

METRO & STATE

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Section B

New scrutiny of creekside developer

2 U.S. agencies looking into water, species issues in Hill Country

By Kevin Carmody

AMERICAN-STATESMAN STAFF

Two federal agencies confirmed Monday that they are investigating possible violations of the federal Clean Water and Endangered Species acts at a western Travis County residential development.

The U.S. Army Corps of Engineers issued the West Cypress Hills development a cease-and-desist order after determining that its developer violated the

Clean Water Act by filling the east branch tributary of Lick Creek without contacting the Corps or obtaining the required permit, the order states. A section of the tributary significant enough to fall under the Corps' jurisdiction was filled during construction of a large storm-water detention pond and dam, said Barry Osborn, a regulatory project manager for the Corps' office in Fort Worth.

Osborn said the investigation is not complete. His office must still determine what type of permit is required and what steps the developer might have to take, based in part on information he has asked the developer to provide.

Meanwhile, the U.S. Fish and Wildlife Service asked the developer in a March 26 letter for documentation about whether the property was a habitat for the endangered golden-cheeked warbler before land clearing started last year. If it was a warbler habitat — which exists in that area elsewhere — the developer would have been obligated to consult with the wildlife service about possible mitigation or pay a fee under the Balcones Canyonlands Conservation Plan.

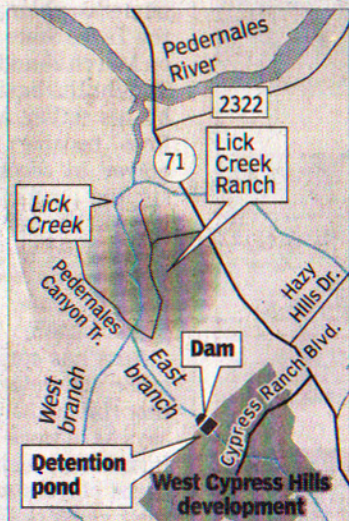
Both investigations were prompted by inquiries from downstream residents who, since last fall, have complained to various regulatory agencies

about sediment-laden water flowing from the development's dam and polluting Lick Creek. The spring-fed creek, which rivals Barton Creek in size and beauty, flows to the Pedernales River near Texas 71.

Russell Parker, developer of the planned 800-home subdivision, has said his consultants previously determined that the property was not a warbler habitat, so there was no need to consult with the wildlife service.

Even if the tract is now determined to be a warbler habitat, the wildlife service won't seek penalties unless the land

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CREEK: Developer already working to address pond, pollution issues

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clearing killed or injured the endangered bird, said Bob Pine of the service's Austin office. But Parker would be required to discuss mitigation options for uncleared areas of the property.

Ed Moore, Parker's engineer, said consultants are already examining the pond site to determine how much of the creek bed was filled, as requested by the Corps. He said that part of the tributary was dry when construction started, and he therefore believed it didn't fall under the Corps requirement for notification and a permit.

"We are applying for the permit," Moore said.

Osborn said issuing an after-the-fact permit might resolve the matter, but it is possible the developer will be required to do a mitigation project such as restoring other sections of the stream or planting vegetation. More serious penalties, which at this time don't appear likely, could include an order to restore the property to its original condition or a penalty of up to \$25,000 per day, he said.

Also Monday, several downstream residents met with

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Travis County commissioner

Parker and his staff, Travis County Commissioner Gerald Daugherty and Tom Hegemier of the Lower Colorado River Authority to discuss the next steps in trying to stop pollution of the creek.

Daugherty suggested holding meetings each month to discuss ways to address neighbors' concerns. Residents of the Lick Creek Ranch community, who have hired environmental lawyer Stuart Henry, said they were willing to participate in monthly meetings. But with the pollution problem unfixed after seven months and with questions

about whether the planned fixes will work, they could not promise to hold off on legal action, representatives said.

"The condition of the creek is obviously not acceptable to anybody," Daugherty said. "I can see where the neighbors feel they are getting stonewalled.

"I've know Rusty Parker for some time, and I'm comfortable ... Rusty will do whatever is necessary to mitigate, to fix things," Daugherty said.

Moore said that work on improvements to the detention pond, which were designed in consultation with the LCRA, could begin as soon as this week. That will include installing a pipe to reroute clean creek water around the pond, where it has been picking up sediment, and planting grass to stabilize the pond's bottom.

However, before that work begins, the development will have to get a waiver from the Corps of Engineers, because its cease-and-desist order bars any work on the pond, Corps officials said. The Corps officials said they are willing to issue that waiver to help stop the pollution.