



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 900
PHOENIX, ARIZONA 85012-1939

November 20, 2009

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Division

**SUBJECT: NOTICE OF VIOLATION OF THE CLEAN WATER ACT
ENFORCEMENT CASE NO. SPL-2008-261-RJD**

Honorable David Snider
Chairman, Board of Supervisors of Pinal County
P.O. Box 827
Florence, Arizona 85132

Dear Mr. Snider:

It has been reported to me that you or your contractors on one or more occasions early in 2008 discharged dredged and fill material into the San Pedro River to improve a road crossing. The road crossing is located in Sections 8 and 17, T6S, R16E near Dudleyville, Pinal County, Arizona.

The Corps of Engineers (Corps) hopes that this problem can be resolved informally and amicably. However, you should recognize that under Sections 301 [33 U.S.C. 1311] and 404 [33 U.S.C. 1344] of the Clean Water Act and Corps regulations promulgated pursuant thereto, the discharge of dredged and/or fill material into waters of the United States is unlawful unless such discharge has been specifically authorized pursuant to Section 404 of the Act by the Secretary of the Army through a Corps permit. The potential penalties for violation of this Section include a maximum criminal fine of \$50,000 per day and imprisonment for up to three years, and a maximum civil penalty of \$25,000 per day of violation [33 U.S.C. 1319].

The Corps requests that you immediately cease all repair activities within the San Pedro River at this crossing.

You are requested to provide the following information within 30 days of the date of this letter in an attempt to rectify the alleged unauthorized activity:

- (1) Documentation that you possess the requisite property interest to have undertaken the road crossing repair work within the San Pedro River.

- (2) Aerial photographs of the area of a scale of 1"=200' or larger which indicate the extent of your property as well as your proposed jurisdictional determination of waters of the United States within your property. You may submit ground level photographs to provide documentation of any additional information you deem important.
- (3) A detailed drawing and explanation depicting the extent and frequency of the past road repair activities which should include dimensions of work, type and amount of dredged and/or fill used, and extent of any excavation and/or grading, the dates/timeframes that the activities were performed, numbers and types of equipment involved, and the purpose of the discharges. Also please indicate if you would like to conduct similar repair activities in the future after flooding the San Pedro River damages this road crossing.

Please provide the above information to:

U.S. Army Corps of Engineers
Regulatory Division, Arizona Branch
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012-1936

During the next few weeks, Arizona Branch personnel will be continuing our investigation of this activity. By copy of this letter I am requesting input from the agencies indicated on the enclosed list to facilitate this investigation and my decision on what initial corrective measures may be necessary. Once this evaluation is complete, the Corps will determine the appropriate course of action to resolve this alleged unauthorized activity.

You are cautioned that your failure to cease all unauthorized activities or to comply with the requests noted above may result in further enforcement actions. Failure to comply with this request may result in my recommendation to the United States Attorney to institute appropriate legal proceedings. Additionally, compliance with this request does not foreclose the Government's options to initiate appropriate legal action or to require the submittal of a permit application.

If you have any questions regarding this matter, please contact my project manager, Robert J. Dummer, for this case at 602-640-5385x224 or via e-mail at Robert.J.Dummer@usace.army.mil.

Sincerely,

/Original Signed By/

Sallie D. McGuire
Chief, Arizona Branch
Regulatory Division

Copies Furnished:

Ken Greenberg
Supervisor for Wetlands Enforcement
CWA Compliance Office (WTR-7)
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

Steven L. Spangle
Arizona Ecological Services Field Office
U.S. Fish and Wildlife Service
2321 West Royal Palm Road Suite 103
Phoenix, Arizona 85021-4951

Robert Scalamera
Surface Water Section, 401 Certifications
Arizona Department Water Quality
1110 West Washington Street, Mail Stop 5415A-1
Phoenix, Arizona 85007-2952

Cindy Alvarez
Bureau of Land Management
12661 East Broadway Boulevard
Tucson, Arizona 85748

Robin Silver
Center for Biological Diversity
PO Box 39629
Phoenix, Arizona 85069-9629