

January 15, 2021

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:)
) Docket No. SDWA-08-2021-0005
 Blackfeet Tribe of the)
 Blackfeet Indian Reservation of Montana)
 Respondent.) **ADMINISTRATIVE ORDER ON**
) **CONSENT**
)
 Blackfoot Public Water System) Proceeding pursuant to section 1414(g) of the
PWS ID #083090003) Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).

INTRODUCTION

The United States Environmental Protection Agency, Region 8 (EPA), and the Blackfeet Tribe of the Blackfeet Reservation of Montana (Respondent) enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the Safe Drinking Water Act (Act), 42 U.S.C. section 300f *et seq.*, and the National Primary Drinking Water Regulations (Part 141), 40 C.F.R. part 141, at the Blackfoot Public Water System (System).

JURISDICTION

1. The EPA has primary enforcement responsibility over public water systems on the Blackfeet Indian Reservation of Montana (Reservation). No other governmental entity has applied for and been approved to administer the program on the Reservation.
2. The EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), which has been delegated to the undersigned EPA official.
3. The Findings of Fact and Findings of Violation and Conclusions of Law (Findings) allegations in paragraphs 6 through 19, below, are made solely by the EPA. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent

may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under section 1448(a) of the Act, 42 U.S.C. § 300j-7(a). Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

PARTIES BOUND

4. This Consent Order applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Consent Order to any successors-in-interest prior to transfer of any interest in the System. Any change in ownership or control of the System including, but not limited to, any transfer of assets or real or personal property will not alter Respondent's responsibilities under this Consent Order.
5. Each undersigned signatory for Respondent certifies to her or his authority to execute this Consent Order and to legally bind Respondent to the terms of this Consent Order.

FINDINGS OF FACT

6. Respondent is a federally recognized Indian tribe and therefore is a "person" within the meaning of 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.
7. Respondent owns and/or operates the System, which is a public water system in Browning, Glacier County, Montana, within the exterior boundaries of the Reservation. The System provides the public with piped water for human consumption.

8. The System has approximately 12 service connections used by year-round residents and regularly serves an average of approximately 56 year-round residents. Therefore, the System is a “public water system” and a “community water system” within the meaning of sections 1401(4) and (15) of the Act, 42 U.S.C. § 300f(4) and (15), and 40 C.F.R. § 141.2.
9. Respondent owns and/or operates the System and therefore is a “supplier of water” as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the requirements of the Act and its implementing regulations, Part 141.
10. The source of the System’s water is ground water from one well.

FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW

11. Respondent is required to complete corrective action of significant deficiencies or comply with an EPA-approved corrective action plan and schedule within 120 calendar days (or earlier if instructed by the EPA) of receiving written notification from the EPA of a significant deficiency. 40 C.F.R. § 141.404(a). Respondent is required to notify the EPA within 30 calendar days of completion of a significant deficiency corrective action. 40 C.F.R. § 141.405(a)(2). Respondent received a sanitary survey report from the EPA on February 3, 2018, which detailed significant deficiencies and a schedule to complete the corrective actions by August 3, 2018. Respondent failed to complete all corrective actions by August 3, 2018, and/or failed to notify the EPA within 30 calendar days of completion of any significant deficiency corrective action and therefore violated these requirements.

12. Respondent is required to correct any sanitary defect found through either a Level 1 or 2 assessment either within 30 calendar days or be in compliance with an EPA approved schedule. 40 C.F.R. § 141.859(c). Respondent is required to notify the EPA when each scheduled corrective action is completed. 40 C.F.R. § 141.861(a)(3). Respondent failed to timely correct all sanitary defects found during an assessment conducted May 8, 2018 and/or failed to notify the EPA of corrective action completion and therefore, violated these requirements.
13. Respondent is required to deliver a consumer notice of individual tap monitoring results for lead and copper to the persons served at each sampled site, in accordance with 40 C.F.R. § 141.85(d). Within 90 calendar days following the end of each monitoring period, Respondent is required to submit to the EPA a sample copy of the consumer notification along with a certification that the notification has been distributed, in accordance with 40 C.F.R. § 141.90(f)(3). Respondent failed to deliver a consumer notice to the persons served at each sampled site for the monitoring period of January 1 to June 30, 2018, and failed to submit a copy of the consumer notice to the EPA and therefore violated these requirements.
14. For each calendar year, Respondent is required to certify to the EPA that an annual Consumer Confidence Report (CCR) has been distributed to the System's customers, and that the information is correct and consistent with compliance monitoring data previously submitted to the EPA. The certification is due within three months of distributing the CCR. 40 C.F.R. § 141.155. Respondent failed to provide CCR certification for calendar year 2017. Therefore, Respondent violated this requirement.

15. Respondent is required to monitor the System's water monthly for total coliform bacteria. 40 C.F.R. §§ 141.853-858. Respondent failed to monitor the System's water for total coliform bacteria during February of 2018, and therefore, violated this requirement.
16. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. Respondent must issue a repeat notice every three months for as long as the violation persists. The violations identified in paragraphs 11 and 12, above, are classified as Tier 2 violations, requiring public notice within 30 calendar days, according to 40 C.F.R. § 141.203. Respondent failed to notify the public of the violations identified in paragraphs 11 and 12, above, and/or failed to certify to the EPA that public notice was provided and therefore violated this requirement.
17. Respondent is required to report any failure to comply with Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violations identified in paragraphs 11, 13, and 14, above, to the EPA and therefore violated this requirement.
18. Respondent is required to report any violation for failure to correct sanitary defects to the EPA no later than the end of the next business day after it learns of the violation. 40 C.F.R. § 141.861(a)(2). Respondent failed to report the violation listed in paragraph 12, above, to the EPA and therefore violated this requirement.
19. Respondent is required to report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation. 40 C.F.R. §

141.861(a)(4). Respondent failed to report the violation listed in paragraph 15, above, to the EPA and therefore violated this requirement.

