

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

In the Matter of

The U. S. Forest Service / Lava Lake
Campground Public Water System

BILATERAL COMPLIANCE AGREEMENT

The Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (DWS) and the U. S. Forest Service agree to the following:

1. The U.S. Forest Service and Deschutes Recreation Company are 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. The U.S. Forest Service owns, and Deschutes Recreation Company operates the public water system (hereinafter “Water System”), identified by public water system ID# OR4194272 serving the Lava Lake Campground, approximately 25 miles west, southwest of Bend, Oregon along Lava Lake in the Deschutes National Forest. The Water System is a transient non-community water system serving approximately 210 people 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 exceeded the maximum contaminant level (MCL) as specified in OAR

333-061-0030 for *E. coli* bacteria in August 2019. Water with *E. coli* bacteria represents a potential public health hazard.

E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. 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 is required to meet all the responsibilities for water suppliers described in OAR 333-061-0025.
2. OAR 333-061-0030(4) specifies, in part, that the MCL for *E. coli* applies to all public water systems and is violated when an *E. coli*-positive repeat sample follows a total coliform-positive routine sample. Coliform monitoring reported for the Water System indicates that on August 7, 2019, an *E. coli*-positive repeat sample was reported following a total coliform-positive routine sample reported on August 6, 2019. This violates the MCL for *E. coli* and demonstrates Water Supplier is not in compliance with OAR 333-061-0030(4).
3. Facilities at the Water System were disinfected and drinking water was flushed from the water distribution system to address the *E. coli* contamination in September 2019.
4. Special samples reported for on September 20, 2019 indicated there was no presence of *E. coli* bacteria in drinking water at the Water System but operations at the Water System were suspended at the end of the 2019 operating period, before the status of the violation of the MCL for *E. coli* could be returned to compliance.

CORRECTIVE ACTIONS

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

1. Water Supplier shall notify DWS in writing, within 10 days of when it begins operating the Water System for the 2020 season. This notification must include a seasonal start-up checklist for the Water System, completed according to OAR 333-061-0065(8) and be reported to DWS according to OAR 333-061-0040(1)(n).
 - DWS records indicate the Water System is operated from May 1 to September 30 every year. If Water Supplier will not begin operations at the Water System by May 1, 2020, it shall notify DWS of the delay and provide an estimated date when operations are expected to begin.
2. Water Supplier shall monitor for coliform bacteria at the Water System according to OAR 333-061-0036(6)(b) every month the Water System is operated during the 2020 season.
 - Water Supplier shall report the sample results to DWS within 10 days of the end of every month according to OAR 333-061-0040(1).
 - Water Supplier will have satisfied the terms of the agreement when two consecutive months of monitoring for coliform bacteria are reported to DWS, and those sample results demonstrate coliform bacteria are not present in drinking water at the Water System.

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 _____ day of _____, 2020.

Signature

Printed Name
Forest Supervisor
U.S. Forest Service

Dated this 20 day of April, 2020.

Chris Howerton
Chris Howerton
~~Area Manager~~ *Operations Manager*
Deschutes Recreation Company

Dated this _____ day of _____, 2020.

David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Michelle Byrd, Oregon Health Authority, Drinking Water Services
Michelle Feuerstein, CLM Services Corporation
Jeff Freund, Deschutes County Environmental Health

Dated this _____ day of _____, 2020.

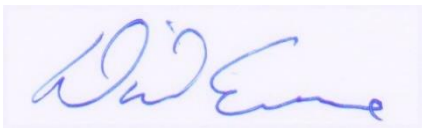
Signature

Printed Name
Forest Supervisor
U.S. Forest Service

Dated this _____ day of _____, 2020.

Chris Howerton
Area Manager
Deschutes Recreation Company

Dated this 27th day of April, 2020.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Michelle Byrd, Oregon Health Authority, Drinking Water Services
Michelle Feuerstein, CLM Services Corporation
Jeff Freund, Deschutes County Environmental Health