



**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION
DRINKING WATER BUREAU,**

Complainant,

v.

No. DWB 16-18(CO)

FRED WHISTLE

and

ANIMAS VALLEY LAND AND WATER COMPANY,

Respondents.

**ADMINISTRATIVE COMPLIANCE ORDER AND
ASSESSMENT OF CIVIL PENALTIES**

1. Pursuant to the Environmental Improvement Act ("EIA"), NMSA 1978, § 74-1-10, and the Drinking Water Regulations, 20.7.10 NMAC, the Secretary of the New Mexico Environment Department ("NMED"), acting through the Director of the Water Protection Division of the NMED, issues this Administrative Compliance Order to Fred Whistle and Animas Valley Land and Water Company ("Respondents") to enforce the EIA and Drinking Water Regulations.

FINDINGS

2. The NMED is an executive agency within the government of the State of New Mexico and is charged with administration and enforcement of the EIA and Drinking Water Regulations.

3. Respondent Animas Valley Land and Water Company owns and operates the Harvest Gold Subdivision public drinking water system ("System"), PWS# NM3511524, located in San Juan County, New Mexico.

4. Respondent Whistle is the general manager of and administrative contact for the System.



5. Each Respondent is a “person” as defined by NMSA 1978, § 74-1-3, and 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.2].

6. On July 29, 2015, an inspector from NMED’s Drinking Water Bureau (“DWB”) conducted a regularly scheduled sanitary survey at the System.

7. On September 14, 2015, a report of the sanitary survey was served on Respondents.

8. The September 14, 2015 sanitary survey report listed five (5) significant deficiencies that Respondents were required to correct and mandated that Respondents consult with DWB within forty-five (45) days to describe how and on what schedule they would address the significant deficiencies.

9. Respondents contacted DWB on September 21, 2015 and provided deadlines by which they would correct the significant deficiencies uncovered in the sanitary survey.

10. Respondents did not correct two (2) significant deficiencies listed in the sanitary survey report by the deadlines they had set for themselves.

11. On September 19, 2016, Mr. Wayne Jeffs, DWB Compliance Officer, issued a Notice of Violation for failure to correct the two (2) significant deficiencies within the agreed upon timeframe.

12. On June 2, 2016, employees from NMED’s DWB conducted an inspection at the System. The inspection resulted from a site visit from technical assistance staff that uncovered issues at the System. NMED ordered the System to issue a Boil Water Advisory on June 3, 2016 due to System failing to monitor for turbidity which is an acute public health contaminant.

13. On June 10, 2016, Mr. Joe Savage, Surface Water Treatment Rule Administrator at NMED, finalized NMED’s report of the June 2, 2016 inspection. The report detailed twenty-one (21) significant deficiencies that were uncovered during the inspection. This report was emailed to Mr. Whistle and received by him on June 10, 2016.

14. As memorialized in the inspection report, NMED required Respondents to consult with DWB within forty-five (45) days of receipt of the report, and provide NMED with a plan that describes how and on what schedule the System would address all significant deficiencies.

15. Mr. Savage issued a Notice of Violation (“NOV”) to Respondent Whistle on August 1, 2016 for failure to submit a Corrective Action Plan to correct significant deficiencies identified during a June 2, 2016 inspection at the System. Because Respondents did not submit a

Corrective Action Plan for the System, DWB drafted a Corrective Action Plan for the System. Mr. Savage delivered the NOV and Corrective Action Plan to Respondent Whistle on August 1, 2016 via electronic mail.

16. Mr. Savage issued another NOV to Respondent Whistle on August 12, 2016 for failure to complete an item in the NMED-imposed Corrective Action Plan concerning cross connections that had a deadline of August 10, 2016. This item required Respondents to submit documentation to NMED by August 10, 2016 verifying that corrective action had been performed. Mr. Savage delivered this NOV to Respondent Whistle on August 12, 2016 via electronic mail.

17. Because Respondents failed to submit a Corrective Action Plan or fix the cross connection deficiency, NMED served an Administrative Compliance Order (“ACO”) with Penalties on Respondents on August 24, 2016.

