 \div 1,728 \text{ in}^3/\text{ft}^3 = 221 \text{ ft}^3$
			$221 \text{ ft}^3 \div 27 \text{ ft}^3/\text{yd}^3 = \mathbf{8.1 \text{ yd}^3 \text{ Fill below OHWM}}$

*Worst case scenario is using the two measurements taken below the dam spillway, where the calculated fill below the OHWM would be the greatest.



Top Photo: East facing view of Dr. Kagel standing in outflow channel below dam.
Bottom Photo: Close-up western view of Dr. Kagel measuring OHWM width.



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SITE PHOTOGRAPHY



Top Photo: East view of downstream channel width (84") at the OHWM. Bottom Photo: Downstream (east) view of the channel above the pond.



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SITE PHOTOGRAPHY



Close-up view of measuring width and depth of channel upstream of Johnson pond.



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SITE PHOTOGRAPHY



Left Photo: Upstream (western) view of Dr. Kagel standing in Six-Mile Creek near its terminus in a man-made irrigation canal. Blue arrows indicate water flow direction. Right Photo: Close up of same view of Six-Mile Creek at the confluence with the irrigation canal.



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SITE PHOTOGRAPHY



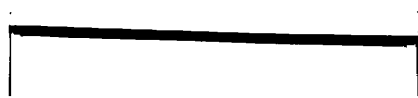
Top Photo: Downstream view of irrigation canal that receives 100% of Six-Mile Creek flow. Bottom Photo: Upstream view of irrigation canal with Dr. Kagel standing above water control structure.

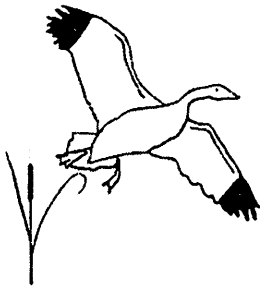


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SITE PHOTOGRAPHY

EXHIBIT 4





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April 30, 2015

Daniel B. Frank, Esq.
Frank Law Office, P.C.
519 E. 18th Street
Cheyenne, WY 82001

Dear Mr. Frank:

This is in regard to a request to have Kagel Environmental, LLC (KE) prepare and submit to you an aquatic habitat restoration plan associated with the alleged Section 404 Clean Water Act violation against Mr. Andrew "Andy" Johnson. The subject project site is located within an approximate 8-acre farm parcel of land owned by Mr. Johnson, and is described as being within Section 30, Township 15 North, Range 115 West, Uinta County, near Fort Bridger, Wyoming. It's KE's understanding that the restoration plan, including a discussion of extant aquatic habitat functions and values [before and after] the alleged unauthorized construction of a state authorized stock watering pond, has been requested of Mr. Johnson by the Environmental Protection Agency (EPA).

Therefore, the following narrative report of functions, values and habitat restoration recommendations within the immediate area(s) of the alleged violation is provided herein and based upon the expertise, experience, and best professional judgment of KE. Please note that the firm of KE is highly qualified in this area, with more than 35 years combined education, training, and experience in ecological studies. KE principals Susan Kagel, Ph.D., and Ray Kagel, M.S., PWS, each have graduate degrees in biological sciences with specialties in wetlands science, wildlife and fisheries biology, and fluvial geomorphology. Additionally, as a former U.S. Army Corps of Engineers (COE) senior regulatory project manager and enforcement officer, KE principal Ray Kagel was responsible for reviewing and approving numerous wetland and stream channel habitat restoration and mitigation plans on behalf of the federal government. Consequently, please be assured that the following aquatic habitat assessment and restoration report is provided with the highest degree of ecologically based professionalism, accuracy and reliability.

SITE DESCRIPTION & METHODS

A state authorized stock pond, including water control structure, culvert pipe, erosion controls, and energy dissipater was constructed on a small perennial stream segment named Six Mile Creek in/about 2013. According to field report(s) prepared by the COE and/or the EPA there were no adjacent wetlands to the creek. During a site inspection performed by KE in the early spring of 2014, KE concurred with the government field inspection report and definitively determined the paucity of wetlands and that no wetlands were impacted by the pond construction.



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The stock pond is generally described as a rather narrow, oblong (elongated) shaped oval, and appears to have been constructed via a combination of excavation work and berm/dam construction. As calculated by Google Earth Pro Measuring Tools, the pond is approximately 615 feet in length along its east/west axis, and approximately 160 feet at its widest north/south axis. Although the stock pond construction did not involve impacts to wetlands, KE observed that the pond construction did require the discharge of fill material below the plane of the ordinary high water mark (OHWM) of the small creek channel.

As calculated and reported by KE in their April 30, 2014 field inspection and environmental site assessment (Appendix 1), the average width of the creek channel is approximately 68-inches and the average depth approximately 8-inches. In the same referenced report, KE calculated and reported that the construction of the stock pond resulted in the discharge of less than 10 cubic yards of fill material below the plane of the ordinary high water mark (OHWM) of the creek channel. Consequently, even in the event that a stock pond is neither an isolated (non-jurisdictional) waterbody, nor considered exempt from Section 404 permitting requirements, the relatively minor discharge of less than 10 cubic yards (or even 25 cubic yards requiring a PCN), means the discharge is already authorized on a national basis by what is [appropriately] termed a *nationwide permit*. It's important to note that all nationwide permits have been determined by the COE and the EPA, that their environmental impacts are both individually and cumulatively, considered to only be *minor*. Also note that a PCN (pre-construction notification) is only applicable in order that the COE can coordinate with other resource agencies to determine if there might be any other specific concerns or considerations that may warrant the addition of some special conditions added to the existing nationwide permit.

