



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

AUG 13 2010

Ref: 8ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Matthew Box, Chairman  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, CO 81137

Lena Atencio, Director  
Department of Natural Resources  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, CO 81137

RE: Emergency Administrative  
Order under Section 1431 SDWA  
Docket No. **SDWA-08-2010-0068**  
Lake Capote Recreation Area  
Public Water System  
PWS ID #0890002

Dear Chairman Box and Ms. Atencio:

Enclosed is an Emergency Administrative Order (Order) issued by the U.S. Environmental Protection Agency (EPA) under section 1431 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300i. On August 12, 2010, EPA was notified that the Lake Capote Recreation Area water system (the "system") obtained one E. coli-positive sample from monitoring conducted on August 9 and a second E. coli-positive sample from monitoring conducted August 11, 2010 at the system. This situation may pose an imminent and substantial health endangerment to persons served by the system.

Pursuant to its authority set forth at section 1431 of the Act, 42 U.S.C. § 300i, EPA is authorized to take whatever actions are necessary to protect human health. This Order and the requirements set forth herein are necessary to ensure adequate protection of public health based on EPA's primary enforcement responsibility under the Act on the Southern Ute Reservation.

The enclosed Order sets forth the compliance actions that must be taken to ensure that the people served by the water system are provided with safe drinking water. The Order requires, in

part, that the system: continue to post a Boil Order and public notice until notified by EPA to discontinue; take additional total coliform bacteria samples; and submit a plan for addressing the contamination. The penalties for failing to comply are set forth in the Order.

EPA thanks the Southern Ute Indian Tribe for promptly notifying the EPA of the E. coli-positive results at the system, and for its initial efforts to address the situation. If you or your staff have any questions or wish to discuss this Order, please contact Mario Mérida at (800) 227-8917 extension 6297 or 303-312-6297. If the tribal attorney has any legal questions, please ask the attorney to contact Legal Enforcement Attorney Peggy Livingston at the above 800 number, extension 6858, or at (303) 312-6858.

Sincerely,



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

Enclosures

Emergency Administrative Order

cc: Tina Artemis, EPA Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2010 AUG 13 PM 2:45

IN THE MATTER OF )  
)  
) **EMERGENCY ADMINISTRATIVE**  
) **ORDER**  
)  
) **SECTION VIII**  
) **HEARING CLERK**  
Southern Ute Indian Tribe, Owner, )  
and the Department of Natural )  
Resources, Operator, )  
)  
)  
Respondents. ) Docket No. **SDWA-08-2010-0068**  
)  
)  
)

**AUTHORITY AND FINDINGS**

1. This Emergency Administrative Order (Order) is issued by the Environmental Protection Agency pursuant to the authority of section 1431(a) of the Public Health Service Act (also known as the Safe Drinking Water Act or Act). 42 U.S.C. § 300i(a). The undersigned officials have been properly delegated this authority.

2. EPA has primary enforcement responsibility for the Act's public water supply protection program on the Southern Ute Indian Reservation (the Reservation). No other governmental authority has applied for and been approved to administer the program on the Reservation.

3. Failure to comply with this Order may result in civil penalties of up to \$16,500 per day. 42 U.S.C. § 300i(b) and 40 C.F.R. part 19.

4. EPA may issue such Orders when certain conditions exist which may present an imminent and substantial endangerment to human health, and other state or local authorities have not acted to protect human health. 42 U.S.C. § 300i(a).

5. Respondent, the Southern Ute Indian Tribe, is a federally recognized tribal government. Respondent, the Department of Natural Resources (the Department), is a Tribal agency under the laws of the Southern Ute Indian Tribe. The Southern Ute Indian Tribe and the Department, collectively referred to as "Respondents," are each a "person" as that term is defined in the Act, 42 U.S.C. § 300f(12), and in 40 C.F.R. § 141.2 for purposes of enforcement of the Act.



6. Respondents own and/or operate the Lake Capote Recreation Area drinking water system (the system), located near Pagosa Springs, Colorado, which provides water to the public for human consumption.

7. Systems that have at least 15 service connections or regularly serve at least 25 people per day at least 60 days per year or at least 25 year-round residents are subject to the requirements of the Act and its implementing regulations, 40 C.F.R. part 141 (also known as the drinking water regulations).

8. The system serves an average of 27 persons daily throughout the year, and therefore is a "public water system" as defined in the Act. 42 U.S.C. § 300f and 40 C.F.R. § 141.2.

9. EPA has determined that conditions exist at the system that may present an imminent and substantial endangerment to human health. EPA has made this determination based on one sample collected on August 9, 2010, by the operator at Lake Capote Recreation Area which was determined to be both total coliform and E. coli-positive, and one repeat sample collected on August 11, 2010, which also was determined to be both total coliform and E. coli-positive. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

10. Prior to issuing this Order, EPA consulted with the system and tribal governmental authorities to confirm the facts and the potential endangerment, and has determined that this Order is necessary to protect human health.

