Carol Peters/R6/USEPA/US
07/21/2008 08:57 AM

To Diana McDonald/R6/USEPA/US@EPA, Robert Houston/R6/USEPA/US@EPA
cc
bcc
Subject Fw: North Diversion Channel

Carol Peters-Wagnon
6EN-WM
214/665-3145

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----- Forwarded by Carol Peters/R6/USEPA/US on 07/21/2008 08:56 AM -----

Scott McDonald/R6/USEPA/US
07/17/2008 07:05 PM

To Michael Michaud/R6/USEPA/US@EPA, Carol Peters/R6/USEPA/US@EPA
cc
Subject Fw: North Diversion Channel

FYI:

----- Forwarded by Scott McDonald/R6/USEPA/US on 07/17/2008 07:08 PM -----

Patrick Rankin/R6/USEPA/US
07/03/2008 12:55 PM

To Ben Harrison/R6/USEPA/US@EPA, Jeannine Hale/R6/USEPA/US@EPA, Denise Hamilton/R6/USEPA/US@EPA, Willie Lane/R6/USEPA/US@EPA, Scott McDonald/R6/USEPA/US@EPA
cc
Subject North Diversion Channel

privileged communication

Today, I discussed the jurisdictional status of the Channel and the Rio Grande with Don Border, Chief (Director?) of the Albuquerque District's Regulatory Functions Branch (now a Division?). Don's telephone number is (505) 342-3282. Here's what I learned:

The Corps currently considers the North Diversion Channel a water of the U.S., apparently on the basis of its relatively continuous flow.

Contrary to our earlier understanding, the Corps does *not* currently require Section 10 permits for work in the Rio Grande above American Dam (near El Paso). Don indicated this was because of the 1899 S.Ct. decision (Rio Grande Dam and Irrigation Co., which actually held such a permit was required to build a dam above Albuquerque because such a dam would affect the "course, capacity, or condition"of the Rio Grande in Texas. Don indicated he thought a reviewing court would likely find the Rio Grande

navigable-in-fact around Albuquerque, but the Corps has taken no such position yet.

The Corps has similar issues on the appropriate authority for issuance of 401 certification on 404 permits authorizing discharges of dredged or fill material to the Channel. Don didn't indicate that they'd been resolved and I conveyed my suggestion, i.e. that it depended on the location of the discharge.

Conclusion. Based on this conversation, I conclude:

1. A finding that the North Diversion Channel is a water of the U.S. would be consistent with the views of the Albuquerque District.

2. The "traditionally navigable water" i.e., the potentially affected water, for a "signficant nexus" analysis would either be:

a. The Rio Grande at Albuquerque, based on recreational vessel use (assuming there is some) demonstrating the River's susceptability to limited commercial navigation. In such an action, we'd have to be careful to use the "traditionally navigable" term rather than "navigable water of the U.S." to avoid potential problems with the Corps.

b. Elephant Butte Reservoir, assuming it's navigable-in-fact. Although the Corps doesn't consider it a "Section 10 water," i.e., a navigable water of the United States, intrastate navigable in fact waters are identified as "traditionally navigable" by the Corps/EPA Rapanos guidance.

c. The Rio Grande at American Dam.

3. If it becomes necessary to perform a significant nexus analysis in the Albuquerque area, additional coordination with the Corps of Engineers would be desirable.

RCastell@state.nm.us

06/29/2004 05:54 PM

To: apuglisi@sandiapueblo.nsn.us, jlovato@amafca.org, jkelly@amafca.org, Joel_Lusk@fws.gov, ccaruso@cabq.gov, Susan_MacMullin@fws.gov, RCastell@state.nm.us, kevin_buhl@usgs.gov, lmeinz@amafca.org, cjones@amafca.org, Denise Hamilton/R6/USEPA/US@EPA, sbulgrin@sandiapueblo.nsn.us
cc: DHogan@cabq.gov
Subject: RE:

Neither day will work for me...But please don't delay your meeting to accomodate my schedule or we'll end up in September. I'd be interested in what you guys find out, though. Thanks, Rick

Rick Castell
New Mexico Department of Game and Fish
3841 Midway Place
Albuquerque, NM 87109

> -----Original Message-----
> From: Alex Puglisi [SMTP:apuglisi@sandiapueblo.nsn.us]
> Sent: Tuesday, June 29, 2004 2:51 PM
> To: Jerry Lovato; jkelly@amafca.org; Joel_Lusk@fws.gov;
> ccaruso@cabq.gov; Susan_MacMullin@fws.gov; RCastell@state.nm.us;
> kevin_buhl@usgs.gov; 'Loren Meinz '; 'Chirsty Burton';
> Hamilton.Denise@epamail.epa.gov; sbulgrin@sandiapueblo.nsn.us
> Cc: 'Dan Hogan '
> Subject: RE:
>
> Jerry:
>
>
> We would like to have all the parties present when we are there so that we
> can openly discuss the problems with all affected/concerned agencies. I
> believe that two meetings will fragment the attendees. We wish to go
> beyond possible reasons and conditions and talk about immediate steps and
> long term solutions that can be undertaken to prevent the problem from
> reoccurring. It would be best to do this when all are present. Is there a
> reason why Tueesday won't work? If so, is there another day next week that
> is better? So far, it seems that the USFWS can attend on Tuesday. We
> realize the need to act on this quickly but at the same time, we also feel
> that there is not much that could be done between Thursday and Tuesday to
> affect stormwater flows that couldn't be implemented after Tuesday.
>
>
> [Alex Puglisi]
>
> -----Original Message-----
> From: Jerry Lovato [mailto:jlovato@amafca.org]
> Sent: Tuesday, June 29, 2004 3:09 PM
> To: 'Alex Puglisi'; jkelly@amafca.org; Joel_Lusk@fws.gov;
> ccaruso@cabq.gov; Susan_MacMullin@fws.gov; RCastell@state.nm.us;
> kevin_buhl@usgs.gov; 'Loren Meinz '; 'Chirsty Burton';
> Hamilton.Denise@epamail.epa.gov; sbulgrin@sandiapueblo.nsn.us
> Cc: 'Dan Hogan '
> Subject: RE:
>
>
>
> Good Afternoon All,
>

