



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2018 DEC 11 PM 3:34

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: SDWA-08-2018-0013

IN THE MATTER OF:)	
)	
UTE INDIAN TRIBE & UTE TRIBE)	FINAL ORDER
PUBLIC WORKS, URIAH HEEPS)	
SPRING & WHITEROCKS PUBLIC)	
WATER SYSTEMS)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 11th DAY OF December, 2018.



Katherin E. Hall
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2018 DEC 11 PM 3: 34

IN THE MATTER OF)	
)	Docket No. SDWA-08-2018-0013
Ute Indian Tribe and Ute Tribe Public Works)	
Uriah Heeps and Whiterocks)	
Public Water Systems, PWS ID# 08499002)	
and 084990003)	
Respondents.)	CONSENT AGREEMENT

FILED
EPA REGION VIII
HEARING CLERK

The United States Environmental Protection Agency Region 8 (EPA) and the Ute Indian Tribe and Ute Tribe Public Works (Respondents), by their undersigned representatives, agree as follows:

INTRODUCTION

1. On May 14, 2018, the EPA issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondents violated two administrative orders that the EPA had previously issued under section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g). The Complaint proposed that the Respondents pay an administrative civil penalty for their violations, pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3).
2. The Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint.
3. The Respondents waive their right to contest the allegations in the Complaint and to appeal any final order (Final Order) that an EPA Regional Judicial Officer may issue to approve this consent agreement (Agreement).
4. This Agreement, upon incorporation into a Final Order, is binding upon the EPA, the Respondents, and the Respondents' successors and assigns. Any change in the Respondents' corporate status—or changes to the ownership or operation of the public water system at issue, including, but not limited to, any transfer of assets or real or personal property—shall not alter the Respondents' responsibilities under this Agreement.

CIVIL PENALTY

5. The Respondents agree to pay a civil penalty in the amount of five thousand dollars (\$5,000) in the manner described below:

- a. Payment shall be in a single payment of five thousand dollars (\$5,000), due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in paragraph 5(a) above, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Olive Hofstader, Enforcement Officer
Water Enforcement Program (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- d. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
- e. Payments are first applied to accrued interest and then to the outstanding principal amount.
- f. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), the Respondents will not deduct penalties paid under this Agreement for federal tax purposes.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

6. In response to the violations of the Act alleged in the Complaint and in settlement of this matter, although not required by the Act or any other applicable laws, Respondents shall complete the

supplemental environmental project (SEP) described in this Agreement and in Appendix A, which the parties agree is intended to secure significant environmental or public health protection and improvement.

7. The SEP shall meet the following requirements:
 - a. The SEP will consist of developing and implementing an environmental compliance audit program, as further described in Appendix A.
 - b. The SEP will be completed by January 31, 2022.
 - c. Respondent's total expenditure for the SEP shall be no less than fifty-five thousand dollars (\$55,000.00).
 - d. All work required to complete the SEP shall be performed in compliance with all applicable laws and regulations

8. Respondents have elected to use Natural Resources Consulting Engineers, Inc. (NRCE), as a third-party contractor to assist with implementation of the SEP. Respondents have represented to the EPA that NRCE has experience in the type of activities to be performed under the SEP. The specific activities to be performed by NRCE on behalf of Respondents are described in this Agreement and Appendix A. Respondents are responsible for ensuring that the entity or entities performing any portion of the SEP comply with all applicable terms of this Agreement.

9. Respondents have selected the residents of the Uintah & Ouray Reservation, including members of the Ute Indian Tribe and other water users of the Tribal Water Systems, as the beneficiaries of the SEP.