#### FINDINGS OF VIOLATION

11. Respondents are required to monitor the system's water at least once per quarter to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria. 40 C.F.R. § 141.21. The drinking water regulations define the acute maximum contaminant level (MCL) for total coliform bacteria as a fecal coliform positive or E. coli-positive repeat sample, or any total coliform positive repeat sample following a fecal coliform-

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positive or E. coli-positive routine sample. 40 C.F.R. § 141.63(b). The results of samples collected by the operator at Lake Capote Recreation Area on August 9 and 11, 2010, exceeded the acute MCL for total coliform bacteria and, therefore, violated this requirement.

### ORDER

#### INTENT TO COMPLY

12. Within 24 hours of receipt of this Order, Respondents shall notify EPA in writing of their intention to comply with the terms of this Order.

#### BOIL ORDER AND PUBLIC NOTICE

13. Respondents issued a public notice and boil advisory on August 12 and forwarded a copy of this notice to EPA. Respondents shall continue the boil water advisory until EPA provides written notification to discontinue. Respondents must carry out the public notice and other notice requirements that EPA directs. Respondents must comply with this requirement upon any future acute MCL violation or any similar emergency situation.

#### DISTRIBUTION SYSTEM DISINFECTION AND MONITORING REQUIREMENTS

14. If Respondents have not already done so since August 13, 2010, Respondents shall, within 24 hours of this Order, clean, flush, and disinfect the system, including disinfection of the system's distribution system and any storage tanks that are part of the system.

15. Once the system has been flushed and disinfected, Respondents shall collect consecutive daily (1 sample per day) special purpose total coliform samples from the system's distribution system.

16. After Respondents receive written notification from EPA that Respondents may discontinue daily total coliform sampling based on EPA's determination that a sufficient number of daily total coliform sample results from the system have been negative, Respondents shall collect weekly special purpose bacteriological samples (1 sample per week).



17. Respondents shall monitor the chlorine residual at the same time and same location as the system's special purpose total coliform samples (as required in paragraphs 15 and 16 above). Respondents shall maintain a detectable disinfectant residual as measured at the far end of the system's distribution system.

18. After Respondents receive written notification from EPA that Respondents may discontinue weekly total coliform sampling based on EPA's determination that a sufficient number of weekly total coliform sample results from the system have been negative, Respondents shall collect monthly total coliform sampling to determine compliance with the total coliform MCL. 40 C.F.R. §§ 141.21 and 141.63.

19. After Respondents receive written notification from EPA that Respondents may discontinue monthly total coliform sampling based on EPA's determination that a sufficient number of monthly total coliform sample results from the system have been negative, Respondents shall resume quarterly total coliform sampling to determine compliance with the total coliform MCL. 40 C.F.R. §§ 141.21 and 141.63.

20. Respondents shall collect all total coliform sampling at sites which are representative of water throughout the distribution system. Additionally, Respondents shall report all total coliform and chlorine residual sampling results to EPA by telephone or fax immediately upon receiving the results.

21. For the total coliform sampling in paragraph 18 above, Respondents shall, before having that sample analyzed, designate one sample as the quarterly compliance sample to determine compliance with the MCL for total coliform. 40 C.F.R. § 141.63.

22. EPA may require Respondents to increase and/or decrease total coliform sampling at any time while the Order is in effect.

#### COMPLIANCE MEASURES

23. Within 30 days of the effective date of this Order, Respondents shall provide EPA with a compliance plan and schedule that outlines actions to be taken that will ensure compliance with the total coliform MCL. 40 C.F.R. § 141.63. The plan shall identify the cause of the total coliform and E. coli-positive samples mentioned above and describe efforts Respondents will take to prevent recurrence of total coliform and E. coli-positive contamination in the system, including evaluation and repair of

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the system's storage tank and chlorination system. The plan shall include a schedule for completion of the project and compliance with the Order and Federal requirements, and if applicable, proposed system modifications, and estimated costs of modifications. The proposed schedule shall include specific milestone dates and a final compliance date to be within 2 months from the date of EPA's approval of the plan. The plan and schedule must be approved by EPA before construction or modifications may commence.

24. The plan and schedule required by paragraph 23, above, shall be incorporated into this Order as enforceable requirements upon written approval by EPA. EPA may incorporate the above required plans into a new Administrative Order issued under § 1414 or § 1431(a) of the Act. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

25. Respondents shall submit monthly reports to EPA on the status of all corrective measures until notified in writing by EPA to discontinue reports. Reports shall be postmarked by the 15th of each month.

26. Within 10 days of completion of the approved plans and schedule required in paragraph 23, above, Respondents shall notify EPA in writing of project completion.

#### **REPORTING**

27. Respondents shall give daily updates to EPA on the progress of returning the system to compliance. Daily updates must be submitted to EPA until EPA notifies the Respondents that reports may be discontinued. These reports may be submitted via phone, fax, or e-mail.




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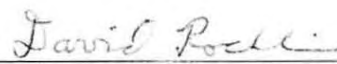
28. All contact with EPA on this matter shall be to:

Mario Mérida, 8ENF-W  
US Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone (800)227-8917 X 6297 or (303) 312-6297  
Fax (303) 312-7518  
e-mail: merida.mario@epa.gov

29. This Order does not affect any legal requirement or EPA's legal enforcement options in this matter. This Order constitutes final agency action.

Issued and effective this 13<sup>th</sup> day of August, 2010.

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

  
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David Rochlin, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice