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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

GRINDSTONE INDIAN RANCHERIA
OF WINTUN-WAILAKI INDIANS OF
CALIFORNIA,
Defendant.

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action against the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California ("Tribe" or "Defendant") brought pursuant to Sections 1414(b) and 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300g-3(b) and 300i, for violations of the SDWA and its implementing regulations at 40 C.F.R. Part 141. These violations include: failure to adequately treat and disinfect drinking water delivered by Defendant's drinking water system; failure to conduct routine and repeat sampling for total coliforms; violation of the maximum

1 contaminant level (“MCL”) for *E. coli*; failure to monitor for lead and copper; failure to monitor
2 for organic chemicals; failure to have a qualified operator for Defendant’s drinking water
3 system; failure to provide Consumer Confidence Reports to the drinking water system’s
4 customers; failure to provide public notice of these violations; and Defendant’s failure to comply
5 with two EPA-issued administrative compliance orders: EPA’s December 15, 2017
6 Administrative Order on Consent (“2017 AOC”) entered between EPA and the Defendant and
7 the June 21, 2019 Emergency Administrative Order (“2019 EAO”) issued by EPA to the
8 Defendant. The United States seeks injunctive relief and civil penalties under Sections 1414(b)
9 and 1431 of the SDWA, 42 U.S.C. §§ 300g-3(b) and 300i, for these violations.

10 JURISDICTION AND VENUE

11 2. This Court has jurisdiction over the parties and subject matter of this action
12 pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 1414 and 1431 of the SDWA, 42
13 U.S.C. §§ 300g-3 and 300i.

14 3. Venue is proper in the Eastern District of California pursuant to 28 U.S.C.
15 §§ 1391(b) and 1395(a), and Sections 1414(b) and (g)(3)(C) and 1431(a) and (b) of the SDWA,
16 42 U.S.C. §§ 300g-3(b) and (g)(3)(C), and 300i(a) and (b), because it is the judicial district
17 where Defendant is located, where a substantial part of the events or omissions giving rise to the
18 claims occurred, and where the alleged violations occurred.

19 4. Authority to bring this civil action on behalf of the United States is vested in the
20 Attorney General of the United States pursuant to Section 1450(f) of the SDWA, 42 U.S.C.
21 § 300j-9(f); and 28 U.S.C. §§ 516 and 519.

22 5. EPA has primary enforcement responsibility for the SDWA public water supply
23 protection program within the Rancheria. *See* Section 1451 of the SDWA, 42 U.S.C. § 300j-11.
24 No other governmental authority has applied for and been approved to administer the SDWA on
25 the Rancheria pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g-2.

26 6. For public water systems in Indian Country for which a State does not have
27 primary enforcement authority for purposes of drinking water enforcement, including the
28 System, the term “State” as used in 40 C.F.R. Part 141 means EPA.

DEFENDANT

7. Defendant is a federally recognized Indian tribe and therefore an “Indian Tribe” within the meaning of Section 1401(14) of the SDWA, 42 U.S.C. § 300f(14). Defendant operates under its Constitution and by-laws adopted and approved by the U.S. Department of the Interior on August 19, 1971. Defendant’s governmental operations are split between its General Council and its Civil Government.

8. Defendant is a “municipality” as defined by Section 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and a “municipality” is in turn a “person” as defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

9. Defendant operates and maintains the Grindstone Rancheria Public Water System (“System”), which is a “public water system” under Section 1401(4)(A) of the SDWA, 42 U.S.C. § 300f(4)(A) and 40 C.F.R. § 141.2, and a “community water system” under Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15).

10. Defendant is a “supplier of water” under Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.

STATUTORY AND REGULATORY BACKGROUND

11. EPA has promulgated National Primary Drinking Water Standards (“NPDWRs”) under Section 1412 of the SDWA, 42 U.S.C. § 300g-1, that establish maximum contaminant levels, monitoring requirements, public notification requirements, and other standards and requirements for regulated drinking water systems. *See* Section 1401 of the SDWA, 42 U.S.C. § 300f(1).

12. Section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i), defines the “applicable requirements” of the SDWA to include the NPDWRs promulgated under Section 1412 of the SDWA, 42 U.S.C. § 300g-1.

13. As provided in Section 1411 of the SDWA, 42 U.S.C. § 300g, the NPDWRs promulgated under Section 1412 of the SDWA, 42 U.S.C. § 300g-1, apply to “public water systems.”

