



3 October 2011

Richard McGuire  
Glyn Griffin  
Hugh B. McKeen  
Catron County Commissioners  
District No.3  
P.O. Box 507  
Reserve, NM 87830

**CLEAN WATER ACT SIXTY DAY NOTICE LETTER RE:  
UNAUTHORIZED DISCHARGE OF POLLUTANTS AND FILL MATERIALS, CATRON COUNTY**

Dear Catron County Commissioners and Catron County,

This is a notice of intent to sue letter pursuant to the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365. By this letter, the Center for Biological Diversity provides notice that the persons and entities named in this letter have violated and remain in violation of the Clean Water Act. If the violations identified herein are not remedied within sixty days, the Center intends to commence an enforcement action against Catron County and the Catron County Commissioners (hereinafter collectively referred to as “Catron County”), seeking civil penalties, injunctive relief, and other appropriate relief including attorneys’ fees and costs. If you believe any of the information in this letter is incorrect, please contact the undersigned immediately.

The name, address, and phone number of the party providing this notice:

Center for Biological Diversity  
P.O. Box 710  
Tucson, Arizona 85702  
Tel: 520-623-5252

The attorney representing the party in this notice:

Cyndi C. Tuell, Attorney  
Center for Biological Diversity  
P.O. Box 710  
Tucson, Arizona 85702  
Tel: 520-623-5252 ext. 308

On or about August 11<sup>th</sup>, 2011, Catron County, using a bulldozer, backhoe or similar device, discharged fill materials at several locations along approximately 13.5 linear miles of the San Francisco River without a Clean Water Act (“CWA”) Section 402 National Pollutant Discharge Elimination System (“NPDES”) permit, and without a CWA Section 404 permit. The discharges took place at and within the San Francisco River, which is located near Reserve, New Mexico, on the Gila National Forest.

The location of the river and discharges at issue are detailed in Appendix A of this notice letter.

Under Section 301 of the CWA, 33 U.S.C. § 1311, a person may not discharge pollutants into waters of the United States unless the discharge is permitted pursuant to a legally-valid permit. Section 402 of the CWA, 33 U.S.C. § 1342, requires a permit for discharge of pollutants from point sources. Further, under Section 404 of the CWA, 33 U.S.C. § 1344, a person may not discharge dredge or fill material to waters of the United States unless authorized by a Section 404 permit. Section 404 permits are issued and administered by the U.S. Army Corps of Engineers. Any deposit of dredged or fill material into waters of the United States in the absence of coverage under a Section 404 permit is a violation of the CWA. Discharge of pollutant is defined as any addition of any pollutant to navigable waters from any source. 33 U.S.C. § 1362(12). Point sources are defined as any discernible, confined and discrete conveyance from which pollutants are discharged. 33 U.S.C. § 1362(14). Pollutant is defined to include dredged spoil, solid waste, biological materials, rock, sand, and agricultural waste. 33 U.S.C. § 1362(6).

The actions of Catron County resulted in rocks, dirt, sediment, vegetation and possibly feces from cattle entering the San Francisco River at numerous sites. *See* Appendix A, attached (e.g., . RIMG1661 showing large boulders in the river on the right side of the nearer-side of the crossing and showing a large volume of material removed from bank that was pushed into stream; RIMG1662 showing a close-up view of the debris pushed into the river shown in RIMG1661; RIMG1711 showing sand that has been pushed into the river; RIMG1748 showing debris moved from bank into river; RIMG1805 showing dirt and vegetation removed from bank and into stream). Catron County has made no effort to remove the fill material or restore the sites.

