



Washington Department of Fish & Wildlife Police Incident Report Form

Incident Number WA-13-000884		Related Case Number	
Incident Type HPA INVESTIGATION - NON-PERMITTED		Incident Occurred On/Between 2/9/2013 0930 Hrs.	
Area		Area 2	
Address 71 RIVER ROAD		Address 2 / X-Street	
City TAHUYA	State WA	County MASON	Zip Code 98588
INVOLVED PERSON(S)			
<u>Involvement</u> SUSPECT		Names (Last, First Middle) CAYO, WILLIAM KENNETH	
[REDACTED]	<u>St</u> WA	<u>DOB</u> 4/21/1959	<u>Age</u> 55
<u>Phone</u> (360) 275-2531			
Address 71 RIVERROAD TAHUYA WA 98588		Address 2	
Race	Sex MALE	<u>Height</u> 5-11	<u>Weight</u> 220 lbs
		<u>Hair</u>	<u>Eyes</u> HAZEL
Comment			
WDFW OFFICERS			
Primary Officer JASON CZEBOTAR		Work Address / Phone DEPARTMENT OF FISH & WILDLIFE 48 DEVONSHIRE ROAD MONTESANO WA 98563 360-271-4265	
Assisting Officer DENNIS FLOWERS		Work Address / Phone DEPARTMENT OF FISH & WILDLIFE 48 DEVONSHIRE ROAD MONTESANO WA 98563 360-463-6284	



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CITATIONS / REFERRALS / WARNINGS

Citation Number / Referral Type C41576	Date Issued 2/9/2013	Officer JASON CZEBOTAR	County MASON
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Violator - Individual (Last, First Middle)

CAYO WILLIAM KENNETH

Violator - Business

RCW 77.15.300	WAC NONE	Violation UNLAWFUL HYDRAULIC PROJECT ACTVTIES	Species NONE
RCW	WAC	Violation	Species
RCW	WAC	Violation	Species
RCW	WAC	Violation	Species
RCW	WAC	Violation	Species

Comment

Citation Number / Referral Type REFERRED	Date Issued 10/14/2014	Officer JASON CZEBOTAR	County MASON
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Violator - Individual (Last, First Middle)

CAYO WILLIAM KENNETH

Violator - Business

RCW 90.58.220	WAC NONE	Violation SHORELINE MGMT ACT VIOLATION	Species NONE
RCW 90.48.140	WAC NONE	Violation UNLAWFUL WATER POLLUTION	Species
RCW	WAC	Violation	Species
RCW	WAC	Violation	Species
RCW	WAC	Violation	Species

Comment



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PROBABLE CAUSE STATEMENT

Created by: JASON CZEBOTAR

Date Created: 10/14/2014

On or about February 8 through the 9, 2013, Mr. William Cayo did operate an excavator and diverted the Tahuya River from the original river channel. Changing the bed or flow of the waters of the State does require an Hydraulics Project Approval (HPA) permit. Mr. Cayo did not have a valid Hydraulics Project Approval (HPA) permit. The Tahuya River is waters of the State. In addition, the project as it-self, the matter in which he conducted the work, and the time frame in which he conducted the work all would not have been approved to be permitted by the Washington Department of Fish and Wildlife.

Although it is possible for Mr. Cayo to own the property under the water, and on both sides of the water, it does not allow for him to move the waters of the State and divert the river. The water, resources, and fish in the water are property of the State.

RCW 77.15.300.1a states that a person is guilty of unlawfully undertaking a hydraulic project activities if the person constructs an form of hydraulic project or performs other work on a hydraulic project and fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work.

The Tahuya River is classified as shorelines of the State. Any work to the Shorelines of the State requires shoreline permit from Mason County. Mason County has a shoreline management program and do have rules, regulations, and a permitting process in order to conduct work on State shorelines. Mr. Cayo did not obtain any permits from the county or the state to conduct the work.

RCW 90.58.220 states that any person willfully engaged in the activities on the shorelines of the State in violation of the provisions of this chapter of any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor.