18. Mr. Savage issued another NOV to Respondent Whistle on September 1, 2016 for failure to complete twelve (12) items in the NMED-imposed Corrective Action Plan that had deadlines of August 30, 2016. These items required Respondents to submit documentation to NMED by August 30, 2016 verifying that corrective action had been performed. Mr. Savage delivered this NOV to Respondent Whistle on September 1, 2016 via electronic mail.

19. Respondents did not submit a monthly operating report to DWB for the month of August by September 10, 2016. Mr. Savage issued a NOV to Respondent Whistle for this failure on September 15, 2016.

20. Because Respondents have not taken sufficient steps to address the fifteen (15) violations addressed in this ACO, Emergency Powers Order No. 2016-3 is issued concurrently with this ACO. Facts concerning each violation are addressed individually below.

21. Violation 1: External Corrosion on Storage Facility. 20.7.10.400.D NMAC states that a finished water storage facility shall be protected from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents, or other vermin.

22. During a July 29, 2015 sanitary survey, NMED observed that the System’s “Tank #1” had numerous rust pinholes, apparent bullet holes, and several sticks placed in some large leaks. Tank integrity was suspect based on the numerous holes and significant corrosion.

23. NMED delivered a sanitary survey report to the System on September 14, 2015. Item 4 in the report required Respondents to have Tank #1 inspected by a qualified tank

inspector, make repairs to plugged leaks and rust pinholes, and submit a corrective action plan to NMED within forty-five (45) days of the receipt of the report.

24. On September 21, 2015, certified operator Thomas Barrow emailed NMED inspector Wayne Jeffs and stated that the System would have Tank #1 inspected and repaired within one hundred eighty (180) days. Mr. Barrow further stated that he would prepare a corrective action plan after the inspection was completed. Forty-five (45) days from the date of receipt of the sanitary survey report was October 29, 2015.

25. One hundred eighty (180) days from October 29, 2015 was April 26, 2016. During this period, Respondents did not provide NMED with evidence that an inspection was conducted or make an effort to address the numerous holes and significant corrosion in the tank.

26. NMED issued a Notice of Violation to Respondents for this deficiency on September 19, 2016.

27. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now one hundred fifty (150) days overdue for completion.

28. Violation 2: Raw Water Storage Facility Overgrown with Vegetation. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”

29. During a July 29, 2015 sanitary survey, NMED observed that the System’s raw water storage pond was surrounded by vegetation and inaccessible for maintenance, with no access to floating pumps.

30. NMED delivered a sanitary survey report to the System on September 14, 2015. Item 5 in the report required Respondents to remove excess vegetation and initiate regular preventative maintenance to limit vegetative growth around the raw water storage pond, and submit a corrective action plan to NMED within forty-five (45) days of the receipt of the report.

31. On September 21, 2015, certified operator Thomas Barrow emailed NMED inspector Wayne Jeffs and stated that the System would remove excess vegetation and implement a preventive maintenance plan to limit growth of excess vegetation within ninety (90)

days. Forty-five (45) days from the date of receipt of the sanitary survey report was October 29, 2015.

32. Ninety (90) days from October 29, 2015 was January 27, 2015. During this period, Respondents did not remove excess vegetation or implement a preventive maintenance plan.

33. NMED issued a Notice of Violation to Respondents for this deficiency on September 19, 2016.

34. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now two hundred forty (240) days overdue for completion.

35. Violation 3: Cross Connections Present. 20.7.10.400.B NMAC requires all parts of a public water supply system to be constructed, operated, and maintained to prevent contamination of the water supply. During the June 2, 2016 inspection, NMED discovered a cross connection that could result in direct contamination of the water delivered to distribution. Specifically, a swivel-port sink fixture is plumbed to the raw water on the “cold” side and finished water on the “hot” side, which constitutes a cross connection. Additionally, a check valve on the west filter was making noise indicative of a loose seal, which could mean a malfunction.

