

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

In the Matter of  
Elderberry-Nehalem Water  
System, PWS OR4100804

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: JR Luttrell, Registered Agent  
41266 Kamy Lane  
Seaside, OR 97138

Elderberry-Nehalem Water System has at all times mentioned herein owned and operated, and continues to own and operate, the public water system (hereinafter “Water System”) serving residences and businesses along and near Gronnel Road, Kamy Lane and U.S. Highway 26 in Seaside, Oregon. The Water System is a community water system serving approximately 160 people and is subject to regulation under Oregon Revised Statutes 448.115 to 448.290 and Oregon Administrative Rules 333-061-0005 to 333-061-0272.<sup>1</sup>

<sup>1</sup> This Notice of Violation and Administrative Order relies on the definitions in ORS 448.115 and OAR 333-061-0020

## Elderberry-Nehalem Water System

Elderberry-Nehalem Water System (hereinafter “Water Supplier”) is therefore a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020, 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 (DWS) has investigated the operation of the Water System.

DWS found, during its investigation, that Water Supplier did not correct significant deficiencies identified during a sanitary survey. Water Supplier is therefore unable to assure its water users that the water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

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

### DESCRIPTION OF RULE VIOLATIONS

1. OAR 333-061-0076(6)(b) requires, in part, water suppliers responsible for water systems using only groundwater sources to have corrected significant deficiencies identified during a sanitary survey, or to be in compliance with an approved corrective action plan, within 120 days of written notice of the deficiency. A sanitary survey was conducted on September 15, 2023 at the Water System and a letter was mailed to Water Supplier on October 19, 2023, identifying significant deficiencies discovered during the survey.

One of the deficiencies, a finished water storage facility in a state of disrepair that allows pests to intrude into the facility, is a direct pathway for contamination to enter the Water System and is a priority for correction. The letter mailed on October 19, 2023 and a subsequent approved action plan required that the deficiencies be corrected by February 22, 2024. That date has passed without the correction of the deficiencies, including the repair of the finished water storage and without DWS approval of an additional corrective action plan. This constitutes a violation of OAR 333-061-0076(6)(b).

### ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

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

1. Water Supplier must demonstrate that the finished water storage facility was repaired or improved to prevent pests and contamination from entering into the Water System and such that the significant deficiency was corrected to the satisfaction of Pete Farrelly of DWS no later than 30 days after the date of service of this Order.

### 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 Oregon Administrative Rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.

This Order does not relieve Water Supplier 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 DWS 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 \$100 per day per violation (OAR 333-061-0090). For example, if DWS issues a Notice of Intent to Impose Civil Penalty on April 1, 2025 for failure to correct the significant deficiency at the Water System according to this Order, the proposed civil penalty could be as much as \$3,000.

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 DWS within 10 days from the date this Order was mailed. **The request for hearing must be sent to: Samina Panwhar, Manager; Oregon Health Authority, Drinking Water Services; and may be delivered by mail to PO Box 14450, Portland, OR 97293 or by email to [samina.t.panwhar@oha.oregon.gov](mailto:samina.t.panwhar@oha.oregon.gov).**

If you request a hearing, DWS 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. DWS will be represented by an Assistant Attorney General. Prior to the hearing date, DWS 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 period, you will lose your right to appeal.

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

If you withdraw a request for hearing, or notify DWS or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, DWS 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 period, you will lose your right to appeal.



**Notice to Active Duty Servicemembers**

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 503-584-3571 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil>.

DWS has designated its complete file on the 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 Order in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad K. Daniels at [bradley.k.daniels@oha.oregon.gov](mailto:bradley.k.daniels@oha.oregon.gov) or 503-735-5438.

Date 2/28/2025



Samina Panwhar, Manager  
Drinking Water Services  
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services  
Scott Shearer, Oregon Public Utility Commission

DATE of Service: March 4, 2025



Signature

Brad K. Daniels

By certified mail and first-class mail