

SEAL ROCK WATER DISTRICT
Board of Commissioners
Regular Monthly Board Meeting
Thursday, September 14, 2023, @ 4:00 p.m.
Public Meeting by Zoom Video Conference
Revised September 13, 2023

SRWD will hold this meeting through Zoom video conferencing. Due to the limited capacity for in-person meetings, the public is encouraged to attend this meeting electronically. Please E-mail tkarlsen@srwd.org to receive the meeting login information.

SRWD encourages the public to submit written comments on items included in the agenda by email to tkarlsen@srwd.org by 2:00 p.m. on the day of the meeting to be included as public testimony. Comments received will be shared with the SRWD Board of Commissioners and included in the permanent record.

SRWD will not be taking public comments during this meeting. Oregon Public Meeting Law provides the public with the opportunity to attend public meetings, it only requires public comment on the employment of a public officer and the opportunity for "public comment" on the standards to be used to hire a chief executive officer.

• **Call Regular Meeting to Order:**

- Consider Application of Herbicides in the South Beaver Creek Watershed Approved by Oregon Department of Forestry NOAP 2023-553-10095 & Ground – Pressurized / Broadcast Application of Herbicides in the South Beaver Creek Watershed.
Presented by: Adam Denlinger, General Manager

• **Consent Calendar:**

Managers' reports included under the consent calendar are an executive summary provided to Commissioners as an update of system conditions, projects, and programs. Management welcomes your feedback and requests more detailed information regarding any item before or during the meeting:

- | | |
|---------------------------------------|-------------------------------|
| • Invoice List | August 2023 to September 2023 |
| • Regular Board Meeting Minutes | August 10, 2023 |
| • Emergency Board Meeting Minutes | August 31, 2023 |
| • Financial Report / Approve Invoices | August 2023 to September 2023 |
| • USDA PMR Phase IV No. 37 | September 14, 2023 |
| • General Manager's Monthly Report | August 2023 to September 2023 |

• **Discussion and Information Items:**

- Consider Primary Source Water Project Update
Presented by: Adam Denlinger, General Manager
Jeff Hollen, SRWD General Counsel

• **Decision Items:**

- Consider USDA-RD E-500 Engineering Services Agreement, Amendment - 5
Presented by: Adam Denlinger, General Manager

• **Reports, Comments, and Correspondence:**

- Governor's Executive Order of Drought Emergency for Lincoln County
- Letter to Lincoln County Commissioners from Mr. Sorn Nymark, ANE Forest of Oregon, Inc.

• **Executive Session: according to ORS 192.660(2), Concerning:**

The SRWD Board may meet in Executive Session, pursuant to ORS 192.660(2)(h); To consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations. No final decisions shall be made in Executive Session.

- **Adjournment:** Next Meeting: **October 12, 2023, @ 4:00 p.m.** Regular Board Meeting or establish date.

THIS AGENDA MAY BE AMENDED UNTIL 3:00 PM THE DAY BEFORE THE MEETING

SPECIAL ACCOMMODATIONS WILL BE PROVIDED WITH 48 HOUR NOTICE; CALL 541-563-3529.
IF HEARING IMPAIRED, PLEASE DIAL 711 OR CALL TTY#1-800-735-1232
This Institution is an Equal Opportunity Employer and Service Provider

ORIGINAL

Report Criteria:

Detail report.
Invoices with totals above \$0 included.
Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-5064				
GLEN MORRIS	166	Stipend	09/14/2023	50.00
KAREN OTTA	82	Stipend	09/14/2023	50.00
PAUL HIGHFILL	27	Stipend	09/14/2023	50.00
ROB MILLS	165	Stipend	09/14/2023	50.00
SAUNDRA MIES-GRANTHAM	165	Stipend	09/14/2023	50.00
Total 01-5064:				250.00
Grand Totals:				250.00

Dated: 9/5/23

General Manager: A. Wick

Dated: _____

Treasurer: _____

ORIGINAL

Report Criteria:

Detail report.
Invoices with totals above \$0 included.
Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-1310				
MERILLEE WALDRON	082223	Refund Overpayment Final Bill	08/22/2023	49.70
PATRICIA CRAVEN	083023	Refund Overpayment	08/30/2023	122.98
Total 01-1310:				172.68
01-5271				
CHARTER COMMUNICATIONS	001293708192	Internet (Office)	08/19/2023	129.98
PIONEER CONNECT TELEPHO	090123	Telephone Services/Internet	09/01/2023	1,679.88
Total 01-5271:				1,809.86
01-5272				
AT&T MOBILITY	08232023	Wireless	08/15/2023	196.81
Total 01-5272:				196.81
01-5273				
PIONEER CONNECT TELEPHO	090123	WTP Telephone Services/Internet	09/01/2023	214.84
Total 01-5273:				214.84
01-5274				
AT&T MOBILITY	08232023	Wireless WTP	08/15/2023	51.33
Total 01-5274:				51.33
01-5290				
STAPLES BUSINESS ADVANTA	8071324061	TRU RED "8.5 x 11" Copy Paer, 20lbs., 92 Brightness, 500/Sheets/Ream, 5 Ream	08/19/2023	133.44
STAPLES BUSINESS ADVANTA	8071324081	2024 At-A-Glance 24" x 36" Yearly Wall Calendar	08/19/2023	22.16
STAPLES BUSINESS ADVANTA	8071324081	2024 At-A-Glance 8" x 11" Monthly Wall Calendar	08/19/2023	53.16
Total 01-5290:				208.76
01-5291				
US POSTAL SERVICE - WALDP	082123	Bulk Mailing	08/21/2023	919.27
Total 01-5291:				919.27
01-5310				
TCB SECURITY SERVICES INC.	243917	Base Monthly Account Fee	09/01/2023	40.00
TCB SECURITY SERVICES INC.	243917	Level 1 (No included calls)	09/01/2023	16.50
Total 01-5310:				56.50
01-5605				
CASCADE COLUMBIA DISTRIBU	874427	Sulfuric/Citric Blend 50/50 Tote	08/18/2023	4,118.00
CASCADE COLUMBIA DISTRIBU	874427	Container Deposit	08/18/2023	400.00
CASCADE COLUMBIA DISTRIBU	874427	Sodium Hydroxide 12.5% LS NSF 53 G Drum	08/18/2023	198.75
CASCADE COLUMBIA DISTRIBU	874427	Container Deposit	08/18/2023	75.00
CASCADE COLUMBIA DISTRIBU	874427	Calcium Thiosulfate 30% (55 gal)	08/18/2023	247.28
CASCADE COLUMBIA DISTRIBU	874427	Container Deposit	08/18/2023	75.00
CASCADE COLUMBIA DISTRIBU	874427	Caustic Soda 50% NSF Tote	08/18/2023	1,650.00

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
CASCADE COLUMBIA DISTRIBU	874427	Container Deposit	08/18/2023	400.00
CASCADE COLUMBIA DISTRIBU	874427	Sulfuric Acid 50% 1.4 NSF Tote	08/18/2023	960.00
CASCADE COLUMBIA DISTRIBU	874427	Container Deposit	08/18/2023	400.00
CASCADE COLUMBIA DISTRIBU	874427	Freight	08/18/2023	640.42
CASCADE COLUMBIA DISTRIBU	874427	Environmental Surcharge	08/18/2023	35.00
CASCADE COLUMBIA DISTRIBU	875038	Aluminum Chlorohydrate (PAX-XL19)	08/17/2023	2,271.50
CASCADE COLUMBIA DISTRIBU	875038	Container Deposit	08/17/2023	400.00
CASCADE COLUMBIA DISTRIBU	875038	Sulfuric Acid 50% 1.4 NSF Tote	08/17/2023	960.00
CASCADE COLUMBIA DISTRIBU	875038	Container Deposit	08/17/2023	400.00
CASCADE COLUMBIA DISTRIBU	875038	Freight	08/17/2023	329.40
CASCADE COLUMBIA DISTRIBU	875038	Environmental Surcharge	08/17/2023	35.00
CASCADE COLUMBIA DISTRIBU	875344	Sodium Hypochlorite 12.5% LS NSF GAL Tote	08/22/2023	1,125.00
CASCADE COLUMBIA DISTRIBU	875344	Container Deposit	08/22/2023	400.00
CASCADE COLUMBIA DISTRIBU	875344	Freight	08/22/2023	150.95
CASCADE COLUMBIA DISTRIBU	875344	Environmental Surcharge	08/22/2023	35.00
CASCADE COLUMBIA DISTRIBU	875656	Container Return - Credit Memo	08/24/2023	600.00-
CASCADE COLUMBIA DISTRIBU	875656	Container Return - Credit Memo	08/24/2023	200.00-
CASCADE COLUMBIA DISTRIBU	875656	Freight	08/24/2023	188.00
Total 01-5605:				14,694.30
01-5610				
CENTRAL LINCOLN P U D	082323	Utility Services	08/23/2023	1,081.77
Total 01-5610:				1,081.77
01-5611				
CENTRAL LINCOLN P U D	082323	WTP Utility Services	08/23/2023	2,138.31
Total 01-5611:				2,138.31
01-5630				
HD FOWLER COMPANY	16484920	6" flip gasket hymax coupling	08/15/2023	773.24
HD FOWLER COMPANY	16487314	2" gate valve awwa resilient seat nrs threaded	08/17/2023	1,090.80
LINCOLN COUNTY PAROLE & P	8152023	Clearing brush 7/19/2023	08/15/2023	400.00
Total 01-5630:				2,264.04
01-5634				
ANALYTICAL LABORATORY GR	160340	Coliform, Presence/Absence by SM 9223 B-18 (ALG) 8/16/23	08/18/2023	392.00
ANALYTICAL LABORATORY GR	160340	Pickup Newport WTP	08/18/2023	17.00
Total 01-5634:				409.00
Grand Totals:				24,217.47

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
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Dated: 9-5-2023

General Manager: A. Nantz

Dated: _____

Treasurer: _____

Report Criteria:
Detail report
Invoices with totals above \$0 included
Paid and unpaid invoices included.

ORIGINAL

Report Criteria:

Detail report.
Invoices with totals above \$0 included.
Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-5630				
USA BLUE BOOK	INV00083196	above grade sampling station	07/25/2023	1,610.34
USA BLUE BOOK	INV00083196	Schonestedt	07/25/2023	2,344.26
Total 01-5630:				3,954.60
Grand Totals:				3,954.60

Dated: 8/21/23

General Manager: A. [Signature]

Dated: _____

Treasurer: _____

ORIGINAL

Report Criteria:

- Detail report.
- Invoices with totals above \$0 included.
- Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-1310				
RICHARD COLVIN	081523	Refund Overpayment Final Bill	08/15/2023	5.37
Total 01-1310:				5.37
01-5061				
BACKFLOW MANAGEMENT, INC	081723	Cross Connection Specialist Update (online) Thayer 9/8/2023	08/17/2023	145.00
Total 01-5061:				145.00
01-5600				
ALSEA BAY POWER PRODUCT	388883	3ld .155 round line	07/31/2023	50.39
ALSEA BAY POWER PRODUCT	388883	polycut blades	07/31/2023	25.98
ALSEA BAY POWER PRODUCT	389010	ultra 2.6 engine oil	07/31/2023	32.40
ALSEA BAY POWER PRODUCT	389709	non ethanol fuel	07/31/2023	65.00
BARRELHEAD SUPPLY, INC.	336701	hammer rock pick22oz	07/31/2023	39.99
BARRELHEAD SUPPLY, INC.	336701	Broom corn warehouse fran	07/31/2023	13.99
BARRELHEAD SUPPLY, INC.	336701	teflon paste 1oz tube	07/31/2023	3.99
BARRELHEAD SUPPLY, INC.	336701	thread seal tape 1/2x260	07/31/2023	.99
BARRELHEAD SUPPLY, INC.	337307	42 gl contractor bags 20pk	07/31/2023	22.19
BARRELHEAD SUPPLY, INC.	337318	safy glasses zorg blk/clear	07/31/2023	7.99
ENGLUND MARINE SUPPLY, IN	10647	atlas thermo-fit gloves m	07/31/2023	4.52
ENGLUND MARINE SUPPLY, IN	10647	FULL SHARE BIB orange/grey xl	07/31/2023	118.29
ENGLUND MARINE SUPPLY, IN	10647	Legacy attitude boot 15" br 8	07/31/2023	120.91
ENGLUND MARINE SUPPLY, IN	10647	neptune 103 anorak jacket org xl	07/31/2023	90.99
FASTENAL COMPANY	ORABY190382	orange hard hat	07/18/2023	19.36
FASTENAL COMPANY	ORABY190382	vs250 ch clr glss	07/18/2023	16.96
FASTENAL COMPANY	ORABY190472	I/XL 8254hdzcls2 vest safety vest	07/25/2023	133.36
FASTENAL COMPANY	ORABY190473	0 ic wb caution blue 17oz	07/25/2023	43.30
FASTENAL COMPANY	ORABY190473	I/XL 8254hdzcls2 vest safety vest	07/25/2023	66.68
NEWPORT ACE HARDWARE &	157903	Vegitation klr gc con 32 oz	07/31/2023	74.95
NEWPORT ACE HARDWARE &	157903	Paperbag fee	07/31/2023	.05
Total 01-5600:				952.28
01-5601				
FEED CORRAL, INC.	34917	wrangler jeans	08/03/2023	81.98
Total 01-5601:				81.98
01-5605				
ENGLUND MARINE SUPPLY, IN	11337	atlas Gloves Blue Large	07/31/2023	8.06
ENGLUND MARINE SUPPLY, IN	11337	atlas Gloves Blue XL	07/31/2023	8.06
ENGLUND MARINE SUPPLY, IN	11337	atlas Gloves Blue XXL	07/31/2023	4.03
NAPA AUTO PARTS	865-41846	Green Gloves Large	07/25/2023	25.99
NAPA AUTO PARTS	865-41846	orange glove Large	07/25/2023	25.99
NAPA AUTO PARTS	865-41846	Green Gloves XLarge	07/25/2023	51.98
NAPA AUTO PARTS	865-42743	food grade grease for pumps at WTP	07/25/2023	62.90
NEWPORT ACE HARDWARE &	162553	Bleach Spryr 1GL ACE	07/31/2023	25.99
Total 01-5605:				213.00

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-5606				
ANALYTICAL LABORATORY GR	160118	WTP: SOC Set 7/26/2023	08/11/2023	1,595.00
ANALYTICAL LABORATORY GR	160118	WTP: Volatile Organic Compounds EPA 524.2 - NRC 7/26/2023	08/11/2023	291.00
ANALYTICAL LABORATORY GR	160217	WTP: PWS Radionuclides Package 7/19/2023	08/15/2023	598.00
Total 01-5606:				2,484.00
01-5629				
ENGLUND MARINE SUPPLY, IN	11097	ball valve stainless steel 1/2"	07/31/2023	189.84
ENGLUND MARINE SUPPLY, IN	11097	ss nipple 1/2"x2"	07/31/2023	6.05
Total 01-5629:				195.89
01-5630				
BARRELHEAD SUPPLY, INC.	336701	clamp 3/8-7/8 ss	07/31/2023	5.58
BARRELHEAD SUPPLY, INC.	336701	coupling 1/4" fpt brs LL	07/31/2023	5.59
BARRELHEAD SUPPLY, INC.	336701	hose barb 3/8x3/8 lf	07/31/2023	3.99
BARRELHEAD SUPPLY, INC.	336701	9/16od x 3/8 vinyl tube	07/31/2023	15.80
BARRELHEAD SUPPLY, INC.	337228	6x10 solid s/d pipe	07/31/2023	65.39
BARRELHEAD SUPPLY, INC.	337307	2 pvc s40 plug threaded	07/31/2023	11.97
BARRELHEAD SUPPLY, INC.	337307	2 pvc s40 cap threaded	07/31/2023	11.18
ENGLUND MARINE SUPPLY, IN	10679	Clamp pref ss 5/8" x 2.25"	07/31/2023	16.24
ENGLUND MARINE SUPPLY, IN	10679	flat blue discharge hose 2"	07/31/2023	6.30
FERGUSON WATERWORKS #30	1211399	6x16 all ss rep clamp 6.84-7.24	07/10/2023	404.72
FERGUSON WATERWORKS #30	1215520	2" valve can risers	08/01/2023	480.20
OVERHEAD DOOR COMPANY O	16936	Planned Maintenance - Rollers 2" Steel with 4.50" Stem TR-1 Medium Duty	02/15/2023	20.00
OVERHEAD DOOR COMPANY O	16936	Planned Maintenance - O1TBX- 2 Button Remote	02/15/2023	96.00
OVERHEAD DOOR COMPANY O	16936	Planned Maintenance - Lift Rental	02/15/2023	150.00
OVERHEAD DOOR COMPANY O	16936	Planned Maintenance - Commercial Service Call - Additional Labor	02/15/2023	195.00
OVERHEAD DOOR COMPANY O	16936	Planned Maintenance - Drive time	02/15/2023	200.00
Total 01-5630:				1,667.98
01-5631				
NAPA AUTO PARTS	865-40835	Bluedeff platinum	07/25/2023	38.98
Total 01-5631:				38.98
Grand Totals:				5,784.44

Dated: 8/17/23

General Manager: *[Signature]*

Dated: _____

Treasurer: _____

ORIGINAL

Report Criteria:

- Detail report.
- Invoices with totals above \$0 included.
- Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
01-2520				
GSI WATER SOLUTIONS INC.	00500.017-4	MCWPP: Water Action Plan Prioritization & Early Implementation Steps Support 4/	05/12/2023	10,739.46
GSI WATER SOLUTIONS INC.	00500.017-5	MCWPP: Water Action Plan Prioritization & Early Implementation Steps Support 5/	06/12/2023	14,750.91
GSI WATER SOLUTIONS INC.	00500.017-6	MCWPP: Water Action Plan Prioritization & Early Implementation Steps Support 6/	07/07/2023	17,107.88
Total 01-2520:				42,598.05
Grand Totals:				42,598.05

Dated: 8/14/23

General Manager: A. N. [Signature]

Dated: _____

Treasurer: _____

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**SEAL ROCK WATER DISTRICT
MINUTES OF THE
Regular Board Meeting
by Zoom Conference Call and In Person
August 10, 2023**

Introduction to Remote Meeting:

Denlinger, General Manager, explained that this board meeting is being conducted remotely and in person. Due to the limited capacity for in-person meetings, the public is invited to attend this meeting electronically. He further explained that the Board President will call each name to confirm those who are present via Zoom conference. After each person hears their name, they need to reply. For each decision item on the agenda that needs to be approved, after discussion and deliberation, the Board President will call each name of the commissioner for their vote. After the commissioners hear their names, he or she will give a vote in the affirmative by saying YES or negative by saying NO.

Call Regular Meeting to Order:

President Rob Mills called the regular board meeting to order at 4:00 p.m., Thursday, August 10, 2023.

