



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Ref: 8ENF-W-SDW

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
and VIA EMAIL at [chairmanfox@mhanation.com](mailto:chairmanfox@mhanation.com)

The Honorable Mark Fox, Chairman  
Mandan Hidatsa and Arikara Nation  
404 Frontage Road  
New Town, North Dakota 58763-9404

Mr. Pem Hall, Director  
Fort Berthold Rural Water  
308 4 Bears Complex  
New Town, North Dakota 58763

Re: Emergency Administrative Order under Section 1431 of the Safe Drinking Water Act,  
Twin Buttes Public Water System, PWS ID #083890003, Docket No. **SDWA-08-2019-0002**

Dear Chairman Fox and Mr. Hall:

Enclosed is an Emergency Administrative Order (Order) issued by the U.S. Environmental Protection Agency to Fort Berthold Rural Water (Respondent) under section 1431 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i. The EPA has determined that conditions exist at the Twin Buttes Public Water System (System) that may present an imminent and substantial endangerment to the persons served by the System. The EPA has made this determination based on information from the System operator on October 31, 2018, and further discussed with you today, that the east side of the distribution system lost pressure due to a water line break

Pursuant to its authority set forth in section 1431 of the Act, 42 U.S.C. § 300i, the EPA is authorized to take actions necessary to protect human health. Based on our discussion today, we understand Fort Berthold Rural Water has already begun taking steps to address the water line break. We sincerely appreciate the Mandan Hidatsa and Arikara Nation's proactive efforts to ensure safe drinking water for all consumers. Nevertheless, this Order and its requirements are necessary to ensure adequate protection of public health at the System.

The enclosed Order sets forth the actions that must be taken to ensure that the people served by the System are provided with safe drinking water. The Order requires Fort Berthold Rural Water to, among other things, provide an alternate source of water to customers; issue a boil water advisory and public notice until notified by the EPA to discontinue; confirm the water line has been repaired or replaced and

the distribution system has been disinfected and flushed; and take additional total coliform bacteria samples. The consequences for failing to comply are set forth in the Order.

If you have any questions or wish to discuss this Order, please contact Olive Hofstader at (800) 227-8917 extension 6467 or (303) 312-6467, or by email at [hofstader.olive@epa.gov](mailto:hofstader.olive@epa.gov). Any questions from counsel for the Respondent should be directed to Amy Swanson, Supervisory Enforcement Attorney, at the above 800 number, extension 6906, or at (303) 312-6906, or by email at [swanson.amy@epa.gov](mailto:swanson.amy@epa.gov).

Thank you for your attention to this matter.

Sincerely,



Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

Emergency Administrative Order

electronic cc:

Lyndon Fredericks, Operator, ([lfredericks@mhanation.com](mailto:lfredericks@mhanation.com))  
Bruce Fox, Supervisor, ([brucefox@mhanation.com](mailto:brucefox@mhanation.com))  
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John Fredericks, Frederick and Peebles, ([JFredericks@ndnlaw.com](mailto:JFredericks@ndnlaw.com))  
Edmund Baker, Environmental Director, MHA Nation, ([edmundbaker@mhanation.com](mailto:edmundbaker@mhanation.com))  
Melissa Haniewicz, EPA Regional Hearing Clerk

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IN THE MATTER OF )  
 )  
Fort Berthold Rural Water, )  
(Twin Buttes Public Water System) )  
PWS ID# 083890003 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. **SDWA-08-2019-0002**

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**EMERGENCY ADMINISTRATIVE ORDER**

