

# BITTERROOT RANCH

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U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

## Response to Complaint and Request for Hearing

**Docket No. SDWA-08-2008-0090**

### Response to Complaint

On August 18 2008 the EPA issued a "Complaint and Notice of Opportunity for Hearing" against the Bitterroot Ranch, LLC and Mel and Bayard Fox. The complaint states that the Bitterroot Ranch has "violated, failed or refused to comply with orders issued under section 1414 (g)(1) of the Safe Drinking Water Act." In fact the Bitterroot Ranch has acted in good faith in its dealings with the EPA and has at all times attempted to comply with the standards set forth in the Safe Drinking Water Act. Since May of 2004 the ranch has abandoned two wells, installed three extensive filtration systems for the remaining wells, instituted a routine inspection and replacement of filters, attempted to find alternative sources of water by digging two wells at the cost of \$15,000, and implemented a well organized and regular water monitoring regimen. The Bitterroot Ranch finds that the specific counts noted by the EPA are negated by the circumstances of the situation and are not factually accurate in many instances.

### Response to Specific Counts

#### **Count I: Failure to Monitor for Total Coliform Bacteria**

The complaint references a total of four instances in which the Bitterroot failed to comply with the order to monitor for total coliform bacteria: the 2<sup>nd</sup> quarter of 2006 (May through June), June of 2007, May of 2008, and June of 2008.

In general the total coliform bacteria monitoring standards have been confusing and extremely difficult to comply with. Proper monitoring has been difficult to implement because, as the complaint acknowledges, “the sampling requirements have changed over time” and notification of these changes has not always been clear. Why for instance, was monitoring required in May of 2008 and not in May of 2007? The ranch has attempted to comply with regulations but, by no fault of the ranch, this has not always been easy.

In each of the instances referenced in the complaint, extenuating circumstances constitute grounds of defense for the ranch.

In the 2<sup>nd</sup> quarter of 2006 (May through June), the ranch was led to believe that Mr. Mark Sposit, an independent contractor employed by the EPA, took the necessary samples when he was here testing for the EPA. The ranch did not take independent tests because it understood that the monitoring performed by the EPA contractor would be adequate. The ranch now understands that the monitoring performed by Mr. Sposit did not satisfy the requirements set forth by the EPA but the ranch was only notified of this issue after the event. The failure to monitor was entirely unwitting.

In June of 2007 the ranch took water samples but the samples were not tested because of a miscommunication with the Teton County Water Laboratory. One technician volunteered to do the testing on a day that the lab was not officially open and another technician discarded the samples because of this irregularity. When the ranch

realized that monitoring would be impossible that month it immediately contacted Mindy Mohr and Charla Colson from the EPA. Charla recommended monitoring the water as early as possible in the month in order to avoid this sort of situation. The email contact between the ranch's representative, Rachel Holloway, and the EPA is included as Exhibit 1.

In May of 2008 the ranch did not realize that monitoring would be required. In the regulations displayed on the EPA website a public water source is defined as follows:

"The term public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such a system has at least fifteen service connections or regularly serves at least twenty-five individuals.<sup>1</sup>"

During May the ranch water system was serving fewer than 25 people from fewer than 15 service connections and therefore thought that monitoring was unnecessary during that period. The EPA did not make it clear to the ranch that it was required to monitor for coliform bacteria in May despite the fact that the ranch did not constitute a public drinking water source during that period.

In June of 2008 the ranch intended to monitor for total coliform bacteria but the person that was sent to deliver the water samples to the laboratory forgot to deliver the water and furthermore neglected to mention this issue to the ranch. By the time ranch representative Hadley Long realized the mistake it was too late to send a sample for the month of June. Hadley Long contacted Mindy Mohr of the EPA with new water samples as quickly as possible.

## **Count II: Failure to Report Total Coliform Monitoring Requirements**

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<sup>1</sup> Please visit <http://www.epa.gov/ogwdw000/pws/frpwsdef.html> to read this regulation.

The complaint references a total of four instances in which the Bitterroot failed to comply with the order to report a failure to monitor for total coliform bacteria: the 2<sup>nd</sup> quarter of 2006 (May through June), June of 2007, May of 2008, and June of 2008. In the 2<sup>nd</sup> quarter of 2006 and May of 2008 the ranch was under the impression that we *had* complied with the order to monitor (see explanation in Count I). In June of 2007 and June of 2008 the ranch did notify the EPA of our failure to monitor (see explanation in Count I).

In the complaint filed against the ranch the EPA specifies that the ranch, “must report the monitoring violation to the EPA.” This general and vague requirement is consistent with all EPA communications to the ranch. When the ranch was aware of its failure to monitor for total coliform bacteria it always contacted a representative of the EPA immediately. Between June 29 and July 17 of 2007 the ranch sent at least 4 emails notifying the EPA of its failure to monitor for total coliform bacteria. Perhaps the ranch communicated with the wrong representative within the EPA but the ranch did *not* fail to contact the EPA. It should be noted that the EPA *never* specified a particularly representative with whom the ranch should communicate, nor communicated to the ranch that a different representative of the EPA must be notified.

### **Count III: Failure to Provide Public Notice**

The complaint notes that during the 3<sup>rd</sup> quarter of 2006 the ranch failed to give notice that national primary drinking water regulations had been violated. The ranch did in fact provide public notice of this failure. The EPA sent the ranch a notice to post in effected areas. The ranch complied with this order and sent the signed notice back to the EPA when the public notice period ended.

#### **Count IV: Failure to Report Violations of NPDWRs**

The complaint notes that during the 3<sup>rd</sup> quarter of 2006 the ranch failed to report to the EPA the failure to give notice that national primary drinking water regulations had been violated. Please see the responses to Count I and Count III for an explanation of this misunderstanding. The ranch did in fact give notice of the violation and reported this to the EPA.

#### **Opposition to Proposed Penalty**

The ranch looks forward to working with the EPA in a settlement process and hopes that no civil penalty will be required. In this case the ranch is working hard to satisfy all drinking water standards and is committed to a positive relationship with the EPA in the future.

#### **Request for Hearing**

The ranch disputes many of the facts referenced in the counts against the ranch and contests the appropriateness of the proposed penalty. The ranch hopes that the issue can be resolved through an informal settlement conference. If this is not possible then the ranch asserts its right to a hearing as entitled under the law.

#### **Desire for Informal Settlement Conference**

The Bitterroot Ranch understands the necessity of the work that the EPA does and applauds the Safe Drinking Water Act. The ranch is committed to complying with EPA orders in the future and has worked extremely hard to comply in the past. Individuals working within the EPA have been considerate and helpful but ranch communications with the EPA as an entity have frequently been lost or misunderstood. This situation is as frustrating to the ranch as it is to the EPA. We look forward to satisfying all EPA

requirements in the future and hope that more open lines of communication between the EPA and the ranch will aid this process.



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