UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of)
Tom Villegas))) MOTION TO WITHDRAW
and) ADMINISTRATIVE COMPLAINT
Amy Villegas,)
Respondents) Docket No. CWA-07-2022-0104
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g))))

Complainant EPA Region 7 hereby files this Motion to Withdraw Administrative Complaint.

1. On August 2, 2022, EPA filed a civil administrative Complaint and Notice of Opportunity for Hearing alleging Respondents violated Sections 301 and 404 of the Clean Water Act (CWA), 33 U.S.C. §§ 1311 and 1344, and regulations promulgated thereunder, by discharging dredged or fill material into the waters of the United States — namely, the Platte River, tributaries to the Platte River, and adjacent wetlands — without a CWA Section 404 permit (Complaint).

2. On or about April 20, 2023, Respondents filed a civil action in the U.S. District Court for the District of Kansas that has been docketed as *Thomas Villegas and Amy Villegas v*. *Regan et al.*, No. 23-cv-2171 (D. Kan.). In addition, Respondents filed a Motion for Preliminary Injunction to Stay Proceedings before the Tribunal on May 5, 2023, in the District of Kansas. Complainant's response to that motion is presently due July 20, 2023. 3. On May 15, 2023, the Agency moved to stay this proceeding pending resolution of *Thomas Villegas and Amy Villegas v. Regan et al.*, No. 23-cv-2171 (D. Kan.), which the Tribunal denied on May 17, 2023, on the basis that "[f]urther indefinite delay, in the face of an unknown judicial ruling coming at an unknown time, is not warranted." Upon Complainant's motion for reconsideration dated May 24, 2023, the Tribunal granted a stay of proceedings until August 8, 2023, so that Complainant could consider whether to pursue its enforcement action against Respondents in federal court rather than administratively.

4. Clean Water Act section 309(g)(1) provides EPA with the discretion to assess civil penalties through administrative adjudication. 33 U.S.C. § 1319(g)(1) (EPA Administrator "may" assess civil penalties under the subsection based on specific findings). EPA has now decided to forego efforts to assess penalties for the previously alleged violations through administrative proceedings. EPA will instead pursue any further action to assess civil penalties, if any, for the previously alleged violations judicially in an Article III court pursuant to 33 U.S.C. § 1319(d). Accordingly, EPA seeks to withdraw this administrative complaint, Docket No. CWA-07-2022-0104, *with prejudice* to re-filing administratively.

5. As directed by the Tribunal's Prehearing Order of September 8, 2022, the undersigned has conferred with counsel for Tom and Amy Villegas prior to filing this Motion. EPA understands Respondents to have no objection to this motion.

RESPECTFULLY SUBMITTED this 7th day of July 2023.

Natasha Goss Counsel for Complainant Attorney-Advisor Office of Regional Counsel U.S. Environmental Protection Agency, Region 7 11201 Renner Boulevard Lenexa, Kansas 66219 goss.natasha@epa.gov

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed via the E-Filing system the original of this Motion to Withdraw Administrative Complaint.

A copy was sent by email to Vanessa Silke and Hannes Zetzsche, counsel for Respondents, at *vsilke@bairdholm.com* and *hzetzsche@bairdholm.com*, respectively.

Date: 7/7/2023

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