**AUTHORITY**

1. This Emergency Administrative Order (Order) is issued by the U.S. Environmental Protection Agency (EPA) pursuant to the authority of section 1431(a) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i(a). The undersigned officials have been properly delegated this authority.
2. Failure to comply with this Order may result in civil penalties of up to \$23,374 per day. 42 U.S.C. § 300i(b); 40 C.F.R. part 19; 83 Fed. Reg. 1190, 1193 (January 10, 2018).
3. The EPA may issue an order pursuant to section 1431(a) of the Act, 42 U.S.C. § 300i(a), upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of humans, and appropriate state or local authorities have not acted, or do not have the authority to act, to protect human health.
4. The EPA has primary enforcement responsibility for the Act's public water supply protection program on the Fort Berthold Reservation (Reservation). No other governmental authority has applied for or been approved to administer the program on the Reservation.
5. Respondent, Fort Berthold Rural Water, is an organization authorized under the laws of the Three Affiliated Tribes of the Fort Berthold Reservation, also known as the Mandan Hidatsa and Arikara Nation (MHA Nation), to provide water and wastewater services to predominantly tribal communities. Respondent is a "municipality" and "person" as those terms are defined in the Act, 42 U.S.C. §§ 300f(10) and 300f(12), respectively, for purposes of federal enforcement under the Act.
6. Respondent owns and/or operates the Twin Buttes Public Water System (System) located in Twin Buttes, North Dakota. The System provides water to the public for human consumption through pipes or other constructed conveyances.
7. Systems that have at least 15 service connections or regularly serve at least 25 people per day at least 60 days per year are "public water systems" as defined in section 1401(4) of the Act, 42 U.S.C. § 300f(4), and, therefore, are subject to the requirements of the Act and the National Primary Drinking Water Regulations (NPDWR) at 40 C.F.R. part 141.

8. The System has approximately 101 service connections used by year-round residents and/or regularly serves an average of approximately 415 year-round residents. Therefore, the System is a “public water system” and a “community water system” as defined in 40 C.F.R. § 141.2 and section 1401 of the Act, 42 U.S.C. § 300f.

9. Prior to issuing this Order, the EPA consulted with the System, Indian Health Services, and the MHA Nation Tribal Government to confirm the facts stated in this Order.

10. The EPA has determined that conditions exist at the System that may present an imminent and substantial endangerment to the health of humans, based on the facts indicated below. The EPA has determined that this Order is necessary to protect human health.

11. Respondent notified the EPA on October 31, 2018, that the System lost pressure in the east side of the distribution system after a non-Fort Berthold Rural Water contractor, while locating a water main, caused a break in the line in the late afternoon on October 30, 2018. Water was shut off and drained down. Respondent immediately notified customers using the alert system. The contractor was unable to adequately repair the break that night and the failed line repair resulted in the tank level dropping to a level of 3 feet. While the System could maintain adequate pressure in the west side of the distribution system, the System could not maintain adequate pressure in the east side of the distribution system. The east side includes the school, health clinic and tribal offices, which were closed on October 31, 2018, due to the situation. A successful repair was made, and pressure began to be restored to the east side by late afternoon on October 31, 2018.

12. Loss of pressure in a drinking water distribution system may cause a net movement of water from outside the pipe to the inside through cracks, breaks, or joints in the distribution system that are common in all water systems. Backsiphonage is also a condition resulting from low or no pressure. Such system failures carry a high potential for fecal contamination or other disease causing organisms to enter a distribution system.

13. On October 31, 2018, the EPA provided Respondent with a template for a boil water advisory. The EPA has been advised that Respondent has issued an advisory.

### **ORDER**

#### **INTENT TO COMPLY**

14. Within 24 hours of receipt of this Order, Respondent shall notify the EPA in writing of its intention to comply with the terms of this Order. Notification by e-mail is acceptable.

### **BOIL ORDER AND PUBLIC NOTICE**

15. Upon receipt of this Order, Respondent shall continue to provide information to the public of the situation described in this Order and notify the public that a boil water advisory is in effect. The boil water advisory will continue until the System's repairs are completed and monitoring of the water is conducted. Respondent shall submit a copy of the notice to the EPA within 24 hours of receipt of this Order. Respondent shall continue providing the public notice until the EPA provides written notice that public notice may be discontinued.

