

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.)
)
 TOM AND AMY VILLEGAS,)
)
)
 Defendants.)

Civil Action No. 1:24-cv-00962

CONSENT DECREE

Table of Contents

| | | |
|---------------|---|-----------|
| I. | JURISDICTION AND VENUE | 4 |
| II. | APPLICABILITY | 4 |
| III. | DEFINITIONS | 6 |
| IV. | INJUNCTIVE RELIEF | 7 |
| V. | REPORTING | 9 |
| VI. | STIPULATED PENALTIES | 10 |
| VII. | FORCE MAJEURE | 13 |
| VIII. | DISPUTE RESOLUTION | 16 |
| IX. | SITE ACCESS AND INFORMATION COLLECTION AND RETENTION | 18 |
| X. | SCOPE AND EFFECT/RESERVATION OF RIGHTS | 19 |
| XI. | COSTS | 20 |
| XII. | NOTICES | 21 |
| XIII. | EFFECTIVE DATE | 22 |
| XIV. | RETENTION OF JURISDICTION | 22 |
| XV. | MODIFICATION | 22 |
| XVI. | TERMINATION | 23 |
| XVII. | PUBLIC COMMENT | 24 |
| XVIII. | SIGNATORIES/SERVICE | 24 |
| XIX. | INTEGRATION | 25 |
| XX. | 26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION | 25 |
| XXI. | FINAL JUDGMENT | 25 |
| XXII. | APPENDICES | 25 |

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint in this action concurrently with the lodging of the proposed Consent Decree, alleging that Defendants Tom and Amy Villegas violated and remain in violation of Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants discharged pollutants into waters of the United States at the property they own as of March 15, 2024, Parcel ID No. 0065790.05, in Section 13, Township 12 North, Range 28 West in Lincoln County, Nebraska (the “Site”), without authorization by the United States Department of Army Corps of Engineers, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

WHEREAS, Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States and Defendants (“Parties”) agree and recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest; and

NOW, THEREFORE, before the taking of any testimony upon the pleadings, without the adjudication or admission of any issue of fact or law except as provided in Section I of this Consent Decree, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims alleged in the Complaint, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and personal jurisdiction over the Defendants.

2. Venue lies in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b)(1) and 1395(a), because Defendants reside and are located in this judicial district.

3. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction over this Consent Decree and any such action and over Defendants and consent to venue in this judicial district.

4. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 301, 309, and 404 of the CWA, 33 U.S.C. §§ 1311, 1319, and 1344.

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other persons otherwise bound by law whether or not any such person has notice of this Consent Decree.

6. The Defendants' obligations under this Consent Decree are joint and several.

7. No transfer of ownership or other interest in the Site, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to implement the Consent Decree within the timeframes specified herein. As a condition of any such transfer, Defendants shall reserve all rights necessary to comply with this Consent Decree.

Prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the reservation of rights provisions of the proposed transfer agreement, to the United States in accordance with Section XII (Notices). If Defendants purport to transfer ownership or other interest in the Site without complying with this Paragraph, they shall cure notice to the successor and the United States, and secure access rights to the Site within 30 days after written notice from the United States of Defendants' purported breach of this Paragraph. Defendants are not liable for any action or inaction taken by any future owner of the Site by virtue of their obligations under this Consent Decree, and are only liable for implementation of this Consent Decree.

8. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, including, for example, any contractor or consultant retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance that conforms to the terms of this Consent Decree. The United States shall not be considered a party to any such contract.

9. In any action to enforce this Consent Decree against Defendants, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, successors, or assigns to take any actions necessary to comply with the provisions of this Consent Decree.

10. It is the express purpose of the Parties in entering this Consent Decree to further the objective set forth in CWA Section 101(a), 33 U.S.C. § 1251(a).

III. DEFINITIONS

11. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“Complaint” means the complaint filed by the United States in this case.

“Consent Decree” or “Decree” means this Decree and all appendices listed in Section XXII (Appendices), and all modifications made effective in accordance with Section XV (Modification).

“CWA” means the Clean Water Act, 33 U.S.C. §§ 1251-1388.

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.

“Defendants” means Tom and Amy Villegas.

“DOJ” means the United States Department of Justice and any of its successor departments or agencies.

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

“Effective Date” means the date provided in Section XIII (Effective Date).

“Paragraph” means a portion of this Consent Decree identified by an Arabic numeral.

“Parties” means the United States and Defendant(s).

