

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

January 29, 2021

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Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:)

The Gros Ventre and Assiniboine Tribes)
of the Fort Belknap Indian Community and)
Prairie Mountain Utilities,)

Respondents.)

Fort Belknap Agency Public Water System)
PWS ID # 083090041)

Docket No. SDWA-08-2021-0010

**ADMINISTRATIVE ORDER ON
CONSENT**

Proceeding pursuant to section 1414(g) of the
Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g).

INTRODUCTION

The United States Environmental Protection Agency, Region 8 (EPA) and the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community and Prairie Mountain Utilities (collectively referred to as Respondents), 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 Fort Belknap Agency Public Water System.

JURISDICTION

1. The EPA has primary enforcement responsibility over public water systems on the Fort Belknap Indian Reservation (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. Respondents admit the jurisdictional allegations in this section of the Consent Order. In signing this Consent Order, Respondents neither admit nor deny the factual allegations herein. Without any admission of liability, Respondents consent to the issuance of this Consent Order and agree to abide

by all of its conditions. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondents 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). Respondents further agree not to challenge the jurisdiction of the EPA or any of 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 Respondents and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondents 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 shall not alter Respondents' responsibilities under this Consent Order.

5. Each undersigned signatory for Respondents certifies to her or his authority to execute this Consent Order and to legally bind Respondents to the terms of this Consent Order.

FINDINGS OF FACT

6. The Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Community (FBIC) are federally recognized Tribes under section 104 of the Federally Recognized Indian Tribe list Act, 25 U.S.C. § 479A, and 79 Fed. Reg. 4748, 4752 (January 29, 2014), and therefore, "persons" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 42 U.S.C. § 300f(10) for purposes of federal enforcement.

7. The Prairie Mountain Utilities (PMU) is an entity chartered under the laws of the FBIC Council and therefore a “person” as the term is defined in the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.

8. Respondents own and/or operate a public water system known as the Fort Belknap Agency Public Water System (System) in the community of Fort Belknap Agency, Montana, within the exterior boundaries of the Reservation. The System provides the public with piped water for human consumption.

9. The System has approximately 432 service connections used by year-round residents and regularly serves an average of approximately 2,000 year-round residents and a non-transient population of 100 and, therefore, is a “public water system” and a “community water system” as defined in section 1401 of the Act, 42 U.S.C. § 300f, and 40 C.F.R. § 141.2.

10. Respondents own and/or operate the System and therefore are “suppliers of water” as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondents therefore are required to comply with the requirements of the Act and its implementing regulations, Part 141.

11. The source of the System’s water is surface water from the Milk River.

12. On December 2, 2013, the Department of Justice filed on behalf of the United States and the Respondents a Consent Decree in the United States District Court for the District of Montana, Great Falls Division, wherein the Respondents agreed to perform specific injunctive relief and reporting for a minimum of five years to address chronic drinking water violations at five Tribally owned and operated public water systems on the Reservation, including the Fort Belknap Agency Public Water System.

13. For the Fort Belknap Agency System, within thirty (30) days of date of entry of the Consent Decree, the Respondents agreed and were ordered to provide a written plan and schedule to meet all requirements of the Stage 1 Disinfection Byproducts Rule (DBPR) (in effect through September 30, 2013) and the Stage 2 DBPR (in effect beginning October 1, 2013), including but not limited to: achieving the required percent removal of Total Organic Carbon (TOC) between the source water and finished water as required by the Stage 1 DBPR; and reducing the locational annual average of DBPs to at or below the MCL as required by the Stage 2 DBPR, by the dates specified in the plan.

14. The Consent Decree at paragraph 16.j specifically stated that until such time as the physical and chemical modifications are made to enable the Fort Belknap Agency Surface Water Treatment Plant to meet the requirements of the Stage 1 and Stage 2 DBPRs, the U.S. agrees not to allege noncompliance with the Consent Decree against the Defendants for the DBP MCL exceedances and failure to remove the required percent of TOC between the source water and finished water, so long as the Defendants meet their commitments under the plan and its schedule.

