Message

From: Dave Bricklin [bricklin@bnd-law.com]
Sent: 11/10/2022 8:21:19 PM
To: Storm, Linda [Storm.Linda@epa.gov]
CC: Zachary Griefen [griefen@bnd-law.com]
Subject: RE: Please give me a call FW: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Linda,

We tried to reach you the other day and left a message. Do you have time for a call today?

David Bricklin

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From: Storm, Linda <Storm.Linda@epa.gov>
Sent: Monday, November 7, 2022 5:29 PM
To: Dave Bricklin <bricklin@bnd-law.com>
Cc: Zachary Griefen <griefen@bnd-law.com>
Subject: RE: Please give me a call FW: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Ah – thank you for that clarification. I have not heard back from Shane Skaar – it is very possible, since they are in litigation, that they won't feel that they can talk with us. I do not know.
Best,
Linda

Linda E. Storm, Aquatic Ecologist
Pronouns: she/her/hers (Why is this important?)
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Seattle, WA 98101-3144
(206)553-6394 ofc/(206)437-2293 cell
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From: Dave Bricklin <bricklin@bnd-law.com>
Sent: Monday, November 07, 2022 2:25 PM
To: Storm, Linda <Storm.Linda@epa.gov>

Cc: Zachary Griefen <griefen@bnd-law.com>
Subject: RE: Please give me a call FW: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

One correction, Linda. The Corps suspended the NWP coverage; it didn't rescind it. It apparently is discussing with ITD next steps.

David Bricklin

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From: Storm, Linda <Storm.Linda@epa.gov>
Sent: Monday, November 7, 2022 1:15 PM
To: Skaar, Shane K CIV USARMY CENWW (USA) <Shane.K.Skaar@usace.army.mil>
Cc: Bujak, Charissa <bujak.charissa@epa.gov>; Jason.Pappani@deq.idaho.gov
Subject: Please give me a call FW: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project
Importance: High

Hello there Shane,
I just left you a voicemail message in follow-up to my email of last week on this issue. See below explanation of these photos related to the Idaho Department of Transportation (IDOT) Construction of US-95 Thorn Creek to Moscow Highway. It is my understanding from Dave Bricklin (attorney) that the IDOT was issued a stop work notification (on at least part of this project work) because the multiple NWP 14 authorizations for individual crossings for the overall project were rescinded by the Corps, because at least one of them exceeded the ½ acre threshold by 2x and there was potential for others to do the same. It is my understanding that EPA was NOT a 401 certifying authority, but IDEQ issued the 401 WQC (am copying Jason Pappani here to notify about this concern as well).
I'm copying my colleague Charissa Bujak, 404 enforcement, on this issue as well for her awareness and any potential follow-through that may be needed.

Please give me a call at your earliest convenience. Note that I understand this is a complex situation where there has been a citizen lawsuit. I am interested to know, since the Corps suspended the NWP 14 authorizations, what the Corps next steps are in terms of a) potentially reprocessing the permit application(s) through a single and complete standard individual 404 permit or something else, b) whether the Corps has taken any more formal compliance/enforcement action and/or what the communication has been to IDOT to stop work so that there are no more unauthorized discharges. I am generally interested in what the Corps (and the state) has done and can do given this situation?
I can forward the other documentation that I was sent.

Sincerely,
Linda Storm

Linda E. Storm, Aquatic Ecologist
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From: Zachary Griefen <griefen@bnd-law.com>
Sent: Monday, November 07, 2022 11:10 AM
To: Storm, Linda <Storm.Linda@epa.gov>; Dave Bricklin <bricklin@bnd-law.com>; Whitley, Annie <Whitley.Annie@epa.gov>
Cc: Dave Bricklin <bricklin@bnd-law.com>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Hi Linda and Annie,

This morning, our client sent us the attached photographs, which were taken on Friday, Nov. 4. They show a significant amount of muddy runoff flowing from areas that ITD recently disturbed into the South Fork of the Palouse River. This is at the north end of the US-95 highway rerouting project, just south of downtown Moscow, ID. You might share these photos with Shane Skaar when you email him.

Our client likely has more information and photographs. If this is something that the two of you can look into and you would like more information, please let us know. If this is something that we need to take up with Idaho DEQ, please let us know that, too.

Thank you!

Zak

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From: Storm, Linda <Storm.Linda@epa.gov>
Sent: Friday, November 4, 2022 4:20 PM
To: Dave Bricklin <bricklin@bnd-law.com>; Zachary Griefen <griefen@bnd-law.com>; Whitley, Annie <Whitley.Annie@epa.gov>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Got it- thanks.

I've located some of our historical files on this project (from 2004 where we were involved in the original NEPA DEIS and subsequent 404 reviews in a couple iterations – I remember visiting out there with Elaine Somers and John Olson looking at the aquatic resource footprint impacts, but also the proposed impacts from routes that would affect the Palouse

prairie ecosystems). I've confirmed with Annie that EPA did not have a 401 water quality certification role. So, it is my intention to shoot an email to Shane Skaar asking to have a conversation early next week. I know he's taking a new job at Seattle District, so hope that he hasn't transferred already. I have good working relationship with him.

