



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

December 18, 2018

CERTIFIED MAIL–RETURN RECEIPT REQUESTED:7015 1520 0003 3989 7668

The Honorable Arthur Blazer
President, Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

Re: Unilateral Administrative Order
Safe Drinking Water Act Violations Docket Number: SDWA-06-2019-1213

PWS ID Number: 063503233–Carrizo Water System
PWS ID Number: 063501233–Community Water System
PWS ID Number: 063508008–Eagle Creek Water System
PWS ID Number: 063507009–Eight Canyon Water System
PWS ID Number: 063506233–Fence Canyon Water System
PWS ID Number: 063503013–Goat Summit Water System
PWS ID Number: 063509008–Nogal Canyon Water System
PWS ID Number: 063507011–White Tail Water System
PWS ID Number: 063502233–Windmill Water System
PWS ID Number: 063507008–Silver Lake Water System

Dear President Blazer:

The U.S. Environmental Protection Agency (EPA) has determined that violations of the Safe Drinking Water Act (SDWA) have occurred at the public water systems referenced above and we are issuing an Unilateral Administrative Order (UAO) to the Mescalero Apache Tribe (the Tribe) to address the violations and protect public health. The UAO becomes effective immediately upon receipt and shall remain in effect until: 1) the Tribe has addressed all significant deficiencies at all ten systems listed in the UAO and 2) EPA has issued a closure letter.

The UAO provides a path to compliance with the requirements of the SDWA and implementing regulations, including issuing Public Notice Rule under the Surface Water Treatment Rule (SWTR), and the Ground Water Rule (GWR) while the tribe works on correcting the significant deficiencies. As described in the enclosed UAO with its attachments, the Tribe is required to comply with the requirements cited above to deliver drinking water that meets the national standards.

This UAO requires the Tribe to issue public notice as indicated in the order as long as significant deficiencies remain at each public water supply facility. Additionally, the public notices must be reissued every 90 days as long as significant deficiencies remain. Please be aware that failure to comply with this UAO may subject the Tribe to additional enforcement action by EPA. The EPA may issue the public notice itself, assess penalties, and/or request assistance from the U.S. Department of Justice to file a complaint in federal court seeking penalties and/or injunctive relief. Keep in mind that the Tribe must not only comply with the terms of this UAO but also all other SDWA requirements. EPA may take additional enforcement actions against the Mescalero Apache Tribe for other SDWA violations not included in this UAO.

If you have any questions regarding the content of the UAO, please contact Mr. Jerry Saunders, of my staff, at (214) 665-6470 or your staff may contact Ms. Tonia Biggs at (214) 665-8551.

Sincerely,



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: Mescalero Apache Tribe

Thora Padilla, Management Resources, email: thora@mescalerodmp.org
Chris Little, Utility Director, email: clittle@mescaleroapachetribe.com
Damian Morgan, DO, email: dmorgan@mescaleroapachetribe.com
Duane Duffy, Tribal Administration, email: dduffy@mescaleroapachetribe.com
Sterlen Kane, Compliance Officer, email: skanejr@mescalerodmp.org
John Wheeler, Attorney, email: jdw@jdw-law.com

Albuquerque Indian Health Service

Chris A. Bradley, email: chris.bradley@ihs.gov
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Robert Trujillo, email: robert.trujillo@ihs.gov

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6

FINDINGS OF VIOLATION, ADMINISTRATIVE ORDER

In the Matter of Public Water Systems: Carrizo; Community; Eagle Creek; Eight Canyon; Fence Canyon; Goat Summit; Nogal Canyon; Silver Lake; White Tail; and Windmill
Owned/Operated by the Mescalero Apache Tribe of the Mescalero Reservation, Respondent
Docket No. SDWA-06-2019-1213

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 1414(g) of the Safe Drinking Water Act ("Act"), 42 U.S.C. § 300g-3(g). The Administrator delegated the authority to issue this Order to the Regional Administrator of the EPA Region 6 who delegated such authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. The EPA has primary enforcement responsibility for the public water supply protection program on the Mescalero Apache Indian Reservation ("Reservation"). No other governmental authority has applied for and been approved to administer the program on the Reservation.

2. The Mescalero Apache Tribe ("Respondent") is a federally-recognized Indian Tribe within the United States of America (83 Fed. Reg. 34863) (July 23, 2018). "Indian Tribe" is defined in Section 1401(14) of the Act, 42 U.S.C. § 300f (14) as "any Indian Tribe having a Federally Recognized governing body carrying out substantial governmental duties and powers over any area."