36. Item 15 in the Corrective Action Plan that NMED issued to the Respondents on August 1, 2016 states that the Respondents must correct the cross connection deficiency by installing a separate line and spigot for the raw and finished water at the sink within ten (10) days, which would have been August 10, 2016.

37. NMED issued an Administrative Compliance Order (“ACO”) on August 23, 2016, imposing a penalty of thirteen thousand dollars (\$13,000) for this violation. 38. To date, NMED has not received documentation that the cross connection problem has been addressed. This task is now forty-four (44) days overdue for completion. Thirty-one (31) days have lapsed since the August 23, 2016 ACO.

39. Violation 4: Chemical Tanks Inadequately Labeled. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has

the potential for causing the introduction of contamination into the water delivered to consumers.”

40. During the June 2, 2016 inspection, NMED discovered inadequate labeling of chemical tanks, which could result in improper chemical injections or treatment of the drinking water. Further, no tanks of chemicals in use were labeled and the operator was unable to identify the chemical additive in one of the tanks.

41. Item 1 in the Corrective Action Plan issued on August 1, 2016 states that the Respondents must clearly and accurately label all chemicals and submit documentation that this task had been accomplished within thirty (30) days, which would have been August 30, 2016.

42. To date, NMED has not received documentation that all chemicals are clearly and accurately labeled. This task is now twenty-four (24) days overdue for completion.

43. Violation 5: Lack of Pipe Labeling Within Treatment Plant. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”

44. During the June 2, 2016 inspection, NMED discovered that none of the piping in the plant was labeled for type of water or direction of flow. Furthermore, the operator was unable to describe the piping flow during the inspection.

45. Item 5 in the Corrective Action Plan issued on August 1, 2016 states that the Respondents must properly label all pipes and lines within the treatment plan to clearly display type of water and direction of flow and submit documentation that this task had been accomplished within thirty (30) days, which would have been August 30, 2016.

46. To date, NMED has not received documentation that all pipes and lines within the treatment plan have been properly labeled to clearly display type of water and direction of flow. This task is now twenty-four (24) days overdue for completion.

47. Violation 6: Lack of Record Keeping of Calibrations for Meters or Lab Equipment. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”

48. During the June 2, 2016 inspection, NMED could not locate any calibration records, and could therefore not identify when or under what circumstances the turbidimeter and chlorine meter were calibrated.

49. Item 6 in the Corrective Action Plan issued on August 1, 2016 states that Respondents must properly calibrate the turbidimeter and chlorine analyzer according to a set procedure at specific intervals or operating conditions, provide documentation that this has been accomplished, and submit formal documentation from the Operations and Maintenance Manual or other formal procedural document that verifies that proper calibrations will be conducted and documented at required intervals or operating conditions in the future. This task was required to be accomplished within thirty (30) days, which would have been August 30, 2016.

50. On September 13, 2016, NMED has received documentation that the turbidimeter and chlorine analyzer were properly calibrated. This task was thirteen (13) days overdue for completion.

51. Violation 7: Disinfectant Residuals Not Measured and Recorded. 40 CFR 141.74(c)(2) states that the residual disinfectant concentration of the water entering the distribution system must be monitored continuously.

52. During the June 2, 2016 inspection, NMED discovered that the System did not have a functioning chlorine analyzer.

53. Item 9 in the Corrective Action Plan issued on August 1, 2016 required that Respondents properly calibrate and maintain the online chlorine analyzer, ensure that the chlorine analyzer is measuring water at the entry point to distribution, report the lowest daily concentration of chlorine on the monthly operating report, and provide documentation that these tasks have been accomplished. This item was required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

54. On September 13, 2016, NMED received documentation that the actions in the above paragraph have been accomplished. This task was thirteen (13) days overdue for completion.

55. Violation 8: Lack of Filter Backwashing Criteria. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has

the potential for causing the introduction of contamination into the water delivered to consumers.”

56. During the June 2, 2016 inspection, NMED discovered that there was no logical or proper criteria for when to backwash and that an operator was on site only a few times each week.