Best and have a good weekend.
Cheers
Linda

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From: Dave Bricklin <bricklin@bnd-law.com>
Sent: Friday, November 04, 2022 4:17 PM
To: Storm, Linda <Storm.Linda@epa.gov>; Zachary Griefen <griefen@bnd-law.com>; Whitley, Annie <Whitley.Annie@epa.gov>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Shane has been the primary staff person involved. Michaela is the attorney.

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From: Storm, Linda <Storm.Linda@epa.gov>
Sent: Friday, November 4, 2022 4:11 PM
To: Zachary Griefen <griefen@bnd-law.com>; Whitley, Annie <Whitley.Annie@epa.gov>
Cc: Dave Bricklin <bricklin@bnd-law.com>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Looks like the project manager is not Shane Skaar, but Michaela Murdock at Michaela.M.Murdock@usace.army.mil is that right? I don't know them, but if that's who you understand is the contact then that's great.

Will get back with you once Annie and I have coordinated.
Best,
Linda

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From: Zachary Griefen <griefen@bnd-law.com>
Sent: Friday, November 04, 2022 3:45 PM
To: Storm, Linda <Storm.Linda@epa.gov>; Whitley, Annie <Whitley.Annie@epa.gov>
Cc: Dave Bricklin <bricklin@bnd-law.com>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Thank you, Linda! I saw your subsequent email about the Corps' project number. Do you still want the name of the Corps Project Manager?

The original March 9, 2021 Corps verification decision was signed by Kelly J. Urbanek, Chief, Regulatory Division. It was supported by a Memorandum for Decision authored by Shane Skaar, Environmental Resources Specialist and co-signed by Michaela Murdock, Attorney Advisor, Office of Counsel Division.

Thank you.

Zak

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From: Storm, Linda <Storm.Linda@epa.gov>
Sent: Friday, November 4, 2022 2:26 PM
To: Zachary Griefen <griefen@bnd-law.com>; Whitley, Annie <Whitley.Annie@epa.gov>
Cc: Dave Bricklin <bricklin@bnd-law.com>
Subject: RE: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Zachary,

Thank you for this summary. I reached out to my colleague, Annie Whitley, who is our new EPA Region 10 401 Coordinator. What I want to find out is a) if she has been contacted by Walla Walla District about this issue, and b) for us to determine whether or not we were involved in writing any 401 WQ certifications for this project. Please note that in looking back through my records, I do not actually find EPA issued 401 WQC for this project name, though we have issued multiple other US95 project 401 WQCs (including NWP 14) through Indian Country. If you know what the Corps project # is that would help us out in searching our records. Annie, please let me know if you have any additional information to add on the EPA 401 WQC question.

What I do recall though is my extensive early involvement in review of a US95 Project with a NEPA EIS. I joined John Olson (Boise EPA Idaho Operations Office Wetland Biologist) and Elaine Somers (EPA Seattle NEPA Review Team and Transportation lead) on a site visit, met with IDOT and the Corps, and provided input on our NEPA DEIS review comments. Later I supported later Elaine Somers and Charissa Bujak (Boise EPA IOO) on final comments on the NEPA/404 review side of our responsibilities.

If we find that we weren't involved on the 401 side and Annie is not already in communication with the Corps, I would be happy to reach out to the Walla Walla District to talk with them about this issue.

Please confirm who the Corps Project Manager is that you are working with (and if you have it what the Corps project # is).

Thank you sincerely,

Linda

Linda E. Storm, Aquatic Ecologist
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From: Zachary Griefen <griefen@bnd-law.com>
Sent: Friday, November 04, 2022 1:57 PM
To: Storm, Linda <Storm.Linda@epa.gov>; Whitley, Annie <Whitley.Annie@epa.gov>
Cc: Dave Bricklin <bricklin@bnd-law.com>
Subject: Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project

Hi Linda and Annie,

I work for Dave Bricklin and I am writing to you at his direction. I am following up on the phone conversation that Dave and Linda had earlier today, regarding the Corps' suspension of authorization under NWP 14 for the US-95 Thorn Creek to Moscow highway rerouting project.

The Corps had verified 13 wetland and/or surface water "crossing sites" under NWP 14 on March 9, 2021. Our client Paradise Ridge Defense Coalition ("PRDC") sued, conducted a wetland delineation, and established that, at least for the southernmost crossing site (Site 1), the wetland impacts were far greater than the Corps had assumed based on information provided to the Corps by the Idaho Transportation Department.

On August 9, 2022, the Corps concluded that the loss of aquatic resources at Site 1 may exceed the 0.5-acre threshold and suspended its verification under NWP 14 at Site 1 pending additional consideration. See attached.

On August 15, 2022, PRDC filed a motion for summary judgment seeking to extend the Site 1 suspension to all 13 crossing sites, because the mistake made by ITD and the Corps at Site 1 was likely repeated elsewhere along the project route. See attached.

On August 29, 2022, the Corps issued a follow-up letter to its prior suspension letter, in which the Corps suspended its verification decisions for the remaining crossing sites (Sites 2–13). See attached.

The case is now being held in abeyance at the request of the Corps and we are waiting for the Corps to decide what to do next. Dave and I think that now might be a good time for the Corps to hear from EPA as to what the appropriate next step should be. As you know, EPA has expressed strong reservations about the ITD-selected "E-2 Route" alternative for project from the outset.

Please let me know if you have any questions or would like more information.

Thank you.

Zak

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