15. Since entry of the Consent Decree, the FBIC and Utility, with compliance and technical assistance from the EPA, the Indian Health Service, and several contract providers, have worked diligently without success to address the physical and chemical modifications necessary to enable the System to comply with the DBP and TOC limits. All other requirements of the Consent Decree have been satisfied. The parties agree that it is in their mutual best interest, and the interest of the public, to terminate the Consent Decree and enter into this Consent Order to focus specifically on addressing the DBP and TOC requirements through a plan and schedule.

16. The parties have agreed upon the following plan to return the facility to compliance:
 - a) Phase I – Achieve compliance with TOC reduction requirements by optimizing the coagulation and flocculation processes at the treatment plant. This shall include:
 - i. Conducting jar tests to identify coagulants that more effectively reduce TOC, including testing the coagulant used during prior periods of compliance with this requirement; and
 - ii. Selecting and using a coagulant that will effectively reduce TOC such that compliance with TOC reduction requirements is achieved.
 - b) Phase II - Achieve compliance with the TTHM MCL by resolving the electrical problems with the tank aeration system and improving water circulation in the distribution system. This shall include:
 - i. Installing an aeration status sensor that can be read remotely at the water plant so that the plant operator will know when the aeration system is not working;
 - ii. Working with EPA to evaluate options for resolving the 3-phase power imbalance, so that the tank aeration system operates continuously and does not experience frequent shutdowns;
 - iii. If an option is selected to resolve the 3-phase power imbalance, after consultation with EPA, developing a plan and schedule for soliciting funding, selecting a contractor, and installing and testing any new equipment.
 - iv. Developing seasonal aeration and/or flushing plans, if needed, to support achieving compliance; and

- v. Completing the water loop at Arena Avenue to reduce stagnant water in the distribution system.
- c) Phase III – If completion of Phase I and Phase II do not result in compliance with the total trihalomethanes (TTHM) maximum contaminant level (MCL), achieve compliance by implementing use of chloramines for secondary disinfection.

FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW

17. The MCL for TTHM is 0.080 milligrams per liter (mg/L), based on the locational running annual average (LRAA) of four consecutive quarterly samples at each sampling location. 40 C.F.R. §§ 141.64 and 141.620(d). The LRAA of samples at sampling location S2-CDC was 0.122 mg/L between the 3rd Quarter 2018 and 2nd Quarter 2019, 0.102 mg/L between the 4th Quarter 2018 and 3rd Quarter 2019, 0.100 mg/L between the 1st Quarter 2019 and 4th Quarter 2019, 0.093 mg/L between the 2nd Quarter 2019 and 1st Quarter 2020, and 0.087 between the 3rd Quarter 2019 and 2nd Quarter 2020 and therefore, Respondents violated this requirement.

18. Respondents are required to reduce the TOC between the System's source water and its combined filter effluent in accordance with 40 C.F.R. § 141.135(b)(2) and § 141.135(c). Compliance is determined quarterly by calculating a running annual average (RAA) removal ratio, between the source water and combined filter effluent, of greater than or equal to 1.00 for TOC removal, in accordance with 40 C.F.R. § 141.135(c). Respondents did not achieve the RAA removal ratio of 1.00 or greater in the 2nd Quarter 2019, 3rd Quarter 2019, 4th Quarter 2019, and 1st Quarter 2020 and therefore, violated this requirement.

19. Respondents are required to collect TTHMs and haloacetic acids (HAA5) samples in the System's distribution system during the months of the highest disinfectant byproduct concentrations at

the location and on the dates identified in the System's monitoring plan. 40 C.F.R. §§ 141.621 & 141.622(a)(1). Respondents failed to monitor the System's water for TTHM and HAA5 during October 2019 and therefore, violated this requirement.

20. Respondents are required to monitor the System's water for disinfection byproduct precursors, taking monthly paired samples of TOC in source water and treated water, with an alkalinity sample of the source water to be taken at the same time. 40 C.F.R. § 141.132(d). Respondents failed to monitor the System's water for disinfection byproduct precursors and alkalinity during July 2019 and therefore, violated this requirement.

21. Respondents are required to report any failure to comply with any National Primary Drinking Water Regulations Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondents failed to report some of the violations cited in paragraphs 17, 18, 19 and 20, above, to the EPA within 48 hours and therefore, violated this requirement.