57. Item 10 in the Corrective Action Plan issued on August 1, 2016 required that Respondents initiate proper and consistent criteria for backwashing both pressure filters based on well-defined parameters and submit documentation that this has been accomplished. This item was required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

58. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now twenty-four (24) days overdue for completion.

59. Violation 9: Inadequate Process Control Monitoring or Record Keeping. 40 CFR 141.723(b) states that “a significant deficiency includes a defect in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system” that is “causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.”

60. During the June 2, 2016 inspection, NMED discovered that turbidity monitoring, recordkeeping, and reporting were not compliant with NMED’s standards.

61. Item 11 in the Corrective Action Plan issued on August 1, 2016 required that Respondents provide process control monitoring and record keeping for chemical addition, finished water turbidity, disinfectant addition, and CT within thirty (30) days, which would have been by August 30, 2016.

62. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now twenty-four (24) days overdue for completion.

63. Violation 10: Inadequate Sample Locations and Turbidity Measurements. 40 CFR 141.560 mandates that all systems serving fewer than ten thousand (10,000) people must conduct continuous turbidity monitoring for each individual filter at the system and must report turbidity results monthly.

64. During the June 2, 2016 inspection, NMED discovered that the System did not have a functioning turbidimeter.

65. Item 13 in the Corrective Action Plan issued on August 1, 2016 required that continuous read turbidimeters be installed at all required regulatory locations and provide documentation that this has been accomplished. Item 13 further required that data from the turbidimeters must be downloaded on a daily basis for the first three (3) months of operation and all data be submitted to the DWB within twenty-four (24) hours for the previous day. These items were required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

66. On September 13, 2016, NMED received documentation that continuous read turbidimeters were installed at the treatment plant. However, NMED has not received daily downloaded turbidity readings. This task is now twenty-four (24) days overdue for completion.

67. Violation 11: Leak at Fixtures and Ports on Pressure Filters and in Piping Within Treatment Plan. 20.7.10.400.B NMAC mandates that any component of a public water system be constructed, operated and maintained to prevent contamination of the water supply.

68. During the June 2, 2016 inspection, NMED staff observed water leaking from many of the pressure filter ports and plumbing connections and noted that a depression in the floor containing pipes and lines was filled with water.

69. Item 14 in the Corrective Action Plan issued on August 1, 2016 required all leaking ports and connections on the pressure filters to be repaired, the cause of water leaks in the floor depression be identified and repaired, and documentation of such repairs be sent to NMED. These items were required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

70. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now twenty-four (24) days overdue for completion.

71. Violation 12: Chlorine Residuals Too Low. 40 CFR 141.75(b)(3)(iii) requires that the residual disinfectant concentration of water entering the distribution system not fall below 0.2 mg/l.

72. During the June 2, 2016 inspection, NMED measured free chlorine residuals in the plant and in distribution with a value below 0.2 mg/l.

73. Item 16 in the Corrective Action Plan issued on August 1, 2016 required that chlorine residuals entering distribution be maintained at a minimum of 0.2 mg/l at all times water is being produced and that documentation verifying this action be sent to NMED. These items were required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

74. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now twenty-four (24) days overdue for completion.

75. Violation 13: Required Monitoring Equipment Not Present. 40 CFR 141.74(a)(1) mandates that public water systems conduct turbidity analyses according to an approved method. 40 CFR 141.74(a)(2) mandates that public water systems measure residual disinfectant concentrations according to an approved method. 40 CFR 141.74(c)(1) mandates that public water systems monitor turbidity continuously. 40 CFR 141.74(c)(2) mandates residual disinfectant concentration of the water entering the distribution system must be monitored continuously. 40 CFR 141.560(b) specifies that turbidimeters must be calibrated using procedures specified by the manufacturer.

76. During the June 2, 2016 inspection, NMED staff observed that bench turbidimeters or chlorine monitors were not available to the operators, as required by the regulations listed in the above paragraph.