1 14. A “public water system” is a system for the provision to the public of water for
2 human consumption through pipes or other constructed conveyances and has at least fifteen
3 service connections or regularly serves at least twenty-five individuals. Section 1401(4)(A) of
4 the SDWA, 42 U.S.C. § 300f(4)(A).

5 15. A “community water system” is a public water system which serves at least 15
6 service connections used by year-round residents or regularly serves at least 25 year-round
7 residents. Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15).

8 16. A “supplier of water” is any person who owns or operates a public water system.”
9 Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5).

10 17. The Surface Water Treatment Rule, 40 C.F.R. §§ 141.70 - 141.75, requires public
11 water systems supplied by a surface water source and providing filtration treatment to meet the
12 following requirements, among other things:

13 a. Pursuant to 40 C.F.R. § 141.72(b)(1), disinfection treatment must be
14 sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent
15 (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log)
16 inactivation and/or removal of viruses, as determined by the State (or EPA where it is the
17 primacy agency).

18 b. Pursuant to 40 C.F.R. § 141.72(b)(2), residual disinfectant concentration
19 in the water entering the distribution cannot be less than 0.2 mg/l for more than four hours.

20 c. Pursuant to 40 C.F.R. § 141.72(b)(3)(i), residual disinfectant concentration
21 in the distribution system cannot be undetectable in more than five percent of samples each
22 month for any two consecutive months that the system serves water to the public.

23 d. Pursuant to 40 C.F.R. § 141.74(c), a public water system that uses a
24 surface water source and provides water to a population equal to or fewer than 500 persons must:
25 (1) perform turbidity measurements on representative samples of the system’s filtered water
26 every four hours (or more frequently) that the system serves water to the public and (2) monitor
27 the residual disinfectant concentration of the water entering the distribution system by either
28 using continuous monitoring equipment or by taking daily grab samples.

1 e. Pursuant to 40 C.F.R. § 141.75(b), a public water system that uses a
2 surface water source and provides filtration treatment must report monthly to EPA within ten
3 days after the end of each month the results of monitoring required by 40 C.F.R. § 141.74(c) for
4 turbidity and residual disinfectant concentrations.

5 18. The Revised Total Coliform Rule at 40 C.F.R. §§ 141.856 – 141.860 requires
6 surface water systems serving 1,000 persons or fewer to meet the following requirements, among
7 other things:

8 a. Pursuant to 40 C.F.R. § 141.856(b), conduct routine monthly monitoring
9 for total coliforms.

10 b. Pursuant to 40 C.F.R. § 141.859(a)(1)(ii), conduct a Level 1 treatment
11 technique assessment (“Level 1 assessment”) if the system takes fewer than 40 samples per
12 month and has two or more total coliform-positive samples in the same month.

13 c. Pursuant to 40 C.F.R. § 141.859(a)(1)(iii), conduct a Level 1 assessment if
14 the system fails to take every required repeat sample after any total coliform-positive sample.

15 d. Pursuant to 40 C.F.R. § 141.859(a)(2)(i), conduct a Level 2 treatment
16 technique assessment (“Level 2 assessment”) if the system has an *E. coli* MCL violation, as
17 specified in 40 C.F.R. § 141.860(a).

18 e. Pursuant to 40 C.F.R. § 141.860(a)(3), take all required repeat samples
19 following an *E. coli*-positive routine sample.

20 f. Pursuant to 40 C.F.R. § 141.860(c)(1), take every required routine or
21 additional routine sample in a compliance period.

22 19. The Lead and Copper Rule in effect between December 10, 2007, and January 5,
23 2021, at 40 C.F.R. § 141.86(d)(4)(ii) provided that all small- and medium-size systems that had
24 met the Rule’s lead and copper action levels during three consecutive monitoring periods could
25 reduce the frequency for lead and copper monitoring from annually to once every three years.
26 For purposes of the Lead and Copper Rule, 40 C.F.R. 141.2 defines a “small” water system as
27 one that serves 3,300 persons or fewer.

28 20. The organic contaminant monitoring requirements at 40 C.F.R. § 141.24(f)

1 requires surface water systems to sample for the contaminants listed in 40 C.F.R. § 141.61(a),
2 and 40 C.F.R. § 141.24(f)(5) provides that the sampling be conducted annually unless the State
3 provides a system with a waiver pursuant to 40 C.F.R. § 141.24(f)(10) that allows the system to
4 conduct sampling at a different frequency specified by the State.