Moreover, the areas modified by Catron County have created numerous conduits for sediment to enter the San Francisco River. *See* Appendix A, attached. The Center has documented sediment entering the river from the areas modified by Catron County in numerous locations, and many additional areas were modified by Catron County. *Id.* (e.g., RIMG1876, RIMG1892, RIMG1904, RIMG1919, and RIMG1920 (close up of RIMG1919) showing area of work by Catron County on river bank with significant erosion flowing towards and into river; RIMG showing an area about 100 feet from river showing erosion flowing toward river). The result of Catron County’s actions is pollution that is continuing to enter the river from several point sources created by the County which constitute continuing and intermittent violations of the CWA. Sediment continues to enter the river whenever vehicles are driven across the river, during storm events, and as a result of normal flow of the river. These ongoing and intermittent violations of the CWA are likely to continue until such time as the sites are restored and the vegetation along the river has recovered, resulting in ongoing and recurring violations for an indefinite period of time.

The Center has documented that there are numerous additional crossings in addition to those depicted in Appendix A to this letter. In total, there are at least 47, and possibly more, separate river crossings created by Catron County's actions.

Catron County has added the area described above to its road maintenance schedule which will result in additional CWA violations. Catron County was aware of the need to obtain CWA permits prior to the actions it took on or about August 11, 2001, but failed to do so. It is therefore highly likely Catron County will again not obtain the necessary permits in the future, resulting in additional violations of the CWA.

Catron County has asserted responsibility for the actions that resulted in the CWA violations described above and has alleged responsibility for future "maintenance" of this area. The actions of Catron County have resulted in past, ongoing, and continuing violations of the CWA.

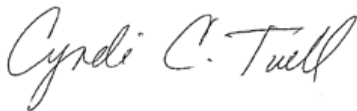
In sum, Catron County's discharge of fill materials at approximately 30 locations within 13.5 linear miles of the San Francisco River in August 2011 is not covered by either a Section 402 NPDES permit or a Section 404 dredge and fill permit, and therefore such discharges violate Section 301 of the CWA, 33 U.S.C. § 1311, Section 402 of the CWA, 33 U.S.C. § 1342, and Section 404 of the CWA, 33 U.S.C. § 1344. Each and every day that the illegal fill material remains in place constitutes a violation of the CWA. Each and every day that the point sources created by Catron County remain in place constitutes a violation of the CWA.

At a minimum, Catron County must complete full restoration of all damage and environmental harm caused by its unpermitted activity in order to come back into compliance with the CWA.

The Center for Biological Diversity will seek the statutory maximum of \$37,500 per day for each violation, including those violations occurring subsequent to this letter, plus injunctive and remedial relief, costs, attorney and expert witness fees, and such other relief as may be appropriate.

To the extent that you believe any of the information in this notice letter is inaccurate, or if you wish to further discuss this letter, the Center for Biological Diversity urges that you or your representatives contact us at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Cyndi C. Tuell". The signature is written in dark ink and is positioned above the typed name and address.

Cyndi C. Tuell, Attorney  
Center for Biological Diversity  
P.O. Box 710  
Tucson, Arizona 85702  
Tel: (520) 623-5252 ext. 308

cc: Lisa P. Jackson, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Al Armendariz, Regional Administrator  
EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

F. David Martin, Secretary of the Environment  
New Mexico Environment Department  
Harold L. Runnels Building  
1190 St. Francis Drive  
Suite N4050  
Santa Fe, New Mexico 87505

Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001

Earl Stockdale, Chief Counsel  
US Army Corps of Engineers  
441 G. Street, NW  
Washington, DC 20314-1000

Greg Stover, Investigator  
New Mexico Attorney General  
201 N. Church Street, Suite 315  
Las Cruces, New Mexico 88001

