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

In the Matter of:

Evergreen Acres Water Services, PWS
OR4100805

SETTLEMENT AGREEMENT AND FINAL
ORDER

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (“Authority”) and Evergreen Acres Water Services, PWS (“Respondent”) (together, “the Parties”) agree and admit to the following to resolve the above-referenced matter:

BACKGROUND

1. Respondent has operated the Evergreen Acres Water Service water system (hereinafter “Water System”) located in Clatsop County identified as water system OR4100805 since at least 2017. The Water System is a community public water system serving approximately 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.
2. The Authority issued a Notice of Intent to Impose Civil Penalty (“Notice”) dated January 9, 2023 to Respondent. The Notice alleged that Respondent committed two violations of OAR 333-061-0090(3)(i). The Notice is attached and is incorporated by reference. Respondent timely requested a contested case hearing with the Authority.

TERMS

3. Respondent admits to the violations, and the facts underlying those violations, described in the attached Notice.
4. Respondent is assessed a civil penalty of \$3,000.00. The Authority shall hold the civil penalty in abeyance pending Respondent’s compliance with this Settlement Agreement (Agreement). If Respondent fails to comply with the terms of this Agreement, the Authority shall notify Respondent of the violation and provide an opportunity for a contested case hearing, but the only issue

Respondent may contest is whether Respondent failed to comply with the Agreement. Respondent may not challenge the past violations agreed to under this Agreement or the appropriateness of the civil penalty.

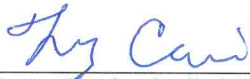
5. Consistent with applicable state law and rules, the Authority may rely on the violations admitted in this Agreement for determining the extent or appropriateness of any future action or sanction. Respondent waives the right to contest the violations and facts admitted in this Agreement and in any future action by the Authority regarding those violations.
6. As of January 17, 2024, Respondent and Tony Cavin no longer operate the Water System and have permitted access to the Water System by new operators Samuel and Jennifer Lynch (“Lynchs”). Respondent and Tony Cavin agree that, unless the Authority directs otherwise in writing, Respondent and Tony Cavin shall no longer operate the Water System and will permit the Lynchs or other operators identified by the Authority access to the Water System for the purpose of operating the Water System. The Authority may, at any time in writing, direct Respondent and Tony Cavin to operate the system if otherwise required by applicable drinking water statutes or rules or designate new operators to be permitted access to the Water System. In addition, the Authority may in the future require Respondent and Tony Cavin to come into compliance with applicable drinking water statutes and rules. Respondent and Tony Cavin agree to come into compliance with such a directive.

General Terms

7. Nothing in this Agreement precludes other state or federal agencies, including but not limited to other units of the Authority, from asserting criminal, civil, or administrative claims against Respondent based on the facts underlying the Notice. Nothing in this Agreement prevents Respondent from disputing such matters and presenting evidence to dispute such matters and asserting affirmative defenses.
8. Respondent releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents arising out of the matters set forth in the Notice, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC § 1983 et seq, and for attorneys’ fees or costs.
9. Respondent is a domestic non-profit corporation. Tony Cavin is the President and Registered Agent of Respondent. Respondent represents and warrants that Tony Cavin has the Authority to enter into this Agreement and bind Respondent on its behalf. This Agreement is binding upon Licensee, its agents, managers, employees, representatives, shareholders, directors, officers, successors, any and all persons or entities acting in concert or participation with or for it, and Tony Cavin.
10. This Settlement Agreement and Final Order may be executed in one or more multiple counterparts, including facsimile, scanned, and electronically transmitted counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. The Parties agree that this Agreement constitutes the sole, entire and complete agreement between the parties to resolve the Notice and that no promises, inducements or agreement not herein expressed have been made and that the terms of this Agreement are contractual and a not a mere recital.
11. This Agreement does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.285 and administrative rules OAR 333-

061-0050 to 333-061-0272, which remain in full force and effect. This Agreement does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

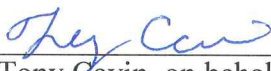
- 12. Respondent is aware of the right to a contested case hearing if the Notice was not resolved with this Agreement. Respondent is aware of the right to judicial review. Respondent freely and voluntarily waives all rights to a contested case hearing and to all judicial review. In full satisfaction and settlement of the Notice, Respondent agrees to the Authority's issuance of a final order incorporating this Agreement.
- 13. The signed Agreement must submitted directly to Authority staff or submitted to PETER.R.FARRELLY@oha.oregon.gov and received by the Authority by February 2, 2024 at 5:00 PM, or this settlement offer is deemed withdrawn.



 Tony Cavin, individually

2-2-24


 Date



 Tony Cavin, on behalf of
 Evergreen Acres Water Services, PWS# 00805

2-2-24

 Date



 Samina Panwhar, Manager
 Drinking Water Services
 Oregon Health Authority

2-2-2024

 Date

FINAL ORDER

NOW THEREFORE, the Authority finds and concludes that Respondent committed two violations of OAR 333-061-0090(3)(i). The Authority hereby imposes a civil penalty of \$3,000 which it holds in abeyance in accordance with the above Settlement Agreement. Further, the Authority adopts all other terms of the Settlement Agreement.

It is so ORDERED.



 Andre Ourso, Administrator
 Center for Health Protection
 Oregon Health Authority

2/12/2024

 Date

- cc: Meredith Reiley, Clatsop County Environmental Health
 Pete Farrelly, Drinking Water Services, Oregon Health Authority
 Brad Daniels, Drinking Water Services