

Statutory and Regulatory Framework

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2 1. Under Section 301(a) of the CWA, it is unlawful for any person to discharge any
3 pollutant, including dredged or fill material, from a point source into any water of the United
4 States without a permit issued under the CWA. 33 U.S.C. §1311(a).
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6 2. Section 404 of the CWA, 33 U.S.C. §1344, and its implementing regulations at 33
7 C.F.R. Part 323 establish a permit program regulating the discharge of dredged or fill material
8 into “navigable waters.” Under this program, the Army Corps of Engineers (the “Corps”) has
9 been delegated the authority to issue permits for the discharge of dredged or fill material. 33
10 U.S.C. §1344.
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12 3. The term “person” is defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5), to
13 include, inter alia, a corporation.
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15 4. The term “discharge of a pollutant” includes any addition of any pollutant to waters of
16 the United States from any point source under Section 502(12) of the CWA, 33 U.S.C.
17 §1362(12).
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19 5. Under Section 502(6) of the CWA, “pollutant” means, among other things, “dredged
20 spoil, solid waste, biological materials, rock and sand,” 33 U.S.C. § 1362(6), and includes
21 “dredged material” and “fill material” as defined by 33 C.F.R. § 323.2(e).
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23 6. “Navigable waters” means “the waters of the United States” under Section 502(7) of
24 the CWA, 33 U.S.C. § 1362(7). The Corps and EPA regulations further define “waters of the
25 United States” to include, inter alia: (i) all waters which are currently used, were used in the past,
26 or may be susceptible to use in interstate or foreign commerce; and (ii) tributaries to such waters.
27 33 C.F.R. § 328.3(a)(1) and (5) (Corps regulations); 40 C.F.R. § 230.3(s)(1) and (5) (EPA
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1 regulations).

2 7. "Point source" means "any discernible, confined and discrete conveyance . . . from
3 which pollutants are or may be discharged" under Section 502(14) of the CWA, 33 U.S.C. §
4 1362(14).
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6 8. Section 309(g) of the CWA authorizes EPA to assess an administrative civil penalty
7 against any person who violates any requirement of the CWA. 33 U.S.C. § 1319(g). EPA has
8 classified this action as a Class II proceeding under Section 309(g)(2)(B) of the CWA. 33 U.S.C.
9 § 1319(g)(2)(B).
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11 9. Under Section 309(g)(2)(B) of the CWA, Respondent is liable for the administrative
12 assessment of a penalty of not more than \$11,000 for each day of violation, up to a maximum
13 administrative penalty of \$157,500 for violations after March 15, 2004. 33 U.S.C.
14 §1319(g)(2)(B); 40 C.F.R. §19.4.

15 10. Each day that a person discharges dredged or fill material into waters of the United
16 States without a Section 404 permit and allows such fill to remain in place constitutes a separate
17 day of violation of the CWA.
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19 11. Under Section 309(g)(3) of the CWA, in assessing a penalty, EPA must take into
20 account (1) the nature, circumstances, extent and gravity of the violations, and, with respect to
21 the violator, (2) ability to pay, (3) any prior history of CWA violations, (4) the degree of
22 culpability, (5) the economic benefit or savings (if any) resulting from the violations, and (6)
23 such other matters as justice may require. 33 U.S.C. §1319(g)(3).
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Factual Background

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2 12. Muranaka Farm, Inc. (“Respondent”) is a California corporation engaged in the
3 business of agricultural production.

4 13. Respondent owns property located at Longitude -118.97, Latitude 34.26 and
5 Assessor’s Parcel #1630020785, in Ventura County, California, with the address 11018 E. Los
6 Angeles Ave., Moorpark, California (“the Property”).

7 14. The area of concern within the Property (“the Site”) is the portion of Calleguas
8 Creek, also referred to as Arroyo Las Posas, that runs through the parcel.

9 15. Calleguas Creek drains the 343-square-mile Calleguas Creek watershed. It flows
10 perennially for the stretch upstream of the Site to approximately 1.6 miles downstream from the
11 Site, then flows intermittently for the next 5 miles to its confluence with Conejo Creek. There it
12 resumes perennial flows for the remaining 7.1 miles before joining Revelon Slough near the
13 entrance to Mugu Lagoon. Both Mugu Lagoon and the lowermost reach of Calleguas Creek are
14 subject to the ebb and flow of the tide from the Pacific Ocean.