“Request for Termination” means the written request presented by Defendant(s) to the United States in accordance with Section XVI (Termination).

“Section,” when not used in conjunction with the CWA (e.g., Section 404 of the CWA), means a portion of this Decree identified by a Roman numeral.

“Site” means the property in Section 13, Township 12 North, Range 28 West and Section 18, Township 12 North, Range 27 West in Lincoln County, Nebraska (the “Site”) depicted in Appendix A.

“United States” means the United States of America, acting on behalf of EPA.

IV. INJUNCTIVE RELIEF

12. Permanent injunction. Defendants and Defendants’ agents, successors, and assigns are enjoined from discharging any pollutant into waters of the United States at the Site, unless such discharge complies with the provisions of the CWA and regulations promulgated pursuant to the CWA.

13. Restoration. Defendants shall restore the Site by performing all work set forth in, and in accordance with, Appendix A to this Consent Decree. Within 30 Days after completion of the work, Defendants shall provide written notice to the United States at the addresses specified in Section XII (Notices).

14. Monitoring and Maintenance. After Defendants complete restoration work in accordance with Paragraph 13, Defendants shall monitor and maintain the Site during the period of time covered by the Monitoring Report that is to be submitted under Appendix A to this Consent Decree. Defendants shall submit reports to the United States in accordance with Section V (Reporting Requirements). Within 30 Days after completion of all monitoring and

maintenance, Defendants shall provide written notice to the United States at the addresses specified in Section XII (Notices).

15. Permits. Where any obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section VII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals. EPA shall cooperate with Defendants' efforts to obtain necessary permits, if required, to implement this Consent Decree, provided however, that such cooperation shall not include any requirement on EPA to assess, analyze, or take any stated position on the Defendants' or the Defendants' agents' compliance with the requirements and terms on this Consent Decree, or the Defendants' or Defendants' agents' entitlement to any permit required to perform the injunctive relief required by paragraphs 12 -14 of this this Consent Decree.

16. Nationwide Permit 32. Nationwide Permit 32, 86 Fed. Reg. 73522, 73579 (Dec. 27, 2021) ("NWP 32"), provides CWA Section 404 authorization, subject to the conditions provided in Nationwide Permit 32 and this Consent Decree, for the discharge of dredged or fill material that is necessary for Defendants to fulfill the injunctive relief requirements in Paragraph 13 of this Consent Decree.

V. REPORTING

17. Whenever any violation of this Consent Decree or any other event affecting Defendants' compliance with this Consent Decree may pose an immediate threat to public health or welfare or the environment, Defendants shall notify Natasha Goss of EPA by telephone at (212) 637-3162 or by email to Goss.Natasha@epa.gov as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event.

18. Each report submitted by Defendants under this Section shall be signed by Defendants or their agents and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

19. The written certification requirement in the preceding Paragraph does not apply to emergency or similar notifications where compliance would be impractical.

20. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations otherwise required by federal, state, or local law, regulation, permit, or other requirement.

21. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree.

VI. STIPULATED PENALTIES

22. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any Appendix listed in Section XXII, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree. A violation of this Consent Decree becomes an “undisputed violation” upon the first of either (a) the Defendants agreeing that they have violated the Consent Decree or (b) the dispute resolution process concluding that Defendants have violated the Consent Decree.

23. Non-compliance with injunctive relief. The following stipulated penalties shall accrue per violation per Day for each undisputed violation of each of the various prohibitions and obligations set forth in Section IV (Injunctive Relief):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ 250 | 1st through 14th Day |
| \$ 500 | 15th through 30th Day |
| \$ 750 | 31st Day and beyond |

24. Non-compliance with reporting requirements. The following stipulated penalties shall accrue per undisputed violation per Day for each violation of the requirements of Section V (Reporting):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ 100 | 1st through 14th Day |

| | |
|--------|-----------------------|
| \$ 200 | 15th through 30th Day |
| \$ 300 | 31st Day and beyond |

25. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day any other kind of violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until any other kind of violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

26. Defendants shall pay any undisputed stipulated penalty within 30 Days after service of the United States' written demand.

27. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

28. Stipulated penalties shall continue to accrue during the procedures of Section VIII (Dispute Resolution), but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the United States that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days after the effective date of the agreement or service of the United States' decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days after service of the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 60 Days after the appellate court's service of its mandate.