>
>
>
> The remainder of this week is booked for the Pueblo. The ND
Channel
> situation has already had a major impact on our schedules. We request that
> the meeting be scheduled for Tuesday of next week at the earliest since
> Monday is a holiday. Some of our governing body may wish to be present. I
> believe that it is important that we be represented at this meeting
> because the fish kill and D.O. content measured during the event could
> represent a possible violation of the Pueblo's water quality standards
> through both an exceedance of numeric criteria and an impairment of
> designated use. Obviously, the Pueblo has the major stake in the
> successful resolution of this issue.
>
>
>
> Thank you.
>
>
> [Alex Puglisi]
>
>
>
>
>
> -----Original Message-----
> From: John Kelly [mailto:jkelly@amafca.org]
> Sent: Tuesday, June 29, 2004 11:11 AM
> To: Joel_Lusk@fws.gov; ccaruso@cabq.gov;
> apuglisi@sandiapueblo.nsn.us; Susan_MacMullin@fws.gov;
> RCastell@state.nm.us; kevin_buhl@usgs.gov; Jerry Lovato ; Loren Meinz ;
> Chirsty Burton; Hamilton.Denise@epamail.epa.gov;
> sbulgrin@sandiapueblo.nsn.us
> Cc: Dan Hogan
> Subject: Meeting to discuss circumstances surrounding fish kill,
to
> be held July 1st, 2:00 PM at AMAFCA offices
>
> June 29, 2004
>
>
>
> Mr. Lusk and all:
>
>
>
> According to AMAFCA records, it has been 15 years
since
> there was a fish kill in the North Diversion Channel pilot channel. I
> would like to meet with all involved to discuss what the exact
> circumstances were, and why there were the low levels of D.O. in this
> event. Our USGS sampling has never shown that low D.O. is an issue for
> storm water so the circumstances surrounding this event need to be
> thoroughly evaluated.
>
>
>
> I propose we meet on Thursday, July 1st, at 2:00 pm
at the
> AMAFCA offices at 2600 Prospect, N.E..

Alex Puglisi <apuglisi@sandiapueblo.nsn.us>

06/28/2004 02:09 PM

To: Joel_Lusk@fws.gov
cc: "Ltgovernor@Sandiapueblo. Nsn. Us" <ltgovernor@sandiapueblo.nsn.us>, "Governor@Sandiapueblo. Nsn. Us" <governor@sandiapueblo.nsn.us>, Denise Hamilton/R6/USEPA/US@EPA, "Richard_Powell@nmenv. state. nm. us" <Richard_Powell@nmenv.state.nm.us>
Subject: RE: AMAFCA North Diversion Channel stormwater with low dissolved oxygen contributes to widespread fishkill in the canal

Joel:

Thanks for documenting the fish kill. Unfortunately, I received your message last night while hiking in Northern NM; otherwise, we could have been down there to document the situation. We are taking samples today. I think we all need to sit down with AMAFCA, the City of Albuquerque Stormwater program, and EPA to talk about this and, apparently, past fish kills. EPA has to do more to prevent water of this quality from continuing to be discharged to the Rio Grande in the Pueblo's waters.

Alex Puglisi
Director, Environment Department
Pueblo of Sandia

-----Original Message-----
From: Joel_Lusk@fws.gov [mailto:Joel_Lusk@fws.gov]
Sent: Monday, June 28, 2004 11:28 AM
To: jkelly@amafca.org
Cc: ccaruso@cabq.gov; apuglisi@sandiapueblo.nsn.us; Susan_MacMullin@fws.gov; RCastell@state.nm.us
Subject: AMAFCA North Diversion Channel stormwater with low dissolved oxygen contributes to widespread fishkill in the canal

John Kelly, AMAFCA,

here is a copy of my email report on yesterday's fishkill.

*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*****
Joel D. Lusk, Senior Environmental Contaminants Specialist
United States Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna NE, Albuquerque, New Mexico 87113-1001
Phone: (505) 761-4709, Fax: (505) 346-2542
Email: joel_lusk@fws.gov & see http://contaminants.fws.gov/
*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~****
----- Forwarded by Joel Lusk/R2/FWS/DOI on 06/28/2004 10:27 AM -----

Joel Lusk
06/28/2004 10:23 AM

To: apuglisi@sandiapueblo.nsn.us, Joy Nicholopoulos/R2/FWS/DOI@FWS, Susan MacMullin/RO/R2/FWS/DOI@FWS, Jim Brooks/R2/FWS/DOI@FWS, Hamilton.Denise@epamail.epa.gov, Michael Hatch/R2/FWS/DOI@FWS, Lyle Lewis/R2/FWS/DOI@FWS, Aimee M Roberson/R2/FWS/DOI@FWS, Peter David/R2/FWS/DOI@FWS, sbulgrin@sandiapueblo.nsn.us
cc: Cyndie Abeyta/R2/FWS/DOI@FWS, kevin_buhl@usgs.gov, Brian

stratification as the source of low dissolved oxygen content. Additionally
, the middle Rio Grande
was flowing with concentrations of DO above 6 mg/L. It was likely the stormwater itself that was lethal.