77. Item 17 in the Corrective Action Plan issued on August 1, 2016 required Respondents to purchase a benchtop turbidimeter and chlorine analyzer, put them to use, train all operators on calibration and use of the equipment, and provide documentation to NMED. These items were required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

78. On September 13, 2016, NMED received documentation that the Respondents installed the required monitoring equipment. However, Respondents have not provided documentation that they are performing monitoring activities as required. This task is now twenty-four (24) days overdue for completion.

79. Violation 14: Lack of Temperature and pH Data. 40 CFR 141.74(a)(1) mandates that public water systems conduct temperature and pH analyses in accordance with approved methods.

80. During the June 2, 2016 inspection, NMED discovered that temperature and pH were not being monitored and recorded daily.

81. Item 18 in the Corrective Action Plan issued on August 1, 2016 required Respondents to monitor and record temperature and pH daily, and submit documentation to NMED verifying these practices were occurring.

82. These items were required to be accomplished within thirty (30) days, which would have been by August 30, 2016.

83. To date, NMED has not received documentation that the actions in the above paragraph have been accomplished. This task is now twenty-four (24) days overdue for completion.

84. Violation 15: Failure to Submit Monthly Operating Report. 40 CFR 141.75(b) states that turbidity measurements must be reported to the appropriate authority within ten (10) days after the end of each month that a system serves water to the public.

85. Respondents did not submit a monthly operating report for the month of August by September 10, 2016.

86. NMED issued a Notice of Violation for this deficiency to Respondent Whistle on September 15, 2016.

87. To date, NMED has not received a monthly operating report for August 2016. This task is now thirteen (13) days overdue.

VIOLATIONS

88. VIOLATION 1: EXTERNAL CORROSION ON STORAGE FACILITY. Respondents are in violation of 20.7.10.400.D NMAC. Respondents are required to protect a finished water storage facility from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents, or other vermin.

89. VIOLATION 2: RAW WATER STORAGE FACILITY OVERGROWN WITH VEGETATION. Respondents are in violation of 141.723(b). Respondents are required to clear excess vegetation to enable proper access and maintenance of the surface water source.

90. VIOLATION 3: CROSS CONNECTIONS PRESENT. Respondents are in violation of 20.7.10.400.B NMAC. Respondents are required to ensure that any component of a

public water system is constructed, operated, and maintained to prevent contamination of the water supply.

91. VIOLATION 4: CHEMICAL TANKS INADEQUATELY LABELED.

Respondents are in violation of 40 CFR 141.723(b). Respondents are required to ensure that there are no defects in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system that cause, or have the potential to cause, the introduction of contamination into the water delivered to consumers.

92. VIOLATION 5: LACK OF PIPE LABELING WITHIN TREATMENT PLANT.

Respondents are in violation of 40 CFR 141.723(b). Respondents are required to ensure that there are no defects in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system that cause, or have the potential to cause, the introduction of contamination into the water delivered to consumers.

93. VIOLATION 6: LACK OF RECORD KEEPING OF CALIBRATIONS FOR METERS OR LAB EQUIPMENT.

Respondents are in violation of 40 CFR 141.723(b). Respondents are required to ensure that there are no defects in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system that cause, or have the potential to cause, the introduction of contamination into the water delivered to consumers.

94. VIOLATION 7: DISINFECTANT RESIDUALS NOT MEASURED AND RECORDED. Respondents are in violation of 40 CFR 141.74(c)(2). Respondents are required to continuously monitor the residual disinfectant concentration of the water entering the distribution system.

95. VIOLATION 8: LACK OF FILTER BACKWASHING CRITERIA. Respondents are in violation of 40 CFR 141.723(b). Respondents are required to ensure that there are no defects in design, operation, or maintenance, or a failure of malfunction of the sources, treatment, storage, or distribution system that cause, or have the potential to cause, the introduction of contamination into the water delivered to consumers.

