UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

September 30, 2016

Mr. Virgil Vigil
10 Virgil Road
Espanola, New Mexico 87532

Re: Administrative Order; Docket Number: CWA-06-2016-2704

Dear Mr. Vigil:

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), ("the Act") prohibits the discharge of a pollutant from a point source into waters of the United States without permit authorization issued under the Act. Section 309(a) of the Act, 33 U.S.C. § 1319(a), authorizes the U.S. Environmental Protection Agency to issue administrative orders requiring compliance with the Act and regulations promulgated thereunder. Enclosed is an Administrative Order requiring you to stop placing fill material into the arroyo on the eastern portion of your property that connects the Acequia de La Puebla system to the Santa Cruz River. The enclosed Order also requires removal of the fill material that was placed into the arroyo.

You have the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to you. Within 10 days of receipt of this Order, you may request a conference regarding the Order or to submit information to EPA. If you request a conference or wish to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Mr. Tom Nystrom of my staff at (214) 665-8331.

Sincerely,

for William K. Honker
Director
Water Division

Enclosures

cc: Deanna Cummings
Albuquerque District Corps of Engineers

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of:	§	Docket No. CWA 06-2016-2704
	§	
Mr. Virgil Vigil	§	
	§	Proceeding Under Section 309(a) of
	§	the Clean Water Act
Respondent	§	

ADMINISTRATIVE ORDER

I. AUTHORITY

1. The following findings of violations are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATIONS

2. Mr. Virgil Vigil ("Respondent"), is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3. At all times relevant to the violations alleged herein ("relevant time period"), Respondent owned or controlled real property located near La Puebla, New Mexico, off of NM 76, west of Chimayo, NM near the end of local road 1433. The violation is located at approximate latitude 35 degrees, 59 minutes, 53.6 North, longitude 105 degrees, 58 minutes, 46.84 seconds West, in Santa Fe County, New Mexico ("subject property").

4. On or about July 22 and July 23, 2011, and on multiple dates between approximately April and July 2014, Respondent and/or others acting on his behalf discharged, caused the discharge, and/or directed the discharge of "dredged material" and/or "fill material," as defined

by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2 from a point source, specifically a backhoe, in, on, and into waters of the United States, namely, approximately 450 linear feet of an unnamed arroyo within the subject property. The arroyo, which facilitates the operation of the Acequia de La Puebla system, had been re-established by the Acequia de La Puebla, on July 20, 2011. The arroyo is a tributary to the Santa Cruz River, which flows into the Rio Grande, a navigable-in-fact body of water.

5. Each piece of heavy equipment used during excavation or construction activities which resulted in a discharge acted as a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

6. The dredged and fill material referred to in paragraph 4 was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

7. During the relevant time period, the arroyo referred to in paragraph 4 was hydrologically connected to, and had a significant nexus to, "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2, and as such, is a "water of the United States" as defined by 40 C.F.R. § 232.2.

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of and in compliance with a permit issued under the Act.

9. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the U.S. Army Corps of Engineers ("COE") to issue permits for the discharge of dredged or fill material to waters of the United States.

10. At no time during the relevant time period did Respondent have a permit issued by the COE that authorized the discharges alleged in paragraph 4.

11. Respondent's discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

III. ORDER

12. Based on the foregoing Findings of Violations and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States and to take the following actions:

a. Within 60 days of Respondent's receipt of this Order, Respondent shall remove the dredged and/or fill material described in paragraph 4, *supra*, and restore the impacted arroyo to the conditions to which the arroyo was re-established by the Acequia de La Puebla on July 20, 2011. This restoration shall include reconstructing the arroyo to an adequate capacity to handle the normal and high flows it handled prior to the violation, including sediment load.

b. Respondent shall contact Tom Nystrom, EPA Region 6, at (214) 665-8331 upon commencement of the removal of the dredged and/or fill material and completion of restoration activities.

IV. GENERAL PROVISIONS

13. Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

14. Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations alleged herein or other violations that become known

to EPA. EPA reserves the right to seek any remedy available under the law which it deems appropriate.

15. Failure to comply with the terms of this Section 309(a) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act and failed to comply with the terms of the Order. The court has the authority to impose separate civil penalties for violation of the Act as well as for violation of this Order. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants, or loans under Section 508 of the Act, 33 U.S.C. § 1368.

16. Compliance with the terms and conditions of this Order does not relieve Respondent of the obligation to comply with any applicable federal, state, or local law or regulation.

17. The effective date of this Order is the date it is received by Respondent.

18. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within 10 days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Issued: 9/30/2016

William K. Honker, P.E.
Director, Water Division
U.S. EPA Region 6