15 16. The Site is at a broad bend in Calleguas Creek. Aerial photographs taken of the Site
16 between 1999 and 2005 show a relatively stable configuration of Calleguas Creek at the Site,
17 with the low flow channel along the south bank and an extensive braided-channel topography
18 along the north bank. The aerial photographs show evidence of surface flows through some of
19 the braided channels.

20 17. On March 2, 2005, the Corps received an application from the Respondent requesting
21 emergency authorization to perform work at the Site under Regional General Permit (RGP) No.

22 63. The proposed emergency repairs included the installation of a rock groin and the placement
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1 of rip-rap on the slope below a barn located at the downstream end of the Property. Respondent
2 also proposed to move sand and debris piles approximately 30 feet to the north to re-establish the
3 pre-flood (i.e., 2004) flow line of Calleguas Creek.
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5 18. On March 8, 2005, the Corps issued authorization under RGP No. 63 for
6 Respondent to construct emergency bank protection, including a rock groin structure and rock
7 slope protection in the vicinity of Respondent's barn, and to push accumulated debris and sand
8 along approximately 1,500 linear feet within Calleguas Creek, consistent with the information
9 provided in the application (File No. 200500890-AJS).
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11 19. On August 22, 2005, the Corps authorized Respondent to reclaim eroded upland
12 property along Calleguas Creek under Nationwide Permit No. 3 for Maintenance Activities (No.
13 200500893-AJS). A description of the project was included in the requisite CWA Section 401
14 Water Quality Certification for the Respondent's permit. According to this certification, the
15 project was restricted to 585 linear feet of the Creek in the vicinity of the Respondent's barn and
16 would impact 0.08 acre of waters of the United States.
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18 20. In May 2006, the Corps visited the Site and photographed an earthen berm and
19 agricultural field constructed within and adjacent to Calleguas Creek.
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21 21. On November 11, 2006, EPA, accompanied by the Corps and Respondent's
22 representatives, inspected the Site. EPA observed and photographed an earthen berm extending
23 for approximately 2,760 linear feet within the braided channel area of Calleguas Creek. Behind
24 the berm, EPA observed and photographed an area that had been cleared and leveled to prepare
25 an agricultural field, a portion of which was in production.
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27 22. Based on EPA's field observations on November 11, 2006, aerial photographs of the
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1 Site between 1999 and 2005, and channel cross sections at the Site from 2001, EPA estimates
2 that the construction of the berm and agricultural field resulted in the filling of approximately
3 11.8 acres of the braided channel of Calleguas Creek.
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5 23. On November 7, 2007, EPA issued a Finding of Violation and Order for Compliance
6 under Sections 308 and 309(a) of the Act. The Order required Respondent to implement a
7 removal and restoration plan to remove and legally dispose of the unauthorized material and
8 restore the affected area of the Calleguas Creek to its pre-disturbance (i.e., 2004) channel and
9 associated floodplain dimensions and configuration.
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11 24. Respondent's discharges of sand, other earthen materials, and vegetative debris into
12 Calleguas Creek have adversely affected the Creek's natural floodplain functions and have
13 increased the potential for erosion of the banks of nearby properties.
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15 25. By removing the vegetation and braided channel topography, Respondent's fill
16 activities have reduced the capacity for sediment deposition at the Site. The discharges caused a
17 narrowed and simplified channel area that further increases the rate and amount of sediment
18 discharged downstream.
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20 26. Calleguas Creek and Mugu Lagoon are both on the CWA Section 303(d) list of
21 impaired water bodies for a variety of pollutants, including sediment and DDT/DDE. The only
22 natural mechanism for removing sediment and DDE from the watershed is through the
23 occasional flushing of Mugu Lagoon to the Pacific Ocean during high flow events. Between
24 these episodic flushing events, accelerated sediment deposition and DDE contamination in Mugu
25 Lagoon have adversely impacted the entire food chain, resulting in the documented thinning of
26 eggshells of light-footed clapper rail and California least tern, both federally listed endangered
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1 species.