Present:

President Rob Mills confirmed that all commissioners present can hear each other by doing a roll call. Present on Zoom Conference Call was Commissioner Saundra-Mies Grantham, Secretary. Present in person in the Board room were Commissioner Rob Mills, Board President; Commissioner Karen Otta, Treasurer; Commissioner Glen Morris, Member; and Commissioner Paul Highfill, Member. Attorney Jeff Hollen, Legal Counsel. Staff: Adam Denlinger, General Manager; Joy King-Cortes, Office Manager.

Excused Absences: None

Announcements/Public Comments:

President Rob Mills asked if there were any announcements. Commissioner Karen Otta announced she would not be able to attend the September Board meeting; Commissioner Saundra-Mies Grantham announced she would not be able to attend the September Board meeting; Commissioner Glen Morris had no announcement; Commissioner Paul Highfill had no announcement; Joy King-Cortes, Office Manager had no announcement; General Manager, Adam Denlinger had no announcement; Attorney Jeff Hollen had no announcement; President Rob Mills had no announcement.

Public Comments: Kenneth Lipp, Lincoln County Public Information Officer, attended the meeting through Zoom.

Consent Calendar:

Items on the consent calendar are July/August 2023 Invoices List for approval; July 13, 2023, Regular Board Meeting minutes; July/August 2023 Financial Report; USDA PMR Phase IV No. 36; and General Manager's Monthly Report. President Rob Mills asked if each commissioner reviewed the consent calendar items. Commissioner Karen Otta answered YES; Commissioner Saundra Mies-Grantham answered YES; Commissioner Glen Morris answered YES; and Commissioner Paul Highfill answered YES. Commissioner Karen Otta motioned to approve the consent calendar not including the May 11, 2023, Board Meeting Minutes. Commissioner Glen Morris seconded the motion. The motion passed 5 – 0. The May 11, 2023 board meeting minutes were passed by 3 YES vote by Commissioner Glen Morris, Paul Highfill, and President Rob Mills. Commissioners Karen Otta and Saundra Mies-Grantham abstained from voting since they were not present at the May 11, 2023 Board meeting.

Reports, Comments, and Correspondence:

On August 2, 2023, the Oregon Department of Forestry (ODF) received the Notification of Operations/Permit for Aerial Application of Pesticides submitted by Tyrol Forfar as the contractor for ANE Forests of Oregon C/O HFI Consultants. The aerial application of pesticides is in the Beaver Creek watershed where the timbers were harvested to prepare the timberland for replanting. The location of the aerial spray is above the SRWD raw water intake. The window start date to do aerial spraying using pesticides with glyphosate is September 2 and the window end date is November 30. Staff submitted comments online in FERNs expressing concerns about the effect it will have on the district's raw water intake. This is a new condition the district needs to learn how the pesticide application could affect the water quality. The NOAP mentions maintaining buffers during aerial pesticide spraying but how effective it is to stop the pesticide from getting into the water tributaries to Beaver Creek. District staff are concerned and so are customers and members of the community. Staff have been responding to various emails, and contacting different agencies and stakeholders for information and guidance. Adam Denlinger has been trying to engage the timberland owner, the contractor, the community, and stakeholders for a discussion on how to mitigate the risk. ODF can not stop aerial spraying as long as the contractor follows the steps and conditions of the permit and follows the chemical manufacturer's label instructions. Staff had learned

64 from DEQ that there are timber companies who do pay for the testing before and after the aerial spraying. Staff would like
65 to have a dialogue with the timberland owner to do the same.
66 District staff have been working with several state agencies including ODF, DEQ, DOA, and OHA in response to this
67 issue. The district is working with State agencies to coordinate a meeting with landowners, applicators, and the
68 community to exchange information and provide an opportunity to inform the landowner regarding concerns with respect
69 to aerial spraying. The district will need to develop countermeasure protocols in response to this issue of aerial application
70 of pesticides in the Beaver Creek watershed. DEQ is assisting with recommendations and guidance for managing risks to
71 source water. Some of the recommendations are suspending pumping while spraying activities are in process and
72 sampling the creek before and after spraying and immediately after the first major rain event. Kenneth Lipp, Lincoln
73 County Public Information Officer will update the county commissioners regarding this issue and he supports Adam in
74 bringing together the community by facilitating a meeting for a dialogue regarding the issue.
75

76 **Discussion and Information Items:**

77 **Primary Source Water Project Update:** On the weekend of August 4, 2023, the WTP lost the use of the server for the
78 third time. Jacobs engineer came to support the Dell technician who came on Monday, August 7, 2023, and replaced the
79 card to bring the server back in working condition.

80 The district WTP Operators have been having difficulty in cleaning the skids and making water. Jacobs Lead Membrane
81 Engineer was on site in July to evaluate individual membrane modules to determine how to effectively clean the filtration
82 units for best performance and to maintain the health of the membranes. While we wait for a comprehensive report, the
83 engineers did make some recommendations for adjusting cleaning protocols, which have been beneficial in extending the
84 length of time between cleanings. It was discovered that the programs for cleaning the skids and the process of making
85 water need to be corrected by WesTech.
86

87 **Decision Items:** None
88

89 **Reports, Comments, Correspondence:**

90 August 2, 2023, Lincoln County Commissioners approved the Declaration of Drought Emergency. Staff is working with the
91 Mid-Coast Water Consortium in drafting a letter for a Public Service Announcement (PSA) to be mailed to customers and
92 released to the media.
93

94 August 1, 2023, the office staff received a letter from the Oregon Secretary of State Audit Division welcoming newly
95 elected commissioners and reminding them of their responsibilities as fiduciaries of the local government. The annual
96 audit filing fee will increase from \$250 to \$300 beginning Jan 1, 2024.
97

98 August 4, 2023, SRWD Beaver Creek Hazardous Algae Bloom (HAB's) Results:

99 Due to raw water quality issues and an increase in organics, operators took steps to engage the State (DEQ) to have raw
100 water on Beaver Creek tested for the presence of Hazardous Algae Bloom (HAB). Raw Water Analysis provided by DEQ
101 includes testing for Cyanotoxins to include Cylindrospermopsin and Microcystins. The district provided two raw water
102 samples which were both analyzed, and the results were negative, or non-detect (ND). Testing provided by DEQ is free of
103 charge. However, if future testing includes a positive result the district would be subject to the state HAB's regulations.
104 Results of testing are included in the board packet and will be provided in future CCR reporting.
105

106 **Recessed Regular Board Meeting:** President Rob Mills recessed the Regular Board Meeting at 4:53 p.m. to go into an
107 Executive Session.
108

109 **Executive Session: according to ORS 192.660(2), Concerning:**

110 The SRWD Board may meet in Executive Session, pursuant to ORS 192.660(2)(h); To consult with legal counsel
111 concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
112 Representatives of the news media and designated staff shall be allowed to attend the executive session. All other
113 members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to
114 report on any of the deliberations. No final decisions shall be made in the Executive Session.
115

116 **Reconvened Regular Board Meeting:** President Rob Mills adjourned the Executive Session and reconvened the
117 Regular Board Meeting at 5:40 p.m.
118

119 **Adjournment:** Motioned by Commissioner Karen Otta to adjourn the meeting. The motion was seconded by
120 Commissioner Sandra Mies-Grantham. The meeting was adjourned at 5:42 p.m.
121

122 **Next Board Meeting:** September 14, 2023, at 4:00 p.m. Regular Board Meeting.
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125
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127 Approved by Board President

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**SEAL ROCK WATER DISTRICT
MINUTES OF THE
Emergency Board Meeting
by Zoom Conference Call and In Person
August 31, 2023**

Call Emergency Meeting to Order:

President Rob Mills called the emergency board meeting to order at 4:02 p.m., Thursday, Aug. 31, 2023.

Present:

Present on the Zoom Conference Call was Commissioner Sandra-Mies Grantham, Secretary. Present in person in the Board room were Commissioner Rob Mills, Board President; and Commissioner Paul Highfill, Member. Staff: Adam Denlinger, General Manager; Joy King-Cortes, Office Manager; Trish Karlsen, Bookkeeper, and Brad Wynn, Lead Operator.

Members of the Public: See the Sign-in Sheet for those attending in person. There were 44 attended through Zoom.

Excused Absences: Commissioners Karen Otta and Glen Morris.

Purpose of the Emergency Meeting:

President Rob Mills explained that the purpose of the emergency meeting is to disseminate the most recent, accurate, relevant information that the district has regarding the aerial application of herbicides in the Beaver Creek Watershed. He also outlined the format of the meeting. Adam Denlinger, General Manager will give his staff report. After his report, the SRWD board members will comment, then Casey Miller, Lincoln County Commissioner will comment, and then the members of the public will comment. Each member of the public who wishes to comment will be given 3 minutes to accommodate everybody.

Staff Report:

Adam Denlinger, GM read his staff report outlining the dates of what has been done and what information he obtained from the time the district was notified of the potential for aerial herbicide application on approximately 475 acres of timberland in the South Beaver Creek Watershed. He facilitated meetings with representative Gomberg, LC Commissioner Casey Miller, and members of the community. He attended several community meetings, Lincoln County Board of Commissioners board meeting, and contacted the Oregon Department of Agriculture (ODA), Department of Environmental Quality (DEQ), Oregon Department of Forestry (ODF), and Oregon Health Authority (OHA). The report also outlined the necessary precautions to protect the water system. See the attached staff report for details.

Comments:

President Rob Mills wanted to know if there are any implications now that the timberland owner filed a new NOAP for Ground-Pressurized/Broadcast (Backpack spray) of herbicides on the same lots. Adam Denlinger, GM shared the information he got from ODF that the 2 NOAP permits are both in place. Any watershed spray is a concern. The applicants can do both aerial and backpack herbicide spraying. Regardless of the method the owner will use, the response of the district is the same. It is to try to work with the property owner to build a relationship to be able to exchange dialogue of what the district side of the operation is and the concern of how the herbicide spray can affect the Beaver Creek watershed.

Commissioner Sandra Mies-Grantham commented on the fact that all is happening all at once in the County, State, and Federal. She is highly interested in the EPA and what advocates we can get on our side.

Commissioner Paul Highfill commented if the timberland owner has a bond the district can use if we need to purchase water from the City of Newport if the water in Beaver Creek gets contaminated with herbicides. Adam Denlinger explained that the bond would be between the owner and the contractor doing the spraying and not with SRWD. Under the Oregon Forest Practice Act, if the property owner violates the rules and the spray causes damage to the district water supply then the district can seek remedy through the enforcement measures by the state (ODF) and federal (EPA) agencies.

President Rob Mills asked for clarification and more information regarding the meeting on Sept. 6. Adam explained that the State of Oregon Pesticide Management Plan for Water Quality Protection identifies 4 agencies – Oregon Department of Environmental Quality (ODEQ), Oregon Department of Agriculture (ODA), Oregon Department of Forestry (ODF), Oregon Health Authority (OHA) are responsible for coming together in developing a water quality and pesticide team. This team is working together in preparation for the meeting with SRWD staff next week. The outcome of the meeting is to provide the district with recommendations on how to best manage risks to the intake for what is likely to occur.

62 Commissioner Casey Miller left a comment in the chat box as he had to leave the Zoom meeting for another engagement.
63 His intent primarily was to observe but he wanted the district to know that the county is available to support and answer
64 questions that the district may have of their jurisdiction. SRWD is doing an excellent job of addressing this challenge and
65 the county is in fluid communication with Adam, who has the highest regard and responsiveness for the community's
66 concern. The county will continue to support the district and its principles. Ken Lipp, Lincoln County Public Information
67 Officer is informed on this issue and can answer questions on behalf of the county.
68

69 **Public Comments:** Comments were taken in the following order. Those attending by phone will comment first; then those
70 attending through Zoom will raise their hand to take turns to comment then those attending in person will comment last.
71 **Nancy McCarty** attended by phone from Makai Subdivision commented that she wanted to listen but she had no
72 comments.

73 **Comments from those who attended through Zoom:**

74 **Stan Ferguson** from Makai Subdivision commented that since EPA has backed Monsanto in court battles he questions
75 how much help EPA could be. EPA has an obvious bias with herbicides/pesticide companies. He is wondering if the
76 district has reached out to activist groups like the Sierra Club and Greenpeace who have more resources regarding
77 environmental issues. Another issue he is wondering about is, if the Siletz River watershed will be sprayed on Sept. 9,
78 and the district will be getting the water from there would the water be tested for contaminants before it's delivered to the
79 district's customers?

80 Adam replied the district is looking into both issues.

81 **Laura Gill** from South Beaver Creek Road. She is outside the district's service area but lives in the area of the watershed.
82 She expressed appreciation for the efforts the district has been making in the last two weeks. As a person living outside
83 the service area, she urged the district to protect the watershed. In doing that the district's customers are also protected.
84 The community should think outside the box and think of creative ways to stop the spray from happening over and over
85 again. Protecting the community will protect the district and the community will do everything to assist the district.

86 **John French** from Bayshore. Is it true that the new NOAP for backpack ground spraying doesn't require advance
87 notification? If so, how would the district know that the ground spraying has occurred and when would the district go
88 offline considering the time for water sampling and getting the test results? Public information indicates that the district's
89 legal counsel from Newport doesn't practice environmental law. He is wondering if the district has reached out to legal
90 counsel who practices environmental law. Adam replied that the new NOAP for backpack ground spraying doesn't require
91 advance notification but the district will be working with the property owner, the consultant, and the contractor to receive
92 notification before the spray. The district discussed with legal counsel that the district might need special counsel
93 regarding this issue.

94 **Sally Noack** from Fox Creek. The information that has gone out has been confusing regarding the spraying. She wants
95 clarification regarding the use of the words herbicides and pesticides. Would the district be testing for herbicides and
96 pesticides and if the carriers involved would be tested by the district also?

97 Adam: Yes, the district is testing for Synthetic Organic Compound (SOC) as required by the Oregon Health Authority
98 (OHA). SOC includes herbicides and pesticides.

99 If the state has preempted the county vote for no aerial spraying why don't USDA or US Forest Service requirements
100 preempt ODF? Adam: He can't answer the question since he has no authority to speak for other agencies. Sally said this
101 would be a good question if the district is considering an environmental lawyer.

102 **Rob Mills, President of the Board** commented that this is a public hearing and not for answering questions. Adam
103 reminded the group that there are different meetings in the community where questions could be answered. This meeting
104 is to hear comments from the public.

105 **Eve Celsi** from South Beaver Creek Road. She has a water rights certificate for over 50 years for surface water located
106 over the boundary line where the spray zone is. It is her understanding that if there is domestic water use that area should
107 have a 300 ft buffer zone. She is wondering who to contact to make sure that is honored, and who is responsible for
108 mapping the area. She will be taking a water baseline sample from their collection source to be tested in a lab in Portland
109 for \$495 plus \$165 for additional testing for glyphosate. It is a community property so the costs will be covered but she is
110 wondering what others who own private wells are doing regarding testing. Adam asked to send him her contact
111 information so he could pass on to her the information he has.

112 **McKenzie/Sam Purdom** from Pacific Coast Highway between Waldport and Seal Rock. She has been a customer since
113 the late '90s. As a customer of the water district she is very appreciative of all the district has done this week and the last
114 month. As a public comment, she urged the district to keep going forward and do more testing as the rain comes and test
115 in different sites. She has a small business and often uses the Beaver Creek Watershed. Her 7th-grade son, Griffin
116 commented he doesn't want pesticides in drinking water and in water for everyday use.

117 **John/Amanda Berks** commented that in 2017 the Lincoln County voters narrowly approved the ban on spraying
118 pesticides. Two years later a Lincoln County Circuit Judge overturned that stating that state law preempts the local effort
119 to regulate the use of pesticides. He is wondering if there is a way to reverse that. Adam advised John to contact County
120 Commissioner Casey Miller for the answer.

121 **Sheila Ping** from Driftwood Village in Seal Rock. She attended a meeting in Waldport yesterday (Aug. 30) and there is a
122 number where you can register your water if you are not in the SRWD service area but getting your water in the
123 watershed like from a spring, a well, or other sources. She will post that number on the chat for others to see.

124 **Anny Celsi** from South Beaver Creek Road. She commented that her father and friends started a community in South
125 Beaver Creek Road when she was 9 years old where they and friends learned to cut trees, plant trees, fish, and hunt for
126 mushrooms. Her father at the age of 57 had non-Hodgeskin Lymphoma. He didn't drink alcohol or smoke but was a
127 landscaper and was close to the chemicals that others used. What happened to her father was not related to this issue
128 but she wanted to share that this is a real thing and it affects families. She hopes that the community continues in good
129 spirits and she doesn't want what happened to her father to happen to other families and to her father's grandchildren.

130 **Holly Brandwen** from Yachats. She gets her water from South West Lincoln Water PUD but she believes that the source
131 of water is all intertwined together. She is wondering if having endangered wildlife and rare species in the area has been
132 taken into consideration. The pesticide spraying is a toxin that could affect the wildlife. Adam: The Oregon Forest Practice
133 Act considers that in identifying the listed endangered species and wildlife and required buffers to protect them. He
134 recommended that Holly should contact ODF for more details.

135 **Debra Fant** from Waldport. She has a well on the base of the forestry land so she can empathize with those facing the
136 issue. She thanked the board for holding this public meeting. She met Barbara Flewellyn (SRWD Budget Committee
137 member) in a meeting last night and received the benefit of some of her wisdom. She encourages the board to continue
138 boldly in taking actions that are recommended to put leverage on the "no pesticide spray" solution. In 2017 she worked
139 with others to pass the no pesticide spraying but it was overturned. A small group is easily overlooked but having an
140 agency representing 5,500 customers there is more leverage in that regard. It is time for the state government to see what
141 changes are necessary to open the door for people to have the right to protect their health and safety. She thanked the
142 board and Adam for their leadership and for making this meeting open and available to the public.

143 **Cathy Redwine** from South Beach. She has been concerned about the pesticide spraying from the time she heard about
144 it. She thanked the board for calling this meeting and urged them to continue to work as diligently and hard as possible for
145 the customers and nature. Hopefully, we can stop what is happening or about to happen.

146 **Sally Noack** from Fox Creek. She expressed appreciation for everything the district is doing including Rob Mills, Tedd
147 Dewitt, and all who are involved. She wants people to realize the relationship between the spraying and the ecosystem
148 around us. It is important for our well-being and the earth.

149 **Ilene Samowitz** from South Beach. She commented on how important water quality is. She is a long-time environmental
150 activist and in support of the no-spray issue. She thanked everybody who is working hard to stop the spraying and will do
151 what she can to help the community.

152 **James Holzgraf/Yasmina Dediher-Small** from Seal Rock. He has 2 small children and an elderly mother living with them.
153 He is very concerned about the pesticide spraying in the watershed also realizing Seal Rock as a whole has a new
154 challenge now that we are getting water from Beaver Creek. It is no longer an issue of the natural landscape, or habitat, or
155 the animals. We need to step it up and get more creative. He feels like we have a strong team. The fact that Brian Booth
156 Park is adjacent to the watershed, he is requesting the board have a conversation with the property owner regarding
157 acquiring the land to protect the watershed. There's grant money out there within the forest council.