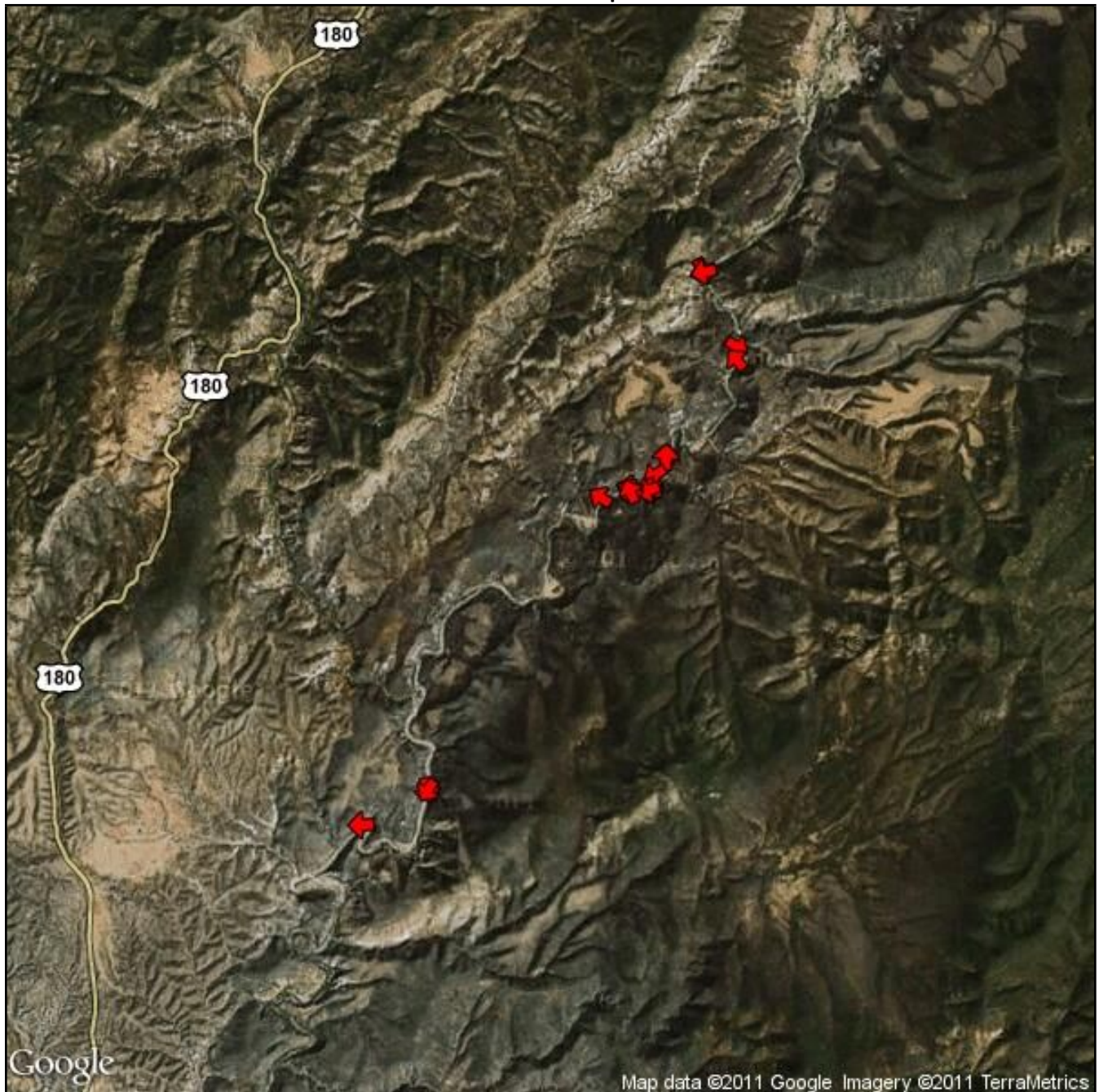
## APPENDIX A



## San Francisco River Gila National Forest

Photos By Cyndi Tuell  
August 25-26, 2011

Overview Map





RIMG1661.JPG

Title:



Attributes	
Latitude	N 33° 31' 54"
Longitude	W 108° 51' 51"
Elevation	5272 ft
Photo Direction	168° SSE
File Name	RIMG1661.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	With correction
Measurement Precision (DOP)	1.6 DOP
Map Datum	WGS-84

RIMG1662.JPG

Title:



Attributes	
Latitude	N 33° 31' 53"
Longitude	W 108° 51' 51"
Elevation	5276 ft
Photo Direction	214° SSW
File Name	RIMG1662.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	
Measurement Precision (DOP)	1.6 DOP
Map Datum	WGS-84