96. VIOLATION 9: INADEQUATE PROCESS CONTROL MONITORING OR RECORD KEEPING. Respondents are in violation of 40 CFR 141.723(b). Respondents are required to ensure that there are no defects in design, operation, or maintenance, or a failure of

malfunction of the sources, treatment, storage, or distribution system that cause, or have the potential to cause, the introduction of contamination into the water delivered to consumers.

97. VIOLATION 10: INADEQUATE SAMPLE LOCATIONS AND TURBIDITY MEASUREMENTS. Respondents are in violation of 40 CFR 141.560. Respondents are required to ensure that the water system conducts continuous turbidity monitoring for each individual filter at the system and report turbidity results monthly.

98. VIOLATION 11: LEAK AT FIXTURES AND PORTS ON PRESSURE FILTERS AND IN PIPING WITHIN TREATMENT PLAN. Respondents are in violation of 20.7.10.400.B NMAC. Respondents are required to ensure all components of a public water system are constructed, operated and maintained to prevent contamination of the water supply.

99. VIOLATION 12: CHLORINE RESIDUALS TOO LOW. Respondents are in violation of 40 CFR 141.74(c)(2). Respondents are required to ensure that the residual disinfectant concentration of water entering the distribution system not fall below 0.2 mg/l.

100. VIOLATION 13: REQUIRED MONITORING EQUIPMENT NOT PRESENT. Respondents are in violation of 40 CFR 141.74(a)(1), 40 CFR 141.74(a)(2), and 40 CFR 141.560(b). Respondents are required to conduct turbidity analyses and measure residual disinfectant concentrations according to approved methods and calibrate turbidimeters using procedures specified by the manufacturer.

101. VIOLATION 14: LACK OF TEMPERATURE AND PH DATA. Respondents are in violation of 40 CFR 141.74(a)(1). Respondents are required to conduct temperature and pH analyses in accordance with approved methods.

102. VIOLATION 15: FAILURE TO SUBMIT MONTHLY OPERATING REPORT. Respondents are in violation of 40 CFR 141.75(b). Respondents are required to report turbidity measurements to the appropriate authority within ten (10) days after the end of each month that a system serves water to the public.

ORDERS AND CIVIL PENALTIES

103. Respondents are hereby ordered to perform the following actions to correct the violations listed in paragraphs 17 and 18:

a. VIOLATION 1: EXTERNAL CORROSION ON STORAGE FACILITY. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of one hundred fifty dollars (\$150,000) within sixty (60) days following receipt of this Order.

b. VIOLATION 2: RAW WATER STORAGE FACILITY OVERGROWN WITH VEGETATION. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of two hundred forty thousand dollars (\$240,000) within sixty (60) days following receipt of this Order.

c. VIOLATION 3: CROSS CONNECTIONS PRESENT. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of thirty-one thousand dollars (\$31,000) within sixty (60) days following receipt of this Order.

d. VIOLATION 4: CHEMICAL TANKS INADEQUATELY LABELED. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

e. VIOLATION 5: LACK OF PIPE LABELING WITHIN TREATMENT PLANT. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

f. VIOLATION 6: LACK OF RECORD KEEPING OF CALIBRATIONS FOR METERS OR LAB EQUIPMENT. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of thirteen thousand dollars (\$13,000) within sixty (60) days following receipt of this Order.

g. VIOLATION 7: DISINFECTANT RESIDUALS NOT MEASURED AND RECORDED. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of thirteen thousand dollars (\$13,000) within sixty (60) days following receipt of this Order.

h. VIOLATION 8: LACK OF FILTER BACKWASHING CRITERIA. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

i. VIOLATION 9: INADEQUATE PROCESS CONTROL MONITORING OR RECORD KEEPING. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

j. VIOLATION 10: INADEQUATE SAMPLE LOCATIONS AND TURBIDITY MEASUREMENTS. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

k. VIOLATION 11: LEAK AT FIXTURES AND PORTS ON PRESSURE FILTERS AND IN PIPING WITHIN TREATMENT PLAN. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

l. VIOLATION 12: CHLORINE RESIDUALS TOO LOW. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

m. VIOLATION 13: REQUIRED MONITORING EQUIPMENT NOT PRESENT. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

n. VIOLATION 14: LACK OF TEMPERATURE AND PH DATA. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of twenty-four thousand dollars (\$24,000) within sixty (60) days following receipt of this Order.

o. VIOLATION 15: FAILURE TO SUBMIT MONTHLY OPERATING REPORT. Comply with Emergency Powers Order No. 2016-3. Pay a penalty of thirteen thousand dollars (\$13,000) within sixty (60) days following receipt of this Order.

