UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:	)	
	)	
Confederated Tribes of Warm Springs,	)	
	)	
Respondent	)	Docket No. SDWA-10-2019-0078
	)	
Warm Springs Public Water System	)	
(ID# 104101247)	)	ADMINISTRATIVE COMPLIANCE
	)	ORDER ON CONSENT
Facility	)	
	)	

I. AUTHORITY

1.1. This Administrative Compliance Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 1414(g) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300g-3(g). The Administrator has delegated this authority to the Region 10 Regional Administrator, who in turn delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

1.2. The EPA has primary enforcement responsibility for the SDWA public water supply protection program on the Warm Springs Reservation. No other governmental authority has applied for or been approved to administer the SDWA public water supply protection program on the Warm Springs Reservation.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2.1. The Confederated Tribes of the Warm Springs ("Respondent") owns and operates the Warm Springs Public Water System ("System"), located on the Warm Springs Reservation, that provides water for human consumption.

2.2. Respondent is a "person" within the meaning of Section 1401(12) of SDWA, 42

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U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement under the SDWA.

2.3. Respondent's System serves approximately 3,800 persons, including 1,356 residential connections and numerous tribal facility connections serving office buildings, at least one day care, at least two schools, at least one senior center, and at least one medical center.

2.4. Respondent's System is a public water system within the meaning of Section 1401(4) of SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.

2.5. Respondent's System regularly serves at least 25 year-round residents and is therefore a "community water system" within the meaning of Section 1401(15) of SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

2.6. Respondent owns and operates the System and therefore is a "supplier of water" within the meaning of Section 1401(5) of SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R.§ 141.2. Respondent is subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141.

2.7. The System is solely supplied by a surface water from the Deschutes River, which is treated with conventional filtration at the System's Dry Creek Treatment Plant.

2.8. EPA provided Respondent written notice of significant deficiencies in its System and a copy of the sanitary survey report on November 27, 2018 following EPA's sanitary survey conducted on July 18, 2018.

2.9. 40 C.F.R. § 141.723(c) requires a surface water system, within 45 days of receiving a sanitary survey report, to either correct the significant deficiencies or develop an approved corrective action plan on how and when the deficiencies will be addressed and to maintain compliance with the corrective action plan and schedule.

2.10. On December 6, 2018, Respondent provided an email to EPA which explained it was committed to resolving the significant deficiencies. This email failed to adequately explain how Respondent would address these immediate health concerns, nor did it provide the date and manner by which the

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significant deficiencies would be addressed.

2.11. On December 20, 2018, EPA sent another letter to Respondent advised Respondent that it was required to address the noticed significant deficiencies or provide a corrective action plan no later than January 12, 2019.

2.12. On March 13, 2019, EPA sent a Notice of Violation letter to Respondent that it was in violation of the 40 C.F.R. § 141.723(c) for failure to address the noticed significant deficiencies or provide a corrective action plan. The EPA also informed the Respondent that this violation was a treatment technique violation, which requires Tier 2 public notice to the System's customers within 30 days pursuant to 40 C.F.R. § 141.203(c), and EPA provided an attached public notice template to this letter.

2.13. 40 C.F.R. § 141.203 requires that certain violations be noticed to persons served by a community water system via hand or direct delivery, or mail as a separate notice or included with the bill. These notices must be provided as soon as practical, but no later than 30 days after the system learns of the violation and must be repeated every three months as long as the violation persists.

2.14. On April 9, 2019, Respondent provided an email with a draft Corrective Action Plan ("CAP") for EPA approval. The CAP contained evidence that certain, but not all, noticed significant deficiencies were corrected. The CAP also included a schedule and description of planned actions to correct the remaining significant deficiencies. The EPA has not yet approved Respondent's CAP due to both its delinquency and lack of details on planned actions.

III. VIOLATIONS

3.1. 40 C.F.R. § 141.723(c) requires a surface water system, within 45 days of receiving a sanitary survey report, to either correct the significant deficiencies or develop an approved corrective action plan on how and when the deficiencies will be addressed and to maintain compliance with the corrective action plan and schedule. EPA provided Respondent written notice of significant deficiencies on November 27, 2018 following the sanitary survey of the System conducted on July 18, 2018. Respondent failed to submit a corrective action plan or provide evidence that the remaining significant deficiencies had been

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addressed within 45 days. Therefore, Respondent violated this applicable requirement.