5 21. The synthetic organic chemical monitoring requirements at 40 C.F.R.
6 § 141.24(h)(2) requires surface waters systems to sample for the synthetic organic contaminants
7 listed in 40 C.F.R. § 141.61(c) (except for aldicarb, aldicarb sulfoxide or aldicarb sulfone) and 40
8 C.F.R. § 141.24(h)(4)(i) and (iii) requires that systems serving less than or equal to 3,300 persons
9 shall sample quarterly unless the State provides a system with a waiver pursuant to 40 C.F.R.
10 § 141.24(h)(5) that allows the system to conduct sampling at a different frequency specified by
11 the State.

12 22. The Stage 1 Disinfection Byproducts Rule at 40 C.F.R. § 141.130(c) requires,
13 among other things, that any community water system that adds a chemical disinfectant to the
14 water in any part of the drinking water treatment process must be operated by “qualified”
15 personnel who meet the requirements specified by the State.

16 23. The Consumer Confidence Reporting Rule at 40 C.F.R. §§ 141.152(b) and
17 141.155(a) requires that community water systems deliver a Consumer Confidence Report
18 (“CCR”) to each of their customers by July 1 of each year. In addition, pursuant to 40 C.F.R. §
19 141.155(c), community water systems must send a copy of the CCR to the primacy agency no
20 later than the date the system is required to distribute the report to customers. Within three
21 months following the distribution of the report, the system must send the primacy agency a
22 certification that the report has been distributed to customers.

23 24. The Public Notification Rule at 40 C.F.R. Part 141, Subpart Q, requires public
24 water systems to provide public notice of any failure to comply with any NPDWR and other
25 situations listed in Table 1 of 40 C.F.R. § 141.201 (the “Public Notice Rule”). Pursuant to Table
26 1 of 40 C.F.R. § 141.202, Tier 1 public notice is required for situations with significant potential
27 to have serious adverse effects on human health as a result of short-term exposure as determined
28 by the primacy agency either in its regulations or on a case-by-case basis. Tier 1 public notice is

1 required no later than 24 hours after a public water system learns of the violation and the system
2 must repeat Tier 1 notices at a frequency determined in consultation with the primacy agency.

3 25. The Long Term 2 Enhanced Surface Water Treatment Rule at 40 C.F.R. Part 141,
4 Subpart W, §§ 141.700-723 (the “Enhanced Water Treatment Rule”), requires surface water
5 systems to sample and treat for *Cryptosporidium*, *E. coli*, and turbidity and, among other things:

6 a. 40 C.F.R. § 141.723(a) authorizes EPA to conduct an onsite sanitary
7 survey of surface water systems, which entails a review of the water source, facilities,
8 equipment, operation, maintenance, and monitoring compliance of the system to evaluate the
9 adequacy of the system, its sources and operations, and the distribution of safe drinking water.

10 b. 40 C.F.R. § 141.723(b) provides that a defect in design, operation, or
11 maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system
12 that EPA determines to be causing, or has the potential for causing, the introduction of
13 contamination into the water delivered by customers, is a “significant deficiency.”

14 c. 40 C.F.R. § 141.723(c) requires surface water systems to respond in
15 writing to significant deficiencies identified by EPA in a sanitary survey report no later than 45
16 days after receipt of the report, indicating how and on what schedule the system will address
17 significant deficiencies noted in the survey.

18 26. Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), authorizes EPA to issue an
19 administrative order to a public water system to bring it into compliance with the SDWA and its
20 NPDWRs.

21 27. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), the United
22 States may bring a civil action in the appropriate United States district court to require
23 compliance with an order issued under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).
24 Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), also authorizes the United
25 States to seek a civil penalty for violation of such an order in an amount not to exceed \$69,733
26 for each day in which such violation occurs where the penalty is assessed on or after December
27 27, 2023. *See* Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as
28 amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701; *see also* 88 *Fed.*

1 *Reg.* 89309 (Dec. 27, 2023), codified at 40 C.F.R. Part 19.

2 28. Section 1431(a) of the SDWA, 42 U.S.C. § 300i(a), authorizes EPA to issue an
3 emergency administrative order when, among other things, the Administrator is in receipt of
4 information that a contaminant is present in or is likely to enter a public water system, which
5 may present an imminent and substantial endangerment to the health of persons, and that
6 appropriate State and local authorities have not acted to protect the health of such persons.