104. Submittals required by Paragraph 103 and a certified or cashier's check for six hundred seventy-six thousand dollars (\$676,000) made payable to the State of New Mexico shall be sent with return receipt requested by either standard U.S. mail or certified mail to:

Alysia Leavitt
Acting Financial Manager
Drinking Water Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

105. If Respondents fail to comply with the requirements of paragraph 103 of this Order, the Secretary of the NMED may assess additional civil penalties for continued noncompliance with this Order.

NOTICE OF RIGHT TO ANSWER AND REQUEST A HEARING

106. Pursuant to NMSA 1978, §§ 61-33-10(E) and 74-1-10(E), and 20.1.5 NMAC, Respondents have the right to request a hearing. If Respondents: (a) contests any material or legal matters upon which this Order is based; (b) contends that Respondent is entitled to prevail as a matter of law; or (c) otherwise contests the appropriateness of this Order, Respondents may mail or deliver within thirty (30) days of receipt of this Order a written Request for Hearing at the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Respondents must attach a copy of this Order to the Request for Hearing. 20.1.5.200.A(2)(d) NMAC.

107. The Request for Hearing shall include an Answer. Respondents' Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, Respondents should so state, and the Respondents may deny the allegation on that basis. Any allegation in this Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

108. Respondents' Answer shall also include any affirmative defenses upon which Respondents intend to rely. Any affirmative defense not asserted in the Answer, except for a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

109. Respondents' Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believe to be true and correct. 20.1.5.200.A(2)(a) NMAC.

FINALITY OF ORDER

110. Pursuant to NMSA 1978, §§ 61-33-10(E) and 74-1-10(E), this Order shall become final unless the Respondents file an Answer and a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

SETTLEMENT CONFERENCE

111. Whether or not a Request for Hearing has been filed, Respondents may confer with the NMED concerning settlement of this Order. The NMED encourages settlement consistent with the provisions and objectives of the EIA and the Drinking Water Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a Request for Hearing and Answer nor alter the deadline imposed for compliance with the mandate of this Order. Settlement discussion may be pursued as an alternative to, or simultaneously with, the hearing proceedings. Respondents may appear at the settlement conference alone or accompanied or represented by legal counsel.

112. A Stipulated Final Order shall finalize any settlement reached by the parties. The Stipulated Final Order must resolve all issues raised in this Order, shall be final and binding on the parties, and may not be appealed.

113. To explore the possibility of settlement in this matter, contact Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, P.O. Box 5469, Santa Fe, NM 87502-5469, or (505) 476-8629.

COMPLIANCE WITH OTHER LAWS

114. Compliance with the requirements of this Order does not relieve Respondents of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC and 20.7.4 NMAC, which remain in full force and effect. Issuance of this Order is not an election by the NMED to forgo any civil or criminal action otherwise authorized under the EIA.

TERMINATION

115. This Order shall terminate when Respondents certify that all requirements of this Order have been met and all penalties paid, and the NMED has approved such certification in writing, or when the Secretary approves a Stipulated Final Order.



Bruce J. Yurdin
Division Director
Water Protection Division
Harold L. Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502

9/23/2016

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Administrative Compliance Order and Assessment of Civil Penalty” was sent via certified mail, return receipt requested, on the following party of record on September 26, 2016:

Fred Whistle
Harvest Gold Subdivision, NM3511524
P.O. Box 5520
Farmington, NM 87499

s/ Annie Maxfield
Annie Maxfield
Assistant General Counsel
New Mexico Environment Department