158 **TiAnne Rios** from Seal Rock. She thanked Adam for answering the questions from the President of the Board when he
159 got it. It lessens the stress to have the answers before coming to the meeting. They are aware that the district (Adam) is
160 not doing the spraying but the one trying to figure out the water situation for the the customers. The community is holding
161 public meetings on Monday at 6:00 p.m. in the Garden Club in Seal Rock and on Wednesday at 3:00 p.m. in the Waldport
162 Community Center and would like to invite Adam to represent the district. It has been mentioned that we are stronger
163 together and the community will work with the district. Local agencies working with the community to change state law
164 regarding spraying is what the group is looking into in the future. Right now the issue is a public health concern because
165 water is being tainted in the Siletz as well. She is unclear about the amount of time to get the testing results back and how
166 to get water while waiting for the results to come back. She is concerned that tainted water will come into homes. She
167 would like the district to consider purchasing the land to protect the watershed. The cost to purchase water from another
168 source is \$40K, in the long run, the district will save money by purchasing the land. She also suggested to maybe send a
169 letter with the intent to sue if the spraying will cause damage to the property owner. She wants to be on record saying "I
170 don't want herbicides and pesticides in my water."

171 **Willow Kasner** from South Beaver Creek Road / South Low Road. She lives on the family farm that is now a wetland.
172 She is worried about the drift from aerial spraying and runoff. The new NOAP has a comment period that ends on
173 September 13 at 11:59 p.m. Water testing is expensive. A GO FUND ME has been set up to offset testing costs. She is
174 trying to gain funds for water testing which is \$500 and soil testing for \$500. The GO FUND ME account has enough
175 money for 5 baseline tests. There are about 30 families who live in the area that need their water tested. She suggested
176 putting pressure on the property owner to stop the spraying. Right now Monsanto is having a billions of dollars settlement
177 in California. This could be used to put pressure on the property owner. She is thankful that the community is working
178 together with the involvement of politicians. Keep the momentum going.

179 **TiAnne Rios** commented that the backpack spray permit is good for 1 year and the owner is not required to notify the
180 public. She called ODF and was told the backpack spray period is Jan 1 – Dec 31 and the owner could do both, the aerial
181 and backpack spraying.

182 **Willow Kasner** wants clarification on the ground pressurize method. It is backpack spraying.

183 **TiAnne Rios** wanted to know if one representative from the community could attend the September 6 meeting that the
184 district is having with representatives from DEQ, OHA, ODA, and EPA. Adam explained that the meeting is not a public
185 meeting but he will share with the community the outcome of the meeting.

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Recessed Emergency Board Meeting:

President Rob Mills excused the public, recessed the Emergency Board Meeting, and went into executive session at 5:28 p.m.

Executive Session: according to ORS 192.660(2), Concerning:

The SRWD Board will meet in Executive Session, pursuant to ORS 192.660(2)(h); To consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations. No final decisions shall be made in Executive Session.

Reconvened the Emergency Board Meeting:

President Rob Mills adjourned the executive session and reconvened the emergency meeting at 5:40 p.m.

Adjournment:

President Rob Mills adjourned the emergency board meeting at 5:42 p.m.

Next Board Meeting: September 14, 2023, at 4:00 p.m. Regular Board Meeting.

Approved by Board President

Date:

SRWD Monthly Financial Report

Monthly Statistics		Comments			
Total customers	2675	Includes new connects Less Abandoned / Forfeited meter plus 3 SRWD meters (shop X 2 & office) plus 1 Hydrant meter			
New connections	0				
Reinstalls	0				
Abandonments/Forfeitures/Meter Removed	0				
Financial Report	Checking/MM	LGIP/PFMMMA	Fund Balances	Comments	
General	\$576,168.22	\$18,160.50	\$594,328.72		
Bond	\$680,486.97	\$0.00	\$680,486.97		
Capital Projects	\$104,220.01	\$68,594.63	\$172,814.64	\$7,421,586 Interim Loan Proceeds	
Revenue Bond	\$2,794.02	\$4,366.62	\$7,160.64		
Rural Development Reserve	\$0.00	\$98,674.88	\$98,674.88		
Dist. Office/Shop Reserve	\$3,614.99	\$124,601.00	\$128,215.99		
Depreciation/SLARA Reserve	\$0.00	\$229,334.74	\$229,334.74		
SDC (formerly SIP)	\$0.00	\$706,810.61	\$706,810.61	\$1,289,490.00 SDC collections thru 8/31/2023	
Water Source Improvement Rsrv	\$0.00	\$254,459.85	\$254,459.85		
TOTALS	\$1,367,284.21	\$1,505,002.83	\$2,872,287.04		
General Fund Review	Current	FYTD	Budgeted Amount	Comments	
Revenue	\$269,964.88	520,865.33	\$3,205,120.00		
Expenses	\$181,051.59	428,565.09	\$3,205,120.00	Contingency \$100,000; Transfers \$416,320; Total expenses budgeted \$2,677,800.	
Net Gain or (Loss) from Operations	\$88,913.29	\$92,300.24			
Water Sales Revenue Comparison	Month	FYTD	Comments		
Water Sales Current Year	\$253,513.17	\$491,096.95	Leak Adjustments & Billings Adjustments (YTD = July - June)		
Actual+In Lieu of Water Sales Less H2O CR	\$258,397.81	\$500,981.59	Billing Adj FYTD \$0.00		
Water Sales Prior Year	\$209,580.22	\$402,941.31	Leak Adj/Write off FYTD \$115.36		
Actual+In Lieu of Water Sales Less H2O CR	\$214,580.22	\$412,942.40	TOTAL FYTD ADJUSTMENTS \$115.36		
Over or (Under)	\$43,932.95	\$88,155.64	Note: Rate increase effective 6/1/2023		
Gallage Comparison	Current	Prior Year	Cost Comparison	Current	Prior Year
Gallons Purchased/Intertie/WTP Treated	12,571,000	10,679,246	Toledo Charges	\$0.00	\$16,235.86
Gallons Sold (includes accountable loss & intertie)	10,954,191	10,357,817	SRWD Sales	\$253,513.17	\$209,580.22
Variance %	12.86%	3.01%	Ratio: Sales/Cost	0.00	12.91
Gallons Produced/Treated at WTP	12,571,000		7/11/2023-8/11/2023		
Gallons from Toledo Master Meter	0		Toledo Master Meter Readings read by SRWD field crew		
SRWD Intertie Usage (Purchased)	0		Additional water SRWD used/purchased from Newport Intertie		
Total Water Received/Produced	12,571,000				
City of Newport Intertie Usage (Sold)	0		Gallons sold to City of Newport for water used from the Newport Intertie		
Total Gallons Accounted	11,587,050		From flushing, leaks, CL2 Analyzer, & fire hydrant use		
Total Gallons Unaccounted	983,950				
Water Loss Percentage	7.83%				
Approval To Pay Bills	Payroll 8/11/2023 \$29,984.14		Payroll 8/25/2023 \$30,858.03		
Month of:	August	(after meeting)	September		
	GF A/P	\$33,956.51	GF A/P	\$34,761.14	up to 9/8/2023
	SDC Fund	\$0.00	SDC Fund	\$12,615.00	WMCP Update (July & August 2023)
	Bond/Rev Bond Fund	\$0.00	Bond/Rev Bond Fund	\$0.00	
	Depreciation/SLARA	\$0.00	Depreciation/SLARA	\$0.00	
	MP - Phase 4 (IFA)	\$0.00	MP - Phase 4 (IFA)	\$0.00	
	MP- Phase 4 (USDA)	\$0.00	MP- Phase 4 (USDA)	\$16,132.96	possibly reimburseable
	MCWPP	\$42,598.05	MCWPP	\$0.00	
	MCWCC	\$0.00	MCWCC	\$936.73	
Monthly Accrual Statistics	Beg. Balance	Accrued	Used/Paid	Balance	
	7/31/2023			8/30/2023	
Office Overtime Hours (2-01)	0.00	3.00	3.00	0.00	
Field Overtime Hours (2-02)	0.00	30.00	30.00	0.00	
PTO (3-01)	3140.69	126.18	108.50	3158.37	
Comp Time (9-01 / 9-02)	144.40	30.75	38.00	137.15	

c:\msoffice\excel\guide21				OR Instruction 1780			
				Modified OR Guide 21			
PROJECT MONITORING REPORT		1. Type of Request		2. Report No.		updated 5-11-2020	
		Final <input type="checkbox"/> Partial <input checked="" type="checkbox"/>		37			
3. REPORT PERIOD		4. BORROWER INFORMATION					
Ending 08/31/2023		Name: Seal Rock Water District					
		Address: 1037 NW Grebe Street, Seal Rock, OR 97376					
BUDGET ITEMS				STATUS OF BUDGET			
(All entries under Column "b" must be justified with an attachment) (All entries under column "e" must be documented with an attached invoice)		(a)	(b)	(c)	(d)	(e)	(f)
		Budgeted	Budget	Revised	Previous	This	TOTAL
		Amounts	Change	Budget	Total	Period	(d)+(e)
		(from LOC)					
							(g)
							Remaining Balance
							(c)-(f)
a. Engineering- Design		\$947,000	\$91,000.00	\$1,038,000.00	\$1,038,000.00		\$ 1,038,000.00
b. Engineering- Membrane Pre-purchase		\$35,000	\$2,990.00	\$37,990.00	\$37,990.00		\$ 37,990.00
c. Engineering- Bid Services		\$45,000	-\$3.00	\$44,997.00	\$44,997.00		\$ 44,997.00
d. Engineering-Basic Engineering		\$380,000	\$27,799.86	\$407,799.86	\$407,799.86		\$ 407,799.86
e. Engineering-Project Inspection		\$0	\$724,744.02	\$724,744.02	\$694,813.48	\$ 15,533.75	\$ 710,347.23
f. Engineering-Start Up		\$20,000	\$10,000.00	\$30,000.00	\$30,000.00		\$ 30,000.00
g. Engineering- Software Development		\$0	\$333,835.12	\$333,835.12	\$301,299.68	\$ 599.21	\$ 301,898.89
h. Legal Services/Land Purch. (easements)		\$400,000	\$77,205.02	\$477,205.02	\$477,205.02		\$ 477,205.02
i. Geotechnical Site Investigation		\$51,000	-\$23.00	\$50,977.00	\$50,977.00		\$ 50,977.00
j. Surveying		\$26,000	\$3,962.00	\$29,962.00	\$29,962.00		\$ 29,962.00
k. Permitting		\$170,000	\$48,486.00	\$218,486.00	\$218,486.00		\$ 218,486.00
l. Archeological/Environmental Mitigation		\$40,000	-\$22,954.00	\$17,046.00	\$17,046.00		\$ 17,046.00
m. Bond counsel Services		\$80,000	-\$24,500.00	\$55,500.00	\$55,500.00		\$ 55,500.00
n. Interim Interest & Expense		\$360,000	-\$161,028.78	\$198,971.22	\$198,971.22		\$ 198,971.22
o. Consultant/Admin/Legal-phase 4		\$12,000	\$134,044.01	\$146,044.01	\$146,044.01		\$ 146,044.01
p. Line of Credit Refinance (COT expenses)		\$1,616,500	-\$429,500.00	\$1,187,000.00	\$1,187,000.00		\$ 1,187,000.00
q. Line of Credit Refinance- Interest		\$0	\$22,914.00	\$22,914.00	\$22,914.00		\$ 22,914.00
r. Contingency		\$1,306,000	-\$1,306,000.00	\$0.00	\$0.00		\$ -
s. Additional IFA Services		\$0	\$342,502.74	\$342,502.74	\$342,502.74		\$ 342,502.74
t. Tree Clearing		\$0	\$13,785.00	\$13,785.00	\$13,785.00		\$ 13,785.00
u. Tank Removal		\$0	\$18,752.00	\$18,752.00	\$18,752.00		\$ 18,752.00
v. Software/Licensing			\$28,396.24	\$28,396.24	\$28,396.24		\$ 28,396.24
x. Construction Costs:							
1. Contractor R&G		\$8,966,000	\$1,743,799.43	\$10,709,799.43	\$9,892,318.82		\$ 9,892,318.82
2. Westech- Membrane Purchase		\$922,000	-\$17,611.50	\$904,388.50	\$904,388.50		\$ 904,388.50
3. Other-Electrical at Intake/WTP		\$0	\$202,421.50	\$202,421.50	\$202,421.50		\$ 202,421.50
4. Other-Compaction Test		\$0	\$52,400.50	\$52,400.50	\$52,400.50		\$ 52,400.50
5. Other-98th St. PRV Calibration		\$0	\$5,210.00	\$5,210.00	\$5,210.00		\$ 5,210.00
6. Other- Electrical VFD		\$0	\$12,500.00	\$12,500.00	\$12,500.00		\$ 12,500.00
k. TOTAL PROJECT COST		\$15,376,500	\$1,935,127.16	\$17,311,627.16	\$16,431,680.57	\$16,132.96	\$16,447,813.53
l. Funding Allocation							
1) Business Oregon Loan/Grant		\$3,481,000	\$0	\$3,481,000.00	\$3,481,000.00		\$ 3,481,000.00
2) USDA Rev Bond Loan		\$2,547,000	\$0	\$2,547,000.00	\$2,547,000.00		\$ 2,547,000.00
3) USDA GO Bond Loan		\$6,549,000	\$0	\$6,549,000.00	\$6,549,000.00		\$ 6,549,000.00
4) USDA Grant		\$2,799,500	\$0	\$2,799,500.00	\$2,799,500.00		\$ 2,799,500.00
5) USDA Sub Grant		\$0	\$1,500,000	\$1,500,000.00	\$681,655.00	\$864.39	\$682,519.39
6) Applicant Contribution		\$0	\$432,008	\$432,008.16	\$370,406.57	\$15,268.57	\$ 385,675.14
7) Interest			\$3,119.00	\$3,119.00	\$3,119.00		\$ 3,119.00
m. TOTAL PROJECT FUNDING		\$15,376,500	\$1,935,127.16	\$17,311,627.16	\$16,431,680.57	\$ 16,132.96	\$ 16,447,813.53
n. Percentage of Completion					95%	0%	95%
5. CERTIFICATION							
<i>I certify that to the best of my knowledge and belief costs or disbursements shown are in accordance with the terms of the project and that an inspection has been performed and all work is in accordance with the terms of the construction contract.</i>							
BORROWER		Signature of Authorized Certifying Official				Date Submitted:	
		Adam Denlinger, General Manager				9/15/2023	
						Telephone:	
						(541) 563-3529	
6. RURAL DEVELOPMENT ACCEPTANCE							
<i>This form and attachments have been reviewed and are accepted by Rural Utilities Service unless otherwise noted. This review and acceptance by RUS does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of the agreements or contracts.</i>							
RURAL UTILITIES SERVICE		Signature of Authorized Certifying Official				Date Submitted:	
		Holly Halligan, Area Loan Specialist					
						Telephone:	
						(541) 801-2682	
NOTES:							



1037 NW Grebe Street
 Seal Rock, Oregon 97376
 Phone: 541.563.3529 – Fax: 541.563.4246
www.srwd.org



Seal Rock Water District

General Manager's Report: [Report Revised September 13, 2023](#)
 Board Meeting September 14, 2023

This report is an executive summary provided with this Board agenda to Commissioners with recommended actions if any. Detailed information, staff reports, and supporting materials are provided within the full agenda packet.

PHASE-IV BEAVER CREEK SOURCE WATER PROJECT:

Jacobs engineers and district staff met with representatives from USDA-RD on August 7th to perform the 11-month warranty walkthrough. Operators pointed out several concerns the district has experienced during the past 11 months of operation to include: various pump failures including chemical feed pump failures. Automatic valves not functioning on command or sticking open/shut. Membrane filtration skids that have been difficult to clean, restricting production. A copy of the Phase IV Beaver Creek Water Supply Warranty Period Report is included in the Board Packet.

ODF APPLICATION OF HERBICIDES IN THE BEAVER CREEK WATERSHED:

On August 30th SRWD received notification through the FERNS notification process that the subject timberland owner has filed a new NOAP for Ground -Pressurized / Broadcast (Backpack-Spray) of herbicides on the same lots. A copy of NOAP 2023-553-10095 released yesterday on the FERNS website has been made available to the Board and is posted on the district's website.

Submission of a new NOAP by the timberland owner does not void the existing NOAP scheduled to go into effect on September 2, 2023. The proposed new NOAP which includes backpack spray does not change the district's planned approach to managing raw water conditions affected by the application of herbicides.

On August 7, 2023, district staff reached out to Mr. Tyrol Forfar to discuss the aerial application of herbicides and to notify the consultants, HFI Consultants of the district's raw water intake downstream of the proposed spray area. The district requested that the consultant please consider attending a meeting with the district to exchange information regarding planned spray activities and the district's raw water intake operation.

On August 10, 2023, district staff attended a consultation with DEQ, Source Water Protection Experts to consult with the department regarding best management practices to protect the district's Beaver Creek intake from pollutants.

On August 10, 2023, the district also submitted a public comment to the Oregon Department of Forestry (ODF) regarding the Aerial Application of Herbicides under NOAP 2023-553-09307. A copy of those comments is included with this staff report.

Seal Rock Water District is an Equal Opportunity Service Provider and Employer.

Adam Denlinger, General Manager

adenlinger@srwd.org

www.srwd.org

At the direction of the SRWD Board, on Monday, August 14, 2023, the district coordinated a public meeting with State Representative, David Gomberg, Lincoln County Commissioner, Casey Miller, and the community to discuss the aerial application of herbicides. This was a large group of over 40 attendees joining in the conversation by Zoom and in person.

On August 15, 2023, the district attended a meeting hosted by Representative Gomberg to discuss the next steps in reaching out to the forestland owner. This meeting included representatives from the Governor's Office and Lincoln County Commissioner, Casey Miller.

On August 16, 2023, staff attended the Lincoln County Board of Commissioners meeting to speak in opposition to aerial application of herbicides.

On August 16, 2023, the district attended a 2nd community meeting hosted at the Waldport Community Center and provided an update to the group about the potential for meeting with the forestland owner Mr. Sorn Nymark.

On August 16, 2023, the district reached out to the Oregon Health Authority for guidance regarding testing for herbicides/pesticides under state regulations under OAR 333-061 to sample for the following constituents:

(3) Organic chemicals: (a) At community and NTNC water systems, water suppliers must monitor according to this section for the following regulated synthetic organic chemicals (SOC): alachlor, atrazine, benzo(a)pyrene, carbofuran, chlordane, dalapon, dibromochloropropane, dinoseb, dioxin(2,3,7,8-TCDD), diquat, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, endothall, endrin, ethylene dibromide, glyphosate, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane(BHC-g), methoxychlor, oxamyl(Vydate), picloram, polychlorinated biphenyls, pentachlorophenol, simazine, toxaphene, 2,4-D and 2,4,5-TP silvex.

The district's most recent SOC samples performed in July of this year were Non-Detect (ND). Results are posted on the district's website.