When conducting a site visit on February 14, 2013, I did not observe any measures to control and prevent sediment to reach the Tahuya River. Washington Department of Fish and Wildlife area habitat biologist, Amy Spoon stated in a violation report that the construction activity impaired water quality by introducing silt to the river at the site as well as down stream. The suspended sediment settles into the gravel bed suffocating and preventing the emergence of salmonids and other small fish. The environmental impacts from the disruption of the river bed and the sediment that was introduced at the time of the construction and the sediment that is continuing to be introduced into the river from the unprotected river bank are hard to quantify. Salmon have a three to four year life cycle and return to the stream they originated from. The impacts to wild fish populations from the Tahuya River may not be felt until 2016-2017 fish runs. February is after the spawning season for salmon, and at the emergence phase of Salmon (which generally occurs in January and February).

RCW 90.48.080 states that it is unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this State, or to cause, permit or suffer to be thrown, run, drained, allowed to seep, or otherwise discharge into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department (Department of Ecology).

Due to the fact that Mr. Cayo did in fact change and disrupt the shorelines of the State by changing and altering the channel of the Tahuya River without a permit or authorization from Mason County or the State, I



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PROBABLE CAUSE STATEMENT

have probable to believe Mr. Cayo did commit a violation under RCW 90.58.220 General Penalty (Shorelines of the State).

Due to the fact that Mr. Cayo did conduct a hydraulic project activity requiring a HPA permit, and did not have a HPA permit, I have probable cause to believe that Mr. Cayo did commit a violation under RCW 77.15.300 Unlawful Hydraulic Project Activities.

Due to the fact that Mr. Cayo did introduce sediment, dirt, and sand into the Tahuya River I have probable cause to believe that Mr. Cayo did commit a violation under RCW 90.48.080 Discharge of Polluting Matter in Waters Prohibited.

ADMONITION

I Certify under penalty of perjury under the laws of the State of Washington that all the statements made herein are true and accurate and that I entered my authorized user ID and password to authenticate it. (RCW 9A.72.085)

JASON CZEBOTAR

Officer Electronic Signature

KITSAP AND N.MASON COUNTY

Location

W178

Badge #

10/14/2014

Date



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NARRATIVE

Created by: **JASON CZEBOTAR**

Date Created: **10/13/2014**

On February 9, 2013, at approximately 0930 hours, Washington State Patrol notified Officer Flowers of a hydraulics violation in progress located at 71 NE River Road in Mason County. Officer Flowers responded to the scene and contacted Mr. William Cayo Sr. Mr. Cayo was operating the equipment and was moving gravel and dirt in order to divert the Tahuya River. When Officer Flowers arrived he observed one excavator and one bulldozer on the river gravel bar. Officer Flowers observed Mr. Cayo actively operating the excavator.

Officer Flowers asked Mr. Cayo if he had an HPA permit for any of the work that was conducted on and along the Tahuya River. Mr. Cayo responded by stating that it was his property and he did not need any permits to do the work he was doing. Officer Flowers explained to Mr. Cayo that in fact he did need to have at least an HPA permit in order to conduct the type of work that he was currently doing. Officer Flowers recommended that Mr. Cayo stop the working in on the river gravel bar and left the scene. Mr. Cayo stated that he had lost a residence to the river before, and he was not going to have it happen again. He stated several times that he did not need any permits to protect his home.

Officer Flowers attempted to explain to Mr. Cayo the Department of Fish and Wildlife will work with him to get him through the permitting process. In addition, if there is an immediate threat to a building, the Department can issue expedited permits in order to protect the property. Mr. Cayo stated numerous times that he didn't need any permits because it was his property.

On February 14, 2013, at approximately 1030 hours, Biologist Amy Spoon and I drove out to the site to take a look at the work that was done. We did not access the property but was able to view it from the roadway. Ms. Spoon stated that project fell under the classification of an HPA project because it effected the bed and flow of waters of the State. She stated there was no permit issued for the project or to the property owner Mr. Cayo, the subject conducting the work at the time of contact.