29. Defendants shall pay stipulated penalties by FedWire Electronic Funds Transfer to the DOJ account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Colorado after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify such payment. The FLU will provide the payment instructions to:

Tom Villegas 25599 Co Rd 4, Hudson, CO 80642; tom@coloradositeworks.com; (303) 349-6213. on behalf of Defendants. Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States in accordance with Section XII (Notices).

30. At the time of payment, Defendants shall send notice that payment has been made (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email in accordance with Section XII (Notices). Such notice shall state that the payment is for the stipulated penalty owed pursuant to the Consent Decree in United States v. Villegas and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-1-1-22164.

31. Defendants shall not deduct any stipulated penalties paid under this Consent Decree in calculating its federal income tax.

32. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

33. The payment of stipulated penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

34. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section X (Scope and Effect/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VII. FORCE MAJEURE

35. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure

(a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay are, minimized to the greatest extent possible. “Force majeure” does not include, for example, financial inability to perform any obligation under this Consent Decree; increased costs of performance; changed economic circumstances; changed labor relations; normal precipitation or climate events; changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site; or failure to obtain federal, state, or local permits if Defendants have not submitted timely and complete applications or have not taken all other actions necessary to obtain all such permits.

36. If any event occurs for which Defendants will or may claim a force majeure, Defendants shall provide notice by email to the email addresses in Section XII (Notices). The deadline for such initial notice is 3 days after Defendants first knew or should have known that the event would likely delay or prevent performance. Defendants shall be deemed to know of any circumstance of which any contractor or, subcontractor of, or entity controlled by Defendants knew or should have known.

37. If Defendants seek to assert a claim of force majeure, within seven days after Defendants serve the notice required in the preceding Paragraph, Defendants shall submit a further written notice to the United States that includes: (a) an explanation and description of the event and its effect on Defendants’ completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for Defendants to complete the requirements of the Consent Decree; (d) Defendants’ rationale for attributing such delay to a force majeure; (e) a statement as to whether, in the opinion of

Defendant, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting Defendants' claim that the delay was attributable to a force majeure.

38. Failure to submit a timely or complete notice or claim under the preceding two Paragraphs regarding any particular event precludes Defendants from asserting any claim of force majeure regarding such event, provided, however, that the United States may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether Defendants have exercised its best efforts in accordance with the first Paragraph in this Section.

39. The United States, after a reasonable opportunity to review Defendants' force majeure claim, shall notify Defendants of its determination whether Defendants are entitled to relief under this Section and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure event. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure event does not, by itself, excuse or extend the time for performance of any other obligation.

40. If Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than 15 days after the United States serves its determination under the preceding Paragraph. In any such proceeding, Defendants have the burden of proving that they are entitled to relief under this Section, that their proposed excuse or extension was or will be warranted under the circumstances, and that they complied with the requirements of this Section. If Defendants carry this burden, the delay or non-performance at issue shall be deemed not to be a violation by Defendants of the affected obligations of this Consent Decree identified to the United States and the Court.

VIII. DISPUTE RESOLUTION

41. The dispute resolution procedures in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of Defendants arising under this Decree precludes Defendants from raising any such issue as a defense to any such enforcement action.

42. Informal Dispute Resolution. Any dispute subject to the procedures in this Section (Dispute Resolution) shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written notice at the addresses set forth in Section XII (Notices). Such notice shall clearly state the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below in this Section.

43. Formal Dispute Resolution. To properly invoke the formal dispute resolution procedures in this Section, Defendants shall, within the time period provided in the preceding Paragraph, serve the United States at the addresses set forth in Section XII (Notices) a written statement of position regarding the matter in dispute. Defendants shall include in their statement of position any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

44. The United States shall serve its response, which shall include its record of any information supporting its position, within 45 Days after Defendants serve their statement of position. The United States' response is binding on Defendants unless Defendants file a motion for judicial review of the United States' position in accordance with the following Paragraph.

45. Judicial Dispute Resolution. Defendants may seek judicial review of the United States' position on a dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 10 Days after service of the United States' response pursuant to the preceding Paragraph; (b) may not raise any issue not raised in the informal dispute resolution process required by this Section, unless either (i) the issue was not appropriate to raise in the informal dispute resolution process or (ii) the United States raises a new issue of law or fact in its response; (c) shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation; and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

46. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court.

