PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services
Kate Brown, Governor

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

In the Matter of Klaas and Barbara Den Heyer Myrtle Tree RV Park, PWS OR4195332 Respondent	NOTICE OF INTENT TO IMPOSE CIVIL PENALTY

To: Klaas and Barbara Den Heyer
Myrtle Tree RV Park
12143 Road 37
Madera, CA 93636-7719

Pursuant to Oregon Revised Statutes (ORS) 448.280, 448.285, and Oregon Administrative Rules (OAR) 333-061-0090, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Services (Authority) intends to impose a civil penalty of $12,500 against you for violations of OAR 333-061-0036(5)(b)(B); 333-061-0050(4)(c)(E); 333-061-0036(2)(d); 333-061-0042; and 333-061-0090.

You have at all times mentioned herein owned and continue to own the Myrtle Tree RV Park (Myrtle Tree) water system, which is a transient non-community public water system serving between 25 and 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

The Authority issued a Notice of Violation and Administrative Order (Order) on July 22, 2015 for violations of rules specified above. The Order identified actions to be completed by you in order to comply with the rules specified. You did not appeal the Order, and did not comply with the Order by the deadlines specified therein. The Order is incorporated by reference.

The proposed civil penalty is based on the following violations specified in the Order and for failing to conduct the actions required by the order:

1. OAR 333–061-0036(5)(b)(B) requires water suppliers to measure water quality parameters relating to the calculation of disinfection effectiveness at public water systems utilizing a surface water source. Operating reports submitted to the Authority prior to the Order were not complete and therefore it was impossible to determine whether disinfection processes at the Myrtle Tree water system were effective. The Order required operating reports be submitted to the Authority to demonstrate treatment processes were effective but reports were not submitted as required.

2. OAR 333-061-0050(4)(c)(E) requires filtration treatment at water systems utilizing a surface water source be designed and operated to meet specific treatment and water quality requirements. OAR 333-061-0036(5)(b) requires turbidity measurements used to demonstrate treatment effectiveness be collected prior to any water storage, but the design of water treatment infrastructure at the Myrtle Tree water system did not allow for routine monitoring of turbidity prior to any water storage. The Order required the treatment system at the Myrtle Tree water system to be repaired to meet construction standards, but you have not demonstrated that the necessary repairs have been completed.

3. OAR 333-061-0036(2)(d) requires water suppliers to conduct monitoring for nitrate at public water systems, but nitrate monitoring results for the Myrtle Tree water system were not reported to the Authority for the 2014 calendar year. The Order required nitrate monitoring results to be reported to the Authority but results have not been reported as required.

4. OAR 333-061-0042 requires water suppliers to provide public notice to persons served by public water systems when specific violations or situations exist. OAR 333-061-0042(2)(a) required public notice to be issued to water users at the Myrtle Tree water system due to the failure to demonstrate effective surface water treatment. Authority records indicate public notice was not provided as required prior to the

Order, and you have not demonstrated that public notice was published following the Order as required.

5. OAR 333-061-0090(i) states that failing to comply with an order issued by the Authority is a violation of the rule for which a civil penalty can be assessed. The Authority issued an Order on July 22, 2015 pursuant to ORS 448.255 but you failed to demonstrate completion of the corrective actions required by the Order.

CIVIL PENALTY

Pursuant to OAR 333-061-0090, you will be assessed a civil penalty in the amount of $50 for each distinct violation and for every day the violation occurred based upon the population served by the public water system. The total civil penalty of $12,500 is based on the period of time from August 22, 2015 through October 10, 2015, inclusive. Each day within this 50 day period has five associated violations in the amount of $50 per violation, for a total penalty of $12,500

If the violations identified in this notice, or other violations incorporated by reference, continue, you may be subject to additional civil penalties in the amount of $50 per day per violation.

CIVIL PENALTY FACTORS CONSIDERED

In assessing the civil penalty, the Authority considered the factors set out in ORS 448.285(2).

- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation:

o You have been formally notified of the violations specified in this notice on at least three separate occasions as described below but have taken little or no action to correct the violations.

