NEW MEXICO
ENVIRONMENT DEPARTMENT

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

P.O. Box 5469
Santa Fe, NM 87502-5469
Phone (505) 476-8620 Fax (505) 476-8656
www.env.nm.gov

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7005 1820 0001 5772 4337

March 9, 2016

Donald Eimer
Tetilla Peak Recreation Area
82 Dam Crest Rd
Pena Blanca, NM 87041

RE: Administrative Compliance Order, No. 2016-ACO-06 Tetilla Peak Recreation Area, PWS# NM3597523

Mr. Eimer

Please find attached Administrative Compliance Order No. 2016-ACO-06 issued to US Army Corps of Engineers, for Tetilla Peak Recreation Area, PWS# NM3597523, under the Environmental Improvement Act, NMSA 1978, § 74-1-10, and the Drinking Water Regulations, 20.7.10 NMAC. Please review the Administrative Compliance Order (Order) carefully to understand what action must be taken to comply with the requirements of the Order. Tetilla Peak Recreation Area has a right to answer the allegations in the Order and request a hearing, NMSA 1978, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at www.env.nm.gov).

If you have any questions or need assistance with meeting the requirements of this Order, please contact Maria J. Medina, Enforcement Coordinator, at 505-476-8629 or via email at maria.medina@state.nm.us.

Sincerely,

Trais Kliphuis
Division Director
Water Protection Division

cc. Jeff Pompeo, Compliance Officer (Electronic)
Jenna Manheimer, Region 6, EPA (Electronic)
P:\~ ELECTRONIC CENTRAL FILE BY WATER SYSTEM
Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,

Complainant, No. 2016-ACO-06

v.

US ARMY CORPS OF ENGINEERS,

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the Environmental Improvement Act ("EIA"), NMSA 1978, § 74-1-10, and the Drinking Water Regulations ("DW 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 ("Order") to ("Respondent") to enforce the EIA and DW Regulations.

FINDINGS

1. 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 DW Regulations.

2. Respondent owns and operates a public drinking water system ("System") Tetilla Peak Recreation Area, PWS# NM3597523, located in Sandoval County, New Mexico.

3. The System is a Transient Non Community water system, as defined by Section 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2], that regularly provides piped drinking water to approximately twenty five (25) users and has approximately forty (40) service connections to serve these users.

4. Respondent, US Army Corps of Engineers, is a "person" as defined by the EIA, NMSA 1978, § 74-1-3 and 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2].

5. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], requires a ground water system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency.

6. On August 18, 2015, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to correct significant deficiencies identified during the October 23, 2014, Sanitary Survey within 120 days of receiving written notice of deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation.

VIOLATION 1

7. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], which requires a ground water system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency. Respondent failed to correct significant deficiencies identified during the October 23, 2014, Sanitary Survey within 120 days of receiving written notice by the State.

RETURN TO COMPLIANCE

Based upon the foregoing, Respondent is hereby ordered to comply with the following:

8. By April 30, 2016, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct significant deficiencies identified during the October 23, 2014 Sanitary Survey (attached).

9. Submittals made pursuant to paragraph 8 of this Order shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Maria J. Medina, Enforcement Coordinator
New Mexico Environment Department
Drinking Water Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

If respondent fails to comply with the requirements of paragraphs 8 through 9 of this order, the Secretary of NMED may assess additional civil penalties not to exceed one thousand dollars ($1,000) for each instance of noncompliance with this order.

RIGHT TO ANSWER AND REQUEST A HEARING

Pursuant to NMSA 1978, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at www.env.nm.gov), Respondent has the right to request a hearing. If Respondent (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, Respondent 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, New Mexico 87502

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

The Request for Hearing shall include an Answer. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and the Respondent 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.

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

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

FINALITY OF ORDER

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

SETTLEMENT CONFERENCE

Whether or not a Request for Hearing has been filed, Respondent 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 DW 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, and simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

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 all parties, and may not be appealed.

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, New Mexico 87502-5469, (505) 476-8629.

COMPLIANCE WITH OTHER LAWS

Compliance with the requirements of this Order does not relieve Respondent 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

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

3/4/16

Trais Kliphuis
Division Director
Water Protection Division
P.O Box 5469
Santa Fe, New Mexico 87502-5469

Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 3/9, 2016 via certified return receipt requested to the following:

Donald Eimer
Tetilla Peak Recreation Area
82 Dam Crest Rd
Pena Blanca, NM 87041

Maria J. Medina