



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

In the Matter of

Cleaner Family Trust / Callahan's
Mountain Lodge Public Water System

BILATERAL COMPLIANCE AGREEMENT

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) and the Cleaner Family Trust agree to the following:

1. The Cleaner Family Trust 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 public water system (hereinafter "Water System"), identified by public water system ID # OR4191551 and serving Callahan's Mountain Lodge, located at 7100 Old Highway 99 in Ashland, Oregon. The Water System is a transient non-community water system serving approximately 60 people and is 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 source water facilities for the Water System do not effectively capture groundwater and exclude surface water from the drinking water system as specified in OAR 333-061-0050(2). Additionally, treatment processes do not effectively disinfect the water nor include adequate surface water filtration as specified in OAR 333-061-0032 and OAR 333-061-0036(5). Water

from a surface water source without effective treatment represents a potential public health hazard.

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. OAR 333-061-0097

4. This Bilateral Compliance Agreement (“Agreement”) is entered into between DWS and Water Supplier to address the inadequate construction of groundwater sources and lack of effective treatment for 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 ensuring effective disinfection and filtration of drinking water at the Water System. The corrective actions and respective deadlines are described in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Water Supplier purchased the Water System and the property where the Water System is located on September 2, 2020.
2. As of September 2, 2020, Water Supplier was and is required to meet all the responsibilities for water suppliers described in OAR 333-061-0025.
3. OAR 333-061-0076(6)(b) requires, in part, water suppliers responsible for water systems using only groundwater sources to correct any significant deficiencies identified during a sanitary survey, or to comply with an approved corrective action plan, within 120 days of written notice of the deficiency. A sanitary survey was conducted on October 5, 2020 at the Water System and a letter was mailed to Water Supplier on October 27, 2020 identifying significant deficiencies discovered during the survey. Water Supplier was required to correct the deficiencies by March 2, 2021 or to have submitted and received approval for a corrective action plan. March 2, 2021 passed without the correction of the deficiencies and without DWS approval of a corrective action plan. Water Supplier is therefore not in compliance with OAR 333-061-0076(6)(b).
4. Water Supplier attempted to complete corrections following the sanitary survey conducted on October 5, 2020 and excavation work near the spring sources supplying the Water System may have resulted in *E. coli* bacteria being confirmed to be present in two of the groundwater springs on October 12, 2021.

5. OAR 333-061-0032(6), in part, requires water suppliers to complete corrective action when sample results indicate the presence of *E. coli* bacteria in a groundwater source. Corrective action must be completed within 120 days or according to a schedule approved by DWS. *E. coli* bacteria were confirmed to be present in two of the groundwater springs supplying the Water System on October 12, 2021. Water Supplier has been unable to complete corrective action to resolve the possibility *E. coli* bacteria will be present in the groundwater springs supplying the Water System. Water Supplier is therefore not in compliance with OAR 333-061-0032(6).
6. OAR 333-061-0050(2)(b) requires, in part, groundwater springs at public water systems to be constructed of concrete or another impervious, durable material and be installed to exclude surface water and to have a screened overflow. The springs supplying the Water System were inspected on October 5, 2020 and determined to not meet these standards and are therefore not in compliance with OAR 333-061-0050(2).
7. DWS notified Water Supplier, in a letter dated October 7, 2022, of the determination that the sources supplying the Water System were determined to be under the direct influence of surface water. Water Supplier responded to the letter with a plan to reconstruct the existing spring sources, but the plan was determined inadequate to completely exclude surface water intrusion into the source facilities.
8. OAR 333-061-0032(1)(a)(A), in part, requires that water systems supplied by a surface water source or groundwater source under the direct influence of surface water provide at least 99.9 percent removal or inactivation of *Giardia lamblia* cysts; at least 99.99 percent removal or inactivation of viruses; and 99 percent removal of *Cryptosporidium*. The Water System is supplied by sources determined to either capture surface water directly or to be under the direct influence of surface water; however, monthly reports of treatment processes at the Water System do not indicate these protections against *Giardia lamblia*, viruses and *Cryptosporidium* are provided. The Water System is therefore not in compliance with OAR 333-061-0032(1)(a)(A).
9. Water Supplier opted to provide treatment for surface water according to OAR 333-061-0032(1) through (5) as applicable, rather than attempting to reconstruct the source facilities at the Water System to effectively exclude surface water intrusion. Water Supplier currently applies a disinfectant to drinking water at the Water System and is in compliance with interim treatment requirements after groundwater sources are determined to be under the direct influence of surface water.

CORRECTIVE ACTIONS

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

1. Water Supplier shall submit complete construction plans for the installation of surface water treatment according to the applicable provisions of OAR 333-061-0032(1) through (5), including filtration and disinfection.
 - The construction plans must be submitted to DWS no later than 90 days after this agreement is signed.
 - 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 Water System must meet the applicable construction standards specified in OAR 333-061-0050.
2. Water Supplier shall ensure reconstruction, construction or installation according to Compliance Action No. 1 is completed no later than nine months after construction plans are conditionally approved by DWS.
 - Construction must be completed in accordance with the plans approved by DWS.
3. Water Supplier shall collect water quality measurements according to the applicable provisions of OAR 333-061-0036(5) and submit the results to DWS within 60 days of notifying DWS that construction was completed according to Compliance Action No. 2.
4. Water Supplier shall publish a public notice no later than 30 days after this agreement is signed, that informs drinking water users at the Water System that disinfection did not achieve the required *Giardia lamblia* inactivation during March 2023. The notice must meet the all the applicable requirements in OAR 333-061-0042.
 - Within 10 calendar days of distributing the public notice to customers, Water Supplier shall send a copy of the notice to DWS along with a written statement that it has fully complied with the distribution and public notification requirements in OAR 333-061-0040(1)(i).

- The notice must be posted in prominent locations throughout the Water System and provided to guests lodged at or dining at facilities served by the Water System.

DWS RESPONSIBILITIES

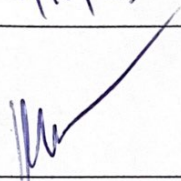
- DWS shall review and approve any corrective action plan or construction plans submitted by Water Supplier within thirty (30) days of receipt. DWS shall approve or require changes to the submitted plans immediately upon completing the review.

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.

Date 6/16/23



Mark Cleaner
Cleaner Living Trust
Callahan's Mountain Lodge

Date 6/20/23



A handwritten signature in black ink, appearing to read "Samina".

Samina Panwhar, Manager
Drinking Water Services
Oregon Health Authority

cc: Zach Golik, Oregon Health Authority, Drinking Water Services
Susan Baker, Jackson County Environmental Public Health