October 26, 2011

Ms. Cyndi Tuell
Southwest Conservation Advocate
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702

Via e-mail to: ctuell@biologicaldiversity.org

Dear Ms. Tuell:

This letter is to acknowledge and respond to your Freedom of Information Act request for a copy of “correspondence between the Army Corps of Engineers and Catron County Commission (New Mexico), specifically, notices of violation or cease and desist orders in regards to the San Francisco River.”

Your FOIA request was received by our office on Wednesday, October 12, 2011 via e-mail. Our office has located the requested information. No information has been withheld due to any exemptions.

The FOIA provides for three categories of requesters: 1) commercial use requesters; 2) educational institutions, noncommercial scientific institutions, and representatives of the news; and 3) all requesters who do not fall within either of the preceding two categories. You fall under category 3 and because the search time did not exceed two hours, you will not be charged search fees for this request. In addition, there are no duplication fees because the documentation is less than 100 pages.

If you have any questions about this response please contact me by phone at (505) 342-3252 or by email at Regina.L.Schowalter@usace.army.mil and I will be happy to clarify any issues or answer any questions you have. If you think we have not been responsive to your request, you have the right to appeal this determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. The Army General Counsel must receive your appeal no later than 60 calendar days after the date of this letter for the appeal to be timely. Your appeal should state the basis for your disagreement with this response and include a copy of this response. Address your appeal to: U.S. Army Corps of Engineers, Albuquerque District, CESPA-OC, Freedom of Information Act Appeal 4101 Jefferson Plaza NE, Albuquerque, New Mexico 87109.

Sincerely,

[Signature]

REGINA SCHOWALTER
FOIA Officer

Enclosure
DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
Las Cruces Regulatory Field Office
505 S. Main St. Suite 142
Las Cruces, New Mexico 88001
(575)-556-9939

October 11, 2011

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

ATTENTION OF:

Regulatory Division
New Mexico/Texas Branch

SUBJECT: CEASE AND DESIST ORDER Action Number SPA-2011-00442-LCO,
Unauthorized Discharge of Dredged Material into the San Francisco River, Catron County, New Mexico

Catron County Commissioners
Richard McGuire
Glyn Griffin
Hugh B. McKeen
P.O. Box 507
Reserve, New Mexico 87830

Dear Catron County Commissioners:

On August 18, 2011, a member of my staff observed that an unauthorized discharge of dredged material into waters of the United States had occurred as described below. On or about August 10, 2011 Catron County Commissioners directed the bulldozing of multiple road crossings through the San Francisco River on NFSR 32 (Catron County Historic Road 12). This activity is approximately located at Latitude 33.608114°, Longitude -108.808066°, Catron County, New Mexico. The activity is a violation of Section 301(a) of the Clean Water Act since a Department of the Army permit was not obtained pursuant to Section 404 of the Clean Water Act. This activity has been assigned Action No. SPA-2011-00442-LCO.

You are hereby directed to cease and desist all unauthorized work in waters of the United States, specifically the San Francisco River. At this time, I have determined that remedial action is not necessary to resolve this violation. If you plan any future work in waters of the United States you must consult the Corps of Engineers (Corps) to determine if a Section 404 permit is required.

Legislation provides for administrative fines as well as civil or criminal penalties for violations of the Clean Water Act. Violations of the Clean Water Act are punishable by civil
fines of up to $25,000 per day of violation, criminal fines of up to $50,000 per day of violation and/or imprisonment for up to one year.

By copy of this letter, we are soliciting the views of appropriate Federal, State, and local agencies, which may also have jurisdiction, regarding this unauthorized activity. Based upon your responses to this notice, comments received from the agencies and any available information, we will determine if any additional measures are necessary to resolve this violation of the Clean Water Act.

We look forward to your cooperation in this matter and hope to reach a resolution of your case in the near future. If you have any questions concerning this matter, please feel free to contact Richard Gatewood at (575)-556-9939 or by e-mail at richard.h.gatewood@usace.army.mil, or by mail at the above address.

Sincerely,

Allan Steinle
Chief, Regulatory Division

Copies furnished:

U.S. Attorney’s Office
New Mexico District
P.O. Box 607
Albuquerque, New Mexico 87103

U.S. Environmental Protection Agency, Region 6
Attn: Wetlands Section (6 WQ-EM)
Mr. Thomas Nystrom
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2750

U.S. Fish and Wildlife Service
Attn: Field Supervisor
Mr. Wally Murphy
2105 Osuna Road N.E.
Albuquerque, New Mexico 87113
Gila National Forest
Attn: Forest Supervisor
Ms. Kelly Russell
3005 E. Camino del Bosque
Silver City, New Mexico 88061

New Mexico Environment Department
Attn: Surface Water Quality Bureau
Mr. David Menzie
3082 32nd Street, Suite D
Silver City, New Mexico 88061