DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 Jefferson Plaza NE
Albuquerque, NM 87109

July 18, 2014

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

REPLY TO
ATTENTION OF:

Regulatory Division
New Mexico/Texas Branch

SUBJECT: CEASE AND DESIST ORDER Action Number SPA-2014-00328-ABQ, Virgil Vigil, Tributaries to and Santa Cruz River, La Puebla, Santa Fe County, New Mexico

Mr. Virgil Vigil
PO Box 495
Espanola, NM 87532

Dear Mr. Vigil:

Over the time period between April through July 2014, the U.S. Army, Corps of Engineers has received numerous complaints that you have caused an unauthorized discharge of fill material into waters of the United States. Specifically, you have directed fill work to be conducted by backhoe within the Santa Cruz River and any adjacent wetlands as well as conducting fill within an unnamed tributary to the Santa Cruz River in a manner to divert the flow of the tributary. These unauthorized activities are approximately located at Latitude 35.99768°, Longitude -105.98537°, and 35.99814 and -107.97910 near La Puebla, Santa Fe 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-2014-00328-ABQ.

You are hereby directed to cease and desist all work in waters of the United States, specifically the Santa Cruz River, its adjacent wetlands and tributaries. We are conducting an investigation to determine the impact of this work as it relates to the public interest and the appropriate course of action to remedy the situation. Potential enforcement actions, in addition to or in lieu of fines, penalties and imprisonment, include directing removal of the unauthorized work and restoration of the site to pre-construction conditions.

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.

Before we reach a final decision regarding the specific enforcement action for this work, you should provide the following information by August 18, 2014.

1. Circumstances regarding this project, including prior knowledge, if any, of Corps permit requirements;

2. Purpose of the activity along with a clear description of work;

3. Overall dimensions (length, width, depth, acreage, etc.) of work that occurred in waters of the United States in addition to any planned work;

4. Description of pre-construction conditions of the site;

5. Photographs of the site (pre and post construction);

6. Date(s) when the work was done;

7. Other permits (if any) issued for the work; and

8. Any other information which may be pertinent to this activity

Once I have received and evaluated your response, I will advise you of my decision regarding the appropriate resolution of this matter. In the event I have not received your response within the prescribed time, I will proceed in my decision without benefit of your comments. My decision may involve requirements for restoration of the area, submittal of an application for an after-the-fact permit, or referral of the case to the United States Attorney or the United States Environmental Protection Agency.

We are providing copies of this letter electronically to Tom Nystrom with the USEPA in Dallas, Texas, and James Hogan with the New Mexico Environment Department, Surface Water Quality Bureau. A hard copy will be provided to the US Attorney in Albuquerque.

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 contact Deanna L. Cummings of my staff at 505-342-3280 or by e-mail at Deanna.L.Cummings@usace.army.mil.

Sincerely,

for Marcy Leavitt
Chief, NM/TX Branch