(See attached file: North Diversion Channel Fishkill June 27, 2004.pdf)

(See attached file: AMAFCA NDC 6-27-04 Fishkill small pix 121.jpg)(See attached file: AMAFCA NDC 6-27-04 Fishkill small pix 103.jpg)(See attached file: AMAFCA NDC 6-27-04 Fishkill small pix 049.jpg)

*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*****
Joel D. Lusk, Senior Environmental Contaminants Specialist
United States Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna NE, Albuquerque, New Mexico 87113-1001
Phone: (505) 761-4709, Fax: (505) 346-2542
Email: joel_lusk@fws.gov & see http://contaminants.fws.gov/
*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~****

John Kelly
<jkelly@amafca.org>

06/28/2004 05:20 PM
Please respond to jkelly

To: Joel_Lusk@fws.gov
cc: ccaruso@cabq.gov, apuglisi@sandiapueblo.nsn.us, Susan_MacMullin@fws.gov, RCastell@state.nm.us, Denise Hamilton/R6/USEPA/US@EPA, Loren Meinz <lmeinz@amafca.org>
Subject: RE: AMAFCA North Diversion Channel stormwater with low dissolved oxygen contributes to widespread fishkill in the canal

June 28, 2004

Mr. Lusk:

The only other fish kill at this site that AMAFCA is aware of was over the weekend of June 10 & 11, 1989. My memory is that we had a long dry spell, and the first storm of the year was a minor flow in the NDC on the preceding Thursday. Dead fish appeared on Saturday. NMDGF was notified by the owners of the adjacent stables. NMDGF toured the site on Sunday, June 11, 1989.

I will fax you my handwritten notes from a phone call with Paul Cassidy of the NMDGF, who toured the site with Jack Kelly, the Fisheries Biologist for NMDGF. They did measure temperature, D.O and pH. They made the determination of stratification and the subsequent mixing as the cause.

John P. Kelly, P.E.
Executive Engineer
Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect Ave
Albuquerque New Mexico 87107

Ofc (505) 884-2215
Fax (505) 884-0214
Cell (505) 362-1270

jkelly@amafca.org
www.amafca.org

Joel_Lusk@fws.gov

06/28/2004 05:37 PM

To: jkelly@amafca.org
cc: apuglisi@sandiapueblo.nsn.us, ccaruso@cabq.gov, Denise Hamilton/R6/USEPA/US@EPA, Loren Meinz <lmeinz@amafca.org>, RCastell@state.nm.us, Susan_MacMullin@fws.gov, Kevin J Buhl <kevin_buhl@usgs.gov>
Subject: RE: AMAFCA North Diversion Channel stormwater with low dissolved oxygen contributes to widespread fishkill in the canal

Thanks John,

I got your fax, and can't say much about the 1989 fish kill.

However, as dissolved oxygen has been measured daily along the same transect by USGS-BRD vertically, as well as longitudinally, and averaged 4 to 5 mg/L, and changed to < 1 mg/L concurrent with the stormwater input, we can say with some certainty that the ongoing fishkill beginning 6-27-2004 is not due to stratification.

*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*****
Joel D. Lusk, Senior Environmental Contaminants Specialist
United States Fish and Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna NE, Albuquerque, New Mexico 87113-1001
Phone: (505) 761-4709, Fax: (505) 346-2542
Email: joel_lusk@fws.gov & see http://contaminants.fws.gov/
*****~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~*~~****

"John Kelly" <jkelly@amafca.org>
06/28/2004 04:20 PM
Please respond to jkelly

To: <Joel_Lusk@fws.gov>
cc: <ccaruso@cabq.gov>, <apuglisi@sandiapueblo.nsn.us>, <Susan_MacMullin@fws.gov>, <RCastell@state.nm.us>, <Hamilton.Denise@epamail.epa.gov>, "Loren Meinz " <lmeinz@amafca.org>
Subject: RE: AMAFCA North Diversion Channel stormwater with low dissolved oxygen contributes to widespread fishkill in the canal

June 28, 2004

Mr. Lusk:

The only other fish kill at this site that AMAFCA is aware of was over the weekend of June 10 & 11, 1989. My memory is that we had a long dry spell, and the first storm of the year was a minor flow in the NDC on the preceding Thursday. Dead fish appeared on Saturday. NMDGF was notified by the owners of the adjacent stables. NMDGF toured the site on Sunday, June

Diana McDonald/R6/USEPA/US
06/11/2007 11:38 AM

To Carol Peters/R6/USEPA/US@EPA
cc Anthony Loston/R6/USEPA/US@EPA, Robert Houston/R6/USEPA/US@EPA
bcc
Subject Re: Fw: Visit with Sandia Gov. Montoya

New issues:
2. Scott Bulgrin, Water Quality Officer with the Sandia Tribe met the Audit team at the North Diversion Channel. At that time it was agreed that the Tribe and the MS4 (AMAFCA) should meet to discuss future joint projects between the Tribe and AMAFCA.
3. At the time of the audit, it was 6EN management decision that the Tribe be invited meet the audit team at the North Diversion Channel since this was the only site that discharged to tribal waters. We did invite the NMED inspectors to sit in on the audit because they do our 106 inspections. The Tribe had no such arrangement with the Region.
4. Scott Bulgrin was told they would have to submit a FOI request to recieve the full report. As this is the usual procedure for parties not included in the permit, the inspector felt this was appropriate and decided it was better to tell them this and have to retract it than it was to tell them would automatically get a copy and have to retract that.
5. I agree that EPA should meet with any Pueblos interested in meeting with us.

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

Carol Peters/R6/USEPA/US

Carol Peters/R6/USEPA/US
06/08/2007 08:41 AM

To Robert Houston/R6/USEPA/US@EPA, Anthony Loston/R6/USEPA/US@EPA, Diana McDonald/R6/USEPA/US@EPA
cc
Subject Fw: Visit with Sandia Gov. Montoya

Please prepare a short update - few sentences/short paragraph - on appropriate topics from below. Please email to me by close of business on Monday .