7 29. Pursuant to Section 1431(a) of the SDWA, 42 U.S.C. § 300i(a), the United States
8 may bring a civil action to require compliance with an emergency administrative order issued by
9 the EPA. Section 1431(b) of SDWA, 42 U.S.C. § 300i(b), provides that any person who violates
10 or refuses to comply with an emergency administrative order issued by EPA is subject to a civil
11 penalty not to exceed \$29,154 for each day in which such violation occurs or failure to comply
12 continues on where the penalty is assessed on or after December 27, 2023. *See* Federal Civil
13 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt
14 Collection Improvement Act of 1996, 31 U.S.C. § 3701; *see also* 88 *Fed. Reg.* 89309 (Dec. 27,
15 2023), codified at 40 C.F.R. Part 19.

16 30. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), the United
17 States may bring a civil action in the appropriate United States district court to require
18 compliance with any applicable requirement and to recover a civil penalty not to exceed \$67,544
19 for each day in which a violation of an applicable requirement occurs.

20 GENERAL ALLEGATIONS

21 31. Defendant owns and operates the System, which is located within the Rancheria,
22 in Glenn County, California.

23 32. The System draws water from Stony Creek, a surface water, which is the
24 System's sole source of water. The System consists of a wet well that collects Stony Creek water
25 before sending it to the System's treatment plant that uses filtration and chemical disinfection
26 before sending it for storage in a 64,000-gallon storage tank. The System delivers drinking water
27 from the storage tank to Rancheria customers via a piping and distribution system.

28 33. The System supplies drinking water to approximately 150 consumers through

1 approximately 58 service connections at the Rancheria.

2 34. The System is a “public water system” within the meaning of Section 1401(4)(A)
3 of the SDWA, 42 U.S.C. § 300f(4)(A), and a “community water system” within the meaning of
4 Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

5 35. The System has a history of chronic violations, including failure to properly
6 monitor and report coliform sample results, exceedances of the *E. coli* MCL, failure to
7 adequately operate the System’s disinfection treatment system, failure to ensure adequate
8 disinfectant residuals in the distribution system, and failure to dedicate sufficient resources to
9 train and retain staff to properly operate the System, for example:

10 a. On August 6, 2014, EPA conducted a sanitary survey of the System under
11 the Enhanced Water Treatment Rule at 40 C.F.R. § 141.723(a) and identified significant
12 deficiencies in a November 13, 2014, inspection report, including, among other things:

13 i. Inadequate maintenance of the System’s storage tanks, as
14 evidenced by leaks and corrosion, resulting in openings that created the potential for microbial
15 contamination of finished water stored in the tanks.

16 ii. Lack of monitoring equipment to measure the effectiveness of
17 finished water disinfection in the storage tanks.

18 iii. Lack of a certified operator.

19 b. On November 17, 2014, EPA notified Defendant of the need to issue a
20 Boil Water Notice due to possible pressure loss in the System caused by low water levels in
21 Stony Creek and working being conducted on the System’s infrastructure.

22 c. On August 19, 2015, the U.S. Department of Agriculture (“USDA”)
23 approved an Emergency and Imminent Community Water Assistance Grant in the amount of
24 \$477,000.00 for Defendant to fund proposed System improvements to provide the Rancheria
25 with safe drinking water.

26 d. Pursuant to an Interagency Agreement between USDA and the federal
27 Indian Health Service (“IHS”), Defendant hired a contractor to rehabilitate the System’s
28 collection gallery, install three new intake pipes, and construct a new wet well with two new

1 pumps, install a new transmission pipe, and connect the existing water treatment facility to
2 electricity.

3 e. On October 28, 2015, EPA inspected the System and on December 22,
4 2015, provided Defendant with an inspection report containing EPA's observations, which
5 included, among other things:

6 i. Inadequate maintenance of the System's storage tanks, as
7 evidenced by leaks and corrosion.

8 ii. The System's operator did not have the proper technical
9 certification to operate the System.

10 f. On February 16, 2016, EPA Region 9's Regional Administrator held a
11 meeting with Defendant to discuss EPA's concerns with the System's ongoing noncompliance
12 with the SDWA.

13 g. On November 30, 2016, EPA inspected the System and on January 12,
14 2017, provided Defendant with an inspection report containing EPA's observations, which
15 included, among other things:

16 i. Inadequate maintenance of the System's storage tanks, as
17 evidenced by leaks and corrosion.

18 ii. The pump that injects chlorine into the System was broken.

19 iii. The System operators had not been monitoring residual chlorine
20 levels as required by the Surface Water Treatment Rule at 40 C.F.R. § 141.74(c)(2).