10. Respondents certify that, as of the date of this Agreement:
 - a. All cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondents in good faith estimate that the cost to implement the SEP is \$55,000.00;
 - b. Respondents are not required to perform or develop the SEP by any federal, state, tribal, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. The SEP is not a project that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Agreement;
 - d. Respondents have not received and will not receive credit for the SEP in any other enforcement action;
 - e. Respondents will not receive any reimbursement for any portion of the SEP from any other person or entity;
 - f. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - g. Respondents are not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
 - h. Respondents inquired of NRCE, the SEP implementer, whether NRCE is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and Respondents have been informed by the SEP implementer that it is not a party to such a transaction.
11. Any public statement, oral or written, in print, film or other media, made by Respondents making reference to the SEP under this Agreement shall include the following language:
“This project was undertaken in connection with the settlement of an enforcement action, *In the matter of Ute Indian Tribe and Ute Tribe Public Works*, taken by the United States Environmental Protection Agency to enforce federal laws.”

12. Respondents shall provide the EPA with Quarterly Reports describing the actions Respondents have taken to meet its obligations under the SEP. The first Quarterly Report will cover the first quarter of 2019, with each quarterly report due ten (10) days after the end of each calendar quarter (e.g. April 10, 2019 for the first quarter of 2019, July 10, 2019 for the second quarter of 2019, etc.). These reports should include, at a minimum, a detailed update on the progress of the SEP, including a description of activities completed, milestones met during the reporting period, potential setbacks, expenditures made in implementation of the SEP, and those activities scheduled for the next reporting

period. The Quarterly Reports shall be submitted on or before the due date to Olive Hofstader at the address provided in paragraph 5(c).

13. Within thirty (30) days after completion of the SEP, Respondents shall submit a SEP Completion Report to Olive Hofstader at the address provided in paragraph 5(c). The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented, including a description of any problems encountered in completing the SEP and the solutions thereto;
- b. An itemized list with documentation (including invoices and/or purchase orders) of all Respondents' SEP expenditures;
- c. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP, including the number and description of compliance issues identified by the SEP and corrected by Respondents; and
- d. A certification by Respondents that the SEP has been fully implemented pursuant to the provisions of this Agreement.

14. The SEP Completion Report shall include the following certification, to be signed by an officer of Respondent:

- a. I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

15. After receiving the SEP Completion Report, the EPA shall notify Respondents, in writing, (i) regarding any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondents to correct any deficiencies in the SEP Completion Report itself; or (ii) indicate that the EPA concludes that the SEP has been completed satisfactorily; or (iii) determine that the SEP has not been completed satisfactorily.

16. If the EPA elects to exercise option (i) in paragraph 15, i.e. the EPA determines that the SEP Completion Report is deficient but the EPA has not made a final determination about the adequacy

of the SEP completion itself, the EPA shall permit Respondents the opportunity to object in writing to the notification of deficiency from the EPA within fourteen (14) days of receipt of such notification. The EPA and Respondents shall have an additional thirty (30) days from the EPA's receipt of such notification of objection to reach agreement on changes necessary to the SEP Completion Report. If the EPA and Respondents cannot reach agreement on any such issue within this 30-day period, the EPA shall provide a written statement of its decision on the adequacy of the SEP to Respondents, which decision shall be final and binding upon Respondents.

17. In the event Respondents fail to comply with any term or provision of this Agreement relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Agreement, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

- a. The EPA shall determine whether the SEP has been satisfactorily completed and whether Respondents have made a good faith, timely effort to implement the SEP.
- b. If Respondents fail to timely and completely submit the Quarterly Reports, Compliance Audit Reports, or the SEP Completion Report—or fail to complete the SEP itself—by the dates required by this Agreement, Respondents shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until the applicable requirement is met.
- c. If the EPA determines that Respondents have not completed the SEP satisfactorily and in a timely manner pursuant to the requirements set forth in this Agreement, Respondents shall be liable for and shall pay a stipulated penalty to the United States in the amount of \$60,000.00, minus the amount that Respondents can demonstrate they spent on the SEP. The EPA may, in the unreviewable exercise of its discretion, decide whether to seek daily penalties under paragraph 17(b) or a lump sum penalty under this paragraph, 17(c).
- d. Respondents shall pay any stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in paragraph 5(b) above.
- e. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Agreement.

18. Respondents shall maintain legible copies of documentation for the SEP Completion Report and for any other information submitted to the EPA relating to this SEP for five years after the SEP's completion and shall provide the EPA with copies of such documentation within fourteen days of any request from the EPA for this documentation.