IV. ORDER

Based upon the foregoing and pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300(g)-3(g), it is hereby ordered as follows:

4.1. Respondent shall correct the significant deficiencies as described below:

a. Implement its Coagulation Standard Operating Procedure (Attachment A) developed for the Plant by June 23, 2019.

b. Install a gasket to hatch on top of System's Tee Wee water storage tank by October 1, 2019.

c. Install a new roof top vent with 24-mesh screen on System's Tee Wee water storage tank by October 1, 2019..

d. Install a gasket and lock to hatch on System's Kah-Ne-Ta water storage tank by October 1, 2019.

e. Install a 24-mesh on overflow pipe on System's Southeast water storage tank by October 1, 2019.

f. Install a new roof top vent with 24-mesh screen on System's Southeast water storage tank by October 1, 2019.

g. Install a gasket and lock to hatch on System's West Hills West water storage tank by October 1, 2019.

h. Install a 24-mesh on overflow pipe on System's West Hills West water storage tank by October 1, 2019.

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i. Install a ladder with safety cage to allow for adequate and safe access to System's West Hills East water storage tank by October 1, 2019.

k. Install a ladder with safety cage to allow for adequate and safe access to System's West Hills East water storage tank by October 1, 2019.

l. Install a gasket to hatch on System's Greely West water storage tank by October 1, 2019.

m. Install a 24-mesh on overflow pipe on System's Greely East water storage tank by October 1, 2019.

n. Install a ladder with safety cage to allow for adequate and safe access to System's Greely East water storage tank by October 1, 2019.

o. Service and repair and/or upgrade HVAC system in water treatment plant to provide adequate ventilation for heat and moisture dissipation from drinking water treatment equipment by October 1, 2019.

p. Provide evidence of complete removal of settled solids from sedimentation tank by June 14, 2019.

q. Restore and/or upgrade river intake air scour system to provide for appropriate operation by October 1, 2019.

r. Reduce turbidimeter sampling delays by October 1, 2019.

s. Physically disconnect out-of-service concrete water storage tank from distribution system by October 1, 2019.

4.2. Within 30 days of the effective date of this Order, Respondent shall issue a Tier 2 public notice for violation listed in Paragraph 3.1 above. Respondent shall repeat this public notice every three

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months as long as the violation persists.

4.3. Respondent must provide the public notices required above by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered. The public notices must also be delivered to other persons regularly served by the System via any other method reasonably calculated to reach persons regularly served by the System who would not normally be reached via mail or other direct delivery. Other methods of delivery include publication in a local newspaper, posting in public places or on the Internet, or email. If a notice is posted, it must remain in place for as long as the violation persists, but in no case less than seven days, even if the violation is resolved. [SEQ CHAPTER \h \r 1]

4.4. Within 30 days of the effective date of this Order, and every three months thereafter, Respondent shall send EPA a copy of the public notice and a certification that the System has fully complied with the public notification regulations.

V. GENERAL PROVISIONS

5.1. For violations of this Consent Order, Respondent may be subject to a civil penalty of not more than $57,317.00 per day of violation pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

5.2. Nothing in this Order shall be construed to relieve Respondent of any applicable requirements of federal, state, or local law.

5.3. The EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any future or past violation of any applicable legal requirements of the SDWA including, but not limited to, the violations identified in Part III of this Order.

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5.4. The provisions of this Order are binding upon Respondent, and all officers, directors, agents, employees, successors, and assigns of Respondent.

5.5. This Order shall become effective on the date it is signed by EPA, after having been signed by Respondent.

5.6. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under SDWA Section 1448.

5.7. The Confederated Tribes of Warm Springs (CTWS) takes no position on the EPA findings of fact, jurisdiction, and violations above, but CTWS agrees to, and hereby, waives its sovereign immunity, to the extent necessary for purposes of this Order; and, CTWS agrees not to challenge jurisdiction in any proceeding as it relates to this Order. CTWS agrees to comply with and be bound by the Order in Section IV and General Provisions in Section V above.

5.8. The EPA and Respondent may agree to modify this Order on Consent. Such modification shall be in writing and shall be incorporated into this Order.

5.9. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order, including any additional tasks determined by EPA to be required under this Order or any continuing obligation or promises, have been satisfactorily completed.

The EPA and the Warm Springs Tribe agree to the Order above.

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The Confederated Tribes of Warm Springs by and through the following Tribal Representative:

Dated this _____ day of _____, 2019.

_____

Tribal Council Chair or delegated official signature

Please Print:

_____

Name

_____

Title

EPA, by and through the Enforcement and Compliance Assurance Division Director:

Dated this _____ day of _____, 2019.

_____

Edward J. Kowalski, Director

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