ORDER ON CONSENT

Based on the foregoing Findings of Violations, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to perform the following:

20. Respondent is ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.
21. By February 28, 2021, Respondent must consult with the EPA regarding actions to correct open significant deficiencies identified in the January 29, 2018 Sanitary Survey report regarding the lack of required overflow on finished water storage tanks. By March 31, 2021, Respondent must submit a proposed schedule (Schedule) and plan (Plan) to the EPA for completion of all corrective actions. The Plan must include proposed modifications to the System and estimated costs of the modifications. The Schedule must include specific milestone dates. The Schedule will be incorporated into this Consent Order with each milestone to be an enforceable requirement upon written approval by the EPA. Within 10 calendar days after completing each task included in the Schedule, Respondent must notify the EPA of the task's completion. Respondent must provide sufficient evidence to the EPA including photographs of the corrective actions. Thereafter, if the EPA identifies any significant deficiency at the System, Respondent must complete corrective action for each significant deficiency and provide notification to the EPA within 30 calendar days of completion, as required by 40 C.F.R. §§ 141.404(a) and 141.405(a)(2).

22. Respondent must complete corrective action for any sanitary defect found through either a Level 1 of 2 assessment conducted at the System. The system must complete the corrective action in compliance with a timetable approved by the EPA in consultation with the System. The System must notify the EPA when each scheduled corrective action is completed. Respondent must comply with all provisions of 40 C.F.R. § § 141.859(c) and 141.861(a)(3) regarding any identified sanitary defects at the System.
23. Within 90 calendar days following the end of each monitoring period, Respondent must deliver a consumer notice of individual tap monitoring results to the persons served at each sample site, in accordance with 40 C.F.R. § 141.85(d), and submit to the EPA a sample copy of the consumer notification along with a certification that the notification has been distributed, in accordance with 40 C.F.R. 141.90(f)(3).
24. For each calendar year, Respondent must provide CCR certifications to the EPA within three months of distributing the CCR, as required by 40 C.F.R. § 141.155.
25. Respondent must monitor the System's water monthly for total coliform bacteria. If a sample is positive for total coliform, within 24 hours of being notified of the positive result, Respondent must collect a set of three repeat samples for each total coliform-positive sample. 40 C.F.R. § 141.853-858. Respondent must report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).
26. Within 30 calendar days of the Effective Date of this Consent Order, and quarterly thereafter as long as the violations cited in paragraphs 11 and 12, above persists, Respondent must notify the public of these violations. Templates and instructions are

available at:

<https://www.epa.gov/region8/waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn>. Following any future violation of Part 141,

Respondent must comply with any applicable public notice provisions of 40 C.F.R. Part 141, Subpart Q. Within 10 calendar days after providing public notice, Respondent must provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. § 141.31(d).

27. Respondent must report any violation of Part 141 to the EPA within 48 hours of the violation occurring, as required by 40 C.F.R. § 141.31(b). However, if a different time period for reporting is specified in this Consent Order or Part 141, Respondent must report within that different period.
28. Respondent must report any violation for failure to correct sanitary defects to the EPA no later than the end of the next business day after it learns of the violation. 40 C.F.R. § 141.861(a)(2).
29. Respondent must report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation, as required by 40 C.F.R. § 141.861(a)(4).
30. Any notices or reports required by this Consent Order to be submitted to the EPA must be submitted to:

Christina Carballal, 8ENF-WSD
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129
Email: carballal-broome.christina@epa.gov

GENERAL PROVISIONS

31. Respondent must fully implement each item of this Consent Order. Respondent's failure to fully implement all requirements of this Consent Order in the manner and time period required will be deemed a violation of this Consent Order.
- 32.** This Consent Order does not constitute a waiver, suspension, or modification of any requirement of the Act or Part 141. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
33. Violation of any part of this Order, the Act, or Part 141 may subject Respondent to a civil penalty of up to \$58,328 (as adjusted for inflation) per day of violation, a court injunction ordering compliance, or both. 42 U.S.C. § 300g-3; 40 C.F.R. part 19; 85 Fed. Reg. at 1754 (January 13, 2020).
34. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.
35. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.
36. This Consent Order will terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the Consent Order. The EPA at its sole discretion may terminate the Consent Order upon determining full compliance and providing written notice to the Respondent.

IT IS SO AGREED AND ORDERED:

Blackfeet Tribe
Blackfoot Public Water System; ECN 600.0023.2018_BlackfeetPWS
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**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**
Complainant.

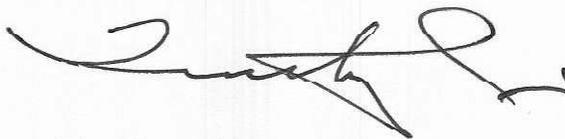
**SUZANNE
BOHAN**

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Date:

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**BLACKFEET TRIBE OF THE BLACKFEET
RESERVATION OF MONTANA,**
Respondent.

A handwritten signature in black ink, appearing to read 'Timothy Davis', with a stylized flourish at the end.

Date:

The Honorable Timothy Davis
Chairman