GENERAL PROVISIONS

19. Nothing in this Agreement shall relieve the Respondents of the duty to comply with the Act and its implementing regulations.

20. Any failure by the Respondents to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

21. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by the Respondents to comply with this Agreement.

22. The undersigned representatives of the Respondents certify that they are fully authorized to enter into and bind the Respondents to this Agreement.


23. The parties agree to submit this Agreement to the appropriate EPA Regional Judicial Officer, with a request that it be incorporated into a Final Order.

24. Each party shall bear its own costs and attorney's fees in connection with this matter.

25. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondents' liability for federal civil penalties for the violations and facts alleged in the Complaint.

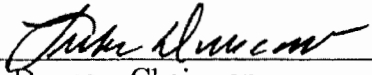
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8

Date: 12/11/2018

By: 
Suzanne Bohan, Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

UTE INDIAN TRIBE AND
UTE TRIBE PUBLIC WORKS,
Respondents.

Date: 12/05/2018

By: 
Luke Duncan, Chairman,
Ute Indian Tribe

Appendix A to Agreement

Ute Indian Tribe and Ute Tribe Public Works, Uriah Heeps Spring and Whiterocks
Public Water Systems, PWS ID# 084990002 and 084990003

As the Supplemental Environmental Project (SEP) for the attached Consent Agreement (Agreement), the Respondents shall develop and implement a computer program to audit and assist Respondents' compliance with the Safe Drinking Water Act and regulations. The SEP will cost \$55,000 and be completed over a three-year period. The computer program will be developed over the first year. Compliance auditing as well as program training and support will continue for two additional years. Respondents elected to develop the program with Natural Resources Consulting Engineers, Inc. (NRCE). The program will track the nature, timing, and costs of all SDWA regulatory requirements pertaining to Respondents' Public Water Systems and provide Respondents an understanding of the necessary budget and rates, operational procedures, and record-keeping procedures at the Systems. The program will include an organized record-keeping system to track all facets of utility operation, including monitoring results, system repairs, inventory, and testing. The program will allow Respondents to assign compliance responsibilities to specific staff and monitor accountability. NRCE will utilize the program to serve as a third-party compliance auditor and will train Respondents' Public Water Systems employees and managers how to use the program to perform self-audits following NRCE's involvement. NRCE will provide Compliance Audit Reports to Respondents and Complainant covering the second and third years of this SEP, 2020 and 2021, respectively. The Compliance Audit Reports must include documentation of Respondents' compliance or lack of compliance with all applicable requirements of the SDWA and its implementing regulations. The Compliance Audit Reports must be submitted by January 31 following the year under audit (e.g., January 31, 2021, for the Compliance Audit Report covering 2020). Respondents are required to correct any compliance issues documented in the NRCE Compliance Audit Reports, and no monetary credit toward the SEP cost will be given for remedying compliance issues. Respondents will make these reports available to the public upon request from any member of the public.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **UTE INDIAN TRIBE AND UTE TRIBE PUBLIC WORKS, URIAH HEEPS SPRING AND WHITEROCKS PUBLIC WATER SYSTEMS, PWS; DOCKET NO.: SDWA-08-2018-0013** was filed with the Regional Hearing Clerk on December 11, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Matthew Castelli, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on December 11, 2018, to:

Respondent

The Honorable Luke Duncan, Chairman
Uintah and Ouray Business Committee
PO Box 190
Ft. Duchesne, Utah 84026-0190

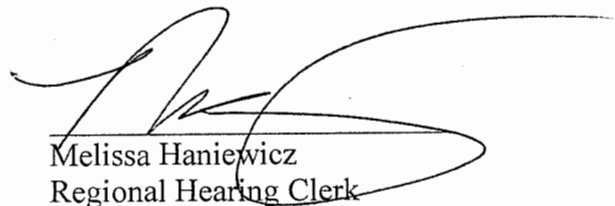
Legal Representative

Katie Frayler and Jeremy Patterson
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, Colorado 80027

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

December 11, 2018


Melissa Haniewicz
Regional Hearing Clerk