2 27. Prior to the discharges, the Site supported rather extensive patches of mixed willow,
3 mulefat, and giant reed plant communities. The removal of this vegetation has degraded habitat
4 for characteristic animals and reduced the interspersed and connectivity of these habitats along
5 Calleguas Creek.
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7 FINDINGS OF VIOLATION

8 The Director of the Water Division of EPA, Region 9 finds that Respondent is in
9 violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a), based on the following findings:
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11 28. Respondent is a "person" under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12 29. Calleguas Creek is a "water of the United States" under Section 502(7) of the CWA,
13 33 U.S.C. § 1362(7), and its implementing regulations. The tidally influenced Calleguas Creek,
14 along with Mugu Lagoon and the Pacific Ocean, are "waters of the United States" under 33
15 C.F.R. § 328.3(a)(1) and 40 C.F.R. § 230.3(s)(1). In addition, as a tributary to such waters,
16 Calleguas Creek is a "water of the United States" under 33 C.F.R. § 328.3(a)(5) and 40 C.F.R. §
17 230.3(s)(5).
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19 30. The sand and vegetative materials placed or caused to be placed in Calleguas Creek
20 are "dredged material(s)" and/or "fill material(s)" under 33 C.F.R. § 323.2(e) and Section 404 of
21 the CWA, 33 U.S.C. § 1344, and "pollutant(s)" under Section 502(6) of the CWA, 33 U.S.C. §
22 1362(6).
23

24 31. The placement of dredged and/or fill material in Calleguas Creek constitutes the
25 "discharge of pollutants" under Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
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27 32. The earthmoving equipment used by Respondent to place dredged and/or fill material
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1 in Calleguas Creek is a “point source” under Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

2 33. Neither Respondent nor any other person obtained a Section 404 permit from the
3 Corps for the discharges of dredged or fill material to the waters of the United States described
4 above.

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6 34. By discharging dredged and/or fill material into waters of the United States without
7 Section 404 permit authorization, Respondent has violated Section 301(a) of the CWA, 33
8 U.S.C. § 1311(a).

9 **NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

10 35. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the
11 administrative assessment of a civil penalty in an amount not to exceed \$10,000 per day for each
12 day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the
13 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations
14 that occurred after March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation,
15 up to a maximum penalty of \$157,500.

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17 36. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the
18 CWA, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a
19 civil administrative penalty in the amount of \$75,000 (seventy five thousand) against
20 Respondent.

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22 37. EPA proposes the penalty in paragraph 36 based upon the facts stated in this
23 Complaint, the nature, circumstances, extent, and gravity of violations, Respondent’s ability to
24 pay, prior history of violations, degree of culpability, and any economic benefit or savings
25 accruing to Respondent as a result of the violations, and such other matters as justice may
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1 require.

2 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

3 38. In accordance with Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2),
4 Respondent may request, within thirty (30) days of receipt of this notice, a hearing to contest any
5 material fact contained in the Complaint or to contest the appropriateness of the proposed
6 penalty. 40 C.F.R. § 22.15(c). The procedures for such a hearing are set out in the
7 “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,
8 and the Revocation/Termination or Suspension of Permits” at 40 C.F.R. Part 22 (enclosed).
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10 39. To avoid being found in default, which constitutes an admission of all facts alleged in
11 the Complaint and a waiver of the right to hearing, Respondent must file a written Answer within
12 thirty (30) days of service of this Complaint. 40 C.F.R. § 22.17. The Answer shall clearly and
13 directly admit, deny or explain each of the factual allegations contained in the Complaint with
14 respect to which Respondent has any knowledge, or shall clearly state that Respondent has no
15 knowledge as to particular allegations in the Complaint. 40 C.F.R. § 22.15. The Answer shall
16 also state: (a) the circumstances or arguments which are alleged to constitute the grounds of
17 defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief;
18 and (d) whether a hearing is requested. 40 C.F.R. § 22.15. Respondent shall file the Answer and
19 any request for a hearing by sending it to:
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21