On August 17, 2023, district staff provided the attached Public Service Announcement (PSA) regarding the district's response to aerial application of herbicides.

On August 18, 2023, the district met for a 2nd time with Representative Gomberg's Office, and Lincoln County Commissioner Miller to discuss the availability of hosting a meeting with Mr. Nymark.

On August 21, 2023, the district hosted a 2nd meeting at the request of a small number of SRWD customers to exchange information and discuss the potential of taking legal action to prevent the aerial application of herbicides under the Safe Drinking Water Act. District staff provided this information to the district's legal counsel for review, and we have reached out to the EPA requesting a meeting with the district to discuss our rights under the Safe Drinking Water Act. Communicating with the Regional Administrator through the local channels is the proper course of action to obtain assistance, which is the most expedient way to prevent dangerous activity from occurring. District staff have attempted to reach the administrator several times, but as of the date of this report, we have not received a response to our replies.

On August 21, 2023, the district reached out to Oregon association partners to include, Special Districts Association of Oregon (SDAO), Oregon Water Utility Counsel (OWUC), and Oregon Association of Water Utilities (OAWU) for guidance and feedback regarding the aerial application of herbicides in watersheds.

On August 23, 2023, the district again reached out to the consultant for ANE Forests of Oregon C/O HFI Consultants, Tyrol Forfar, and left urgent voicemails requesting an informal meeting with the district to include Representative Gomberg and Lincoln County Commissioner Miller. I spoke with Mr. Forfar, and it seems like Mr. Nymark is open to a meeting. On behalf of the district, I expressed the importance of meeting with the timber owner to exchange information regarding the district's operation and risk relative to the proposed aerial application of herbicides.

The district has reached out to EPA Department Director Stacey Murphy with a request for consultation concerning this matter. There appears to be no ability for the district or a citizen to enforce the Safe Drinking Water Act under Section 1431, as that authority is limited to the EPA and their Regional Administrator.

The district has also reached out to the Oregon Department of Agriculture (ODA) to provide assistance to the district under the state's Pesticide Management Plan for Water Quality Protection. Specifically, as it relates to: *"The overall plan relies on the formation of a Water Quality Pesticide Management Team (WQPMT) composed of representatives from each of the four agencies Oregon Department of Environmental Quality (DEQ), Oregon Health Department (OHA), Oregon Department of Forestry (ODF) and ODA responsible for water quality in Oregon. This team will act as a coordinating advisory team between state agencies and key stakeholders."*

On August 25, 2023, the district contacted Christina Higby, Citizen Advocate & Tribal Liaison with the Department of Agriculture (ODA) to discuss pulling together the WQPMT members for a meeting with the district and Representative Gomberg and Lincoln County Commissioner Miller.

On August 31, 2023, district staff attended a radio program in Newport with Lincoln County Commissioner Casey Miller to raise community awareness regarding the Aerial Application of Herbicides in South Beaver Creek.

On August 31, 2023, the district Board of Commissioners hosted an emergency Board Meeting to receive public comments from the community. The district received several comments regarding the proposed application of herbicides which are included in the minutes of the meeting.

On September 1, 2023, immediately following the emergency Board meeting the district provided a 2nd public service announcement. Also included in the Board packet for the September regular monthly board meeting. District staff have received several positive comments regarding the district's efforts to be inclusive with the community in our ongoing effort to be transparent in response to this issue.

On September 6, 2023, district staff met with the Water Quality Pesticide Management Team (WQPMT) at the Lincoln County Court House with Lincoln County Commissioner Casey Miller, State Representative David Gomberg, and a representative from the Governor's office. Conversations between the agencies followed the general guidance identified in the Pesticide Management Plan for Water Quality Protection.

District staff raised awareness to a very engaged group of state agency representatives from DEQ, ODF, ODA, ODFW, and OHA regarding risks to the Beaver Creek community and the district's newly constructed raw water intake downstream of the proposed spray sites. The state agencies agreed to collaborate on developing a question-and-answer sheet that will be provided to the community, which outlines the specific roles and responsibilities of the agencies. The state agencies are also looking into other recommendations for developing the district's source water risk reduction strategy. The proposed fact sheet will be shared with district customers and the community when it becomes available.

ODF provided the attached Herbicide Fact Sheet for immediate distribution to the community. Representative Gomberg asked how/what steps private well owners should take concerning risks due to herbicide application. OHA provided a link for those seeking information regarding the state's [domestic well-safety program](#). On September 7th the district provided this link to several private well owners in the area that requested this information in a previous meeting.

The subject of funding to protect private water systems was brought up by a representative from the Governor's office with a commitment to provide a follow-up regarding funding. Due to the potential risk to the district's intake, the district may have an opportunity to apply for funding through the USDA-RD Emergency Community Water Assistance Grant (ECWAG) program. The district is working with USDA's Community Programs Specialist to identify funding to support the cost of additional treatment to remove SOCs.

The district will remain in contact with state agencies and the forestland owner's consultant to monitor the proposed application of pesticides while we continue to formalize a management plan in response to this issue. The district intends to take every precaution necessary to protect the water system, including:

- Shutting the Beaver Creek intake pump station off during the application of herbicides.
- Allow flow in the creek to move through the stream beyond the POD.
- Sample the raw water and if results are non-detect the district will resume operation, as long as it's safe to do so.
- If hazardous chemicals are detected the district will not use the Beaver Creek system, report results to DEQ and PARC, and continue sampling.

The district has a 5-day supply of water depending on the time of year. However, if necessary, the district will suspend the operation of the intake longer, continue sampling, and move to a secondary source of water until it's safe to resume operation on the Beaver Creek system.

On September 7th the district received a request for a meeting from the Oregonians for Food & Shelter (OFS) Associate Director Tiffany Monroe. OFS represents members in the agriculture, forestry, and urban sectors that rely on modern production tools. The mission of OFS is to provide outreach and expertise on responsible use and access to pesticides, fertilizer, and biotechnology. A meeting with OFS and the district is scheduled for later this month.

On September 8th the district received an email that included a letter from Oregon Forests Forever (OFF) which is also included in the Board Packet's

On September 8th an open letter from the district to Mr. Sorn Nymark was published in the Newport News-Times. After several attempts to reach Mr. Nymark, the district received an email from Mr. Nymark's Consultant HFI Consultants advising the district that Mr. Nymark has received a copy of the Open Letter and is aware of the district's repeated requests for a meeting. *"I have forwarded your open letter you published to Sorn so he is aware of your request. It is up to him whether or not he will be meeting with you. As far as I know, we are still going forward to spray the property. We will have the Oregon Department of Agriculture on site to oversee the operation. You can rest assured that the application will be done within the boundaries of the law and with best management practices. As I'm sure you have learned from your conversations with the ODA there is absolutely no risk to the water supply and human health if this herbicide is applied according to Oregon Law and the product labels."*

On September 9th the district received a letter from Ursula Bechert, DVM, PhD, to the Governor's office in opposition to herbicide spraying on ANE Forests Property. This letter is included with this report.

On September 11th the district received notice of a letter dated September 8th from Mr. Sorn Nymark to the Lincoln County Commissioners regarding NOAP 2023-553-09307 providing that ANE and its Board of Directors have offered to ground apply herbicides rather than by helicopter. This decision was made in large part based on community concerns and protests. It will cost ANE an additional \$15,000 to \$20,000 to switch to ground application.

SRWD is working closely with state agency representatives, most notably Oregon Department of Agriculture (ODA) and Oregon Department of Environmental Quality (DEQ) in response to this issue. Working through ANE's consultant they have requested that DOA be on site when spraying is to be performed. As such the district expects to be notified regarding the schedule for herbicide application.

With support from the LC Commissioners, State Representative Gomberg's office, and the state agencies SRWD continues taking proactive steps to ensure that the district's water supply system is protected. Risk reduction measures posed in this report are used broadly by other water providers throughout the region and the state. The district is also working with funding agents and engineers to identify treatment processes to remove SOC's, as well as available funding opportunities to fund the cost of this effort.

Regarding legal action, SRWD does not have the authority to take any legal action in this matter. The district will only consider legal counsel when it is appropriate to do so. Any discussion with respect to special counsel involving this matter is subject to Board approval and is not scheduled for discussion at this time.

Due to the budget limitation, the district is not at this time considering large-scale land acquisition in response to this matter. The Beaver Creek watershed is approximately 33.5 square miles, respectively, or over 21,536 acres according to DEQ's Source Water Protection Specialists. If land acquisition is to be considered in the future, the district would need to seek professional services and view this as a multiyear process. While grant funding may be available, it's competitive and often comes with matching requirements. Developing a capital campaign for land acquisition will require subsequent rate increases to cover the matching funds.

In closing, I believe it's important to point out that herbicide application in the Beaver Creek watershed has been a common practice for decades now. While this condition was not unforeseen by the district as it's identified in the district's Source Water Assessment available on the district's website, due to the recent

improvement to switch to a new primary source of water on Beaver Creek, this is the first time the district has had to respond to this issue.

Data in the report developed by DEQ identifies that just over 50% of the watershed is owned and managed by the United States Forest Service (USFS). 25.5% of the watershed is privately owned with the remaining balance owned and managed as private industrial forest, agriculture, and State Forest. The report identifies potential sources of pollutants to include the application of herbicides and pesticides, which is why the district tests for SOC's.

Staff want to impress upon the Board, SRWD customers, and the Community that we are doing everything within our jurisdictional authority in response to this issue. Staff are working day and night responding to countless emails, phone calls, and requests for information related to this issue. Materials presented to the Board at this meeting along with this report are available in the lobby and on the district's website. District staff are committed to updating the SRWD Board and our customers regarding any new developments concerning this matter and would encourage those seeking more information regarding this matter to please visit our website as new information will be posted on the website as it becomes available.

Other notable activities for the month include:

- Attended meetings with engineers to discuss membrane module onsite testing.
- Met with representatives from USDA-RD and Engineers to perform the 11-month warranty walkthrough.
- Met with representatives from USDA-RD to provide project status reports.
- Attended Mid Coast Water Conservation Consortium Meeting.
- Met with property owners in the district to discuss water quality issues.
- Attended OWRD Place-Based Planning Meetings.
- Met with GSI Water Solutions to review progress on MC-WPP, the Water Management and Conservation Plan, and Beaver Creek streamflow and temperature monitoring.
- Attended League of Oregon Cities Water Infrastructure Meeting.
- Attended the Monthly Oregon Water Utility Commission (OWUC) meeting.
- Attended the Lincoln County Drought Committee meeting.
- Attended several interviews with Newport News-Times, KLCC and KQYE radio, and Yachats News to provide updates regarding Herbicide application in the South Beaver Creek Watershed.
- Participated in a coordinating meeting with the Oregon Water Utility Association fall Tri-WUC conference including Oregon, Washington, and Idaho.
- Attended the August 16th Lincoln County Board of Commissioners Meeting.
- Met with legal counsel to discuss pending arbitration matters and potential impacts related to risks associated with raw water quality.
- Met with representatives from DEQ to discuss planning efforts for hosting the Department of Environmental Quality (DEQ) Board of Commissioners meeting and providing a tour of the district's Raw Water Intake and WTP.

Phase IV Beaver Creek Water Supply Warranty Period Report

PREPARED FOR: Adam Denlinger/Seal Rock Water District
Larry Estes/Seal Rock Water District
Chris Sutherland/Seal Rock Water District
Brad Wynn/Seal Rock Water District
Joy King/Seal Rock Water District
Ian Sloane/R&G Excavating

PREPARED BY: Jennifer Koch/Jacobs
Darren Edwards/Jacobs

COPIES TO: Craig Massie/Jacobs
Don Watson/Jacobs
Brian Daley/USDA
Holly Halligan/USDA
File

DATE OF SITE VISIT: August 7th, 2023

PROJECT NUMBER: D3362301 (District and Jacobs)

Summary

This report summarizes Jacobs site visit on August 7th, 2023 for the for the Phase IV Beaver Creek Water Supply project in conformance with the warranty period set when substantial completion was certified on August 18th, 2022. This date excludes any extended special guarantees. Other work or equipment that has been corrected during this one-year period also restarts the warranty correction period for that specific item or work.

Raw Water Intake Structure

- FESL was visibly not established at the intake pump station structure
- Level float switch not functional at the intake pump station

Raw Water Electrical Building

- Sodium permanganate leaks on chemical panel
- Sodium hydroxide leaks on chemical panel
- Rainwater continues to leak between canopy and CMU block wall
- Damage on the meter near the transformer – **NOTE: this CPI's meter panel.**

Pipeline/Beaver Creek Road/Kona Place/TL-500

- TL-500 was not accessed

Water Treatment Plant

Clearwell No. 1

- Moisture along the west side of the tank
- Off colored paint around perimeter grout line/base flange on East side of tank. Some paint is lifting
- The top of the tank was not accessed

Brine Tank

- Soften Water supply solenoid valve clogs with debris from SW piping and does not close

Generator

- SRWD has continued concern with condition of enclosure and internal component after the recent repairs
- Rust was visible on the fuel tank portion of the generator

Membrane Building

- Janitor and Bathroom Room
 - Mop and Broom Holder rusting
 - Rusting on bathroom appurtenances, paper towel holder, ADA bathroom
- Rusting on communication vault outside on north side of Membrane Building
- Control Room
 - Repeated failures with servers requiring Dell to continue to provide support; most recent failure occurred on 8/3/23
 - UPS issues with screen switching to bypass mode; issue was spotted on 8/3/23. Needs confirmation that it is functioning correctly
- Electrical Room
 - Grounding wire disconnected on north wall
- Process Area
 - Flange bolts and nuts on stainless steel piping are rusting. Bolts are specified 316 SST. Some installed are 316 SST verified on the bolt head. Those that are rusting have different markings on the bolt heads.
 - Leak on CIPS pipe joint, feeding Skid 1, at 90-degree elbow to pipe joint causing corrosion on stainless steel pipe below.
 - CIP Skid – CIP piping shakes excessively during certain CIP processes when the CIP Pump starts. Pipe support system may be deficient above the CIP Skid. Pipe supports were attached to the skid to support piping above the skid.
 - Finished Water – Sodium Hydroxide injection quill is leaking.
 - Drain rock still backing up in the 2” floor drain line

Site Photos (captions not provided for all)



Rust observed on mop and broom holder in Janitor Room



Rust observed on the bar in the bathroom



Rust observed on the paper towel holder



Rusting observed on the paper towel holder and garbage can



Ground to structural not connected and corrosion observed. This is a code violation.

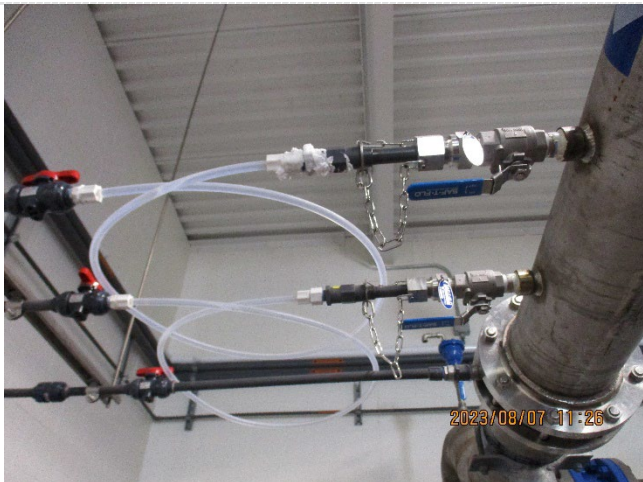




Rusting on bolts observed at FW pumps



Rusting on bolts observed at FW pumps





Rust observed at bolts

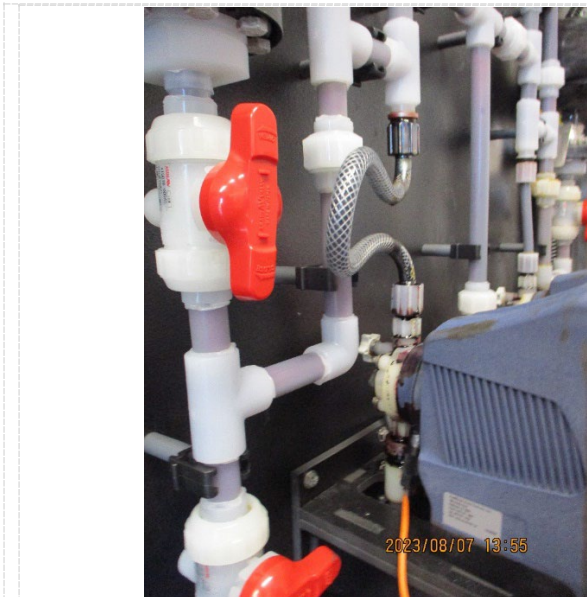


Leak at the joint of the CIP pipe





Stormwater leaking between canopy and building



Chemical leaks in Intake Building



Meter damaged at Intake Site



Peeling along Clearwell 1



1037 NW Grebe Street
Seal Rock, Oregon 97376
Phone: 541.563.3529 – Fax: 541.563.4246
www.srwd.org



Seal Rock Water District

Date: September 8, 2023

To: Rieghly Sitton
Oregon Dept of Forestry
rieghly.k.sitton@odf.oregon.gov

From: Seal Rock Water District
1037 NW Grebe Street
Seal Rock, OR. 97376

Re: Proposed Timberland Spraying NOAP 2023-553-10095

Dear Mr. Sitton

Seal Rock Water Districts (SRWD) Point of Diversion (POD) is immediately downstream of the proposed application of herbicides described in NOAP 2023-553-10095. SRWD is concerned that runoff from herbicides will be transported from the sprayed areas into nearby surface waters, and consequently, that herbicides will adversely affect the district's downstream raw-water intake negatively affecting the SRWD community of 5500 customers via the drinking water system.

The SRWD Board of Commissioners and Customers would like to know what assurances will be provided to ensure that herbicides from the ANE - South Beaver Creek Spray will not enter surface water of South Beaver Creek, its tributaries, or the mainstem of Beaver Creek. The district would like to request that ODF condition the application of herbicides to include independent monitoring to sample and measure herbicides in lands and waters adjacent to the sprayed areas, and further downstream in the area of the district's POD.

The district would also like to request that ODF/ODA notify the district when any spraying is scheduled to occur subject to this NOAP. Because there are many of us who are at risk of exposure to these herbicides, directly or indirectly the community that receives their drinking water from Beaver Creek should be notified. SRWD has learned from the timber consultant that ODA will be present when spraying is scheduled to be performed. As a professional courtesy SRWD would like to ask that ODA/ODF please notify the district of any proposed application of herbicides in the Beaver Creek Watershed.

Thanks in advance for your consideration.