RIMG1711.JPG

Title:



Attributes	
Latitude	N 33° 31' 34"
Longitude	W 108° 52' 37"
Elevation	5246 ft
Photo Direction	269° W
File Name	RIMG1711.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.65 DOP
Map Datum	WGS-84

RIMG1748.JPG

Title:



Attributes	
Latitude	N 33° 36' 50"
Longitude	W 108° 48' 42"
Elevation	5600 ft
Photo Direction	153° SSE
File Name	RIMG1748.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.43 DOP
Map Datum	WGS-84



RIMG1749.JPG

Title:



Attributes	
Latitude	N 33° 36' 50"
Longitude	W 108° 48' 42"
Elevation	5600 ft
Photo Direction	153° SSE
File Name	RIMG1749.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.43 DOP
Map Datum	WGS-84

RIMG1752.JPG

Title:



Attributes	
Latitude	N 33° 36' 49"
Longitude	W 108° 48' 41"
Elevation	5591 ft
Photo Direction	258° WSW
File Name	RIMG1752.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.58 DOP
Map Datum	WGS-84



RIMG1794.JPG

Title:



Attributes	
Latitude	N 33° 36' 06"
Longitude	W 108° 48' 18"
Elevation	5499 ft
Photo Direction	120° ESE
File Name	RIMG1794.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	With correction
Measurement Precision (DOP)	1.4 DOP
Map Datum	WGS-84



RIMG1805.JPG

Title:



Attributes	
Latitude	N 33° 35' 59"
Longitude	W 108° 48' 20"
Elevation	5512 ft
Photo Direction	319° NW
File Name	RIMG1805.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.61 DOP
Map Datum	WGS-84

RIMG1876.JPG

Title:



Attributes	
Latitude	N 33° 35' 05"
Longitude	W 108° 49' 08"
Elevation	5499 ft
Photo Direction	4° N
File Name	RIMG1876.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.3 DOP
Map Datum	WGS-84



RIMG1892.JPG

Title:



Attributes	
Latitude	N 33° 34' 53"
Longitude	W 108° 49' 16"
Elevation	5495 ft
Photo Direction	238° WSW
File Name	RIMG1892.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	
Measurement Precision (DOP)	1.33 DOP
Map Datum	WGS-84

RIMG1903.JPG

Title:



Attributes	
Latitude	N 33° 34' 45"
Longitude	W 108° 49' 19"
Elevation	5469 ft
Photo Direction	281° WNW
File Name	RIMG1903.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.31 DOP
Map Datum	WGS-84



RIMG1904.JPG

Title:



Attributes	
Latitude	N 33° 34' 45"
Longitude	W 108° 49' 21"
Elevation	5466 ft
Photo Direction	250° WSW
File Name	RIMG1904.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.45 DOP
Map Datum	WGS-84



RIMG1919.JPG

Title:



Attributes	
Latitude	N 33° 34' 46"
Longitude	W 108° 49' 32"
Elevation	5705 ft
Photo Direction	281° WNW
File Name	RIMG1919.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.31 DOP
Map Datum	WGS-84

RIMG1920.JPG

Title:



Attributes	
Latitude	N 33° 34' 46"
Longitude	W 108° 49' 32"
Elevation	5466 ft
Photo Direction	298° WNW
File Name	RIMG1920.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.31 DOP
Map Datum	WGS-84



RIMG1921.JPG

Title:



Attributes	
Latitude	N 33° 34' 46"
Longitude	W 108° 49' 32"
Elevation	5479 ft
Photo Direction	338° NNW
File Name	RIMG1921.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.31 DOP
Map Datum	WGS-84

RIMG1947.JPG

Title:



Attributes	
Latitude	N 33° 34' 41"
Longitude	W 108° 49' 53"
Elevation	5325 ft
Photo Direction	303° WNW
File Name	RIMG1947.JPG
Magnetic Declination	9.9°
Status	Fixed
Measure Mode	3D
Differential	Without Correction
Measurement Precision (DOP)	1.72 DOP
Map Datum	WGS-84