Carol Peters-Wagnon
6EN-WM
214/665-3145

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---- Forwarded by Carol Peters/R6/USEPA/US on 06/08/2007 08:39 AM ----

Michael Michaud/R6/USEPA/US
06/07/2007 05:27 PM

To Carol Peters/R6/USEPA/US@EPA
cc

Subject Fw: Visit with Sandia Gov. Montoya

Carol,

Put together a short update on the items listed below and let me review it tuesday before we send it out.

Thanks

Mike Michaud
Chief
Water Enforcement Branch
214-665-2722
----- Forwarded by Michael Michaud/R6/USEPA/US on 06/07/2007 05:26 PM -----

John Blevins/R6/USEPA/US
06/07/2007 02:38 PM

To Michael Michaud/R6/USEPA/US@EPA, david garcia@EPA
cc Suzanne murray@epa
Subject Fw: Visit with Sandia Gov. Montoya

Please give me updates/responses to each of the items captured below...ASAP

John Blevins
Division Director
US EPA Region 6
Compliance Assurance and Enforcement Division- 6EN
1445 Ross Avenue
Dallas TX 75202
blevins.john@epa.gov
214-665-2210 (w)
214-437-9810 (c)
214-665-7446 (f)

----- Forwarded by John Blevins/R6/USEPA/US on 06/07/2007 02:35 PM -----

Dorothy Whaley/R6/USEPA/US
06/07/2007 02:32 PM

To John Blevins/R6/USEPA/US@EPA, gilrein.stephen@epa.gov@EPA, flores.miguel@epa.gov, William Honker/R6/USEPA/US@EPA, hook.Jonathan@epa.gov, Deborah Ponder/R6/USEPA/US@EPA, edlund.carl@epa.gov, luthans.william@epa.gov
cc Charles Sheehan/R6/USEPA/US@EPA, Suzanne Murray/R6/USEPA/US@EPA, Ben Harrison/R6/USEPA/US@EPA, Shirley Bruce/R6/USEPA/US@EPA, Mark Potts/R6/USEPA/US@EPA, William Rhea/R6/USEPA/US@EPA
Subject Fw: Visit with Sandia Gov. Montoya

Jonathan/John/Carl/Miguel

During our visit yesterday, Gov. Montoya asked Larry about follow-up on the items we discussed when he was in Dallas. Larry would like to send the Governor a note with BRIEF status info on as many items as possible. Please send me any responses that you have on the items below.

Dorothy Whaley
Special Assistant
Office of the Deputy Regional Administrator
214-665-8501 - Desk
214-665-6648 - Fax
whaley.dorothy@epa.gov

---- Forwarded by Dorothy Whaley/R6/USEPA/US on 06/07/2007 02:17 PM ----

Lawrence Starfield/R6/USEPA/US
04/03/2007 02:23 PM

To John Blevins/R6/USEPA/US, gilrein.stephen@epa.gov@EPA, flores.miguel@epa.gov, William Honker/R6/USEPA/US@EPA, hook.Jonathan@epa.gov, Deborah Ponder/R6/USEPA/US, edlund.carl@epa.gov, luthans.william@epa.gov,
cc Dorothy Whaley/R6/USEPA/US, Charles Sheehan/R6/USEPA/US, Suzanne Murray/R6/USEPA/US@EPA, Ben Harrison/R6/USEPA/US@EPA
Subject Visit with Sandia Gov. Montoya

The Mayor and I had a good visit with Gov. Montoya. Here is a short summary with a few follow up items. **Please get back to Dorothy Whaley by April 12 with your reaction to the issues in your areas.**

6PD: They were pleased with the morning meeting on UST. They are glad an Order is coming, and that we are assigning a high priority to inspecting USTs that are near drinking water wells. They just would like to see the Order issued.

6EN: The Governor's major request is to "see some progress" on Bernalillo and Rio Rancho.
1. We told them that 6EN was preparing some orders that should show the progress he desires, both on WQ and schedule.
2. Alex asked if they could get regular (monthly/quarterly?) reports on the status of enforcement activities -- we said that we thought that was do-able.
3. They said that at an October 2006 meeting, the Tribe was told they would get reports from Rio Rancho; they haven't gotten those. (He alluded to other unfulfilled commitments from the October meeting -- are there any?)
4. Inspector credentials didn't come up.

6EN: New issues raised:
1. Alex expressed a concern with an old dairy that wants to send its wastewater the Bernalillo. The Tribe is concerned b/c this would send more nitrogen to a plant that already fails to meet the Nitrogen standard.
2. They raised issues concerning the MS4 compliance of the Albuquerque Metropolitan Flood Control Authority. They said that add'l controls are needed to control solids from their discharge; BMPs are not effective. They said that the Tribe found 24 shopping carts in the river coming from the Flood Control Assn's (AMFCA) discharge (Outfall 001).
3. Alex says that they were allowed to participate in "part" of the audit of the AMFCA, but not all of it. They thought that the Tribe was allowed to participate in inspections of any facility that impacts Sandia?

We need to get back to him on that.
4. They were told by the inspector that they'd need to file a FOIA request to see the inspection/audit results re: AMFCA. Is that right?
5. They asked that as part of "some" of the 6EN trips for planning meetings with the State, we might schedule time to meet with those 3-4 Pueblos that have enforcement issues.

6WQ: I asked about the status of their triennial review request, and their revisions to WQS.
1. Alex said that they submitted a draft triennial review package.
2. There is some frustration that Rio Rancho and Bernalillo obtained extensions of time to treat their drinking water, which complicates the cities' ability to meet the effluent limits.
3. Alex said that Sandia is modifying their standards somewhat. The arsenic level will still be stringent, but not as stringent. They are looking at 3.6 ug/l. He thought the cities could meet it.
4. The Tribe is seeking to stabilize water quality in the River at current conditions, and not to have it degrade further.