Adam Denlinger, General Manager
Seal Rock Water District



1037 NW Grebe Street
Seal Rock, Oregon 97376
Phone: 541.563.3529 – Fax: 541.563.4246
www.srwd.org



Seal Rock Water District

September 1, 2023 - Posted on the District's Website

Follow up to

Application of Herbicides in the District's Watershed on South Beaver Creek

On Wednesday, August 23, 2023, SRWD received notification through the Forest Activity Electronic Reporting and Notification System (FERNS) notification process that the subject timberland owner has filed a new Notification of Operations/Permit to Operate Power-Driven Machinery (NOAP) for Ground-Pressurized / Broadcast (Backpack-Spray) of herbicides on the same lots. A copy of NOAP 2023-553-10095 has been made available to the Seal Rock Water District Board of Commissioners and is posted on the district's website. The public comment period for this NOAP closes on September 13, 2023, at 12:59 PM. The district would like to encourage customers and interested parties to access the FERNS website and submit public comments before the deadline. Submission of a new NOAP by the timberland owner does not void the existing NOAP scheduled to go into effect on September 2, 2023. The proposed new NOAP which includes backpack spray does not change the district's planned approach to managing raw water conditions affected by the application of herbicides.

The SRWD Board of Commissioners and staff are very concerned about the effect of herbicide application on our coastal environment, residents, wildlife, and water intake operations at the SRWD's Point of Diversion (POD) downstream of the proposed application sites. The district continues working with state agencies to develop protocols for managing potential hazards from entering the drinking water system to ensure that the spray operation will not adversely impact our domestic water supply.

On August 23, 2023, the district reached out to the consultant for ANE Forests of Oregon C/O HFI Consultants, requesting an informal meeting with the district and the timberland owner President Mr. Nymark, including Representative Gomberg and Lincoln County Commissioner Miller. On behalf of our SRWD customers, we expressed the importance of meeting with Mr. Nymark to exchange information regarding the district's operation and risk relative to the proposed application of herbicides. The consultant did affirm that aerial application of herbicides has not been removed from consideration and reports that the timber owner is well within their rights under the Oregon Forest Practice Act with respect to this issue.

The district has reached out to the Oregon Department of Agriculture (ODA) to provide assistance to the district under the state's Pesticide Management Plan for Water Quality Protection. Specifically, as it relates to: *"The formation of a Water Quality Pesticide Management Team (WQPMT) composed of representatives from each of the four agencies (ODA/DEQ/ODF/OHA) responsible for water quality in Oregon. This team will act as a coordinating advisory team between state agencies and the district.* On September 6, 2023, the district will meet with representatives from the WQPMT to discuss the development of a formal Pesticides Management Plan for Water Quality Protection on Beaver Creek.

In an effort to promote inclusiveness and transparency with SRWD customers and the community, the district has hosted several community meetings to support, inform, and increase awareness regarding the Board's ongoing response to this issue. SRWD Board of Commissioners held an Emergency Board Meeting on August 31, 2023, to receive information from staff regarding the district's progress and receive public testimony regarding this issue. A copy of the staff report along with Board packet materials from this meeting can be obtained by visiting the district's website.

The district would like to take this opportunity to thank our customers, the community, and our elected officials for the overwhelming support of the district as we work diligently to provide the community and our customers with updates regarding this matter. District staff will continue to provide updated information on our website.

Very respectfully, SRWD

The Seal Rock Water District Water Quality Report is available online at www.srwd.org/report or contact us for a paper copy

IF HEARING IMPAIRED, PLEASE DIAL 711 OR CALL TTY# 1-800-735-1232

SRWD is an Equal Opportunity Employer and Service Provider.

Open Letter to Mr. Sorn Nymark, ANE Forests of Oregon

RE: Timberland Spraying

September 5, 2023

Seal Rock Water District (SRWD) and our area coastal communities recognize that your enterprise, ANE Forests of Oregon, supplies valuable timber for consumers and generates needed revenue for our local and state economies. We also acknowledge your right, granted by Oregon law, to spray your 475 acres of clear-cut timberland in the South Beaver Creek watershed. We understand spraying is common practice in forestry management and even viewed as good stewardship by those in the business.

SRWD is concerned about good stewardship, too. The South Beaver Creek watershed is the water source for our 5500 residential and commercial customers and the emergency water we provide to Newport. Our system, comprised of the raw water intake on Beaver Creek and our water treatment plant and service network, became operational in 2021. This milestone was the culmination of a seven-year collaborative effort involving stakeholders representing fish and wildlife preservation, environmental protection, regulatory permitting, water rights law, and private property owners. The U.S. Department of Agriculture wholeheartedly endorsed the project as the most viable way to provide our central coast communities with a safe, reliable, long-term water supply.

Like you, we have much at stake in the proposed spraying of your timberland. We are vitally concerned about the known (and unknown) effects of chemical spraying in the Beaver Creek watershed and the underground water supplies of private property owners. We believe you're concerned, too, as evidenced by your agreeing to abide by state regulations governing timberland spraying. But we're all aware that even with presumed safeguards in place – strict guidelines for aerial and ground spraying, stringent water testing for contamination, and constant monitoring of vegetation, fish, and wildlife – there is the potential for poisonous chemicals ending up in our water supply and natural habitat. If that were to happen, it would threaten the safety and well-being of our communities and negatively impact your enterprise.

SRWD, our local communities, and ANE would be well served by working together to reduce the risks inherent in your proposed spraying – risks that extend to all of us. To that end, we respectfully urge you and representatives from ANE to be available to hear our input, and for you to offer yours, on how a workable balance might be achieved between protecting your timberland and the safety and well-being of our communities.

Respectfully,

Rob Mills, SRWD Board of Commissioners
Adam Denlinger, SRWD General Manager

8 September 2023
1433 NW Fircrest Court
Waldport OR 97394

Governor Tina Kotek
Office of the Governor
900 Court St NE, Suite 254
Salem, OR 97301

Dear Governor Kotek,

I hope you're doing well. I would like to express my deep concern about the spraying that ANE Forests of Oregon has planned, which will affect the Beaver Creek watershed – water that the [Seal Rock Water District](#) (SRWD) uses to supply drinking water to thousands of people along the coast. I live in north Waldport and depend on clean water from the SRWD. I have always loved Oregon and been proud of the priority the state has given to environmental protections. However, these protections seem to be waning over time.

The SRWD has written an [open letter](#) to the landowner of ANE Forests. There are plans to spray almost 500 acres with [pesticides](#) in close proximity (within 100') of streams. Run-off will contaminate the Beaver Creek watershed with glyphosate, imazapyr, metsulfuron methyl, sulfometuron methyl, which are spread with a water-soluble carrier. These streams are described as Type F streams, which means they provide critical habitat for fish. Below are excerpts of product descriptions from current EPA registrations and 2022 peer-reviewed publications:

- [Sulfometuron methyl](#): "For terrestrial uses, except for under the forest canopy: DO NOT apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. DO NOT contaminate water by cleaning of equipment or disposal of equipment washwaters or rinsate... Drift and runoff may be hazardous to aquatic organisms in neighboring areas. Do not apply where runoff is likely to occur."
- [Imazapyr](#): "Do not apply to water except as specified in this label. Treatment of aquatic weeds may result in oxygen depletion or loss to decomposition of dead plants. This oxygen loss may cause the suffocation of some aquatic organisms. When using this product for terrestrial applications, do not apply directly to water or to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters or rinsate. This herbicide is phytotoxic at extremely low concentrations. Nontarget plants may be adversely affected from drift... Do not apply this product within one-half mile upstream of an active potable water intake in flowing water (i.e., river, stream, etc.) or within one-half mile of an active potable water intake in a standing body of water, such as a lake, pond or reservoir."
- [Glyphosate](#): "... exposure to glyphosate or its commercial formulations induces several neurotoxic effects. It has been shown that exposure to this pesticide during the early stages of life can seriously affect normal cell development by deregulating some of the signaling pathways involved in this process, leading to alterations in differentiation, neuronal growth, and myelination."

In addition to contamination of our drinking water, pesticide sprays can have devastating consequences on both the local wildlife and the surrounding environment. The potential for these pesticides to leach into wetlands, which are vital breeding and feeding grounds for numerous species, raises serious red flags, including for coho salmon (NOAA listed Beaver Creek and Seal Rock as critical habitat for these species).

I urge you to take decisive action to address this issue:

- Immediate suspension: Please consider suspending any plans for aerial pesticide sprays in the vicinity of critical coho salmon habitat until a thorough environmental impact assessment can be conducted.
- Strengthen protective measures: Enhance protective measures to ensure that any activities in the area surrounding critical habitats adhere to the highest environmental standards and are in line with existing regulations for the preservation of endangered species and standards for providing safe drinking water.
- Collaborative assessment: Work closely with relevant environmental agencies, scientists, and stakeholders to conduct a comprehensive assessment of the potential risks posed by the aerial pesticide sprays to the local ecosystems, water quality, and endangered species.

- Community engagement: Engage with local communities, environmental organizations, and concerned citizens to gather input and insights that can help inform decision-making and shape a more sustainable approach to land management.

I heard from someone that the Department of Environmental Quality cannot get involved until there's a problem with our drinking water. This makes no sense – it would be so much easier to *prevent* contamination of this important watershed! In fact, Oregon statutes “directs DEQ to cooperate with other agencies of the state to prevent or mitigate pollution of waters of the state.” Furthermore, “public drinking water systems must monitor for certain pesticides [OAR 333-061-0036].” And the [State of Oregon Pesticide Management Plan for Water Quality Protection](#) states “Prevention of water contamination is a major component of effective resource management.” Metsulfuron methyl, imazapyr, glyphosate, and sulfometuron are all listed in the plan's appendix B listing “Oregon Pesticides of Interest: potential to occur at concentrations approaching or exceeding a Federal, State, or Tribal human health or environmental reference point.”

Your leadership in addressing this critical issue would be greatly appreciated by the citizens of Oregon who care deeply about the health of our ecosystems and clean drinking water as evidenced by the numerous physical signs and social media posts. I look forward to hearing about the actions you take to address these concerns and protect our environment. Thank you in advance.

Sincerely,



Ursula Bechert, DVM, PhD

Ane Forests of Oregon, Inc.

To: Lincoln County Commissioners
225 W. Olive Street, Room 110
Newport, Oregon 97365

Re: NOAP 2023-553-09307
September 8th 2023

Dear Commissioners Miller, Jacobson and Hall,

I received your letter dated August 16th with a request to abate plans for herbicide application by helicopter on our forestland parcels in the South Beaver Creek watershed. I understand there is a great deal of community concern surrounding this planned application.

First, I would like to provide you with some details about myself. I am 86 years old, and I am planning my retirement. In 1975, I became president of a Danish seed company with approximately 500 employees and exported seeds to 130 countries. In 1982, I decided to establish a subsidiary company in Albany. We purchased a farm by Highway 20 next to the Oregon State University research farm. On the farm, we build facilities for breeding grass varieties used domestically and exported around the world. The company is now in Halsey and is the largest breeder and exporter of grass seed in the US. I am proud that this Company has provided local jobs.

Over 30 years ago, we invested in a home and property in Lincoln County which we have had since. I am not an "absentee landowner" as I have been involved as a contributor to this community for decades. I am strong advocate for climate and the environment, and I believe that climate change and global warming is the biggest threat to our grandchildren. I believe that the forest products sector provides a renewable green resource that is vital to our future. Growing renewable forests is a tool to mitigate and reduce climate change. While growing, trees transfer CO2 to oxygen and while alive and after harvest store carbon, in all materials made of wood including structural materials all materials made of wood including structural materials, siding, flooring, furniture and more all store carbon. As a landowner in Oregon, it is a requirement for us under the Forest Practice Act to reforest after harvest. Herbicides have been validated through science as an important tool in ensuring that reforested trees will grow successfully. Without them, weeds including many invasive species can easily take over and choke out trees. In this specific reforestation effort, we are seeking control of noxious and invasive vegetation to meet our requirement to successfully reforest.

Based on our obligation to ensure that newly planted trees can become "free to grow" our Board of Directors will be moving forward with herbicide application to our harvested units. However, we can offer to do this via ground application rather than by helicopter. This was large part decided based on concerns over protesters: It will cost us an additional \$15,000 to \$20,000 to switch to ground application.

I am open to visiting and sharing more about myself and the land management decisions we are making. However, for health reasons I am not able to participate in public forums. I would love to discuss this issue with you in person, but I am reluctant to have my home address become public record. However, we do plan to proceed with my obligation to reforest our property and will do so with utmost care following all of Oregon's strong regulations for herbicide application to forestland.

Sincerely,



Ane Forests of Oregon, Inc.
Sorn Nymark, President





Fact Sheet

Pesticide Stewardship Partnerships in Oregon

Background

For over two decades, the Pesticide Stewardship Partnerships Program has been using local expertise combined with water quality sampling results to promote voluntary changes in how pesticides are used. The goal is to achieve measurable water quality improvements that benefit human health and aquatic life while maintaining effective strategies to control pests and weeds.

In 2013, the Oregon legislature began funding the program through state general funds and pesticide registration fees. These funds are used to conduct water quality sampling and analyses, identify areas of concern, support watershed partners, provide grants for projects to reduce the amount of pesticides entering local surface waters, and support the collection and disposal of waste pesticides around the state.

The program receives guidance from the Water Quality Pesticide Management Team, which is composed of representatives from the Oregon Departments of Agriculture, Environmental Quality, Fish and Wildlife, and Forestry; the Oregon Watershed Enhancement Board; the Oregon Health Authority; and Oregon State University. This team uses PSP data and information to evaluate monitoring results, identify priority pesticides of concern, and work with local partners to prevent or reduce pesticide contamination in streams.

What partnerships do

Pesticide Stewardship Partnerships do the following:

- Identify local pesticide-related water quality issues
- Share monitoring results with local communities and interested individuals
- Explain data in relation to effects and/or water quality criteria or benchmarks
- Engage pesticide users and technical assistance providers to identify and implement actions to reduce pesticides from entering local waterbodies
- Use long-term monitoring to evaluate progress and provide feedback to support water quality management
- Provide financial support to PSP partners to promote of the responsible application of pesticides to protect and improve water quality



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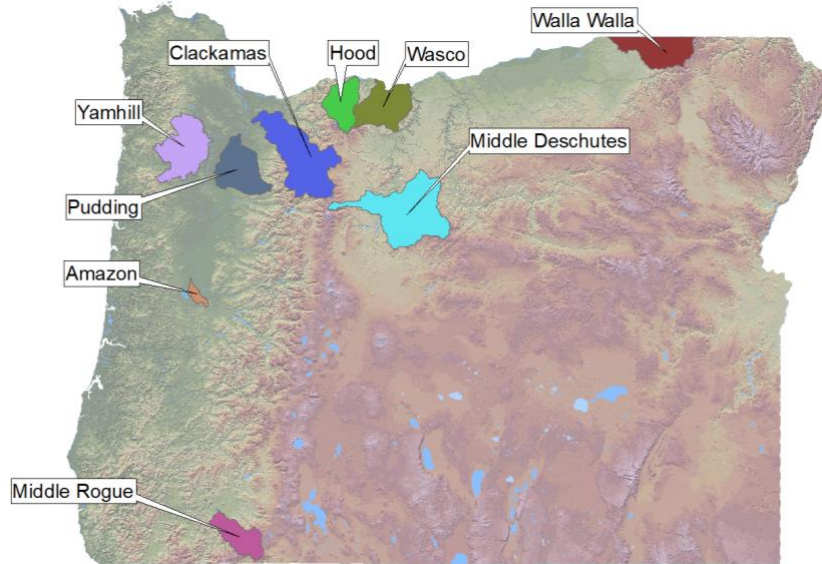


State of Oregon
DEQ Department of Environmental Quality

Pesticide Stewardship Partnership Projects

Currently there are nine designated partnerships in Oregon:

- Amazon Basin
- Clackamas Basin
- Hood Basin
- Middle Deschutes Basin
- Middle Rogue Basin
- Pudding Basin
- Walla Walla Basin
- Wasco Basin
- Yamhill Basin



Land use within each of the basins varies. In some areas watershed partners place an emphasis on urban pesticide use, in others agriculture and/or commercial forestry may be of greatest concern. This diverse mixture captures most pesticide application types and provides a balanced assessment of the effectiveness of current practices and their impact on water quality.

Program name and contacts

Pesticide Stewardship Partnerships Program

David Gruen
Oregon Department of Environmental Quality
David.Gruen@deq.oregon.gov | 503.719.2282

Kathryn Rifenburg
Oregon Department of Agriculture
Kathryn.Rifenburg@oda.oregon.gov | 971.600.5073

Alternate formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.



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State of Oregon
DEQ Department of Environmental Quality



Herbicide Use in Forestry

A forest management tool

What are herbicides?

Herbicides are considered a “pesticide,” which is a broad term for chemicals that also include fungicides, insecticides, rodenticides and other pest control tools. Herbicides are used in agriculture, residential and urban areas, forestry, industrial sites, railroads, and other settings.

How are herbicides used in forestry?

Forest landowners primarily use herbicides to prepare forestland for tree planting and again to control competing weeds that hinder survival and growth of young trees.

Herbicide treatments used in forest management include foliar spray (broadcast, strip, spot, or direct), stem injection, basal spray, and cut-stump. Herbicide applications are done by aerial (helicopter, fixed-wing or unmanned aircraft system (drone)), ground equipment or hand.

Forest landowners also use herbicides to control invasive noxious weeds, such as gorse, Scotch broom, Himalayan blackberry, and Japanese knotweed. These noxious weeds can encroach on roads and streams, displace native species, and lower the quality of habitat for wildlife. Noxious weeds can also increase the risk of wildfire and can make cropland less productive.

How often are herbicides used in forestry?

Forest landowners are responsible for about 4 percent of all pesticides (including herbicides), by weight, used every year in Oregon. In western Oregon, herbicides are typically applied 1 to 3 times during a 40-to-70 year timber harvest rotation. Herbicides are commonly used for site preparation before tree planting and sometimes later to control competing vegetation while seedlings gain height. In eastern Oregon, herbicides are used less frequently because of different management methods on the slower-growing forests than the rest of Oregon.

What laws regulate forest herbicide use?

All pesticides used in the United States must be registered with the U.S. Environmental Protection Agency (EPA) and must carry federally approved labels describing permitted uses and appropriate protection measures. To be registered, pesticides must be tested for effects on humans and the environment.

Pesticide sellers and applicators must comply with the state's Pesticide Control law (Oregon Revised Statute Chapter 634) which requires state product registration and applicator licensing. The law prohibits faulty, careless, or negligent application of herbicides.

Pesticide users on forestland must also follow Oregon's Forest Practices Act (FPA), administered by the Oregon Department of Forestry (ODF). The FPA requires operators to protect human health and safety, soil, air, fish, wildlife, and water quality through measures that:

- Retain and protect trees and plants along some streams following logging,
- Prohibit helicopter herbicide applications within:
 - 300 feet around schools and dwellings
 - 75 feet or more of fish-use or drinking water streams and
 - 50 feet for some non-fish streams,
- Prohibit other aerial applications (non-helicopter) within 60 feet of fish-use or drinking water streams
- Prohibit all aerial applications within 60 feet of open water greater than ¼ acre,
- Prohibit ground-based applications within 10 feet of fish-use or drinking water streams and open water greater than ¼ acre, and
- Prevent, control and report leaks and spills.