### **ALTERNATE WATER SUPPLY**

16. Upon receipt of this Order, Respondent shall notify the public that an alternate potable water supply is available. Respondent shall provide at least two liters of potable water daily per person at a central location that is accessible to all persons served by the System. Respondent may also opt to provide an alternate water supply that is either 1) provided by a licensed water distributor, 2) purchased bottled water, or 3) provided by another public water system that meets the requirements of the NPDWRs. The alternate water supply shall be made available at no cost to all users of the System as needed for drinking and cooking until water service is restored to affected users of the System.

### **DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS**

17. Within 24 hours of repairing the water line, Respondent shall properly disinfect and flush the System's distribution system and return pressure to normal. Respondent began flushing the System on November 1, 2018.

18. Following flushing and disinfecting of the System as required by paragraph 17, above, Respondent shall monitor the chlorine residual daily in the distribution system. When the chlorine residual returns to normal, Respondent shall collect consecutive daily (one sample per day) special purpose (defined in 40 C.F.R. § 141.853(b)) samples from the System's distribution system. Respondent shall ensure that each sample is analyzed for total coliform and *E. coli* and shall email or fax each result to the EPA upon receipt of the analysis from the laboratory.

19. After Respondent receives written notification from the EPA that it may discontinue daily total coliform sampling, Respondent must collect weekly bacteriological samples (one sample per week) to determine compliance with the *E. coli* maximum contaminant level as stated in 40 C.F.R. § 141.860.

20. After Respondent receives written notification from the EPA that it may discontinue weekly total coliform sampling, Respondent shall thereafter resume monthly total coliform sampling as required by 40 C.F.R. § 141.855.

21. Respondent shall remain obligated to comply with all applicable requirements of 40 C.F.R. part 141 including, but not limited to, the requirements in 40 C.F.R. § 141.858 to collect three repeat samples within 24 hours of being notified of a total coliform-positive sample result. If a repeat sample is total coliform or *E. coli* positive, within 24 hours of being notified of the positive sample, Respondent shall consult with the EPA for further compliance requirements.
22. Respondent shall collect all total coliform sampling at sites that are representative of water throughout the System according to the Sample Siting Plan submitted to the EPA by the Respondent. Additionally, Respondent shall report all sampling results to the EPA by telephone, email or fax immediately upon (*i.e.*, as soon as practicable, and in no event more than 24 hours after) receiving the results.
23. The EPA may require Respondent to increase total coliform and chlorine residual sampling at any time while this Order is in effect.

### **CORRECTIVE MEASURES**

24. Within 7 days of the effective date of this Order, Respondent shall provide the EPA with written verification that the water main was adequately repaired.
25. The EPA may require additional corrective measures if it is determined that the water main was not adequately repaired.

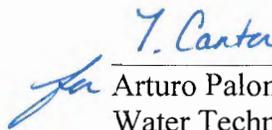
### **REPORTING**

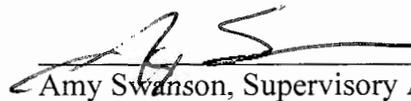
26. Respondent must give weekly updates to the EPA on the progress of providing an alternate water supply, repairing the water main, disinfecting and flushing the System, and monitoring for total coliform and chlorine residual. Weekly updates must be submitted to the EPA until the EPA notifies the System that reports may be discontinued. These reports may be submitted via phone, fax, or e-mail.
27. Any notices or reports required by this Order to be submitted to:
- Olive Hofstader at (800) 227-8917, ext. 6467, or (303) 312-6467,  
by email at [hofstader.olive@epa.gov](mailto:hofstader.olive@epa.gov), or fax at (303) 312-7518.
28. This Order does not relieve Respondent from complying with any applicable federal, tribal, state, or local law.

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29. This Order constitutes final agency action. Respondent may seek federal judicial review of this Order under section 1431 of SWDA, 42 U.S.C. § 300(i), pursuant to section 1448(a) of the SDWA, 42 U.S.C. § 300j-7(a).

30. Issued and effective this 1<sup>st</sup> day of November, 2018.

  
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Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

  
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Amy Swanson, Supervisory Attorney  
Regulatory Enforcement Unit  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice