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Feds drop lawsuit against sand-shifting Caseville couple

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By Crystal Harmon
TIMES WRITER

The United States government has dropped a lawsuit - and the threat of a million-dollar-plus fine - against a Caseville couple who leveled sand on their beach two years ago.

"We're happy to have that 800-pound gorilla off our back," Herb Kincaid said today. "Now, Marion and I can go back to a somewhat normal life. I can't even tell you how happy we are."

"It never should have been brought in the first place," said his wife, Marion Kincaid, of the suit. "It was ridiculous. Over sand?"

The federal government sued the Kincaids last year, claiming they violated the Clean Water Act when they had the sand on their beach along M-25 leveled out by a machine in the spring of 2001.

Government attorneys warned the couple that they could be assessed fines of up to \$25,000 per day for each day that the sand had been moved and not put back where it came from.

U.S. District Judge David M. Lawson dismissed the case on Tuesday. Lawson presides at the federal district court in Bay City.

Intervention by Thomas H. Magness, commander of the U.S. Army

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Corps of Engineers Detroit District, led to the suit being dropped, said Assistant U.S. Attorney Geneva S. Halliday.

"Col. Magness asked the Department of Justice to dismiss the case," Halliday said. "He felt the Kincaids weren't going to violate in the future, and he said all he ever wanted was compliance."

The Kincaids, however, insist they never did anything wrong, and the Corps made no attempt to explain the permit process, ask them about their beach-grading efforts or resolve the issue outside of court.

The couple say they're going to seek reimbursement from the government for the \$100,000 they've spent fighting the case.

"When there's a problem, you resolve it with communication," Herb Kincaid said. "If the Corps thought we graded our beach, they could have knocked on our door and we'd have explained it to them. If we'd known about the permit, we'd have gotten it. They took pictures and everything ... why not knock on the door and talk to us?"

The Kincaids said they did have their beach graded, but not on the dates in the lawsuit. And they had the sand pushed toward their house, not into the water, Herb said.

"The government talks about the high-water mark, and that's something we never even heard of," he said.

Save Our Shoreline Inc., a nonprofit lobbying group representing beach-front property owners, helped the Kincaids with their legal expenses.

"They are really dedicated people and we are very grateful for all they did for us," Herb Kincaid said.

The government settled two similar suits against Bangor Township residents last year, with the defendants paying \$1,000 and agreeing not to violate federal beach rules.

But the Kincaids said they were holding out for an outright dismissal and ignored settlement offers.

Halliday said the dismissal of the Kincaid case clears her docket of beach-maintenance matters, at least for now.

"There are no other cases pending, and if nobody violates the Clean Water Act, we won't have to file anymore," Halliday said.

-Crystal Harmon covers courts and politics for The Times. She can be reached at 894-9643.

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