OEJTA: I asked about relationships with OEJTA
1. Alex didn't report any issues, except the slowness in scheduling the meeting between the Gov. and the RA. I said that OEJTA serves an important coordinating function, but that if a Tribal Governor wants to meet, he is welcome to contact the RA's office directly.
2. Alex also said that they sometimes like to meet with the programs directly. I said that is not a problem, and OEJTA is helpful in arranging that.
3. Gov. Montoya suggested that the RA might address an AIPC meeting, where many Governors are present. I said we'd look into that, and see if there was a meeting around the time of an RTOC meeting in New Mexico. Please look into that, Jonathan.
4. Their feast day is June 13. Is that near the date of the next RTOC?
5. They commented that their logo on the Tribal logo chart is not the color version, and that several others need updating. It may be time to update the entire chart (65 tribes vs. 66....; some name changes).

Thanks.

Larry

Mark Allen/R6/USEPA/US
05/22/2008 03:17 PM

To "Alex Puglisi" <apuglisi@sandiapueblo.nsn.us>
cc Michael Michaud/R6/USEPA/US@EPA, Randy Gee/R6/USEPA/US@EPA, Carol Peters/R6/USEPA/US@EPA, "Jill Smith"
bcc Diana McDonald/R6/USEPA/US
Subject AMAFCA

Alex, I got your message and talked to Enforcement about your concerns. Enforcement let me know that prior to moving forward, they had planned to listen to the concerns of the Pueblo. Discussions can be with you or we can formally hold consultation with Tribal Leadership. If you can give us some dates you and/or Sandia's leadership are available for a conference call or a face to face meeting, I will start the scheduling. After today, I'll will be out until May 28th. I am here for the rest of the day if you would like to talk....Mark

Diana McDonald/R6/USEPA/US
05/15/2008 02:35 PM

To "John Kelly" <jkelly@amafca.org>
cc apuglisi@sandiapueblo.nsn.us, Carol Peters/R6/USEPA/US@EPA, Denise Hamilton/R6/USEPA/US@EPA, "Jerry Lovato "
bcc
Subject RE: Fishkills from the North Diversion Channel

John, thank you so much for your reply.

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

"John Kelly" <jkelly@amafca.org>

"John Kelly" <jkelly@amafca.org>
05/15/2008 02:28 PM

To Diana McDonald/R6/USEPA/US@EPA, <Joel_Lusk@fws.gov>, <apuglisi@sandiapueblo.nsn.us>, Denise Hamilton/R6/USEPA/US@EPA
cc Carol Peters/R6/USEPA/US@EPA, Michael Michaud/R6/USEPA/US@EPA, "Jerry Lovato " <jlovato@amafca.org>
Subject RE: Fishkills from the North Diversion Channel

May 15, 2008

Ms. Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
EPA Region 6

Dear Ms. McDonald:

In my 20+ years at AMAFCA, the 1989 and 2004 events are the only two events that AMAFCA has been involved in of this nature.

I have also reviewed the AMAFCA files, and find no other records of similar events, going back to the channel construction in the mid 60's.

John P. Kelly, P.E.
Executive Engineer
Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect N.E.
Albuquerque, N.M. 87107

phone 505.884.2215
fax 505.884.0214

jkelly@amafca.org
www.amafca.org

-----Original Message-----
From: Mcdonald.Diana@epamail.epa.gov [mailto:Mcdonald.Diana@epamail.epa.gov]

Sent: Thursday, May 15, 2008 8:44 AM
To: Joel_Lusk@fws.gov; apuglisi@sandiapueblo.nsn.us; jkelly@amafca.org; Hamilton.Denise@epamail.epa.gov
Cc: Peters.Carol@epamail.epa.gov; Michaud.Michael@epamail.epa.gov
Subject: Fishkills from the North Diversion Channel

Do any of you have documentation of any fishkills from the North Diversion Channel other than the one in 1989 and the one in 2004?

Thanks,

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

Stephen Gilrein/R6/USEPA/US

05/12/2008 04:50 PM

To Michael Michaud/R6/USEPA/US@EPA, Linda Serrano/R6/USEPA/US@EPA

cc Darlene Whitten-Hill/R6/USEPA/US@EPA, Diana McDonald/R6/USEPA/US@EPA, John Blevins/R6/USEPA/US@EPA, Suzanne

bcc

Subject Re: FOR DD'S SIGNATURE - enforcement confidential - Attorney/client work product - AMAFCA AO

..we need to reference something more recent that a 2004 fish kill...according the tribe they occur multiple time a year,,,any records our there...Fish and Wildlife have any documentation, etc???

Michael Michaud/R6/USEPA/US

Michael Michaud/R6/USEPA/US

05/12/2008 03:11 PM

To John Blevins/R6/USEPA/US@EPA, Stephen Gilrein/R6/USEPA/US@EPA, Suzanne Murray/R6/USEPA/US@EPA

cc Diana McDonald/R6/USEPA/US@EPA, Darlene Whitten-Hill/R6/USEPA/US@EPA

Subject FOR DD'S SIGNATURE - enforcement confidential - Attorney/client work product - AMAFCA AO

Here are the documents for signature:

AO Route Slip.doc AE00 Multi Vio AO Cover Letter 090605T.doc AMAFCA AO.doc

Mike Michaud
Associate Director for Water Enforcement
Compliance Assurance and Enforcement Division
Water Enforcement Branch
EPA, Region 6
214-665-2722

