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## MEMORANDUM FOR RECORD

### SUBJECT: Violation Determination

#### 1. Responsible Party / Owner and Contact Information:

Tom Villegas  
25599 WCR 4  
Hudson, Colorado 80642

**2. Project Location:** The activity is located within the Platte River, unnamed tributaries to the Platte River, and adjacent wetlands approximately centered at Latitude 41.008047°, Longitude -100.453985°, within Section 13, Township 12 N, Range 28 W, in Lincoln County, Nebraska.

#### 3. Description of the alleged Unauthorized Activity or alleged Non-compliance violation:

Based upon review of aerial imagery (google earth and digital globe) and a subsequent site visit conducted by the Corps on May 18, 2021, impacts to Waters of the United States (WOUS) have occurred without a Section 404 permit.

Mechanized equipment has been used to fill and excavate at numerous locations within the Platte River, unnamed tributaries to the Platte River, as well as, within adjacent wetlands for the construction of berms, crossings, and ponded areas in numerous locations. Total impacts are estimated to be 7.024 acres, including 0.024 acre (149-linear feet) of channel below the ordinary high water mark (OHWM) and 7.0 acre of wetlands.

#### 4. Violation Elements:

##### Elements of a Section 404 Violation:

- A. Discharge of dredged or fill material (33 CFR 323.2): Filling activities via mechanized equipment have occurred within WOUS. Filling and excavation activities have occurred in numerous locations within the Platte River, unnamed tributaries to the Platte River, and adjacent wetlands. Material was excavated using a backhoe and discharged within WOUS to construct berms, crossings, and ponded areas.
- B. Into Waters of the United States (33 CRR 328): Impacts have occurred within the channel of the Platte River, unnamed tributaries to the Platte River, and adjacent wetlands. The Platte River flows into the Missouri River. The Missouri River is a Section 10, Traditionally Navigable Water.
- C. From a point source: Activities have occurred due to mechanized equipment. A backhoe was present during the May 18, 2021 site visit.
- D. By any person(s): Filling and excavation activities have occurred in between 2017

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(+/-) and 2021. There is currently no work occurring, but equipment is present. Based on a review of Google Earth, Digital Glove, and a site visit; Mr. Villegas has done work within WOUS without a Section 404 permit. Ms. Feeney owns the neighboring property to the north and potentially the property where work occurred. Ms. Feeney has not done any work.

E. Without authorization: The activity is not authorized.

F. Date the discharge occurred: Based on google earth imagery, filling activities occurred as early as 2017 and continued to present day. Based on a site visit conducted May 18, 2021, filling activities have occurred within WOUS.

**Elements of a Section 10 Violation:**

A. Obstruction or alternation: N/A

B. Of a Navigable Water of the U.S.: N/A

C. Without authorization. N/A

**Non-compliance:**

A. Terms/conditions of permit violated and sufficiently serious to require enforcement action: N/A

**5. Determination of Violation or Non-compliance:**

A violation does exist. The responsible parties will be notified.

Unauthorized discharge of fill and excavation associated with filling activities has occurred within WOUS. The filling and associated excavation activities require a pre-construction notification and Individual Section 404 permit. Mr. Villegas did not seek approval from the Nebraska Regulatory Office prior to conducting the work. A permit was not verified and therefore the unauthorized activities are in violation of the Clean Water Act.

**6. Initial Recommendation for Resolution of Unauthorized Activity or Non-Compliance**

**Unauthorized Activities (33 CFR 326.3):**

A. No further action is recommended because:

B. Voluntary restoration may be completed by eliminating current detrimental impacts to the satisfaction of the Corps, at which point no further action will be required. This may occur through:

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C. The activity may be exempt from Section 404 regulation if the activity is modified as follows:

D. The activity may be authorized by an after-the-fact authorization if the activity is modified as follows and/or additional measures are taken such as:

E. The enforcement action should be referred to EPA Region 7 because: Discharge of fill material and associated excavation has occurred within WOUS. Based on the amount of fill material discharged into WOUS and the potential for continued filling activities to occur. During the site visit, the applicant specifically asked about doing more work and wanted to know if he was going to be fined.

**Non-compliance Violations (33 CFR 326.4):**

A. No further action is recommended because:

B. The violation may be resolved through mutual agreement and brought into compliance by voluntary restoration or through a permit modification. This may occur through: removal of the discharged fill material within the Platte River, its tributaries, and adjacent wetlands as well as, the restoration of the discharge and excavation areas. However, Mr. Villegas may be unwilling to voluntarily restore the numerous unauthorized work sites.

C. It is unlikely an agreeable solution can be reached. It is recommended that the Corps consider suspension/revocation procedures (33 CFR 325.7(c)) or it is recommended that we coordinate with Office of Counsel and Department of Justice to pursue legal action:

**PREPARED BY:**

Drew Vlazny  
Drew Vlazny Project Manger

Date: 6/17/2021

**APPROVED BY:**

\_\_\_\_\_  
John Moesch State Program Manager

Date: \_\_\_\_\_