47. In resolving a dispute, the Party seeking judicial dispute resolution shall bear the burden of proving by a preponderance of the evidence that its position is in accordance with the objectives of this Consent Decree and the CWA, and that its position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

48. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with

respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Section VI (Stipulated Penalties). If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. SITE ACCESS AND INFORMATION COLLECTION AND RETENTION

49. Until one year after the termination of this Consent Decree, the United States and its representatives, including attorneys, contractors, consultants, and agency personnel, shall have the right of entry into the Site, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of restoration work required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

65. Until three years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, that relate in any manner to Defendants' performance of its obligations under this Consent Decree. At any time during this

information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

66. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

X. SCOPE AND EFFECT/RESERVATION OF RIGHTS

67. This Consent Decree resolves and shall constitute a complete and final settlement of all claims of the United States alleged in the Complaint.

68. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in the immediately preceding Paragraph in this Section.

69. Nationwide Permit 32. The Parties acknowledge that Nationwide Permit 32, 86 Fed. Reg. 73522, 73579 (Dec. 27, 2021), provides CWA Section 404 authorization, subject to the conditions provided in Nationwide Permit 32 and the terms of this Consent Decree and attachments hereto, for any dredged or fill material that was placed as of December 31, 2020, at the Site to remain in place. The Parties further acknowledge that, as of the Effective Date, Nationwide Permit 32 provides CWA Section 404 authorization, subject to the conditions provided in Nationwide Permit 32 and the terms of this Consent Decree, for the discharge of

dredged or fill material that is necessary for Defendants to fulfill the injunctive relief requirements set forth in this Consent Decree.

70. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

71. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

72. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties to this Consent Decree, nor does it limit the rights of such third parties against Defendants, except as otherwise provided by law.

73. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party to this Consent Decree.

XI. COSTS

74. The Parties shall bear their own costs of this action, including attorneys' fees, except that, should Defendants subsequently be determined by the Court to have violated any

provision of this Consent Decree, the United States shall be entitled to collect the costs, including attorneys' fees, incurred in any action to enforce this Consent Decree.

XII. NOTICES

75. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by email addressed as follows:

As to DOJ:

Chief
Environmental Defense Section
U.S. Dept. of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ No. 90-5-1-1-22164
MailProcessing_EDS.ENRD@usdoj.gov

With a copy to:

Phillip Dupré
Environmental Defense Section
U.S. Dept. of Justice
P.O. Box 7611
Washington, U.C. 20044-7611
Re: DJ No. 90-5-1-1-22164
phillip.r.dupre@usdoj.gov

As to EPA:

Natasha Goss
Office of Regional Counsel, Region 2
Ted Weiss Federal Building
290 Broadway
New York, NY 10007
Re: DJ No. 90-5-1-1-22164
goss.natasha@epa.gov

As to Defendants:

Vanessa A. Silke
Baird Holm LLP
1700 Farnam Street
Suite 1500
Omaha, NE 68102-2068
vsilke@bairdholm.com

76. Any Party may, by written notice to the other Parties in accordance with this Section, change its designated notice recipient or notice email address provided above.

77. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIII. EFFECTIVE DATE

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIV. RETENTION OF JURISDICTION

79. The Court retains jurisdiction over this case for the purpose of resolving disputes arising under this Consent Decree, entering orders modifying this Consent Decree pursuant to its applicable terms or applicable law, or effectuating or enforcing compliance with the terms of this Consent Decree.

XV. MODIFICATION

80. The terms of this Consent Decree, including the Appendix listed in Section XXV, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

81. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section VIII (Dispute Resolution), provided, however, that, instead of the burden of proof provided in Section VIII, the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVI. TERMINATION

82. After Defendants have completed all of the requirements of Paragraphs 12-14 and have complied with all other requirements of this Consent Decree for a period of one year, Defendants may serve upon the United States a Request for Termination, certifying that Defendants have satisfied those requirements, together with all necessary supporting documentation.

83. The Parties shall confer informally concerning Defendants' Request for Termination and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation or other appropriate document requesting termination of the Consent Decree.

84. If the United States does not agree that the Consent Decree may be terminated, Defendants may invoke the procedures of Section VIII (Dispute Resolution). However, Defendants may not invoke such procedures until 15 Days after service of its Request for

Termination. If the United States disputes that the criteria for termination have been met, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

85. Irrespective of the preceding Paragraphs in this Section, termination of this Consent Decree does not extinguish the requirements of Paragraph 12. In addition, irrespective of the preceding Paragraphs in this Section, termination of this Consent Decree does not affect the expiration of Defendants' record retention obligations because, as provided in Paragraph 65, they expire 5 years after termination of this Consent Decree.

