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

In the Matter of

Oregon Parks and Recreation
Department / Hat Rock State Park
Public Water System

BILATERAL COMPLIANCE AGREEMENT

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) and the Oregon Parks and Recreation Department agree to the following:

1. The Oregon Parks and Recreation Department is a water supplier (hereinafter “Water Supplier”) as defined in Oregon Revised Statute (ORS) 448.115 and Oregon Administrative Rule (OAR) 333-061-0020. The responsibilities of water suppliers are identified in OAR 333-061-0025.
2. Water Supplier owns and operates the OPRD Hat Rock State Park public water system (hereinafter “Water System”), identified by public water system ID # OR4191072 and located east of Umatilla, Oregon. The Water System is a transient non-community water system serving approximately 500 people during the peak season and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.
3. DWS has reviewed the operation of the Water System pursuant to its authority in ORS 431A.010, 448.150 and 448.255. DWS has determined that water provided by the water system exceeds the maximum contaminant level (MCL) as specified in OAR

333-061-0030 for nitrate. Water with nitrate above the MCL represents a potential public health hazard.

Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. OAR 333-061-0097.

4. This Bilateral Compliance Agreement (“Agreement”) is entered into between DWS and Water Supplier to address the contamination of the drinking water provided by the Water System. This Agreement establishes the corrective action(s) that Water Supplier must take and the deadlines for completing those actions with the purpose of reducing the contamination in the drinking water below the MCL. The corrective actions and respective deadlines are described in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Water Supplier was and is required to meet all the responsibilities for water suppliers described in OAR 333-061-0025.
2. OAR 333-061-0025 requires, in part, water suppliers to take all reasonable actions to assure that the water delivered to users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. Water samples collected at the Water System indicate that water provided by the system exceeded the MCL for nitrate as specified in OAR 333-061-0030(1) despite Water Supplier’s operation of a nitrate treatment system. Water Supplier’s failure to operate the treatment system effectively demonstrates Water Supplier has not taken all reasonable actions to ensure that water does not exceed the MCL for nitrate.
3. Water Supplier is not in compliance with OAR 333-061-0025.
4. The MCL for nitrate is 10 mg/L. OAR 333-061-0030(1).
5. Sample results for the Water System demonstrate that the water has been above the MCL for nitrate in violation of OAR 333-061-0030(1). On August 25, 2021, test results from a confirmation sample showed that the average concentration of nitrate in the water provided by the Water System was 16 mg/L of nitrate. Two other samples collected during the 2021 calendar year also exceeded the MCL but were collected outside of the Water System’s identified operating period.

6. Water Supplier is not in compliance with OAR 333-061-0030(1).
7. Water Supplier reported a sample collected on September 7, 2021 with concentrations of nitrate below the MCL but a sample collected on October 20, 2021 showed the concentration of nitrate to be 15.6 mg/L

CORRECTIVE ACTIONS

Water Supplier agrees to take the following corrective actions and meet the deadlines set out below:

1. Water Supplier shall monitor for nitrate at the Water System according to OAR 333-061-0036(2)(c), 333-061-0036(1)(g) and as follows:
 - Monitoring shall begin when the Water System is opened to the public in April 2022 and be conducted every month water is available for public consumption, according to OAR 333-061-0036(1)(g). Sample results shall be reported to the Authority no more than 10 days after the end of each month according to OAR 333-061-0040(1).
 - If any sample exceeds the MCL for nitrate specified in OAR 333-061-0030(1), Water Supplier shall collect a confirmation sample within 24 hours according to OAR 333-061-0036(2)(f). Confirmation samples, regardless of the nitrate concentration, shall be reported to DWS within two business days of when the sample was submitted to a laboratory for analysis.
2. If nitrate treatment at the Water System requires maintenance or modification, Water Supplier shall submit an action plan to DWS no later than March 31, 2022 identifying how it will ensure compliance with the MCL for nitrate at the Water System. The action plan shall:
 - Identify all tasks Water Supplier intends to perform to ensure drinking water produced by the Water System has concentrations below the MCL for nitrate and set reasonable deadlines for completing all the identified tasks.
 - Include complete construction or installation plans that meet the requirements in OAR 333-061-0060 for the construction or modification of any facilities at the

Water System. Construction plans must be approved by DWS prior to any construction or installation taking place.

3. If the average of any monthly sample and confirmation sample exceeds the MCL for nitrate, Water Supplier shall immediately restore the nitrate treatment at the Water System to effective operation such that concentrations of nitrate in drinking water are below the MCL specified in OAR 333-061-0030(1).
 - Water Supplier must complete the corrective action within 72 hours of receiving notification that sample results exceeded the MCL. Water Supplier shall thereafter submit verification to DWS in writing of the action taken within 24 hours of completing the action. Verification must also identify what action Water Supplier took to ensure nitrate does not exceed the MCL on an ongoing basis.
4. Water Supplier will have satisfied the terms of this Agreement and may return to monitoring nitrate according to OAR 333-061-0036(2)(c) if sample results reported for the Water System have concentrations of nitrate below the MCL specified in OAR 333-061-0030(1) every month from April through October 2022 or for one complete season of operations at the Water System.

DWS RESPONSIBILITIES

- DWS shall review and approve any corrective action plan or construction plans submitted by Water Supplier within thirty (30) days of receipt. DWS shall approve or require changes to the submitted plans immediately upon completing the review.

GENERAL PROVISIONS

1. Water Supplier satisfies the terms of this Agreement by completing the corrective actions listed above according to the deadlines specified herein.
2. 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 333-061-0005 to 333-061-0272, which remain in full force and effect.
3. This Agreement does not relieve Water Supplier of any responsibilities or liabilities established by any applicable federal, state, or local law or regulation.

4. If Water Supplier fails to complete any of the corrective actions listed above or fails to meet any of the listed deadlines, DWS may pursue any enforcement action, which may include assessment of civil penalties or other legal remedies pursuant to ORS 431A.010, 431.155, 448.255 and 448.280. If DWS proceeds with such an enforcement action, Water Supplier will have the right to a hearing.
5. DWS may consider the findings of fact and violations cited in the conclusions of law of this Agreement for purposes of any future enforcement action or sanction involving Water Supplier.
6. Water Supplier is aware of its rights to contest the violations listed in this Agreement in a contested case hearing under the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183) and its rights to judicial review of a final order issued in the contested case. Water Supplier freely and voluntarily waives all rights to a contested case hearing and to all judicial review of the findings of fact or conclusions of law contained in this Agreement in a proceeding brought by DWS to enforce this Agreement.
7. This Agreement 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.

Dated this 14th day of February, 2022.

Mark Miller

Mark R Miller
Park Manager - Blue Mountain Management Unit
Oregon Parks and Recreation Department

Dated this 14th day of February, 2022.

David Emme

David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Bill Goss, Oregon Health Authority, Drinking Water Services
Amy Word, Oregon Health Authority, Drinking Water Services