1. Authority Engineer James MacPherson conducted a sanitary survey at the Myrtle Tree water system on November 19, 2014. This survey identified significant deficiencies to be corrected related to the maintenance and operation of surface water treatment at the Myrtle Tree water system. You were notified of the survey results on February 6, 2015 in a letter which directed you to correct these deficiencies including measuring and recording water quality parameters and submitting monthly operating reports to the Authority, as well as making other

improvements. A corrective action plan was submitted on March 30, 2015 but corrective action was not completed as identified in the plan.

2. The Authority sent a letter to Bryan Galt, operator for the Myrtle Tree water system, on April 17, 2015 instructing him to submit monthly operating reports and to perform total coliform and nitrate sampling. To date, there has been no response to this letter.

3. The Authority issued the Order on July 22, 2015 which ordered you to demonstrate effective surface water treatment and to provide finished drinking water that meets all applicable water quality standards. This was to be completed within 30 days of the date of service of the Order. The Order also required you to monitor for nitrate and to publish a public notice. To date, you have not completed any of the actions included in the Order.

- (b) Prior violations:

- You violated OAR 333-061-0036(2)(d) two times by failing to monitor for nitrate as required by the rule in 2009 and 2011.

- You violated OAR 333-061-0036(6) 24 times since January 1, 2010 by failing to monitor for total coliform as required by the rule.

- You violated OAR 333-061-0036(5) 32 times since January 1, 2010 by failing to measure and report water quality for the determination of water treatment effectiveness as required by the rule.

- You violated OAR 333-061-0042 one time by failing to notify the customers of the Myrtle Tree water system after exceeding the MCL for turbidity in March 2011.

- You violated OAR 333-061-0065 or 333-061-0025(13) one time since January 1, 2015 by failing to demonstrate that the operator for the Myrtle Tree water system received the required special training related to water systems utilizing surface water sources.

- You violated OAR 333-061-0060 one time since January 1, 2014, by failing to submit construction plans for approval prior to making major modifications to the Myrtle Tree water system.

- You failed to comply with an administrative order issued by the Authority on March 1, 2009

  - (c) Economic and financial conditions of the person incurring the penalty:

- The Authority has no information about your economic or financial details, or the economic or financial conditions at the Myrtle Tree RV Park water system.

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 the Authority within 20 days from the date this Notice was mailed. **The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Services; PO Box 14450; Portland, OR 97293-0450. If a request for hearing is not received with the 20-day period, you will have waived your right to a hearing.**

Notice to Active Duty Service members. 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 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is http://legalassistance.law.af.mil/content/locator.php.

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings (ORS 183.635).

If you do not request a hearing within 20 days, or if you withdraw a request for hearing, notify the Authority or the administrative law judge that you will not appear or fail to appear at a scheduled hearing. The Authority may issue a final order by default ordering you to pay a civil penalty. If the Authority issues a final order by default, the Authority designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon default.

For purposes of ORS 293.229 through 293.233 and ORS 293.250, the civil penalty specified herein will become a liquidated debt if a final order is issued. Pursuant to ORS 293.231 the Authority is required to assign liquidated and delinquent civil penalties to the Department of Revenue, as provided in ORS 293.250, not later than 90 days after the final order is issued. Reasonable administrative costs, collection costs, attorney's fees, and all other costs and charges necessary for the collection of any amount not paid when due, including but not limited to collection charges assessed by the Department of Revenue may be added to the amount due of $12,500.

If you need to receive the information in this Notice in an alternate format, or if you have any questions about the requirements in this notice, please contact Brad K. Daniels at (971) 673-0405.

Dated this 14th day of October, 2015.

Jere High, ND
Interim Administrator, Center for Health Protection
Oregon Health Authority

cc: Rick Hallmark, Coos County Environmental Health Program
Jay MacPherson, Oregon Health Authority, Drinking Water Services
Betsy Parry, Oregon Health Authority, Drinking Water Services

DATE of Service: October 15, 2015

Brad K Daniels

By certified and first class mail