XVII. PUBLIC COMMENT

86. The Parties acknowledge that this Consent Decree shall be lodged with the Court for a period of not less than 30 Days to allow for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XVIII. SIGNATORIES/SERVICE

87. Each undersigned representative of DOJ and Defendants certify that such individual is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the party such individual represents to this document.

88. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail or email with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

89. This Consent Decree constitutes the entire agreement among the Parties regarding the subject matter of the Consent Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the Consent Decree herein.

XX. 26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION

90. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraphs 13 and 14 is restitution, remediation, or required to come into compliance with law.

XXI. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court, as recorded on the Court's docket, this Consent Decree shall constitute and have the force and effect of a final judgment of the Court as to the United States and Defendant.

XXII. APPENDIX

92. The following appendix is attached to and part of this Consent Decree:

“Appendix A” is the Restoration Plan.

IT IS SO ORDERED.

Dated and entered this ___ day of _____, 20__.

The Honorable _____

UNITED STATES DISTRICT JUDGE

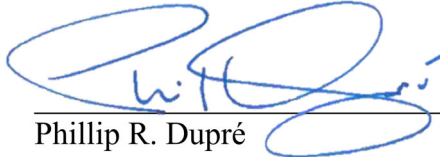
District of Colorado

United States v. Villegas
Consent Decree

FOR THE UNITED STATES OF AMERICA:

Date: April 10, 2024

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division



Phillip R. Dupré
Environment and Natural Resources Division
Environmental Defense Section
PO Box 7611
Washington, D.C. 20011

United States v. Villegas
Consent Decree

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY, OFFICE OF ENFORCEMENT AND
COMPLIANCE ASSURANCE:

JOSEPH THEIS

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JOSEPH G. THEIS
Acting Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

United States v. Villegas
Consent Decree

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Alyse Stoy
Acting Regional Counsel
Region 7
Environmental Protection Agency


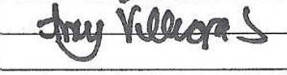
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Natasha Goss
Attorney-Advisor
Region 7
Environmental Protection Agency

United States v. Villegas
Consent Decree

FOR DEFENDANTS:

26 Mar 24
Date

 Thomas Villegas
 Amy Villegas

Approved as to form:

Date

Attorney(s) for Defendant(s)

6300557.1

Appendix A – Restoration Plan

1. Within 30 days of the Effective Date of this Consent Decree, Defendants shall remove the spoil pile from Area A9 indicated in the map included in this Appendix by placing it back into the excavated pond, returning the elevation of the spoil pile and excavated pond to pre-existing levels. Further, Defendants shall remove the culvert connecting the pond to the Platte River. Any fill material removed from Area A9 and not used in filling the excavated side channel shall be deposited within the area marked “for deposit of fill” in the map included in this Appendix.
2. Within 90 days of the effective date of this Consent Decree, Defendants shall revegetate the area described in Paragraph 1 and the areas marked in red, marked A5, and marked A12. This revegetation shall take place with wetland vegetation identified on the National Wetland Plant List as suitable to the Great Plains Region or identified as such by the Natural Resources Conservation Service office located in North Platte, Nebraska.
3. Defendants shall seed all disturbed upland areas with native grasses and implement appropriate erosion control measures to ensure that sediments are not introduced into waters of the United States during the restoration. A State NPDES permit may be required for this work.
4. Within 30 days of completion of this work, Defendants shall submit a Completion Report to EPA, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete.
5. Defendants shall take reasonable measures to enable the best practicable survival rate of planted species. Any herbicides used at the Site for invasive species shall be used in a manner to minimize impact on planted species.
6. Within 13 months of submission of the Completion Report, Respondents shall submit a Monitoring Report to EPA, which shall include photographs of the restored portion of the Site and written descriptions of on-Site conditions during the 12 months after submission of the Completion Report.
7. Defendants shall notify the EPA in writing should any change in size, location, or methods to accomplish the work occur, or should unforeseeable changes in site conditions or other components of the restoration project. Such notification shall occur within fourteen (14) days of Defendants’ becoming aware of such change.
8. Defendants shall allow representatives from the EPA and/or the United States Corps of Engineers to inspect the Site at reasonable times and in a reasonable manner to ensure compliance.

United States v. Villegas
Consent Decree