---- Forwarded by Michael Michaud/R6/USEPA/US on 05/12/2008 03:07 PM ----

Scott McDonald/R6/USEPA/US

05/08/2008 09:05 PM

To Carol Peters/R6/USEPA/US@EPA, Michael Michaud/R6/USEPA/US@EPA

cc Darlene Whitten-Hill/R6/USEPA/US@EPA, Jackie Samuel/R6/USEPA/US@EPA

Subject Re: Fw: ENFORCEMENT SENSITIVE - FOR DD'S SIGNATURE - AMAFCA AO

I have reviewed and made comments. Now forwarding to Mike -
Scott

Carol Peters/R6/USEPA/US

Carol Peters/R6/USEPA/US
05/08/2008 02:16 PM

To Scott McDonald/R6/USEPA/US@EPA
cc Darlene Whitten-Hill/R6/USEPA/US@EPA, Jackie Samuel/R6/USEPA/US@EPA
Subject Fw: ENFORCEMENT SENSITIVE - FOR DD'S SIGNATURE - AMAFCA AO

Carol Peters-Wagnon
6EN-WM
214/665-3145

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----- Forwarded by Carol Peters/R6/USEPA/US on 05/08/2008 02:16 PM -----

Diana McDonald/R6/USEPA/US
05/08/2008 02:03 PM

To Carol Peters/R6/USEPA/US@EPA
cc
Subject Fw: ENFORCEMENT SENSITIVE - FOR DD'S SIGNATURE - AMAFCA AO

I added a Sandia Pueblo as cc to cover letter.

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

----- Forwarded by Diana McDonald/R6/USEPA/US on 05/08/2008 02:02 PM -----

Mary-Anne Mitchell/R6/USEPA/US
05/07/2008 10:43 AM

To Diana McDonald/R6/USEPA/US@EPA
cc
Subject Fw: ENFORCEMENT SENSITIVE - FOR DD'S SIGNATURE - AMAFCA AO

Particularly look at changes to Part A of Order--Thanks

----- Forwarded by Mary-Anne Mitchell/R6/USEPA/US on 05/07/2008 10:38 AM -----

Diana McDonald/R6/USEPA/US
05/06/2008 02:12 PM

To Mary-Anne Mitchell/R6/USEPA/US@EPA
cc
Subject ENFORCEMENT SENSITIVE - FOR DD'S SIGNATURE -

AMAFCA AO

H:\6EN\6EN-W\WM\McDonald\Albuquerque MS4 Audit\AMAFCA ENFORCEMENT

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

5/6/08

505-884-2215

Called John Kelly, Executive Engineer, AMAFCA, to discuss upcoming AO.

5/7/08

Called John and left a msg that I needed to give him a heads up about the AO.

5/8/08

Called Jerry - told him AO was coming. He was appalled that we were issuing an order but understood we were making a point. Said that channel was man made ~~Told him to~~ and that there wasn't a violation. Told him to wait until they got the order, then respond to it - that would be best. He said OK.

5/16/08

Scott McDonald/R6/USEPA/US
05/02/2008 05:47 PM

To Diana McDonald/R6/USEPA/US@EPA
cc
bcc
Subject Fw: CWA Question?

Re: AMAFCA

---- Forwarded by Scott McDonald/R6/USEPA/US on 05/02/2008 05:49 PM ----

Peter Stokely/DC/USEPA/US
03/12/2008 08:00 AM

To Scott McDonald/R6/USEPA/US@EPA
cc Donna Downing/DC/USEPA/US@EPA, Mark Ryan/R10/USEPA/US@EPA
Subject Re: CWA Question?

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But as you know I am not a lawyer, and I am not aware of any case law that addresses this (to answer your question).

Pete

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XXXXXXXXXXXXXXXXXXXXXXX
Peter Stokely
Environmental Protection Agency
Office of Civil Enforcement
1200 Pennsylvania Ave. NW
ARS Room 4110A
Washington, DC 20460
Mail Code 2243A
ph 202-564-1841
fax 202-564-0018
XXXXXXXXXXXXXXXXXXXXXXX

"Verhage, Kathleen M."
<kverhage@cabq.gov>
05/01/2008 05:50 PM

To Diana McDonald/R6/USEPA/US@EPA
cc
bcc
Subject RE: 2004 fish kill

Hi Diana-
I hope that Jerry has gotten back to you. The only documentation that I can find is the report form Fish and Wildlife to the USGS that a fish kill had occurred.

My understanding of the situation is the same. I thought that Jerry had mentioned something about a small storm which happened to be the first storm of the season, flushing high COD water into the channel which made the DO drop. None the less, the DO did drop low and the fish died.

Jerry mentioned that AMAFCA did some DO testing in the channel last summer. I don't have that data but he should.

Kathy

-----Original Message-----
From: Mcdonald.Diana@epamail.epa.gov
[mailto:Mcdonald.Diana@epamail.epa.gov]
Sent: Thursday, May 01, 2008 8:16 AM
To: Verhage, Kathleen M.; jlovato@amaca.org
Subject: 2004 fish kill

Good morning, Kathy and Jerry -

I am reviewing files and I can't find any documentation on the 2004 fish kill in the North Diversion Channel. I'd appreciate anything you have on that. If you could send it electronically, that would be great. It is my understanding that the water in the channel was high, the fish swam into the "bathtub" , then the water went down trapping the fish. The DO went real low and the fish died. Then the water level went back up and the dead fish were swept to the Rio Grande? Is that your understanding?

Diana McDonald
R6 Storm Water Enforcement
NM Storm Water Coordinator
(214) 665-7495

FishandWildlifeMemo.pdf

4/30/08

NPDES Stormwater (2:56:28 PM): Taylor, do you remember the timeframe of when AMAFCA had the fishkill in Sandia's Rio Grande waters? I'm writing an AO telling them to fix the "bathtub" and I can't find any record of it in the files.

taylor0126 (2:58:12 PM): Chuck Caruso with the City of Albuquerque phoned about a fish kill and his phone call was 5/16/2005 and his phone is 505-768-3654. We met with Loren Meinz with Amafca on 6/15/1996 out in Albuquerque.

