

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION
CENTER FOR HEALTH PROTECTION

In the Matter of

Black Mountain Water District
Improvement Company
Public Water System OR4100370

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Norman Edward Hutsell
Black Mountain Water District Improvement Company
PO Box 1013
Heppner, OR 97836

Black Mountain Water District Improvement Company (the Company) has at all times mentioned herein owned and operated the Black Mountain Water District (Black Mountain) water system which serves the properties along and between Blake Ranch Road to the north, Meadowlark Road to the east and Blue Jay Road to the west. The Black Mountain water system is a community public water system serving approximately 40 people and is subject to regulation according to Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.

The Company is therefore a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Pursuant to its authority established in ORS 431A.010 and ORS 448.255, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (Authority) has investigated the operation of the Black Mountain water system.

The Authority found, during its investigation, that sample results reported for the Black Mountain water system repeatedly indicated the presence of coliform bacteria in the water distribution system. The repeated presence of coliform bacteria resulted in the need for a disinfectant residual to be maintained; however, the treatment to maintain the required disinfectant residual was not installed within the time required.

This Notice of Violation and Administrative Order (Order) is being issued to the Company for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during the Authority's investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333–061-0032(6)(g) requires water suppliers to install treatment for disinfectant residual maintenance within six months after at least three coliform investigations are required at a water system as prescribed by OAR 333-061-0078. A third coliform investigation was required at the Black Mountain water system on February 17, 2017 but treatment to maintain a disinfectant residual was not installed by August 22, 2017 as required. This constitutes one violation of OAR 333–061-0032(6).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

The Company is required to conduct the remedial actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) violated (ORS 448.255(3)).

- Compliance Action No. 1: The Company must submit to the Authority complete construction plans depicting treatment for maintaining a disinfectant residual throughout the Black Mountain water distribution system. The plans must be submitted to the Authority no later than November 1, 2017.
 - The construction plans must meet all the applicable requirements of OAR 333-061-0060 and have sufficient detail to completely and clearly illustrate what will be constructed.

- Construction of all improvements or modifications at the Black Mountain water system must meet the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 2: The Company must complete construction, no later than January 1, 2018, of the treatment for maintaining a disinfectant residual such that:
 - A disinfectant is applied at the entry point to the Black Mountain water distribution system from Spring #3; and
 - A disinfectant is applied at the entry point to the Black Mountain water distribution system from Springs #4 and #5.
- Compliance Action No. 3: The Company must complete construction of the treatment for applying a disinfectant at the entry point to the Black Mountain water distribution system from Springs #1 and #2 no later than August 31, 2018.
- Compliance Action No. 4: The Company must report to the Authority, a record of disinfectant residual measurements collected at representative sites throughout the water distribution system according to OAR 333-061-0036(9) for three consecutive months after fulfilling Compliance Action No. 3 as specified above.
 - The disinfectant residual measurements must be reported to the Authority no later than 10 days after the end of each month in which the measurements were collected according to OAR 333-061-0040.

GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.290 and administrative rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve the Company of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by the Authority to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$50 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when the Authority issues a Notice of Intent to Impose Civil Penalty.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). If you want a hearing you must file a written request for hearing with the Authority within 10 days from the date this Order was mailed. **The request for hearing must be sent to: David Emme, Manager; Oregon Health Authority, Drinking Water Services; PO Box 14450; Portland, OR 97293.**

If you request a hearing, the Authority will notify you of the time and place at which the hearing will be held. You may enlist representation by legal counsel. Per ORS 413.041, a party that is not a natural person may be represented by an attorney or by any officer or authorized agent or employee of the party. Parties are ordinarily represented by counsel. The Authority will be represented by an Assistant Attorney General. Prior to the hearing date, the Authority will provide you with information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. An administrative law judge from the Office of Administrative Hearings will be assigned to preside over the hearing, as required by ORS 183.635.

If you do not make a timely request for a hearing, the Notice of Violation and Administrative Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 71 days from the day this order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and the Authority subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

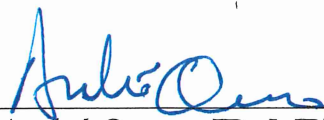
If you withdraw a request for hearing, or notify the Authority or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, The Authority may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Notice to Active Duty Service members. Active duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.

The Authority has designated its complete file on the Black Mountain water system as the record in this case for purposes of proving a prima facie case upon default.

If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0405.

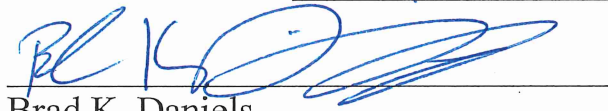
Dated this 22nd day of September, 2017.



André Ourso, JD, MPH
Administrator
Oregon Health Authority
Public Health Division
Center for Health Protection

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Amy Word, Oregon Health Authority, Drinking Water Services
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: September 25, 2017



Brad K. Daniels

By certified mail and first class mail