After completing the spring site inspection and environmental assessment of the alleged stock pond violation in early April, 2014, KE returned to the Johnson site during mid-summer (July, 2014) and performed a second inspection and environmental impacts, including a routine functional value habitat assessment along the [alleged] impacted section of Six mile Creek.

FINDINGS

Based upon KE's April 5, 2014 on-site field inspection, and KE's follow-up site inspection conducted on July 5, 2014, we find and offer the following professional opinions regarding the alleged violation in regard to functional values and aquatic habitat impacts associated with Mr. Johnson's stock water pond.

In order to reliably assess pre-pond construction site conditions along the channel of Six Mile Creek, KE appropriately selected natural (undisturbed) reference reaches of the channel. The reference reaches were located immediately downstream and upstream of the pond. Both observed reference reaches flow through historically over-grazed agricultural lands and revealed that the channel is bordered by mostly steep and substantially incised banks. Due to overgrazing and mostly unconsolidated bank soils, the incised banks showed significant indications of recent



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and current accelerated erosion which increases turbidity, transport and deposition of suspended sediments, and increased transport of bed load, all of which results in quantifiable water quality degradation.

The reference reaches also revealed a nearly complete absence of riparian woody vegetation, lack of wetlands (aquatic habitat), and negligible wildlife and fisheries habitat. KE also observed no open or standing water areas suitable for waterfowl or other migratory shorebirds. The reference reaches were also devoid of significant deep pools that would provide sufficient depth for cool water temperatures in summer and escape habitat for survival of cold water fisheries such as native trout. It's important to note that this small channel flows within a chiefly xeric high altitude ecosystem where aquatic habitats are practically exclusive to major streams and riverine systems. Consequently, areas where small surface flows are either permanently or semi permanently ponded or inundated, typically enhance and/or establish aquatic habitat(s) that previously exhibited either marginal, negligible, or no measurable functions and values whatsoever.

In contrast to the undisturbed reference reaches of Six Mile Creek, and based upon the spring and summer site visits, Google Earth photo research, and the professional ecological assessments of the alleged violation area, KE has observed and concluded the following impacts that have resulted from the construction of the stock pond:

- a. The shallow margins (above and below the OHWM) of the pond have created and established wetlands where no wetlands previously existed.
- b. The pond has created and established wetland and riparian emergent, submergent, and floating herbaceous plants, as well as vascular woody vegetation where none previously existed.
- c. The approximate 1-acre pond created and established waterfowl nesting, resting, feeding, and loafing habitat where none existed previously.
- d. The size and depth (>8 feet) of the pond provide a year round cold water habitat to support and encourage viable trout fisheries where none existed previously.
- e. The size and depth of the pond creates a significant sedimentation basin, particularly during spring high runoff and storm events; suspended particulates are now settled and filtered substantially improving downstream water quality.
- f. The stock pond's undulating and meandering margins, small island areas, and areas of less than 6.6 foot depths (wetlands) have significantly increased the functional value of the entire (approximately 700 linear feet) stretch of channel located on Mr. Johnson's ranch.

CONCLUSIONS and RECOMMENDATIONS

Based on KE's professional examinations performed during two (spring and summer) site inspections and environmental assessments of the Johnson stock pond, we determined that the pond construction resulted in numerous environmental impacts; all impacts are considered



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positive. KE's environmental assessments revealed no adverse impacts to the aquatic environment whatsoever. Therefore the sole recommendation for any environmental restoration and enhancement of six mile creek would be to construct additional ponds within the Six Mile Creek watershed. For example, the Johnson stock pond has resulted in the creation and continuing development of a micro-aquatic ecosystem where there was previously nothing but a small and shallow incised creek channel with eroding banks virtually absent of wetlands and viable aquatic habitat. The above referenced wetland and other aquatic vegetation includes various sedges (*Carex sp.*), rushes (*Juncus sp.*), duckweed (*Lemna*, *Wolffiella*, *Wolffia*, *Spirodella*, *sp.*), pond weed (*Potamogeton sp.*), fall panic grass (*Panicum doctotomiflorum*), willow (*Salix sp.*), and other species that are both palatable and nutritional to migratory waterfowl, as well as numerous aquatic dependent mammals such as weasels, muskrats and beaver. Many of these emergent, submergent, and floating plants also are known to harbor micro- and macro- invertebrates that provide nutritional support for fisheries. The abundant natural colonization of these wetland and aquatic plant species beneficial to waterfowl, wildlife, and fisheries essentially precludes the need for artificial supplementation (planting) of new or additional vegetative species.

Since the primary purpose of this [any] stock pond is to provide a safe and reliable source of water for cattle, horses, sheep, goats, etc., it would be oxymoronic to restrict livestock from utilizing the stock pond for its primary purpose. The exception to livestock utilization restrictions might be in the case where a stock pond is unable to support an overabundance of farm and ranch animals. In the case of the subject stock pond with a surface area of approximately 1- acre, KE observed that the current number of livestock is in healthy ecological balance with the newly established aquatic and wetland habitat that Mr. Johnson established by constructing his pond. However, in the event that Mr. Johnson were to double the number of his current livestock, then KE would recommend a habitat re-assessment in order to determine if livestock impacts warranted either expansion of the pond, access restrictions, and/or developing a rest and rotational formula for livestock watering.

Should you have any questions, comments, or need additional information, please feel welcomed to contact KE at your convenience.

Sincerely,

Ray L. Kagel, Jr., M.S.
 Professional Wetland Scientist #2234
 Wildlife Biologist

Susan W. Kagel, M.S., Ph.D.
 Wetland Scientist
 Project Manager