

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

January 15, 2021

12:08 PM

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF: )

The Blackfeet Tribe of the )  
Blackfeet Indian Reservation of Montana, )

Respondent. )

Heart Butte Public Water System )  
PWS ID #083090005 )

) Docket No. SDWA-08-2021-0006

) **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 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana (Respondent) 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 Heart Butte Public Water System (System).

**JURISDICTION**

1. The EPA has primary enforcement responsibility over public water systems on the Blackfeet Indian Reservation of Montana (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. The Findings of Fact and Findings of Violation and Conclusions of Law (Findings) allegations in paragraphs 6 through 17, below, are made solely by the EPA. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review Respondent 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). Respondent further agrees not to challenge the jurisdiction of the EPA or 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 Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent 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 will not alter Respondent's responsibilities under this Consent Order.

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

#### **FINDINGS OF FACT**

6. Respondent is a federally recognized Indian tribe and therefore is a "person" within the meaning of 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.

7. Respondent owns and/or operates the System, which is a public water system, in Browning, Glacier County, Montana, within the exterior boundaries of the Reservation. The System provides the public with piped water for human consumption.

8. The System has approximately 108 service connections used by year-round residents and regularly serves an average of approximately 400 year-round residents. Therefore, the System is a "public water system" and a "community water system" within the meaning of sections 1401(4) and (15) of the Act, 42 U.S.C. § 300f(4) and (15), and 40 C.F.R. § 141.2.

9. Respondent owns and/or operates the System and therefore is a “supplier of water” as defined in section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent therefore is required to comply with the requirements of the Act and its implementing regulations, Part 141.

10. The source of the System’s water is ground water from two wells.

**FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW**

11. Respondent is required to complete corrective action of significant deficiencies or comply with an EPA-approved corrective action plan and schedule within 120 calendar days (or earlier if instructed by the EPA) of receiving written notification from the EPA of a significant deficiency. 40 C.F.R. § 141.404(a). Respondent is required to notify the EPA within 30 calendar days of completion of a significant deficiency corrective action. 40 C.F.R. § 141.405(a)(2). Respondent received a sanitary survey report from the EPA in August 2017, which detailed significant deficiencies and a schedule to complete the corrective actions by February 26, 2018. Respondent failed to complete all corrective actions by February 26, 2018, and/or failed to notify the EPA within 30 calendar days of completion of any significant deficiency corrective action and therefore violated these requirements.

12. Respondent is required to monitor the System’s water triennially for lead and copper. 40 C.F.R. § 141.86(d). Respondent monitored the System’s water for lead and copper on September 13, 2015, and the next sampling was required between June 1, 2018, and September 30, 2018. Respondent failed to monitor the System’s water for lead and copper during that period and therefore, violated this requirement.

13. For each calendar year, Respondent is required to certify to the EPA that an annual Consumer Confidence Report (CCR) has been distributed to the System’s customers, and that the information is correct and consistent with compliance monitoring data previously submitted to the EPA.

The certification is due within three months of distributing the CCR. 40 C.F.R. § 141.155. Respondent failed to provide CCR certification for calendar year 2017. Therefore, Respondent violated this requirement.

14. Respondent is required to monitor the System's water monthly for total coliform bacteria. 40 C.F.R. §§ 141.853-858. Respondent failed to monitor the System's water for total coliform bacteria during February of 2018 and April of 2019, and therefore, violated this requirement.

15. Respondent is required to notify the public of certain violations of Part 141 and, within 10 calendar days after completing public notice, provide the EPA a certification of having provided public notice, along with a representative copy of the public notice. 40 C.F.R. §§ 141.31(d) and 141.201-141.211. Respondent must issue a repeat notice every three months for as long as the violation persists. The violation identified in paragraph 11, above, is classified as a Tier 2 violation, requiring public notice within 30 calendar days, according to 40 C.F.R. § 141.203. Respondent failed to notify the public of the violation identified in paragraph 11, above, and/or failed to certify to the EPA that public notice was provided and therefore violated this requirement.

16. Respondent is required to report any failure to comply with Part 141 to the EPA within 48 hours (except where Part 141 specifies a different time period). 40 C.F.R. § 141.31(b). Respondent failed to report the violations identified in paragraphs 11, 12, and 13, above, to the EPA and therefore violated this requirement.

17. Respondent is required to report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation. 40 C.F.R. § 141.861(a)(4). Respondent failed to report the violation listed in paragraph 14, above, to the EPA and therefore violated this requirement.

**ORDER ON CONSENT**

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to perform the following:

18. Respondent is ordered to comply with all provisions of the Act and Part 141, including but not limited to each requirement cited above.