NPDES Stormwater (2:59:27 PM): Chuck retired but he may still be there. You didn't write him an AO or anything, did you?

taylor0126 (3:00:39 PM): I think all we found was a fish kill, but could not find a specific NPDES violation

NPDES Stormwater (3:01:19 PM): Do you remember if there was any documentation? Was the kill in 2005?

taylor0126 (3:03:18 PM): Scott Bulgrin with the Pueblo of Sandia Tribal Environmental offices has the details about the June 17, 2004 fish kill in the North Diversion Channel. He also had questions about non-compliance with Rio Ranch WWTP #3. Scott's # is 505-771-5081

NPDES Stormwater (3:04:49 PM): Thanks. Are your phone records the only records we have?

taylor0126 (3:06:28 PM): I show no inspection records

taylor0126 (3:06:39 PM): You may check the Albuquerque MS4 permit file

taylor0126 (3:06:52 PM): I don't have anything down here

NPDES Stormwater (3:07:14 PM): I gone through everything in that file. I'm trying to find Dell's 2004 violation summary log now.

taylor0126 (3:08:51 PM): basically, there was no point source violation we could find and the main reason for the fish kill was when the water was high, the fish came into the basin and then when it went down, the basin was cut off from the river and the DO went real low and the fish died.

taylor0126 (3:09:10 PM): It wasn't a matter of the SW from the MS4 having too many nutrients or something like that

taylor0126 (3:09:48 PM): but it sure isn't a pretty site and we were hoping to encourage them to design a system that kept the flow going instead of holdling it in the basin

taylor0126 (3:10:00 PM): however, any such work would be real expensive

taylor0126 (3:10:18 PM): and as it was, we weren't going after MS4 then and I know we may do that now

taylor0126 went idle at 3:20:29 PM.

NPDES Stormwater (3:25:39 PM): When we did the audit, we went out to the basin. Scott met us there and they (AMAFCA and Scott) talked about doing something with it, but AMAFCA hasn't. Now we're going to tell them to do whatever and send us a schedule for doing it. At least you had the date of the fishkill. When I draft the AO, would you take a look at it?

NPDES Stormwater (3:26:07 PM): I thought maybe they had put it in one of their annual reports, but, no, no such luck!

Carol Peters/R6/USEPA/US
03/12/2008 04:55 PM

To Robert Houston/R6/USEPA/US@EPA
cc Diana McDonald/R6/USEPA/US@EPA, Michael Michaud/R6/USEPA/US@EPA
bcc
Subject Fw: AMAFCA - pit under railroad bridge in industrial canal

maybe include as part of the SSO case?

Carol Peters-Wagnon
6EN-WM
214/665-3145

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----- Forwarded by Carol Peters/R6/USEPA/US on 03/12/2008 04:54 PM -----

Scott McDonald/R6/USEPA/US
03/12/2008 04:48 PM

To Michael Michaud/R6/USEPA/US@EPA, Carol Peters/R6/USEPA/US@EPA, Stephen Gilrein/R6/USEPA/US@EPA
cc
Subject AMAFCA - pit under railroad bridge in industrial canal

I sent an e-mail to our OECA-WED water contacts explaining the situation with the pooling stagnate water under the railroad bridge in the industrial canal...which discharges as a slug during heavy rainfall events, etc. I asked if they agree that R6 has legal justification for issuing an AO to AMAFCA based upon the facts. Below is Stokely's response (when Pete says "city", he means AMAFCA). I will also forward Mark Ryan's response. In addition, I discussed the issue with Joe Theis (OECA) on the phone.

Bottom line is that they feel that R6 has a sound enough argument to issue an AO. Pete answered my main question as to whether the pit-pond under the bridge acts as a "point source"? He feels that the dug-out pit causes pollutants to concentrate...and by suddenly releasing the concentration during rain events...this creates a new unpermitted point source (read below).

Mike - if you and Steve decide to issue an AO, then I will assign an attorney and explain the situation - Scott

----- Forwarded by Scott McDonald/R6/USEPA/US on 03/12/2008 04:33 PM -----

Peter Stokely/DC/USEPA/US
03/12/2008 08:00 AM

To Scott McDonald/R6/USEPA/US@EPA
cc Donna Downing/DC/USEPA/US@EPA, Mark Ryan/R10/USEPA/US@EPA
Subject Re: CWA Question?

Scott there clearly appears to be pollution entering a jurisdictional water that should be abated. I like the idea that the pit could be a point source and the city responsible for the discharge, but I have some questions about how the pit is different from the canal. Wouldn't the same quantity of pollutants make it to

the jurisdictional water without the pit the city dug? The pit may concentrate and hold pollutants, but before the pit was dug, and considering any given year, didn't the same types and quantities of pollutants run-off into the water as well? Are you arguing that the concentration and subsequent sudden release of pollutants is different (thus violates the CWA) than the "normal" yearly and more spread out discharge of pollutants that would have occurred previously? If the answer is yes the pit, by concentrating pollutants from treated waste water creates a new unpermitted point source, I'd say you have good logical argument. The remedy would be to restore canal?

But as you know I am not a lawyer, and I am not aware of any case law that addresses this (to answer your question).