3. Respondent is a "person," as defined in 40 C.F.R. § 141.2 for purposes of federal enforcement of the Act.

4. At all times relevant to the violations ("relevant time period") alleged herein, Respondent owned or operated the following ten public water systems ("PWSs") located on the Mescalero Apache Indian Reservation in Otero County, New Mexico:

- (i) Carrizo (PWS ID No. 063503233);
- (ii) Community (PWS ID No. 063501233);
- (iii) Eagle Creek (PWS ID No. 063508008);
- (iv) Eight Canyon (PWS ID No. 063507009);
- (v) Fence Canyon (PWS ID No. 063506233);
- (vi) Goat Summit (PWS ID No. 063503013);
- (vii) Nogal Canyon (PWS ID No. 063509008);
- (viii) White Tail (PWS ID No. 063507011);
- (ix) Windmill (PWS ID No. 063502233); and
- (x) Silver Lake (PWS ID No. 063507008).

5. The PWSs are "suppliers of water" and provide water for human consumption to:

- (i) approximately 930 year-round residents through 278 service connections at Carrizo;
- (ii) approximately 2113 year-round residents through 363 service connections at Community;
- (iii) approximately 503 seasonal (April through October) campers through 55 service connections at Eagle Creek;
- (iv) approximately 320 year-round residents through 90 service connections at Eight Canyon;
- (v) approximately 173 year-round residents through 45 service connections at Fence Canyon;
- (vi) approximately 780 year-round residents through 85 service connections at Goat Summit;
- (vii) approximately 30 year-round residents through 8 service connections at Nogal Canyon;
- (viii) approximately 50 year-round residents through 6 service connections at White Tail;
- (ix) approximately 750 year-round residents through 190 service connections at Windmill; and
- (x) approximately 157 seasonal (April through October) campers through 50 service connections at Silver Lake.

Therefore, all ten PWSs listed in paragraph 5 above are classified as "public water systems" by Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. Part 141, and are required to comply with the Act and its implementing drinking water regulations, the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141.

6. During the relevant time period, Respondent's PWSs served drinking water to the customers of the Mescalero Apache Tribe. Eight of Respondent's PWSs are classified as a "community water systems", as defined by Section 1401(15) of the Act, 42 U.S.C. § 300f (15). Eagle Creek and Silver Lake are classified as "transit non-community water systems," as defined by Section 1401(16) of the Act, 42 U.S.C. § 300f (16).

Sanitary Survey Findings/Failure to Address Significant Deficiencies

7. The EPA conducted sanitary surveys at the Respondent's PWSs. Each sanitary survey included an on-site review of the: water sources; water treatment facilities; distribution; pumping facilities; water sampling monitoring; operator certification; water storage; and operations, maintenance and management of the PWSs for the purpose of evaluating each

systems' ability to produce and distribute safe drinking water. As a result of the sanitary surveys, the EPA identified significant deficiencies at each of the Respondent's PWSs that require correction. Appendix B contains information on the Sanitary Surveys, the significant deficiencies, the required corrections and their status.

8. The EPA sent letters to the Respondent reporting the significant deficiencies at the PWSs. The letters required the Respondent:

- a) For groundwater systems to correct the deficiencies within one hundred and twenty (120) days of receipt of the letters or, if compliance cannot be achieved within one hundred and twenty (120) days, to submit corrective action plans within 120 days, including milestones and timelines, for review and approval by the EPA. Each PWS listed in 4(i)-(ix) is a ground water system.
- b) For surface water systems including ground water under the direct influence of surface water (GUDI systems) to correct the deficiencies within forty-five (45) days of receipt of the letters or, if compliance cannot be achieved within forty-five (45) days, to submit corrective action plans within 120 days, including milestones and timelines, for review and approval by the EPA. The Silver Lake PWS listed in 4(x) is a GUDI surface water system.

9. While some significant deficiencies have been corrected, most significant deficiencies remain with only limited progress over many years of non-compliance. A total of 156 significant deficiencies were identified, but only 9 of those have been corrected.

Regulatory Violations

10. According to the National Safe Drinking Water Information System (PWS database) which stores violations and monitoring data and observations the EPA made when conducting sanitary surveys, Respondent violated the SDWA and the NPDWRs as follows:

- a) Pursuant to 40 C.F.R. §§ 141.403 and 141.723, significant deficiencies must be addressed or on an approved schedule within one hundred and twenty (120) days for groundwater systems and within forty-five

(45) days for surface water systems including ground water under the influence of surface water systems. Respondent failed to correct the significant deficiencies identified in sanitary surveys performed by the EPA within one hundred twenty (120) days at Mescalero ground water PWSs and forty-five (45) days for Mescalero surface water or ground water under the influence of surface water systems. See Appendix B for the current list of significant deficiencies.