22 Danielle Carr
23 Regional Hearing Clerk (ORC-1)
24 U.S. EPA, Region 9
25 75 Hawthorne Street
26 San Francisco, CA 94105
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1 40. If Respondent requests a hearing, members of the public, to whom EPA is obligated
2 to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA,
3 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the
4 penalty assessment. See also 40 C.F.R. § 22.45.
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6 41. A copy of the Answer and request for a hearing and copies of all other documents
7 relating to these proceedings filed with the Regional Hearing Clerk should be sent to:

8 Marcela von Vacano
9 Assistant Regional Counsel (ORC-2)
10 U.S. EPA Region 9
11 75 Hawthorne Street
12 San Francisco, CA 94105

13 42. If Respondent fails to file a written Answer within thirty (30) days of service of this
14 Complaint, Complainant may file a motion for a Default Order Assessing Administrative
15 Penalties. 40 C.F.R. § 22.17(a). Should the Presiding Officer grant EPA's motion for a Default
16 Order, the Default Order may become a Final Order forty-five (45) days after its service. 40
17 C.F.R. §§ 22.17(c) and 22.27(c).

18 43. Any civil penalty assessed in the Default Order becomes due and payable without
19 further proceedings thirty (30) days after the Default Order becomes final under 40 C.F.R. §
20 22.27(c) and 40 C.F.R. § 22.17(d).
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22 44. Respondent's failure to pay the entire proposed penalty assessed by the Default Order
23 by its due date may result in a civil action to collect the assessed penalty, plus interest, attorney's
24 fees, cost of collection proceedings, and an additional quarterly non-payment penalty pursuant to
25 Section 309(g)(9) of the CWA. 33 U.S.C. § 1319(g)(9).
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27 45. Neither assessment nor payment of an administrative civil penalty pursuant to this
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1 matter shall affect Respondent's continuing obligation to comply with the CWA, with any other
2 federal, state or local law, and with any Order issued under Section 309(a) of the CWA, 33
3 U.S.C. § 1319(a), for the violations alleged herein.
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5 46. For proceedings pursuant to Section 309(g)(1) of the CWA, the Complainant must
6 provide the State where the violation took place an opportunity to consult before assessing a
7 penalty. Accordingly, EPA is sending a copy of this Complaint to the Los Angeles Regional
8 Water Quality Control Board.
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10 Date: 15 Sept 2008 *Alexis Strauss*
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12 Alexis Strauss
13 Director
14 Water Division
15 U.S. Environmental Protection Agency
16 Region 9
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1 Docket No. CWA-09-2008-0005

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3 CERTIFICATE OF SERVICE

4 I certify that the foregoing Class II Administrative Complaint was sent to the following
5 persons, in the manner specified, on the date below:

6 Original hand delivered: Danielle Carr
7 Regional Hearing Clerk
8 Office of Regional Counsel
9 U.S. Environmental Protection Agency,
10 Region 9
75 Hawthorne Street
San Francisco, CA 94105

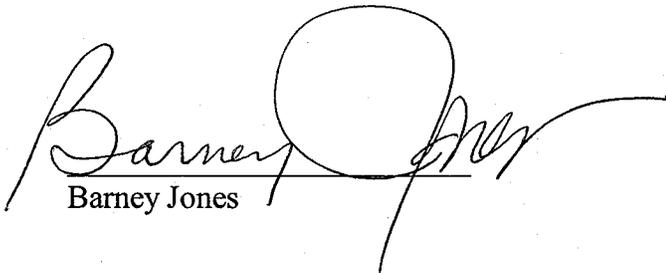
11 Authorized service
12 Copy by certified mail,
return receipt requested:

13 Kevin J. Lamb
14 Lamb & Kawakami LLP
333 South Grand Avenue, Suite 4200
Los Angeles, California 90071

15 Mr. Tom Larson
16 Muranaka Farm, Inc.
17 11018 E. Los Angeles Avenue
Moorpark, CA 93021

18 Paula Rasmussen
19 Section Chief
20 Compliance and Enforcement
21 Los Angeles Regional Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

22
23
24 Date: Sep. 16, '08


Barney Jones