21 iv. Lack of a certified operator on staff.

22 v. The presence of total coliform-positive results for each location in
23 the System sampled by EPA's contractor on November 30, 2016.

24 h. On February 7, 2017, EPA conducted a follow-up inspection of the
25 System and observed that the chlorinator pump, which was observed broken during the
26 November 30, 2016, inspection, remained broken and that inadequate chlorination methods were
27 in use, resulting in inadequate chlorine residuals in the System's finished drinking water tanks.

28 i. On February 9, 2017, EPA performed a sanitary survey of the System

1 pursuant to the Surface Water Treatment Rule at 40 C.F.R. § 141.723(a) and identified
2 significant deficiencies in its June 7, 2017, inspection report, including:

3 i. The System lacked adequate online monitoring equipment to
4 ensure and document compliance with the Surface Water Treatment Rules' treatment
5 requirements.

6 ii. Inadequate maintenance of the System's storage tanks, as
7 evidenced by leaks and corrosion.

8 iii. The System's operators were not properly certified.

9
10 j. On July 21, 2017, EPA attended a consultation meeting with Defendant at
11 the Rancheria to discuss the ongoing SDWA noncompliance at the System, including
12 Defendant's failure to address the significant deficiencies identified by EPA during its February
13 9, 2017 sanitary survey.

14 k. On July 21, 2017, IHS recommended a proposed corrective action plan to
15 Defendant to assist it in addressing the significant deficiencies identified by EPA during its
16 February 9, 2017, sanitary survey.

17 l. On August 9, 2017, Defendant submitted its proposed corrective action
18 plan to EPA.

19 m. On August 11, 2017, EPA approved Defendant's corrective action plan.

20 36. After Defendant failed to adequately implement the corrective action plan
21 approved by EPA on August 11, 2017, or otherwise bring the System into compliance with the
22 SDWA and its NPDWRs, EPA entered into the 2017 AOC with the Defendant pursuant to
23 EPA's enforcement authority under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

24 37. EPA subsequently issued the 2019 EAO to Defendant pursuant to EPA's
25 imminent and substantial endangerment authorities under Section 1431 of the SDWA, 42 U.S.C.
26 § 300i. EPA based its order on information that bacteria such as coliforms and *E. coli* that
27 endanger the health of persons if ingested in drinking water were present in or likely to enter the
28 System, and that Defendant had failed to adequately operate its drinking water disinfection

1 treatment system to ensure adequate disinfectant residuals in the entry point to the System's
2 distribution system and in the distribution system itself.

3 FIRST CLAIM FOR RELIEF

4 Failure to Comply with the Surface Water Treatment Rule

5 38. The allegations in Paragraphs 1 through 37 are hereby realleged and incorporated
6 by reference as if fully set forth herein.

7 39. Based on the analytical results of sampling performed by Defendant at the
8 System, on at least 55 occasions between September 2018 and December 2019 (after which
9 Defendant stopped sampling at the System's disinfection plant), Defendant failed to ensure that
10 the System's disinfection treatment system was sufficient to achieve 99.9 percent inactivation
11 and/or removal of *Giardia lamblia* cysts and viruses, and further failed to ensure that the residual
12 disinfectant concentration in the water entering the System's distribution system was no less than
13 0.2 mg/l for more than four hours, as required by 40 C.F.R. §§ 141.72(b)(1) and 141.72(b)(2).

14 40. Based on the analytical results of sampling performed by Defendant at the System
15 between April 2020 and September 2023, on at least 19 occasions the residual chlorine
16 concentration in the System's distribution system was undetectable in more than five percent of
17 samples each month for two consecutive months that the System served drinking water to the
18 public, in violation of 40 C.F.R. § 141.72(b)(3)(i).

19 41. On at least 42 occasions since at least May 30, 2018, Defendant failed to report
20 results of monitoring for turbidity and residual disinfectant concentrations to EPA within 10 days
21 after the end of each month or anytime thereafter, in violation of 40 C.F.R. § 141.75(b).

22 42. Unless restrained by an order of the Court, these violations are likely to continue.

23 43. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the
24 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the
25 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
26 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
27 not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties
28 are assessed on or after December 27, 2023.

SECOND CLAIM FOR RELIEF

Violations of Revised Total Coliform Rule

44. The allegations in Paragraphs 1 through 43 are hereby realleged and incorporated by reference as if fully set forth herein.