Note: A pesticide license is required for an individual to prescribe use of or application of herbicide on another person's land. Landowners are not required to have a pesticide applicator's license for prescribing or applying herbicide to their own land.

How are herbicides monitored in streams?

ODF continues to work with federal, state, and local partners to monitor water quality and stream health during forest management activities. Oregon's Pesticide Stewardship Program, facilitated by ODA, identifies local pesticide-related water quality issues, monitors pesticide presence in watersheds across the state, and helps pesticide users identify and implement solutions to improve water quality and crop management.

What is required prior to applying pesticides?

Before applying herbicides on forestland, the pesticide applicator must submit a notification of operation that describes the planned application using ODF's internet-based system called E-Notification (also known as FERNs). The E-Notification must be submitted at least 15-days prior to beginning the operation.

For helicopter pesticide applications, the operator sets a 90-day application period and may begin 15-days after the notification submission date, if ODF determines there is no "nearby recipient" within 1 mile of the spray unit. If there is a "nearby recipient" within 1 mile of the spray unit, the operator must wait 30-days before spraying. The operator must status in E-Notification a planned spray unit by 7 p.m. the day before spraying.



For submission of forest operations, subscriptions to notifications or registrations of dwellings or water intakes see <http://ferns.odf.oregon.gov/E-Notification>

Note: ODF requires an E-Notification for herbicide application where the desired outcome is forest management, but is not required for vegetation management around households.

How can I get information on herbicide applications?

The E-Notification is an internet database of submitted notifications, which is accessible to the public as a subscriber or registrant. Subscribers receive an email for their area of interest when a notification is submitted to E-Notification. Registrants may register their resident parcel or surface water intake to receive an E-Notification alert for next day planned helicopter pesticide applications within one mile of their home or surface water intake. ODF will reconcile the registrant's parcel and surface water intake information into the E-Notification database to determine potential "nearby recipients" within 1 mile of the spray unit. Registrants may view planned helicopter pesticide applications 14-days after the notification submission date.

What if I suspect a violation of the law?

If you suspect a violation of the Oregon FPA laws has occurred, please contact your local ODF stewardship forester at <https://tinyurl.com/odf-find-a-forester>. The ODF stewardship forester will investigate your report in coordination with other state agencies and provide information back to you on their findings.

What if there is a pesticide spill?

For immediate emergencies, please call 911. Under rules administered by the ODF and Oregon Department of Environmental Quality (DEQ), if a spill occurs on forestland, those responsible are required to report the incident.

Report a pesticide spill by calling the Oregon Emergency Response System (1-800-452-0311) or the National Response Center (1-800-424-8802) and contact your local ODF stewardship forester at <https://tinyurl.com/odf-find-a-forester>.

Oregon Department of Forestry Field Offices

For more information about the Oregon FPA or the Forest Practice Rules, please contact your local ODF stewardship forester at <https://tinyurl.com/odf-find-a-forester>

For additional information:

- National Pesticide Information Center
<http://www.npic.orst.edu>
- Oregon Department of Agriculture (ODA)
 - Oregon's lead agency for pesticide use
<http://www.oregon.gov/ODA/PEST/www.oregon.gov/ODA/PEST/>
 - Oregon's Noxious Weed Program
<https://www.oregon.gov/ODA/programs/Weeds/Pages/Default.aspx>
 - Pesticide Analytical and Response Center (PARC)
<http://www.oregon.gov/ODA/programs/Pesticides/Pages/PARC.aspx>
 - Pesticide Stewardship Program
<https://www.oregon.gov/oda/programs/pesticides/water/pages/pesticidestewardship.aspx>
- Oregon Department of Environmental Quality (DEQ)
<http://www.oregon.gov/DEQ/>
- U.S. Environmental Protection Agency (EPA)
<http://www.epa.gov/pesticides/>



Dear Sheila,

Please take a minute to help us communicate to elected officials in your county about Oregon's strong forest protection laws.

Recently, your Lincoln County Commissioners and local state Representative repeatedly pressured a local forest landowner to abandon his management plans, **despite those practices being completely legal and safe under existing state regulations.**

This is unacceptable and sets a terrible precedent for other farming and forestry families in your community who are following the law and managing their land sustainably to produce food and wood products Oregonians need.

Instead of standing up for the extensive set of strong, science-based laws put in place to protect resources like water quality on working lands, or protecting the rights of law-abiding community members, or helping educate others on Oregon's high-quality standards, **your local officials caved to a small but loud group of anti-forestry activists and badgered a local landowner into changing his course of action.**

That's not the kind of leadership we expect from local officials who are elected to represent you and protect your interests.

[Please take a minute to send an email to your local elected officials](#) and tell them we expect more out of them. We expect them to stand up for private property rights and protect the hard-working families who elected them from baseless fear mongering by NIMBY activists.

Thank you for being the voice of reason,
Sara @ Oregon Forests Forever

Sent to: sheilajswinford@gmail.com

[Unsubscribe](#)

September 11, 2023

TO: Rieghly Sitton
Oregon Dept of Forestry
rieghly.k.sitton@odf.oregon.gov

RE: Public comments on Notification 2023-553-10095

My wife and I live in Bayshore, Lincoln County, and are customers of Seal Rock Water District (SRWD). We previously wrote to you in providing our public comments opposing NOAP 2023-553-09307 for aerial spraying of pesticides on behalf of ANE Forests Of Oregon upstream from the SRWD water intake source on South Beaver Creek that supplies our domestic water. Our comments regarding 2023-553-09307 also included our opposition to the ground application of pesticides, which we reaffirm here. All of our comments regarding 2023-553-09307 are incorporated into our comments here.

At least two of the pesticides included in the proposed ground spraying, Glyphosate and Metsulfuron-methyl, are categorized by the Oregon Department of Agriculture as statewide pesticides of moderate concern. Bayer's Environmental Hazards warning for Metsulfuron-methyl, aka Oust XP, as copied below, indicates that the product has high potential for reaching surface water via runoff for **several months or more after application**. The Beaver Creek watershed is a very low gradient and slow moving system. How is SRWD expected to continuously test our water supply for contaminants for several months or more after spraying? The extreme costs of doing so, and the even higher costs of providing an alternative source of clean water if necessary, should fall upon the landowner who necessitated these actions.

ENVIRONMENTAL HAZARDS

For terrestrial uses, except for uses under the forest canopy, do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment wash-water or rinsate.

Exposure to OUST® XP HERBICIDE can injure or kill plants. Damage to susceptible plants can occur when soil particles are blown or washed off target onto cropland.

Sulfometuron-methyl is known to leach through soil into groundwater under certain conditions as a result of label use. This chemical may leach into groundwater if used in areas where soils are permeable, particularly where the water table is shallow. This product may impact surface water quality due to runoff of rain water. This is especially true for poorly draining soils and soils with shallow ground water. This product is classified as having high potential for reaching surface water via runoff for several months or more after application. A level, well-maintained vegetative buffer strip between areas to which this product is applied and surface water features such as ponds, streams, and springs will reduce the potential loading of sulfometuron-methyl from runoff water and sediment. Runoff of this product will be greatly reduced by avoiding applications when rainfall or irrigation is expected to occur within 48 hours.

I recently photographed one of the ANE Forest clear cuts to be sprayed above S-Low Road, see below, and was struck by how steep the hillside is.



It is not rocket science that any pesticides applied to this and other steep terrain clear cuts, whether by aerial or ground spray, will find their way via runoff into Beaver Creek and our drinking water.

If any visualization of the path of this runoff is needed, the below screen grab, courtesy of the online River-Runner app, which tracks where a raindrop anywhere in the contiguous United States will end up, shows how runoff from the approximate location of ANE Forests' GRAVES001 108.4 acre unit south of S-Low Road will enter Beaver Creek and will eventually reach the Seal Rock Water District intake facility, contaminating our water supply.



We are well aware that our comments here will have no impact on the spraying of pesticides in the watershed that provides our drinking water. Our comments are intended primarily to document our concerns and to be included in the official record in the event of future litigation resulting from actions in our watershed by ANE Forests Of Oregon and Sorn Nymark, HFI Consultants and Tyrol Forfar, HFI Field Services LLC and Tim Halme, and Pacific AG Services North West LLC and Anthony Ghidossi.

Jon French and Patricia Ferrell-French

[REDACTED] (Bayshore)

[REDACTED]

cc: Seal Rock Water District
ANE Forests of Oregon
HFI Consultants
HFI Field Services LLC
Pacific AG Services North West LLC

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 11, 2020.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 5

The Effective Date of this Amendment is: August 11th, 2023.

Background Data

Effective Date of Owner-Engineer Agreement: May 11, 2020

Owner: Seal Rock Water District

Engineer: Jacobs Engineering Group Inc.

Project: Phase IV Beaver Creek Water Supply Project

Nature of Amendment:

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

Additional engineering services have been required with project extension from the original final completion date of August 24th, 2021. Additional services provided with this amendment to cover work since July 2023 and extending through the end of November 2023. Jacobs services and costs are subject to change pending certified substantial and final completion dates.

- *Remaining engineering services (project management, project closeout, document controls - meetings, invoicing/project controls, continued contractor interface, continued WesTech interface, expenses, finalize as built); resident project representation (RPR) field inspection services as needed for the time, ongoing automation, SCADA and integration support, ongoing engineering services regarding operation of treatment plant and Owner directed activities— **\$55,960.***

Agreement Summary:

Original agreement amount:	\$ 1,056,000
Net change for prior amendments:	\$ 384,419
This amendment amount:	\$ 55,960
Adjusted Agreement amount:	\$ 1,496,379

Change in time for services (days or date, as applicable): Project continues to extend past original contract substantial completion thus requiring engineer to remain engaged to complete the work for inspection, as built, review of final equipment O&M to be provided by general contractor, project closeout by project manager and design team. In addition, this also includes allowance up to the revised contracted amount for Owner directed services and activities for SCADA and integration support along with warranty support and on call engineering support to operations and maintenance.

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this, or previous Amendments remain in effect.

OWNER:

ENGINEER:

Seal Rock Water District

Jacobs Engineering Group Inc.

By: _____
 Print name: Adam Denlinger

By:  _____
 Print name: Alan Chang

Title: General Manager

Title: Designated Manager

Date Signed: _____

Date Signed: 9/8/2023

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

 Agency Representative Date

 Name and Title

Seal Rock SDC Workplan - Amendment 5 - August 11th, 2023																	
	Title:	PM	Engineer	RPR	Senior Engineer	Junior Engineer	Senior Lead Engineer	Senior Lead Engineer	Engineer	Senior CAD Technician	Senior Scientist	Administrative Assistant					
	Billing Rates:	\$225	\$150	\$150	\$175	\$120	\$200	\$200	\$150	\$120	\$150	\$100					
WBS	Task	Craig Massie	Jennifer Koch	Art Bowcock	Darren Edwards	Humberto Jaramillo	Tom Engleson/Paul Mueller	Don Watson/Sherman Walker	Mari Valenzuela/Tiana	Bistra Gyaourova	Dana Larson	Lori Hurt / Garrett Bates	Labor Hours	Labor	Expense	Total	
1	Project Management																
1.1	Project Management	6	6										12	\$2,250		\$2,250	
1.2	Project Controls											4	4	\$400		\$400	
2	Resident Project Representative																
2.1	Construction Observation												0	\$0		\$0	
3	Engineering																
3.1	Submittals							2	4				6	\$1,000		\$1,000	
3.6	O&M		2		2								4	\$650		\$650	
3.9	As Built and Record Drawings		2		2					20			24	\$3,050		\$3,050	
3.10	Expenses												0	\$0	\$3,100	\$3,100	
3.11	Allowance - Owner Directed Activities	8	8	8	10				4				38	\$6,550		\$6,550	
4	Post Construction																
4.1	Warranty Period		4		8	4	24						40	\$7,280		\$7,280	
4.2	Startup Support					4	16						20	\$3,680		\$3,680	
SI	Software Integration																
01.A.PN.OE.SI-3C	HMI support and troubleshooting												0	\$0		\$0	
01.A.PN.OE.SI-3B	Win-911 alarm notification configuration												0	\$0		\$0	
01.A.PN.OE.SI-4A	Software O&M manual												0	\$0		\$0	
01.A.PN.OE.SI-3D	Camera setup												0	\$0		\$0	
01.A.PN.OE.SI-3E	Thin client setup at district office												0	\$0		\$0	
01.A.PN.OE.SI-4B	Final tuning and onsite assistance												0	\$0		\$0	
01.A.PN.OE.SI-4B	Power monitoring: ETC 8 hours												0	\$0		\$0	
01.A.PN.OE.SI-4B	Conductivity Probe Redundancy Design												0	\$0		\$0	
01.A.PN.OE.SI-4B	Allowance - Owner Directed Activities						40	100					140	\$28,000		\$28,000	
	Total	14	22	8	22	8	80	102	8	20	0	4	288	\$52,860	\$3,100	\$55,960	



EXECUTIVE ORDER NO. 23-22

**DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN
LINCOLN COUNTY.**

At the request of Lincoln County (by Commission Resolution and Order 08-23-332, dated August 16, 2023) and based on the recommendations of the Drought Readiness Council and input from the Water Supply Availability Committee dated August 21, 2023, and pursuant to ORS 536.740, I find that low streamflow, low precipitation, and low soil moisture have caused or will cause natural and economic disaster conditions in Lincoln Counties.

Forecasted water supply conditions and precipitation levels are not expected to improve. Drought is likely to have a significant economic impact on the farm, ranch, vineyard, recreation, tourism and natural resources sectors, as well as an impact on drinking water, fish and wildlife, and important minimum flows for public instream uses and other natural resources dependent on adequate precipitation, stored water, and streamflow in these areas. Extreme conditions are expected to affect local growers and livestock, increase the potential for fire, shorten the growing season, and decrease water supplies.

Conditions continue to be monitored by the State's natural resource and public safety agencies, including the Oregon Water Resources Department, the Oregon Office of Emergency Management, the Oregon Office of the State Fire Marshal, and the Oregon Department of Forestry's Fire Protection Division.

Preparation and resiliency to drought are vital to the health and safety of persons, property, and the economic security of the citizens and businesses of these counties. I, therefore, declare that a severe, continuing drought emergency exists and is likely to continue to exist in Lincoln County.

NOW, THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

- I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources to mitigate drought conditions and assist in agricultural recovery in Lincoln County.



EXECUTIVE ORDER NO. 23-22
PAGE TWO

- II. The Oregon Water Resources Department and the Water Resources Commission are directed to coordinate and provide assistance to water users in Lincoln County as the Department and Commission determine necessary and appropriate in accordance with ORS 536.700 to 536.780.
- III. The Oregon Water Resources Department is directed to seek information from the Oregon Department of Fish and Wildlife to help understand the impacts of water availability on Oregon's fish and wildlife, as necessary and appropriate in accordance with ORS 536.700 to 536.780.
- IV. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in Lincoln County.
- V. All other state agencies are directed to coordinate with the above agencies and provide appropriate state resources as needed to assist affected political subdivisions and water users in Lincoln County.
- VI. This Executive Order expires on December 31, 2023.

Done at Salem, Oregon, this 1st day of September, 2023.

Tina Kotek
GOVERNOR

ATTEST:

LaVonne Griffin-Valade
SECRETARY OF STATE

From: [Adam Denlinger](#)
To: [Jon French](#)
Cc: [Trish Ferrell-French](#); [Annette Talbott](#); [Trish Karlsen](#); [Joy King-Cortes](#); [Brendi Hoch](#); [Adam Denlinger](#)
Subject: RE: Questions for tomorrow's Board Meeting
Date: Wednesday, September 13, 2023 4:31:16 PM
Importance: High

Thanks for your email to the district Jon,

We will pass this information on to the Board for consideration.

All the best

Adam

Adam Denlinger
General Manager
Seal Rock Water District
1037 NW Grebe Street | Seal Rock OR. 97376
O: 541.563.3529 | F: 541.563.4246 | M: [541.270.0183](tel:541.270.0183) | adenlinger@srwd.org
www.srwd.org

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From: Jon French [REDACTED]
Sent: Wednesday, September 13, 2023 8:27 AM
To: Adam Denlinger <ADenlinger@srwd.org>
Cc: Trish Ferrell-French [REDACTED]; Annette Talbott [REDACTED]
Subject: Questions for tomorrow's Board Meeting

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Adam, in lieu of Visitor Public Comments, I have the following questions and requests for information, questions I think others share and which hopefully you can respond to at tomorrow's Board meeting:

Yesterday's YachatsNews article on the ground spraying included the following:

The district will not be stepping up its monitoring beyond its normal quarterly water sampling along Beaver Creek barring any unexpected rain event.

“If we had a heavy rain event immediately following a spray-activity we would probably shut down and sample,” Denlinger said. “Just because with that we could see some runoff from that impact the water system. That potential exists but given the weather window that they have to work in I don’t see that likelihood right now.”

The district plans to monitor the situation closely, particularly by learning when Ane Forests plans to spray. But the company is under no legal obligation to notify residents or the district on its ground spray operations, and thus far Denlinger’s requests to the company to keep him in the loop as a professional courtesy have gone unanswered.

My questions/requests:

1. As you know, at least one of the pesticides to be ground sprayed, Metsulfuron-methyl, has the high potential for reaching surface water via runoff for **several months or more after application**, yet you are talking about just doing normal quarterly monitoring and a shut down and water sampling only in the event of a heavy rain **immediately** following a spray-activity. How does that protect the district's customers from contamination of the water supply given that contamination could occur during the wet winter season for months after spraying, not just immediately after?
2. I asked you at the recent emergency board meeting how you will know when ground spraying occurs, and you said that, although notice to the district is not required, you had been informed by the consultant that the district would be notified when ground spraying occurs. Yet the YachatsNews story reports that your requests of the company to be kept in the loop have gone unanswered. How can the district and its customers have any confidence that we will know when ground spraying occurs?
3. I also asked at the recent emergency meeting about the status of retaining an environmental special counsel. Perhaps Jeff Hollen can provide an update on this effort and let us know what legal options have been considered and pursued.

Thank you.

Jon

From: Jeff Hollen <jeffh@ouderkirkhollen.com>
Date: September 15, 2023 at 9:47:08 AM PDT
To: Joy King-Cortes <JKing@srwd.org>
Cc: Adam Denlinger <ADenlinger@srwd.org>
Subject: RE: Board Meeting

Attachments: [ORS 634.172 Claims1.pdf](#)
[ORS 634 Definitions.pdf](#)
[ORS 634.212 Protected Areas.pdf](#)
[42 USC 3001 Administrator Authority.pdf](#)
[Updated Guidance EPA1.pdf](#)

Joy,

Attached are the materials which I referenced in yesterday's meeting. ORS 634.172 is the Oregon law that limits claims to "after" the loss or damage has occurred from "pesticides." The attached ORS Definitions includes "herbicide" in the definition of "pesticide." The attached statute ORS 634.212 allows landowners to form a protected area to prevent or regulate application of herbicides. Paragraph 6 of the Definitions identifies landowners as those having 3 or more acres. That appears to be the only action that citizens may take, and the decision to authorize that area as protected is made by the Dept. of Agriculture.