The Tahuya River is classified as shorelines of the State. The Tahuya River is a fish bearing stream. The water is regulated by the State. Any project that will effect the bed or flow of waters of the State requires a hydraulics project activities (HPA) permit. WDFW is charged with the protection of fish and fish habitat. In order to ensure projects will not have a negative overall effect on fish habitat, the permits set guidelines on the type of work to be done, work windows, how the work shall be conducted, and any sediment or erosion control methods that must be taken. Each project and location is different, because of that fact standard sets of regulations cannot be applied across the State in every project. Each project must submit an application describing the work that is to be done. The local habitat biologist will then evaluate the project and determine what affects the project will have on fish habitat, and what restrictions and mitigation plans need to be conducted to ensure a net loss of zero habitat. If a project is outside of the scope of what can be permitted, it is denied an approval. By statue, a permit cannot be issued for work that has already been completed.

The biologists do take into consideration impacts on personal property if a project is not done. In the case where property is in immediate danger, the process is expedited. This could even take the form of a verbal approval followed up later with a written permit.

Mr. Cayo did effect the bed and flow of the Tahuya River (waters of the State), and did not have a permit.



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NARRATIVE

Due to the fact that Mr. Cayo did conduct a hydraulic project activity requiring a HPA permit, and did not have a HPA permit, I have probable cause to refer the charge of 77.15.300 Unlawful Hydraulic Project Activities to the Mason County Prosecutor. I referred this report to the prosecutors office for a charging decision.

ADMONITION

I Certify under penalty of perjury under the laws of the State of Washington that all the statements made herein are true and accurate and that I entered my authorized user ID and password to authenticate it. (RCW 9A.72.085)

JASON CZEBOTAR

Officer Electronic Signature

KITSAP AND N.MASON COUNTY

Location

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SUPPLEMENTAL

Created by: **DENNIS FLOWERS**

Date Created: **10/13/2014**

On February 9, 2013 at approximately 1000 hours I received a call from WSP dispatch advising of a possible HPA violation in progress on the Tahuya River. The address given for the violation was 71 River Road near the intersection with Snow Cap Drive. They also advised that the RP wished to remain anonymous and had stated that the activity has been going on for several days if not longer.

I was working in the Puyallup area with a civilian rider at the time of the call and due to the delayed reporting time for the activity and my previous current commitment I did not respond to the area until just after 1100 hours. We arrived at the address around 1230 hours at which time I observed a large excavator and a smaller bulldozer working on the gravel bar of the river in front of the address given. I parked and walked down toward the river making contact with 2 men sitting in front of the residence. I asked who was in charge and they advised that it was Bill, the home owner, and they pointed to the man on the excavator. I walked out to where the excavator was working and the man stopped his work. I identified myself as a Fish and Wildlife Officer and asked if he had a permit for the work being done. The man huffed and replied that he did not need a permit to work on his property. I asked who he was and he identified himself as Bill Cayo the property owner. I advised that a permit was required whenever any work was done in or near the river. Mr. Cayo said that he had already lost 1 home to the river, pointing to a place well within the current river channel, and that he did not intend to loose another home. I advised several times that a permit was required and that he could potentially face criminal and or civil action if he continued to work without acquiring the proper permit. Mr. Cayo calmly replied that he had nothing to loose besides his home and that I could do what ever to this, referring to himself, old man that has already suffered several heart attacks recently. He claimed that he had attempted to get help with the erosion issue but that no one would help him or his neighbors. I asked when and who he had contacted for help but he did not offer any response to those questions. He advised that he was going to finish moving the piles of gravel to shore up the bank in front of his home and that he was not going into the river.

At this time I returned to my patrol vehicle and contacted Sgt. Jackson. We discussed several options to the situation. I advised that no work was currently being performed in the free flowing water and that there was no siltation currently taking place and hence I believed the majority of potential damage was already done. I returned and contacted Mr. Cayo again stressing that he needed to acquire a permit. I added that I have known WDFW to expedite permits when there is an eminent threat to buildings, especially homes. He essentially advised that he was tied of asking for help and he was going to finish his work.

At this time I took several photographs of the work being performed and I left the immediate area. I forwarded an e-mail to WDFW staff advising them of the contact and I attached a map and several photos of the work before clearing the Tahuya area.



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ADMONITION

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DENNIS FLOWERS

Officer Electronic Signature

PIERCE COUNTY

Location

W92

Badge #

10/13/2014

Date