Violation of E. coli MCL

45. Pursuant to 40 C.F.R. § 141.860(a)(3), Defendant violated the MCL for *E. coli* by failing to take all required repeat samples following *E. coli*-positive routine sampling results at the System on January 7, 2021, February 3, 2021, April 1, 2021, September 30, 2021, October 28, 2021, November 18, 2021, December 28, 2021, and January 27, 2022.

Failure to Conduct Routine Monthly Monitoring

46. Defendant failed to conduct routine monthly monitoring as required by 40 C.F.R. §§ 141.856(b) in the months of December 2018 and January 2019. Such failures are monitoring violations pursuant to 40 C.F.R. § 141.860(c)(1).

Failure to Conduct Level 1 and Level 2 Treatment Technique Assessments

47. Defendant violated the requirements at 40 C.F.R. § 141.859 to conduct Level 1 and 2 assessments by:

a. Failing to conduct a Level 1 assessment as required by 40 C.F.R. § 141.859(a)(1)(ii) after Defendant's System, which takes fewer than 40 samples for total coliform per month, had two total coliform-positive samples in the same month, *i.e.*, on September 3 and 4, 2020.

b. Failing to conduct Level 1 assessments as required by 40 C.F.R. § 141.859(a)(iii) after Defendant failed to take repeat samples for total coliform as required under 40 C.F.R. § 141.858(a)(1) after single total coliform-positive samples at the System on September 3, 2020, March 4, 2021, and February 24, 2022.

c. Failing to conduct Level 2 assessments as required by 40 C.F.R. § 141.859(a)(2)(i) after Defendant violated the *E. coli* MCL as specified in 40 C.F.R. § 141.860(a)(3) on January 7, 2021, February 3, 2021, April 1, 2021, September 30, 2021, October 28, 2021, November 18, 2021, December 28, 2021, and January 27, 2022.

1 48. Unless restrained by an order of the Court, these violations are likely to continue.

2 49. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the
3 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the
4 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
5 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
6 not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties
7 are assessed on or after December 27, 2023.

8 THIRD CLAIM FOR RELIEF

9 (Failure to Monitor for Lead and Copper)

10 50. The allegations in Paragraphs 1 through 49 are hereby realleged and incorporated
11 by reference as if fully set forth herein.

12 51. Sometime prior to 2014, EPA determined pursuant to 40 C.F.R.
13 § 141.86(d)(4)(iii) that Defendant was eligible to perform lead and copper monitoring at the
14 System at a reduced frequency of once every three years, between the months of June and
15 September, with one of the three-year periods spanning June 1, 2020, through September 30,
16 2022.

17 52. Defendant violated 40 C.F.R. § 141.86(d)(4)(iii) by failing to monitor for lead and
18 copper at any time between June 1, 2020, through September 30, 2022.

19 53. Unless restrained by an order of the Court, these and similar violations are likely
20 to continue.

21 54. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the
22 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the
23 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
24 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
25 not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties
26 are assessed on or after December 27, 2023.

27 FOURTH CLAIM FOR RELIEF

28 (Violation of Organic Contaminant Monitoring Requirements)

1 55. The allegations in Paragraphs 1 through 54 are hereby realleged and incorporated
2 by reference as if fully set forth herein.

3 *Failure to Monitor for Organic Contaminants*

4 56. On November 30, 2016, Defendant sampled for the organic contaminants listed at
5 40 C.F.R. § 141.61(a) in accordance with 40 C.F.R. § 141.24(f) under a reduced monitoring
6 schedule allowed by EPA under 40 C.F.R. § 141.24(f)(10), which required Defendant to take one
7 sample in a three-year period extending from January 1, 2014, through December 31, 2016.

8 57. Based on Defendant's November 30, 2016 sample results, EPA allowed the
9 Defendant to remain on a reduced three-year monitoring schedule for the organic contaminants
10 listed at 40 C.F.R. § 141.61(a). Defendant subsequently failed to sample for organic
11 contaminants in each of the subsequent three-year monitoring periods extending from January 1,
12 2017 through December 31, 2019, and from January 1, 2020 through December 31, 2022, in
13 violation of 40 C.F.R. § 141.24(f).

14 *Failure to Sample for Synthetic Organic Contaminants*

15 58. On November 30, 2016, Defendant sampled for the synthetic organic
16 contaminants listed at 40 C.F.R. § 141.61(c) in accordance with 40 C.F.R. § 141.24(h)(2) under a
17 reduced monitoring schedule allowed by EPA under 40 C.F.R. § 141.24(h)(5), which required
18 Defendant to take one sample in a three-year monitoring period extending from January 1, 2014,
19 through December 31, 2016.