- b) Pursuant to 40 C.F.R. §§ 141.201, 141.203, 141.403, and 141.404, Respondent is required to provide public notice for treatment technique violations for failure to address significant deficiencies. When corrective action is not completed, the public water system must give timely public notification as appropriate for the type of system and its consumers. To date, Respondent has failed to provide a public notice to its customers and consumers for failure to address significant deficiencies.

11. Pursuant to 40 C.F.R. § 141.203, treatment technique violations require a Tier 2 public notice. 40 C.F.R. § 141.203 sets out the form, manner and frequency of the public notice for Community and Non-community water systems. The requirements are also described in detail below in the Order Section by category of water system.

SECTION 1414(g) ORDER

12. Based on these findings and pursuant to the authority of Section 1414(g) of the Act, 42 U.S.C. § 300(g)-3(g), the EPA orders that Respondent take the following actions:

- a) Within fifteen (15) days of the effective date of this Order and pursuant to 40 C.F.R. § 141.206, the Respondent shall provide public notice to all residents and consumers of water for the water systems identified in this Order following the guidelines below for Community and Non-Community Water Systems.
- b) Within thirty (30) days of the effective date of this Order, the Respondent shall submit to the EPA evidence of providing public notice to impacted water system residents and consumers. The Respondent will continue to reissue public notice to all residents and consumers of water for the water systems identified in this Order every ninety (90) days until such time that all significant deficiencies are corrected in each water system and the EPA considers them complete.
- c) The Respondent will provide documentation of providing public notice to the EPA within fifteen (15)

days of every ninety (90) day renewal cycle. Evidence of public notice should include documentation of the methods used to reach the customers and consumers in each water system in accordance with 40 C.F.R. §§ 141.203. If notices are posted in a public building, then documentation should include photos of the notices with a description of the location where they are posted.

- d) A sample public notice is provided in Appendix A and will be provided electronically to respondent. Public Notices should follow the content provided in Appendix A. Should the respondent wish to change the content then the public notice format must be submitted for the EPA approval to ensure that it meets the requirements for public notice. A section of the public notice entitled "What is being done" will need to be provided by the respondent along with the date the public notice is distributed.

Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time-period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must, at a minimum, meet the following requirements:

Community Water Systems must:

1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
2. Any other method reasonably determined to reach other persons regularly served by the system, if they would not normally be reached by the notice required above. Such persons may include those who do not pay water bills or do not have service connections addresses (e.g., house renters, apartment dwellers, etc.). Other methods may include: Publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the internet; or delivery to community organizations.

Non-community Water Systems must:

1. Post the notice in conspicuous locations throughout the distribution system frequently by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and
 2. Any other method reasonably determined to reach other persons served by the system if they would not normally be reached by the notice in the paragraph above. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations (e.g., community centers).
13. The Respondent shall comply with 40 C.F.R. § § 141.723 and 141.403 to correct the significant deficiencies identified in sanitary surveys at the PWSs in accordance with the significant deficiencies identified in Appendix B.
14. Each submittal made pursuant to this Order shall be sent by U.S. mail or by certified mail, with receipt requested, to the address below. Electronic submittals will also be accepted.

U.S. EPA, Region 6
Water Enforcement Branch
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Attn.: Tonia Biggs, (6EN-WR)
(214) 665-8551
Email: biggs.tonia@epa.gov

GENERAL PROVISIONS

The Order is effective upon receipt by the Respondent.

The Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. § § 701-706. Section 706, which is set forth at <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section706&num=0&edition=prelim>, states the scope of such review.

This Section 1414(g) Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 141 or other applicable federal requirements, which remain in full force and effect. Issuance of this Section 1414(g) Order is not an election by the EPA to forego any

civil or any criminal action otherwise authorized under the Act.

Violation of any term of this Section 1414(g) Order or the Act may subject the Respondent to an administrative civil penalty of up to \$38,954 under Section 1414(g) of the Act, 42 U.S.C. § 300g-(g), or a civil penalty of not more than \$55,907 per day per violation, assessed by an appropriate United States District Court under Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A).

This Order shall be binding on the Respondent cited herein and all its successors, and assignees. No change in ownership or operator(s) of the PWSs shall alter the responsibility of the Respondent under this Order.

12/18/18
Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division