The federal statute 42 USC 3001 limits authority to enforce the federal safe water drinking law to the "Administrator." That is further described in the attached Updated Guidance, and the last page of that attachment states that no private citizen can enforce that law. In each of these situations, the damage must have already occurred, or expert evidence to prove imminent danger is required, and for the federal intervention, additional evidence must be provided that the State has not acted appropriately to safeguard the public.

Conclusion: the State must act to protect the public, and then the federal assistance must be sought, and otherwise the District and the public must await the damage or loss to occur before seeking a remedy, which is only a monetary remedy, not a preventative one. I would be more than happy to have someone point out a mistake in this analysis.

Jeff Hollen, Attorney at Law

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42 U.S. Code § 300i - Emergency powers

(A) ACTIONS AUTHORIZED AGAINST IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HEALTH

Notwithstanding any other provision of this subchapter the [Administrator](#), upon receipt of information that a [contaminant](#) which is present in or is likely to enter a [public water system](#) or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of [persons](#), and that appropriate State and local authorities have not acted to protect the health of such [persons](#), may take such actions as he may deem necessary in order to protect the health of such [persons](#). To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the [Administrator](#) may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of [persons](#) who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by [persons](#) who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) PENALTIES FOR VIOLATIONS; SEPARATE OFFENSES

Any [person](#) who violates or fails or refuses to comply with any order issued by the [Administrator](#) under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed \$15,000 for each day in which such violation occurs or failure to comply continues.

634.006 Definitions. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(6) "Landowner" means a person:

(a) Owning three acres or more within a proposed protected area; and

(b) In the case of multiple ownership of land:

(A) Whose interest is greater than an undivided one-half interest in the land; or

(B) Who holds an authorization in writing from one or more of the other owners whose interest, when added to the interest of the person, are greater than an undivided one-half interest in the land.

(7) "Person" means:

(a) A person as defined in ORS 174.100;

(b) A public body as defined in ORS 174.109; and

(c) The federal government or any of its agencies.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

(e) "Insecticide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department declares to be

a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means an individual who:

(a)(A) Is using, spraying or applying restricted-use or highly toxic pesticides; or

(B) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or other use of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery during the spraying or other application of pesticides, either on the ground or, if certified under ORS 634.128, by aircraft.

(10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means an individual who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Private applicator" means an individual who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the individual or the employer of the individual.

(16) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(17) "Protected area" means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.

(18) "Public applicator" means an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(19) "Public trainee" means an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utility and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(20) "Registrant" means a person registering any pesticide pursuant to this chapter.

(21) "Restricted area" means an area established under the provisions of this chapter to restrict, but not prohibit, the application of pesticides.

(22) "Restricted-use pesticide" means any pesticide or device that the department has found and determined to be so injurious or detrimental to humans, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

(23) "Weed" means any plant that grows where not wanted. [1973 c.341 §3; 1987 c.447 §134; 2015 c.833 §12; 2021 c.177 §1]

LIABILITY CLAIMS PROCEDURE

634.172 Procedure for making liability claim against landowner or pesticide operator; investigation of report of loss; claim procedure not waiver of governmental immunity. (1) No action against a landowner, person for whom the pesticide was applied or pesticide operator arising out of the use or application of any pesticide shall be commenced unless, within 60 days from the occurrence of the loss, within 60 days from the date the loss is discovered, or, if the loss is alleged to have occurred out of damage to growing crops, before the time when 50 percent of the crop is harvested, the person commencing the action:

(a) Files a report of the alleged loss with the State Department of Agriculture;

(b) Mails or personally delivers to the landowner or pesticide operator who is allegedly responsible for the loss a true copy of the report provided for under paragraph (a) of this subsection; and

(c) Mails or personally delivers to the person for whom the pesticide was applied a true copy of the report required under paragraph (a) of this subsection if that person is not the person commencing the action.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within the time provided in subsection (1) of this section.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit that otherwise may exist.

(6) Notwithstanding ORS 634.006, as used in this section, "landowner" includes any person shown by records of the county to be the owner of land or having such land under contract for purchase. [1973 c.341 §23; 1991 c.351 §1; 1995 c.96 §2; 2015 c.833 §13]

634.212 Formation of protected areas; petition; filing fee; guidelines for determinations by director. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. If the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) When determining whether to amend or revoke a rule or order declaring a protected area, the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industries to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited. [1973 c.341 §25; 1999 c.59 §185; 2005 c.22 §446; 2007 c.71 §197; 2009 c.98 §27]

UPDATED GUIDANCE ON INVOKING EMERGENCY AUTHORITY UNDER SECTION 1431 OF THE SAFE DRINKING WATER ACT

Purpose of Guidance

Section 1431 has broad application and provides EPA with an effective tool to address public health endangerments concerning public water systems (PWSs) and underground sources of drinking water (USDWs). One of the purposes of this guidance is to encourage a more widespread use of EPA's Section 1431 authority by more fully explaining situations where this authority may be applied. In addition, this guidance discusses EPA's internal procedures for taking action under Section 1431 and provides information on how to support and prepare an order. The Office of Enforcement and Compliance Assurance (OECA) is issuing this 2018 guidance update in response to the Office of Inspector General's (OIG) October 20, 2016 Management Alert entitled "Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public" (Report No. 17-P-0004).

Contents

This guidance is organized as follows:

- Overview
- Elements of 1431 Authority
- Role of State and Local Authorities¹
- Remedial Actions that May Be Ordered
- Relationship between Section 1431 and Other EPA Emergency Authorities
- Parties Over Whom Section 1431 Grants EPA Authority
- Taking Action Under Section 1431
- Attachment 1 - Section 1431
- Attachment 2 - House Report 93-1185 (1974)
- Attachment 3 - OIG's 2016 Management Alert
- Attachment 4 – Examples of Information to Support a SDWA Section 1431 Action

Disclaimer

This guidance document on the application of EPA's emergency powers under Section 1431 of the SDWA is a statement of Agency policies and principles. It does not establish or affect legal rights or obligations. This guidance document does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by

¹ For purposes of the SDWA, federally-recognized Indian tribes are considered "States" under Section 1401 and Section 1451. Similarly, when interpreting and applying Section 1431, EPA includes tribes, territories, and the District of Columbia under the "State and local authorities" element.

applying the law to the specific facts of the case. The Agency may take action at variance with this guidance.

Overview

Introduction

Drinking water sources can be contaminated by both naturally occurring contaminants or by activities in the watershed such as agriculture or industry. PWSs use treatment and monitoring to identify and protect consumers from such contaminants. Contaminants may be present in or released into the environment as a result of inadequate treatment of drinking water by a PWS, or potentially impact USDWs from sources like a leaking underground storage tank, or failure of an underground injection control (UIC) well, to name a few. These incidents may result in contamination in or near a PWS or USDW that may pose an “imminent and substantial” endangerment to human health.

Authority granted under SDWA Section 1431, 42 U.S.C. Section 300(i), gives the Administrator broad powers to take appropriate enforcement action² if he or she receives information that:

- A contaminant is present in or likely to enter a PWS or USDW, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), and
- The contaminant or attack may present an “imminent and substantial endangerment” to human health, and
- The appropriate state and local authorities have not acted to protect public health.

The purposes of a Section 1431 action are to prevent an impending dangerous condition from materializing, or to reduce or eliminate a dangerous situation once it has been discovered. Section 1431 focuses on “imminent and substantial endangerment,” which is a broadly defined concept (see discussion below). For example, one major function of Section 1431 is its use as a preventative enforcement measure.³

² The legislative history of Section 1431 reflects the intent of Congress to confer broad power to the Administrator in Section 1431 actions. *See* 120 Cong. Rec. 37591 (1974) (stating the authority under Section 1431 is “broad in scope and provides a necessary enforcement tool for the Administrator”).

³ The preventative intent of Section 1431 is apparent in the legislative history, which states: “the Committee intends that this language be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.” H.R. Rep. No. 1185, 93rd Cong., 2d Sess. 35-36, *reprinted in*, 1974 U.S. Code Cong. & Ad. News 6454, 6488 (H.R. 93-1185). The discussion of Section 1431 in this 1974 House Report is shown in Attachment 2 of this Guidance.

As an “emergency” provision, however, Section 1431 should not be used as a substitute for other SDWA provisions, where such other provisions are adequate to protect public health.⁴ For example, under the Public Water System Supervision (PWSS) Program, violations of monitoring requirements or even of a maximum contaminant level (MCL) should generally be addressed through use of the enforcement authorities (including administrative order authority) in Section 1414. But if the MCL exceedance may present an imminent and substantial endangerment, then an emergency action under Section 1431 may be appropriate in addition to or in place of any SDWA Section 1414 enforcement action. Examples under the UIC program would include a Class II well injection pressure exceedance that causes movement of fluid into an USDW, or a Class V UIC well operator who is injecting contaminants that may be causing or contributing to an MCL exceedance or otherwise endangering an USDW. Although these generally would be enforced as a violation under Section 1423, a Section 1431 action also may be appropriate if an imminent and substantial endangerment may be present.

1986, 1996 and 2002 Amendments to Section 1431

The 1986 SDWA amendments clarified EPA’s existing authority to order the provision of an alternative water supply by persons who caused or contributed to the endangerment. In addition, the 1986 amendments strengthened EPA’s authority to enforce Section 1431. Previously, Section 1431 provided that EPA could enforce against any person who “willfully” violated or failed or refused to comply with a Section 1431 order. The 1986 amendments removed the term “willfully,” enabling EPA to enforce against any persons, whether or not their actions were willful. Also, the 1986 amendments clarified EPA’s authority to protect USDWs, as discussed on page 7.

Additionally, in 1996, Congress changed the maximum civil penalty from \$5,000 to \$15,000 per day.⁵ The 2002 SDWA amendments inserted language regarding terrorist attacks or other intentional acts designed to disrupt or adversely impact the safety of drinking water.

Delegation of Authority

In January 2017, the Administrator revised Delegation No. 9-17, which delegates the authority to take administrative action under Section 1431 to the Regional Administrators (RAs) and the Assistant Administrator (AA) for OECA. The January 2017 version of Delegation No. 9-17 supersedes

⁴ H.R. 93-1185, at 36, states that “Section 1431 reflects the Committee’s determination to confer completely adequate authority to deal promptly and effectively with emergency situations which jeopardize the health of persons.” The Report further states that the authority of Section 1431 should “not be used when the system of regulatory authority provided elsewhere in the bill could be used adequately to protect the public health.” *Id.*

⁵ The penalty numbers in SDWA Section 1431 (and other statutes) are annually updated for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. 28 U.S.C. Section 2461 note. *See* 40 C.F.R. Section 19.4 for the most up-to-date numbers.

the May 11, 1994 and July 25, 1984 SDWA Section 1431 related delegations. Among other things, the January 2017 revision added a requirement for Regions to consult with OECA before issuing orders under Section 1431. Further, Delegation No. 9-16 was also updated in January 2017. Delegation No. 9-16A requires Regions to notify OECA before commencing a judicial action under SDWA. Under the limited circumstances of a temporary restraining order issued under SDWA Section 1431, Delegation No. 9-16D applies and requires notification to OECA before Regions exercise this authority. While Delegation No. 9-16 specifies notification, Regions are expected to consult with OECA in these instances, as discussed below.

Within OECA, the Office of Civil Enforcement's (OCE) Water Enforcement Division (WED) has been designated to consult with the Regions on SDWA Section 1431 actions, and the Federal Facilities Enforcement Office (FFEO) has been designated for actions involving federal agencies. OECA is committed to providing feedback to the Regions as soon as possible, which typically is within 24 to 48 hours, and has responded even earlier where the endangerment is acute. In some Regions, the authority to issue Section 1431 orders has been redelegated below the RA level.

Under OECA's February 1, 2017 "Revised Consolidated Procedures for Regional and Headquarters Coordination on Regulatory Enforcement Cases Involving Nationally Significantly Issues (NSIs)" List B, "any enforcement action invoking the imminent and substantial endangerment authority under SDWA Section 1431" requires consultation with OECA.⁶

If the order involves a federally recognized Indian tribe or Indian country entity, the Region should consult OECA's January 17, 2001 "Final Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy." Where EPA issues an emergency order in Indian country, such actions are generally considered "exigent circumstances" that would not need the concurrence of OECA's Assistance Administrator as provided for in the "Final Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy." However, consultation with OECA is still required before the Region takes a Section 1431 action.

Elements of Section 1431 Authority

To apply the authority granted under Section 1431, two conditions must be met. First, the Administrator must have received "information that a contaminant which is present in or likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons."⁷ Second, the Administrator

⁶ For federal facility matters, see the June 10, 2015 David J. Kling memorandum, "Revised Procedures for Determining Level of Federal Facility Enforcement Office Involvement in Formal Regulatory Enforcement Cases."

⁷ It should be noted that unlike several of the imminent and substantial endangerment provisions in other statutes, SDWA Section 1431 uses the term "information" instead of "evidence."

must have received information that “appropriate State and local authorities have not acted to protect the health of such persons.” To realize the full potential of Section 1431, the key elements of these conditions must be understood. Each element is discussed in greater detail below.

Contaminant

Section 1401(6) of the SDWA defines “contaminant” very broadly to include “any physical, chemical, biological, or radiological substance or matter in water.” Under this broad definition, EPA may take action under Section 1431 even when the contaminant in question is not regulated by a National Primary Drinking Water Regulation (NPDWR) or listed in a National Secondary Drinking Water Regulation (NSDWR) under the SDWA (e.g., EPA has not issued a NPDWR for the contaminant or the regulation has been promulgated, but is not yet effective). This authority is supported by the SDWA legislative history.⁸ Moreover, listing on EPA’s Contaminant Candidate List, under the Unregulated Contaminant Monitoring Rule, or establishment of a health advisory, are similarly not required for a substance to be considered a contaminant, and are not prerequisites for use of Section 1431 authority.

Likely to Enter

Application of the Section 1431 authority is not limited to existing contamination of a PWS or USDW, but also may be used to prevent the introduction of contaminants that are “likely to enter” drinking water. Thus, Section 1431 orders should ideally be issued early enough to prevent the potential hazard from materializing.⁹

Underground Sources of Drinking Water

EPA’s Section 1431 authority is not limited to the protection of PWSs. It also extends to the protection of all USDWs, whether or not the USDW currently supplies a PWS. The 1986 amendments clarified EPA’s existing authority to protect USDWs by making this authority explicit in the statute.

The Agency has defined “underground sources of drinking water” in 40 C.F.R. Section 144.3. Under this definition, “USDW” includes both aquifers that currently supply a PWS and those that simply have the potential to supply a PWS (according to the criteria in Section 144.3). The ability to address the

⁸ H.R. 93-1185, at 35, states, “The authority to take emergency action is intended to be applicable not only to potential hazards presented by contaminants which are subject to primary drinking water regulations, but also to those presented by unregulated contaminants.”

⁹ “Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing. This means that ‘imminence’ must be considered in light of the time it may take to prepare administrative orders or moving papers, to commence and complete litigation, and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health.” H.R. 93-1185, at 35–36.

contamination of USDWs (rather than only PWSs) broadens EPA's authority in two ways. First, it allows EPA to act under Section 1431 where the groundwater source in question is only a potential supplier of a PWS. Second, it allows the Agency to protect water supplies that do not meet the threshold of 25 persons served or 15 service connections in the definition of "public water system" (for example, many private wells) that are at risk because of the contamination or threatened contamination of an USDW.

Imminent and Substantial Endangerment

Assuming EPA can show that a contaminant is "present in or likely to enter" the drinking water supply (either PWS or USDW), EPA also must show that a contaminant "may present" an "endangerment" and that the endangerment is both "imminent" and "substantial."

Imminent Endangerment

Section 1431 authorizes EPA to address "endangerments" that are "imminent." The case law that has developed on these terms (as used in the SDWA or in analogous provisions of other statutes), together with the SDWA legislative history, suggests the following guidance.

An "endangerment" may include not only actual harm, but also a threatened or potential harm.¹⁰ No actual injury need ever occur.¹¹ Therefore, while the threat or risk of harm must be "imminent" for EPA to act, the harm itself need not be.¹² Public health may be endangered imminently and substantially "both by a lesser risk of a greater harm and by a greater risk of a lesser harm;" this will ultimately depend on the facts of each case.¹³

An endangerment is "imminent" if conditions which give rise to it are present, even though the actual harm may not be realized for years.¹⁴ Courts have stated that an "imminent hazard" may be declared at any point in a chain of events that may ultimately result in harm to the public.¹⁵ For

¹⁰ U.S. v. Conservation Chemical Co., 619 F. Supp. 162, 192 (W.D. Mo. 1985) (interpreting the term "endangerment" in CERCLA), citing Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976), (en banc), cert. denied, E.I. Du Pont de Nemours & Co. v. EPA, 426 U.S. 941 (1976) (interpreting the language "will endanger" in the Clean Air Act).

¹¹ See Ethyl Corp. v. EPA, 541 F.2d at 13.

¹² See U.S. v. Reilly Tar and Chemical Corp., 546 F. Supp. 1100, 1109-10 (D. Minn. 1982) (quoting H.R. 93-1185); U.S. v. Conservation Chemical Co., 619 F. Supp. at 193-94. The Conservation Chemical Co. court, construing similar language in CERCLA, stated that the standard is especially lenient since it authorizes action "when there *may* be risk of harm, not just when there *is* a risk of harm." Id. at 193 (emphasis in original).

¹³ See Ethyl Corp. v. EPA, 541 F.2d at 18.

¹⁴ See U.S. v. Conservation Chemical Co., 619 F. Supp. at 193-94; B.F. Goodrich v. Murtha, 697 F. Supp. 89, 96 (D. Conn. 1988) (CERCLA action).

¹⁵ Trinity Am. Corp. v. EPA, 150 F.3d 389, 399 (4th Cir. 1998) ("EPA need not demonstrate that individuals are drinking contaminated water to justify issuing an emergency order."); Dague v. City of Burlington, 935 F.2d 1343, 1356 (2nd Cir. 1991); U.S. v. Ottati & Goss, Inc., 630 F. Supp. 1361, 1394 (D.N.H. 1985).

example, in U.S. v. Midway Heights County Water District,¹⁶ individuals were exposed to microbiological and turbidity exceedances, but actual illnesses had not yet been reported. The court found that the presence of organisms that were accepted indicators of the potential for the spread of serious disease presented an imminent (and substantial) endangerment.¹⁷

Endangerments can more readily be determined to be imminent where they involve contaminants that pose acute human health threats. Examples include (but are not limited to):

- A nitrate MCL violation when a sensitive population is exposed (e.g., infants less than six months of age).
- A waterborne disease outbreak with or without MCL violations.
- A microbiological MCL or turbidity treatment technique violation with or without a waterborne disease outbreak.
- Migration of untreated sewage directly into or near an USDW.
- A release of surficial contamination that may ultimately migrate to a usable aquifer.
- A reduction or loss of pressure in a distribution system (e.g., due to broken water mains or power outages) that increases the risk of contaminants entering water.
- A sanitary problem such as dead birds or rodents in finished water storage tanks.