Pete

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XXXXXXXXXXXXXXXXXXXXXXXX
Peter Stokely
Environmental Protection Agency
Office of Civil Enforcement
1200 Pennsylvania Ave. NW
ARS Room 4110A
Washington, DC 20460
Mail Code 2243A
ph 202-564-1841
fax 202-564-0018
XXXXXXXXXXXXXXXXXXXXXXXX

Carol Peters/R6/USEPA/US
03/12/2008 04:56 PM

To Robert Houston/R6/USEPA/US@EPA
cc Diana McDonald/R6/USEPA/US@EPA
bcc
Subject Fw: Further AMAFCA comments:

another opinion

Carol Peters-Wagnon
6EN-WM
214/665-3145

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----- Forwarded by Carol Peters/R6/USEPA/US on 03/12/2008 04:56 PM -----

Scott McDonald/R6/USEPA/US
03/12/2008 04:55 PM

To Michael Michaud/R6/USEPA/US@EPA, Carol Peters/R6/USEPA/US@EPA, Stephen Gilrein/R6/USEPA/US@EPA
cc
Subject Further AMAFCA comments:

Mark is not as supportive about issuing an AO (read below) and raises questions about rules associated with dams....but does not oppose issuing the AO.

----- Forwarded by Scott McDonald/R6/USEPA/US on 03/12/2008 04:51 PM -----

Mark Ryan/R10/USEPA/US
03/12/2008 09:23 AM

To Peter Stokely/DC/USEPA/US@EPA
cc Donna Downing/DC/USEPA/US@EPA, Scott McDonald/R6/USEPA/US@EPA, Keith Cohon/R10/USEPA/US@EPA
Subject Re: CWA Question?

This is a subtly complex problem. Pete spotted the main issue: weren't those pollutants already there before the new hole in the ground concentrated them. Sounds just like a dam, doesn't it? Dam law (not to be confused, of course, with damn law) is not entirely uniform in its approach to this problem. Look in the Digest (attached) under Dams. You'll see that courts generally ask if the dam is simply moving things through that were already there or is it contributing something new to the river. If it's simply moving stuff through, even if in different concentrations than would naturally occur, no "addition" of a pollutant occurs. In *Consumers Power*, for example, fish parts were held to be already there as life fish before they were chopped up in the turbines - therefore no "addition" of pollutant. There is a more recent case out of Oregon that deals with dams effects on temperature that is somewhat at odds with *Consumers Power*. The problem is, we're bastardized CWA to make dams exempt. It started with the Gorsuch administration in the early 1980's, and we've been trying to come to terms with that case law and policy ever since. I'm copying Keith Cohon on this email. Keith is our Regional dam expert, and he understands these issues better than anyone. He might have some other ideas.

Let's go back to Pete's question of whether the bad stuff was already in the water, and assume there is no pit under the bridge to act as a trap during low flow. In that case, all the oils and greases would simply flow through to the downstream water. The lined waterway, which used to be natural, may be a WOUS. If so, any discharges from it would not be a point source discharge. The point source would be the spot where the O&G enters the waterway. If the waterway is not a WOUS, arguably the point were the waterway enters the downstream natural river would be the point source.

Good luck.
-Mark

cwa digest.wpd

Mark A. Ryan
Senior Enforcement Counsel
U.S. EPA, Idaho Office
1435 N. Orchard St.
Boise, ID 83706
phone: (208) 378-5768, fax: (208) 378-5744

Peter Stokely/DC/USEPA/US

Peter Stokely/DC/USEPA/US
03/12/2008 07:00 AM

To Scott McDonald/R6/USEPA/US@EPA
cc Donna Downing/DC/USEPA/US@EPA, Mark Ryan/R10/USEPA/US@EPA
Subject Re: CWA Question?

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Pete

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Environmental Protection Agency

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Washington, DC 20460
Mail Code 2243A
ph 202-564-1841
fax 202-564-0018
XXXXXXXXXXXXXXXXXXXXXXXX

Carol Peters/R6/USEPA/US
03/12/2008 04:52 PM

To Diana McDonald/R6/USEPA/US@EPA
cc
bcc
Subject Fw: AMAFCA - pit under railroad bridge in industrial canal

Carol Peters-Wagnon
6EN-WM
214/665-3145

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Scott McDonald/R6/USEPA/US
03/12/2008 04:48 PM

To Michael Michaud/R6/USEPA/US@EPA, Carol Peters/R6/USEPA/US@EPA, Stephen Gilrein/R6/USEPA/US@EPA
cc
Subject AMAFCA - pit under railroad bridge in industrial canal

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03/12/2008 08:00 AM

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cc Donna Downing/DC/USEPA/US@EPA, Mark Ryan/R10/USEPA/US@EPA
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fax 202-564-0018
XXXXXXXXXXXXXXXXXXXXXXX

CITY OF ALBUQUERQUE

January 15, 2008

Permit file

U.S. EPA, Region 6
NPDES Permits and Technical Section
6WQ-PP
ATTN: Ms. Denise Hamilton
1445 Ross Avenue
Dallas, Texas 75202-2733

RE: Albuquerque Municipal Separate Storm Sewer System Permit No. NMS000101

A compact disk (CD) containing an electronic copy of the City of Albuquerque's (COA) and the Albuquerque Metropolitan Flood Control Authority's (AMAFCA) Storm Water Management Plan (SWMP) is included with this correspondence. A CD containing progress reports and annual reports is also attached. It appears that very few changes were made to the SWMP once it was submitted to the EPA in 2004. A hard copy detailing changes to our Development Process Manual (DPM) that address Post-Construction runoff controls is also attached.

Let me know if you need any additional information. You can contact me by phone at (505) 768-3654 or by email at kverhage@cabq.gov.

Sincerely,

Kathy Verhage

Kathy Verhage, P.E.
Storm Drainage Section
Engineering Division, DMD

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

1/2/08

Brent brought me letter from Sandia re: us not sending them copy of Albuquerque audit. After much discussion Brent and I decided to thank them for pointing the discrepancy and send them our a copy.

I remember a discussion I had with Scott Bulgarian (misp) where I told him I thought he would have to ask for reports like anybody else. But Denise told him they'll (WQ) send him a copy.

When report was sent out, it was concurred on by Denise & Willie, without sending Sandia a copy. Mike signed it.

Copy mailed to Governor Montoya and Alex - no cover letter.