19. By February 28, 2021, Respondent must consult with the EPA regarding actions to correct open significant deficiencies identified in the August 14, 2017 Sanitary Survey report regarding the culverts near Wells WL01 and WL02 and potential contamination of the wells. By March 31, 2021, Respondent must submit a proposed schedule (Schedule) and plan (Plan) to the EPA for completion for the corrective action. The Plan must include proposed modifications to the System and estimated costs of the modifications. The Schedule must include specific milestone dates. The Schedule will be incorporated into this Consent Order with each milestone to be an enforceable requirement upon written approval by the EPA. Within 10 calendar days after completing each task included in the Schedule, Respondent must notify the EPA of the task's completion. Respondent must provide sufficient evidence to the EPA including photographs of the following corrective actions. Thereafter, if the EPA identifies any significant deficiency at the System, Respondent must complete corrective action for each significant deficiency and provide notification to the EPA within 30 calendar days of completion, as required by 40 C.F.R. §§ 141.404(a) and 141.405(a)(2).

20. Between June 1, 2022, and September 30, 2022, Respondent must monitor the System's water for lead and copper, and thereafter as directed by the EPA, in accordance with the System's Lead and Copper Rule Tap Sample Site Plan, as required by 40 C.F.R. § 141.86(a)-(d). Within the first 10 calendar days following the end of each monitoring period, Respondent must report analytical results to

the EPA, as required by 40 C.F.R. § 141.90. Within 30 calendar days of receiving monitoring results, Respondent must deliver a consumer notice of individual tap monitoring results to the persons served at each sampled site, in accordance with 40 C.F.R. 141.85(d). Within 90 calendar days following the end of each monitoring period, Respondent must submit to the EPA a sample copy of the consumer notification along with a certification that the notification has been distributed, in accordance with 40 C.F.R. 141.90(f)(3).

21. For each calendar year, Respondent must provide CCR certifications to the EPA within three months of distributing the CCR, as required by 40 C.F.R. § 141.155.

22. Respondent must monitor the System's water monthly for total coliform bacteria. If a sample is positive for total coliform, within 24 hours of being notified of the positive result, Respondent must collect a set of three repeat samples for each total coliform-positive sample. 40 C.F.R. § 141.853-858. Respondent must report results to the EPA within the first 10 calendar days following the end of the required monitoring period. 40 C.F.R. § 141.31(a).

23. Respondent must notify the public of the violations, and issue a repeat notice every three months as long as the violations identified in paragraph 11 persist. Templates and instructions are available at:

<https://www.epa.gov/region8-waterops/reporting-forms-drinking-water-systems-wyoming-and-tribal-lands-epa-region-8#pn>. Thereafter, following any future violation of Part 141, Respondent must comply with any applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 calendar days after providing public notice, Respondent must submit a copy of the notice and certification to the EPA. 40 C.F.R. § 141.31(d).

24. Respondent must 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 Consent Order or Part 141, Respondent must report within that different period.

25. Respondent must report any violation of total coliform monitoring requirements to the EPA within 10 calendar days after discovering the violation, as required by 40 C.F.R. § 141.861(a)(4).

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

Christina Carballal, 8ENF-WSD  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Email: carballal-broome.christina@epa.gov

#### **GENERAL PROVISIONS**

27. Respondent must fully implement each item of this Consent Order. Respondent's failure to fully implement all requirements of this Consent Order in the manner and time period required must be deemed a violation of this Consent Order.

28. This Consent Order must 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.

29. Violation of any part of this Consent Order, the Act, or Part 141 may subject Respondent 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).

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

31. The Consent Order is effective upon the date a fully executed, file-stamped copy is filed with the EPA Region 8 Hearing Clerk.

32. This Consent Order will 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 Respondent.

IT IS SO AGREED AND ORDERED:



Blackfeet Tribe  
Heart Butte Public Water System; ECN 600.0023.2018\_BlackfeetPWS  
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**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**  
Complainant.

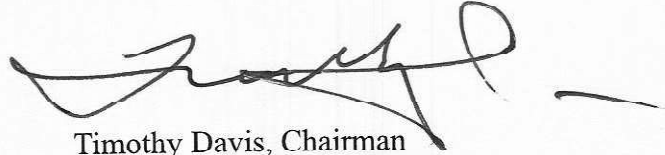
**SUZANNE  
BOHAN**

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Date:

Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

**BLACKFEET TRIBE OF THE BLACKFEET  
INDIAN RESERVATION OF MONTANA,**  
Respondent.

A handwritten signature in black ink, appearing to read 'Timothy Davis', with a horizontal line extending to the right.

Date:

Timothy Davis, Chairman  
Blackfeet Tribe