20 59. Based on Defendant's November 30, 2016 sampling results, EPA allowed the
21 Defendant to remain on a reduced three-year monitoring schedule for the synthetic organic
22 contaminants listed at 40 C.F.R. § 141.61(c). Defendant subsequently failed to sample for
23 synthetic organic contaminants in each of the subsequent three-year monitoring periods
24 extending from January 1, 2017, through December 31, 2019, and from January 1, 2020, through
25 December 31, 2022, in violation of 40 C.F.R. § 141.24(f).

26 60. Unless restrained by an order of the Court, these and similar violations are likely
27 to continue.

28 61. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the

1 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the
2 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
3 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
4 not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties
5 are assessed on or after December 27, 2023.

6 FIFTH CLAIM FOR RELIEF

7 (Violation of Stage 1 Disinfection Byproducts Rule)

8 62. The allegations in Paragraphs 1 through 61 are hereby realleged and incorporated
9 by reference as if fully set forth herein.

10 63. On February 9, 2017, EPA provided Defendant with a sanitary survey report that
11 specified the System's operator(s) were required to obtain treatment and distribution level 1
12 certifications from an EPA-approved program, which includes the California State Water
13 Resources Control Board's Operator Certification Program. On a date best known to Defendant,
14 System operator Vernon Burrows obtained a treatment (but not distribution) level 1 certification,
15 which the Board placed on its Drinking Water Operator Certification List.

16 64. On January 1, 2021, the treatment level 1 certification obtained by the System's
17 operator, Vernon Burrows, expired.

18 65. On April 11, 2023, EPA reviewed the State Water Resources Control Board's
19 Drinking Water Operator Certification List and found Vernon Burrows no longer appeared on
20 the list of certified treatment operators.

21 66. Since at least January 1, 2021, the System has not been operated by a person with
22 a distribution level 1 operator certification, as required by EPA.

23 67. From January 1, 2021, to at least April 11, 2023, Defendant has failed to ensure
24 its System's operation by "qualified" personnel with operator certification requirements specified
25 by EPA, as required by 40 C.F.R. § 141.130(c). To the extent Defendant has continued to operate
26 the System without qualified personnel, this violation remains ongoing.

27 68. Unless restrained by an order of the Court, these and similar violations are likely
28 to continue.

69. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27, 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties are assessed on or after December 27, 2023.

SIXTH CLAIM FOR RELIEF

(Violation of CCR Rule)

70. The allegations in Paragraphs 1 through 69 are hereby realleged and incorporated by reference as if fully set forth herein.

71. Defendant failed to provide EPA with copies of the CCR or certifications of distribution for the years 2018 through 2023 by the required deadline of July 1 of each year, or anytime thereafter, in violation of 40 C.F.R. §§ 141.152(b) and 141.155(a).

72. Unless restrained by an order of the Court, these and similar violations are likely to continue.

73. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27, 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties are assessed on or after December 27, 2023.

SEVENTH CLAIM FOR RELIEF

(Violation of Public Notice Rule)

74. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

75. On numerous occasions, Defendant failed to operate the System in compliance with the NPDWRs, including violations of the *E. coli* MCL on January 7, 2021, February 3, 2021, April 1, 2021, September 30, 2021, October 28, 2021, November 18, 2021, December 28,

2021, and January 27, 2022, which required a Tier 1 notification pursuant to Table 1 of 40 C.F.R. § 141.202. Defendant did not notify the public as required by 40 C.F.R. Part 141 Subpart Q, §§ 141.202(a) and (b).

76. Unless restrained by an order of the Court, these and similar violations are likely to continue.

77. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27, 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties are assessed on or after December 27, 2023.

EIGHTH CLAIM FOR RELIEF

(Failure to Comply with the Long Term 2 Enhanced Water Treatment Rule)

78. The allegations in Paragraphs 1 through 77 are hereby realleged and incorporated by reference as if fully set forth herein.

79. On January 20, 2023, Defendant received a sanitary survey report from EPA identifying a number of significant deficiencies with the System found during EPA's August 2, 2022 sanitary survey, including, among other deficiencies, failing to provide monthly operating reports documenting regular turbidity and chlorine residual levels, as required by the Surface Water Treatment Rule at 40 C.F.R. § 141.75(a), and failing to have a qualified operator with treatment and distribution level 1 certification, as required by the Stage 1 Disinfection Byproducts Rule at 40 C.F.R. § 141.130(c). The Defendant's receipt of the sanitary survey report on January 20, 2023, required Defendant's response no later than 45 days later on March 6, 2023.