ORDER ON CONSENT

Based on the foregoing Findings of Fact and Findings of Violation and Conclusions of Law, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondents agree and are hereby ORDERED to perform the following:

22. Respondents shall, within 30 calendar days after receipt of this Consent Order, submit to the EPA a proposed schedule (Schedule) implementing the plan in paragraph 16 above to bring the System into compliance with the required percentage removal of TOC and the TTHM MCL as defined in 40 C.F.R. § 141.62(b).

23. The Schedule for each phase must include a timeframe in which to determine whether compliance has been thoroughly and sustainably achieved or, absent success in complying with the TOC removal and/or TTHM MCL, a timeframe for moving to the next phase. Portions of Phase I and Phase II may be concurrent. The Schedule shall include proposed modifications to the System and estimated costs of such modifications. The Schedule shall also include a project start date, interim milestone deadlines, and a final compliance deadline (which shall be within three years of the effective date of this Consent Order). Respondents shall not begin physical or chemical modifications to the System before the EPA has approved the Schedule.

24. Each milestone in the Schedule shall be incorporated into this Order as an enforceable requirement upon written approval by the EPA.

25. Within 90 calendar days after receipt of the EPA's approval of the Schedule, Respondents shall begin to provide the EPA with quarterly reports on the progress made toward bringing the System into compliance with the TTHM MCL. Each quarterly report is due by the 10th day of the month following the relevant calendar quarters (e.g., April 10 for the first calendar quarter).

26. Within 10 calendar days after completing all tasks included in the Schedule, Respondents shall notify the EPA of the project's completion.

27. The System shall achieve compliance with the TTHM MCL by the final compliance deadline specified in the EPA-approved Schedule. If the Respondents' plan fails to achieve permanent compliance, the EPA may order further steps and/or seek penalties for noncompliance.

28. Respondents shall notify the public quarterly by completing a public notice (PN) until the TTHM MCL violation is resolved. Respondents shall submit a copy of the completed PN and

appropriate certification 10 calendar days after the PN was provided. 40 C.F.R. §§ 141.31(d) and 141.201(c)(3).

29. Respondents shall achieve a reduction of the TOC between the System's source water and its combined filter effluent, determined quarterly by calculating a RAA removal ratio of greater than or equal to 1.00 for TOC removal, as required by 40 C.F.R. § 141.135(b)(2) and 141.135(c).

30. Respondents shall monitor the Systems' water quarterly for TTHM and HAA5 at the specific location during the month identified in the System's monitoring plan, as required by 40 C.F.R. §§141.620-141.622. Respondents shall submit the sampling results to the EPA within 10 calendar days following the end of the monitoring period, as specified by 40 C.F.R. § 141.629.

31. Respondents shall monitor the System's water each month for disinfection byproduct precursors, as required by 40 C.F.R. § 141.132(d). Within the first 10 calendar days after the end of each monitoring period, Respondents shall report analytical results, including its calculation of the TOC removal percentage and all other information required by 40 C.F.R. § 141.134(d), to the EPA, as required by 40 C.F.R. § 141.132(d).

32. Respondents shall 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 Order or Part 141, Respondents shall report within that different period.

33. Any notices or reports required by this Consent Order to be submitted to the EPA shall be submitted to:

Jill Minter, 8ENF-WSD
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129
Email: minter.jill@epa.gov

GENERAL PROVISIONS

34. Respondents shall fully implement each item of this Consent Order. Respondents' failure to fully implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order.

35. This Consent Order shall 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.

36. Violation of any part of this Order, the Act, or Part 141 may subject Respondents 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).

37. This Consent Order may be amended or modified by written agreement of the EPA and Respondents.

38. The Effective Date of this Consent Order is the date upon which a fully executed copy is filed with the Regional Hearing Clerk.

39. This Consent Order shall 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 Respondents.

IT IS SO AGREED AND ORDERED:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

**COLLEEN
RATHBONE**


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Date: _____

**Colleen Rathbone, Branch Chief
Water Enforcement Branch
U.S. EPA Region 8**

FORT BELKNAP INDIAN COMMUNITY,
Respondent.

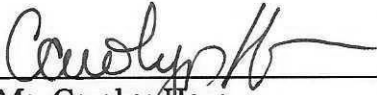
Date: 1-11-2021



The Honorable Andrew Werk, Jr.
President

PRAIRIE MOUNTAIN UTILITIES,
Respondent.

Date: 1/13/21



Ms. Carolyn Horn
Acting Director