

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF: )

Blackbird Bend Corporation, )

Respondent )

Proceedings under Section 1414 of the )  
Safe Drinking Water Act, 42 U.S.C. § 300g-3 )

) Docket No. SDWA-07-2017-0001

) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
) ON CONSENT

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by section 1414 of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300g-3, as properly delegated to the undersigned officials.

2. Blackbird Bend Corporation (“Respondent”) is a business that owns and/or operates the Blackbird Bend Casino Public Water System (“the System”), which provides piped water for human consumption to employees and patrons of Respondent’s facility known as Blackbird Bend Casino near Onawa, Iowa on the Omaha Tribe of Nebraska Indian Reservation. Respondent is wholly owned by the Omaha Tribe of Nebraska (“Tribe”), a federally-recognized Indian tribe. Accordingly, Blackbird Bend Casino and the System are “tribal facilities” for purposes of EPA’s 2011 “Policy on Consultation and Coordination with Indian Tribes” and EPA’s 1984 “Policy for the Administration of Environmental Programs on Indian Reservations.” EPA has worked with the Tribe, and will continue to work with the Tribe as appropriate, pursuant to EPA’s Indian Policies concerning consultation with tribal governments and enforcement against tribal facilities. EPA has provided, and will continue to provide as appropriate, compliance assistance to the Respondent and Tribe in its capacity as a regulatory agency in ensuring compliance with applicable federal law.

3. The System is supplied by a groundwater source consisting of two wells.

4. The System is a non-community water system as that term is defined in 40 C.F.R. § 141.2 because it regularly serves at least 25 of the same persons over six months of the year and is not a community water system.

5. Respondent is subject to the SDWA and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141. The drinking water regulations are “applicable requirements” as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

6. EPA has primary enforcement authority for public water systems in Indian Country, as that term is defined in 18 U.S. Code § 1151. The System is located within the exterior borders of the Omaha Tribe of Nebraska Indian Reservation. Therefore, EPA has primary enforcement authority over the system.

7. On December 10, 2013, the U.S. Environmental Protection Agency performed a sanitary survey of the System pursuant to its authorities outlined in 40 C.F.R. § 141.401. During the sanitary survey, EPA identified 12 significant deficiencies that required corrective action by the System. One of those significant deficiencies was a failure by the BBC Public Water System to have an Operations and Maintenance Manual (“O&M Manual”) in place. By letter dated February 18, 2014, the EPA notified the System that it was required to develop and implement an O&M Manual as a corrective action to address the identified significant deficiency.

8. By letter dated June 28, 2014, the EPA agreed to a deadline of December 31, 2014, for submitting the O&M Manual to EPA.

9. In December 2014, the System submitted an O&M Manual. On January 21, 2015, EPA responded to the System that the O&M Manual was inadequate and lacked essential information.

10. Because the System failed to submit an acceptable O&M Manual by the established deadline, EPA issued a Notice of Violation to the System dated January 28, 2015.

11. The System submitted another version of an O&M Manual in July 2015. Again, EPA determined that the manual was inadequate and lacked essential information, and responded with comments and specific recommendations to make the O&M Manual adequate and approvable. By agreement of the parties, a deadline of January 15, 2016, was established for a revised submittal of the O&M Manual to address the shortcomings identified by EPA.

12. In December 2015, the System submitted a third version of an O&M Manual. By letter dated March 11, 2016, EPA indicated to Respondent that the Manual was inadequate in addressing prior issues that had been identified, and provided specific recommendations to make the manual adequate and approvable. The parties agreed that Respondent would retain a qualified contractor to assist in writing a fourth draft of the Manual, which would be submitted to EPA by June 2016.

13. In May 2016, the System submitted a fourth version of an O&M Manual. By letter dated November 16, 2016, EPA issued the system another comment letter describing inadequacies with the Manual, and included specific recommendations to make the manual adequate and approvable. To date, the system has failed to submit an adequate O&M Manual that addresses to the satisfaction of EPA specific feedback and recommendations provided repeatedly by the EPA.

### **VIOLATIONS**

14. 40 C.F.R. § 141.403(a)(5) requires systems that have been notified of a significant deficiency to (i) complete a corrective action in accordance with EPA guidance or direction within 120 days of written notification, or (ii) be in compliance with an EPA-approved corrective action plan and schedule.
15. The System has failed to submit an adequate O&M Manual to EPA within 120 days of the EPA-approved deadline. Therefore, the System has failed to complete a corrective action for an identified significant deficiency and is in violation of 40 C.F.R. § 141.403(a)(5) and the SDWA.
16. 40 C.F.R. § 141.403(a)(7) requires systems to provide notice to the public annually for any unaddressed significant deficiency until the significant deficiency is corrected.

### **ORDER**

Based on the above violations, Respondent is ORDERED and hereby AGREES to perform the following actions upon the effective date of this Order:

17. Respondent shall submit to EPA a revised O&M Manual that addresses each of the comments in EPA's November 16, 2016, letter. The letter is attached as Appendix A and is fully incorporated into the terms of this Order. Respondent shall submit a draft Manual to EPA within 30 days of the effective date of this Order. Once EPA submits comments on the draft Manual, Respondent shall submit a final Manual within 30 days.
18. If EPA has not approved Respondent's revised O&M Manual prior to the July 2017 due date for the System's Consumer Confidence Report, Respondent shall notify the public of its failure to address the significant deficiency in its July 2017 Consumer Confidence Report.
19. Respondent shall submit the revised O&M Manual to:

Scott Marquess  
U.S. EPA Region 7  
Water Enforcement Branch  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

### **GENERAL PROVISIONS**

20. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue

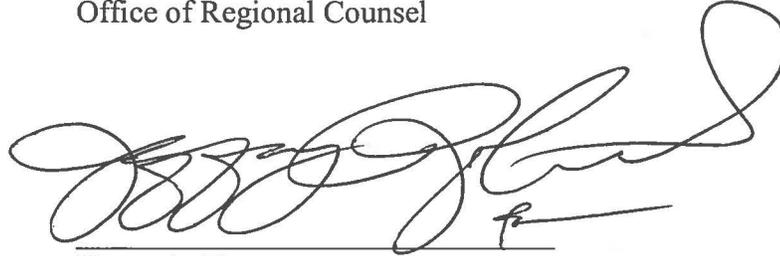
of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

21. This Order shall not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.
22. Violation of any part of this Order or the drinking water regulations may subject Respondent to a civil penalty of up to \$53,907 (as adjusted for inflation) per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. part 19.
23. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.
24. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued: 8 day of FEBRUARY, 2017.



Chris Muehlberger  
Office of Regional Counsel



Karen A. Flourney  
Director  
Water, Wetlands and Pesticides Division

**For the Respondent, Blackbird Bend Corporation:**



\_\_\_\_\_  
Signature

February 3, 2017  
\_\_\_\_\_  
Date

Brad Appleton  
\_\_\_\_\_  
Name

Chief Operations Officer  
\_\_\_\_\_  
Title