80. Defendant failed to respond in writing, or any other method, to EPA within 45 days after receipt of the sanitary survey report, *i.e.*, by March 6, 2023, or anytime thereafter, in violation of 40 C.F.R. § 141.723(c).

81. Unless restrained by an order of the Court, these and similar violations are likely

1 to continue.

2 82. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the
3 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the
4 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
5 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
6 not to exceed \$69,733 for each day in which a violation of the NPDWRs occurs, where penalties
7 are assessed on or after December 27, 2023.

8 NINTH CLAIM FOR RELIEF

9 (Failure to Comply with EPA's 2017 Administrative Order)

10 83. The allegations in Paragraphs 1 through 82 are hereby realleged and incorporated
11 by reference as if fully set forth herein.

12 84. As set forth in Paragraph 36, EPA and Defendant entered into, and EPA issued,
13 the 2017 AOC pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), on December
14 15, 2017. The 2017 AOC required Defendant to, among other things, bring the System into
15 compliance with the NPDWRs, including disinfection monitoring and reporting requirements;
16 monthly total coliforms monitoring requirements; qualified operator requirements; and public
17 notification requirements; develop a Capacity Development Strategy that required development
18 of, at a minimum, a Capital Improvement Plan, an Asset Inventory, a Budget Plan/Financial
19 Strategy for System operation and maintenance, and a Water Rate Study; provide monthly
20 progress reports describing the Tribe's progress in implementing the approved Compliance Plan;
21 and arrange for quarterly meetings with EPA to discuss the Tribe's overall compliance with the
22 2017 AOC and the SDWA.

23 85. On numerous occasions since the 2017 AOC was issued, Defendant failed to
24 comply with the 2017 AOC, including the requirements set forth in the preceding paragraph.

25 86. Unless restrained by an order of the Court, these and similar violations are likely
26 to continue.

27 87. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the
28 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the

1 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
2 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
3 not to exceed \$69,733 for each day in which a violation of the 2017 AOC occurs, where
4 penalties are assessed on or after December 27, 2023.

5 TENTH CLAIM FOR RELIEF

6 (Failure to Comply with EPA's 2019 Emergency Administrative Order)

7 88. The allegations in Paragraphs 1 through 87 are hereby realleged and incorporated
8 by reference as if fully set forth herein.

9 89. As set forth above at Paragraph 37, EPA issued the 2019 EAO to the Defendant
10 on June 21, 2019, pursuant to Section 1431(a) of SDWA, 42 U.S.C. § 300i(a), after concluding
11 that conditions may present an imminent and substantial endangerment to Defendant's
12 customers. The 2019 EAO required, among other things, that Defendant provide boil water
13 notices to its customers; take follow-up coliform sampling within 24 hours of being notified of a
14 total coliform or *E. coli* positive result; submit operating reports and monitoring data to EPA on
15 a weekly basis; develop and submit for EPA's approval an alternative water supply plan; ensure
16 operation of the System by a qualified operator; and provide weekly updates to EPA on
17 Defendant's progress with the 2019 EAO.

18 90. On numerous occasions since the 2019 EAO was issued, Defendant failed to
19 comply with the requirements of the 2019 EAO, including those set forth in the preceding
20 paragraph.

21 91. Unless restrained by an order of the Court, these and similar violations are likely
22 to continue.

23 92. Pursuant to Section 1431(b) of the SDWA, 42 U.S.C. § 300i(b), and the Federal
24 Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt
25 Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 88 *Fed. Reg.* 89309 (Dec. 27,
26 2023), codified at 40 C.F.R. Part 19, Defendant is liable for injunctive relief and civil penalties
27 not to exceed \$28,239 for each day in which a violation of the 2019 EAO occurs, where penalties
28 are assessed on or after December 27, 2023.

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations set forth above, the United States of America respectfully requests that this Court grant the following relief:

1. Enter an injunction requiring Defendants to comply immediately with the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, and its implementing regulations at 40 C.F.R. Part 141;

2. Enter an injunction requiring Defendant to comply with the provisions of the EPA's 2017 Administrative Order on Consent and the 2019 Emergency Order;

3. Assess civil penalties against Defendants for each of the violations alleged herein;

4. Award court costs to the United States; and


5. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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4/3/24
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