However, acute contaminants are not the only ones that might pose an imminent endangerment. Because an endangerment is created by the risk of harm, not necessarily actual harm, EPA should determine whether a risk of harm is imminent. Therefore, contaminants that lead to chronic health effects, such as carcinogens, also may be considered to cause “imminent endangerment”¹⁸ even though there is a period of latency before those contaminants, if introduced into a drinking water supply, might cause adverse health effects. A factor that a Region may consider is the length of time a population has been or could be exposed to a contaminant. In the SDWA legislative history, the House Report specifically states that an imminent endangerment may result from exposure to a carcinogenic agent.¹⁹

¹⁶ 695 F. Supp. 1072, 1076 (E.D. Cal. 1988).

¹⁷ Id.

¹⁸ See Conservation Chemical Co., 619 F. Supp. at 194 (citing legislative history of RCRA Section 7003).

¹⁹ See H.R. 93-1185, at 36. This view is underscored by the numerous other references in the legislative history to the discovery of carcinogens and potential carcinogens in an ever increasing number of water supplies. 1974 House Report, *supra*, at 6, 10-11, 35; 120 Cong. Rec. 36372, 36374-75, 36398-99, 36401 (1974). This concern was reiterated and strengthened in subsequent Congressional reviews of the SDWA program. House Comm. on Interstate and Foreign

Examples could include (but are not limited to):

- An exposure, or threat of exposure, to chronic contaminants at levels exceeding their MCLs or health advisory levels (e.g., PFOA).
- Exposures to chronic-type contaminants, such as lead, that are present at high enough concentrations to cause not only immediate, but also long-term health effects.

Section 1431 should not be used in cases where the risk of harm is remote in time or completely speculative in nature.²⁰ However, in determining the imminence of a hazardous condition, EPA may consider the time it may require to prepare orders, to commence and complete litigation, to implement and enforce administrative or judicial orders to protect public health, and to implement corrective action under Section 1431.²¹ For example, even where a contaminant is not likely to enter a ground water supply for several months or longer (as can be the case with a ground water plume moving toward a well), EPA may consider this hazard to be “imminent” in light of the time required to implement the actions described above. Further, even where a hazardous condition has been present for some time (even years), case law supports the view that EPA is not prevented from finding that the conditions present an imminent endangerment.²²

In addition, Section 1431 may be used to address threats to health from exposure pathways other than direct ingestion of drinking water. For example, in U.S. v. Midway Heights County Water District,²³ individuals were exposed to bacteriological and turbidity contamination through uses such as bathing, showering, cooking, dishwashing, and oral hygiene. The court determined that, although the water primarily was not used for drinking water, an imminent and substantial endangerment existed from “human consumption.” EPA has defined human consumption broadly to include these various uses.²⁴ Section 1431 may be invoked in situations where, for instance, the risks involve exposure to contaminants like *Legionella* or disinfection byproducts in water vapor from a shower.

Commerce, H.R. Rep. No. 96-186, 96th Cong., 1st sess. 4-6 (1979), and Senate Comm. on Environment and Public Works, S. Rep. No. 96-161, 96th Cong., 1st Sess. 3 (1979).

²⁰ This interpretation is supported by H. Rep. 93-1185. *See also* W.R. Grace & Co. v. United States EPA, 261 F.3d 330, 339 (3d Cir. 2001).

²¹ *See* H. Rep. 93-1185, at 36; B.F. Goodrich v. Murtha, 697 F. Supp. at 96 (quoting H. Rep. 93-1185).

²² *See* In re FCX, Inc., 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (“even when there is an inordinate delay [by EPA], the court must find an immediate danger to public health if in fact one exists”).

²³ 695 F. Supp. at 1076.

²⁴ *See* 40 C.F.R. Section 141.801.

Substantial Endangerment

The term “substantial endangerment” can apply to a range of existing or threatened hazards and should not be limited to extreme circumstances. Actual reports of human illness are not required to establish the presence of a “substantial” endangerment to water consumers.²⁵ One court, interpreting “substantial endangerment” as used in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has stated that “the word ‘substantial’ does not require quantification of the endangerment (e.g., proof that a certain number of persons will be exposed, that ‘excess deaths’ will occur, or that a water supply will be contaminated to a specific degree).”²⁶ Instead, the court found, an endangerment is substantial if there is a reasonable cause for concern that someone may be exposed to a risk of harm. The court stated that a number of factors (e.g., the quantities of CERCLA hazardous substances involved, the nature and degree of their hazards, or the potential for human exposure) may be considered in determining whether there is a reasonable cause for concern, but in any given case, one or two factors may be so predominant as to be determinative of the issue.²⁷ Of course, the emergency authority of Section 1431 should not be used in cases where the risk of harm is completely speculative in nature or is *de minimis* in degree.²⁸

House Report 93-1185 gives the following examples of what may be considered a “substantial” endangerment:

- “a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventative action is not taken.”
- “a substantial statistical probability exists that disease will result from the presence of contaminants in drinking water.”
- “the threat of substantial or serious harm (such as exposure to carcinogenic agents or other hazardous contaminants).”²⁹

There is no bright line test for when Regions and OECA should consider emergency action; it is always a case specific decision based on the facts in a particular matter. It is important to remember that EPA may consider various types of “information” when determining whether a contaminant “may present an imminent and substantial endangerment to the health of persons.” As part of the required consultation with OECA, a Region can discuss with OECA whether the information available is sufficiently credible and warrants the use of Section 1431’s emergency powers. For a nonexhaustive list of appropriate, potential types of supporting information, see Attachment 4.

²⁵ United States v. North Adams, 777 F. Supp. 61, 84 (D. Mass. 1991).

²⁶ Conservation Chemical Co., 619 F. Supp. at 194.

²⁷ Id.

²⁸ See H.R. 93-1185, at 35.

²⁹ Id. at 36.

Role of State and Local Authorities

One of the crucial requirements of a Section 1431 enforcement action is that “appropriate State and local authorities have not acted to protect the health of such persons.”³⁰ Generally, EPA considers the lack of sufficient actions of State and local officials to be a finding the Agency must make, supported by a record, when taking an action under Section 1431.³¹ Accordingly, Section 1431 should not be used to deal with problems that are being handled effectively by state (including tribes or territories) or local governments in a timely fashion.³² Effective and timely State and local actions could include the issuance of an administrative order containing enforceable compliance deadlines and, if necessary, the provision of alternative drinking water. In other situations, for instance where E. coli was detected at a child care facility, an example of a timely State action was the development of an action plan, approved by the Region, that included: discontinued use of the contaminated well; installation of a new, deeper well; provision of interim bottled water to employees; and delay of school start date until a new, safe well was online.

OECA recognizes there are sensitivities associated with determining whether a State or local authority has not acted to protect the health of persons. Section 1431 does not require any finding that a State or local authority has “failed” to act.³³ When assessing State and local actions, it is not a black and white test. Instead, there is often a range of potential responses to a specific situation. For example, State and local authorities intentionally may defer action to, or request action by, EPA because the Section 1431 authority may be more powerful or expeditious. In addition, the State or local authorities may not have acted due to lack of jurisdiction. In other cases, a State may have made a good faith effort to address an emergency, but EPA may determine the State actions have not been effective, or are no longer effective, to protect public health, and, thus, that additional actions are needed.³⁴ These additional actions may help fill a gap and could be included in an EPA Section 1431 action (e.g., State agency has only provided alternative water to a portion of an impacted area, but information indicates other people are at risk so EPA addresses the rest in a federal order). Further, State or local authorities may decide to act jointly with EPA. In such cases, EPA would determine that State and local authorities have not acted (on their own) to sufficiently protect the health of persons. Therefore, EPA may proceed with Section 1431 actions when State and local authorities are working jointly with EPA.

Section 1431 also provides that before taking action and to the extent practicable in light of the imminent endangerment, EPA shall consult with the State and local authorities to confirm the information on which EPA is basing the proposed action and to determine what action the State and local

³⁰ See Footnote 1.

³¹ It should be noted one court has held that the receipt of such information is a jurisdictional prerequisite to action under this section. United States v. Occidental Petroleum Corp., No. 79-989 (E.D. Cal. 1980).

³² See H.R. Rep. 93-1185, at 35. This implements legislative intent expressed in House Report 93-1185 to “direct the Administrator to refrain from precipitous preemption of effective State or local emergency abatement efforts.”

³³ Reading the SDWA to say that any action by the state (even if minor or ineffective) deprives EPA of authority to act would strip EPA of its statutory emergency powers and be at odds with the clear purpose of the statute to preserve and protect the public health. Trinity Am. Corp. v. EPA, 150 F.3d at 397.

³⁴ Id. at 398-399.

governments are taking or will take. Under Section 1431, then, it is not mandatory to consult with the State and local authorities (i.e., they should be contacted “to the extent practicable”).³⁵ Nevertheless, the Regions should be aware that EPA will need a basis in the record for the finding. This written basis could be simply a log of a telephone conversation or correspondence between EPA and the State and local authorities.

If EPA has information that State/local agencies are going to act, then EPA must decide whether the action is timely and protective of public health.³⁶ If EPA determines that the action is insufficient and State and local agencies do not plan to take additional actions to ensure public health protection, in a timely way, then EPA should proceed with an action under Section 1431.³⁷

Unlike under Sections 1414 or 1423, a notice of violation (NOV) need not be issued prior to taking a Section 1431 action. No violation of any requirement is needed for a Section 1431 order. An NOV, even if issued, would not be a means of consulting with the State and local authorities to determine whether they have acted in a timely and appropriate manner to protect the health of persons. Rather, an NOV serves as a prerequisite under Sections 1414 or 1423 for the EPA to take certain enforcement actions in primacy states.

The Regions should note that they need to determine that neither State nor local authorities acted adequately to protect public health before bringing a Section 1431 action. The State can be of assistance to EPA in making this determination because the State should be able to identify the appropriate local authorities and may be aware of whether these authorities have taken any actions.

It is important to remember EPA is authorized to act under Section 1431 regardless of whether a State, territory or tribe has primary enforcement authority. EPA has invoked Section 1431 in cases where it is not the primacy agency, but is instead exercising its oversight authority and taking independent, federal action to address an emergency.

³⁵ This language was added from an amendment offered during a House debate on November 19, 1974: “To the extent [the EPA Administrator] determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking.” In explaining the amendment, Representative Murphy of Illinois stated that it “requires [] the Federal Administrator [to] consult with State and local authorities as to the emergency, what information it is based on, and what action he proposes to take, so that [EPA] can work hand in glove with the local and State authorities.” See 120 Cong. Rec. 36400 (1974).

³⁶ “State health authorities, therefore, must not only have acted, but acted in a way adequate to protect the public health; and EPA, the agency with expertise in this area, determines if the state efforts were adequate.” Trinity Am. Corp., 150 F.3d at 398.

³⁷ Congressional reports and floor debates support the view that Congress inserted this language in Section 1431 (and added certain procedural prerequisites before allowing federal enforcement in a primacy state) simply to avoid duplication between the federal and state enforcement and to preserve the primary responsibility for protecting the public at the state and local levels. H.R. Rep. 93-1185, at 22-34, 35; S. Rep. No. 93-231, 93rd Cong., 1st Sess. 9, 10 (1973); 120 Cong. Rec. 36372, 36374-75, 37591-92 (1974).

Remedial Actions That May Be Ordered

Once EPA determines that action under Section 1431 is needed, a very broad range of options is available. The statute provides that EPA may take actions as may be necessary to protect the health of persons. Moreover, EPA may take such actions notwithstanding any exemption, variances, permit, license, regulation, order, or other requirement that would otherwise apply.³⁸

The actions that EPA may take may include (but are not limited to):³⁹

- issuing orders as necessary to protect the health of persons who are or may be users of such system (including travelers), including orders that require:
 - the provision of alternative water supplies, at no cost to the consumer, by persons who caused or contributed to the endangerment (e.g., provision of bottled water, installing and maintaining treatment, drilling of new well(s), connecting to an existing PWS).
 - information about actual or impending emergencies (e.g., if standard information gathering tools like SDWA Section 1445 would not result in an expeditious response or may not apply in a certain case).
 - public notification of hazards (e.g., door-to-door, posting, newspapers, electronic media).
 - an investigation to determine the nature and extent of the contamination in the environment.
 - a survey to identify PWSs, private supply wells or ground water monitoring wells near potentially contaminated areas.⁴⁰
 - monitoring of regulated or unregulated potential or identified contaminants.
 - development of a feasibility study to assess potential remedial actions to abate an endangerment.
 - an engineering study proposing a remedy to eliminate the endangerment and a timetable for its implementation.

³⁸ The legislative history supports this view. *See* H.R. Rep. 93-1185, at 35.

³⁹ The House Report specifically mentions several of these listed actions as among those EPA may take.

⁴⁰ Portion of the emergency order mandating that Trinity identify all potential users of the contaminated wells in the three-quarter-mile area is not a “‘limitless’ or unduly burdensome task.” *Trinity Am. Corp.*, 150 F.3d at 401.

- control of the source of contaminants that may be contributing to the endangerment, including by halting disposal.
- cleanup of contaminated soils endangering an USDW.
- commencing a civil action for appropriate relief including a restraining order, or a temporary or permanent injunction. The injunction may require the PWS owner or operator, UIC well owner or operator, or the responsible party to take steps to abate the hazard.

Use of Judicial vs. Administrative Orders

Except where the responsible party is a federal agency, the Region may issue a Section 1431 administrative order and/or ask the Department of Justice to file a civil judicial action.⁴¹ A civil referral may be preferable to a Section 1431 administrative order if the Region believes the responsible party will be uncooperative or recalcitrant or if the necessary relief is long-term or otherwise appropriate for supervision by a U.S. District Court (e.g., expected cost of relief is high).

A Section 1431 administrative order offers EPA some unique powers. EPA may issue unilateral Section 1431 orders or enter into administrative orders on consent. Unlike compliance orders (e.g., issued under Sections 1414 or 1423), Section 1431 orders enable the Agency (versus the courts) to order actual injunctive-type relief. This relief is limited only by the usual constraints of the Administrative Procedure Act (APA). The APA requires all Agency actions be reasonable and not “arbitrary or capricious.”⁴² Thus, by issuing an administrative order instead of filing a civil judicial action, the Agency rather than the District Court determines the scope and timing of appropriate relief in the first instance.

The recipients of an administrative order may challenge its terms. Under the judicial review provisions of SDWA Section 1448, the petition must be filed within 45 days in the appropriate Court of Appeals (a District Court does not have jurisdiction to hear challenges to a Section 1431 administrative order). If the recipient fails to meet this condition, he or she loses the right to contest the terms of the order.

Section 1431 administrative orders have long been considered final agency action subject to review under Section 1448. Following the Supreme Court’s 2012 decision in *Sackett*,⁴³ on March 21, 2013, OECA issued guidance to the Regions about “Language Regarding Judicial Review of Certain Administrative Enforcement Orders Following the Supreme Court Decision in *Sackett v. EPA*.” In

⁴¹ In the case of a federal agency recipient, the action will be a Section 1431 administrative order.

⁴² 5 U.S.C. Section 706(2).

⁴³ *Sackett v. EPA*, 132 S. Ct. 1367 (2012).

the March 2013 guidance, OECA provided specific language to be included in unilateral orders, such as Section 1431 orders (i.e., respondent may seek federal judicial review) and administrative orders on consent (i.e., respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review). Regions should include the appropriate *Sackett* language in their administrative actions (whether unilateral or on consent).

Except where the responsible party is a federal agency, any enforcement actions to require compliance with an administrative order or to seek civil penalties for its violation must be in District Court. Where the recipient is a federal agency, EPA may issue an administrative penalty order under Section 1447(b) of the SDWA for the federal agency's failure to comply with a Section 1431 administrative order.⁴⁴ A recipient who violates or fails or refuses to comply with the terms of the administrative order, may be subject to a civil penalty pursuant to Section 1431(b); a federal agency recipient may be subject to a penalty pursuant to Section 1447(b).⁴⁵

Relationship between Section 1431 and Other EPA Emergency Authorities

A Section 1431 order can be taken in conjunction with emergency orders under other statutes. Emergency provisions include:

- Resource Conservation and Recovery Act (RCRA) - Section 7003
- CERCLA - Section 106⁴⁶
- Clean Water Act (CWA) – Sections 504(a) and 311
- Toxic Substances Control Act - Section 7
- Clean Air Act (CAA) - Sections 112(r)(9) or 303

Although similar in general terms, each of the emergency provisions of these statutes is somewhat different. Guidance on EPA's authority to address imminent and substantial endangerment under CERCLA, RCRA, CWA and CAA have been issued by the Agency.⁴⁷ For example, Section

⁴⁴ For more information about EPA's federal facility penalty authority under the SDWA, see "Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996," signed on May 29, 1998 by Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance (Steven A. Herman memorandum).

⁴⁵ See Footnote 5 above regarding annual adjustments for inflation. Also note that for federal agency recipients, "As a matter of practice, EPA will seek penalties against a Federal agency which violates or fails or refuses to comply with a § 1431 order not to exceed [the maximum penalty for non-federal parties] for each day in which such violation occurs or failure to comply continues." Steven A. Herman memorandum, Footnote 5.

⁴⁶ CERCLA Section 106 orders against Executive Branch agencies require the concurrence of the Attorney General.

⁴⁷ "Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial

7003 of RCRA is very broad in that it allows for protection of the “environment.”⁴⁸ However, it is somewhat limited in that the threat must be caused by a “solid waste.” Section 1431, on the other hand, is limited to the protection of a PWS or an USDW, but covers a broad universe of “contaminants.” Regions may consider issuing joint orders under more than one of these statutory authorities, or separate orders that complement each other. When issuing orders under more than one authority, Regions should be sure to coordinate with each appropriate office. However, if the order is being unduly delayed by coordination difficulties, the Region should proceed with the Section 1431 order, followed by an order under the other statute or statutes.

Parties over Whom Section 1431 Grants EPA Authority

Section 1431 by its terms gives EPA broad discretion to issue any orders necessary to protect the health of persons. EPA may issue Section 1431 orders not only to an owner or operator of a PWS, but also, for example, to federal, state, tribal, territorial or local governments; owners or operators of underground injection wells; area or point source polluters; or to any other person whose action or inaction requires prompt regulatory intervention to protect public health.⁴⁹

In cases where the responsible party is not clearly known, one option is to issue the order to the most likely contributor(s) based on the type of contaminant(s) found in the PWS and/or USDW compared to current and past land practices in the area. As part of the order, EPA can require that a study be performed to more clearly determine the responsible parties. In such a case, additional orders may be issued as knowledge accumulates. Thus, an initial Section 1431 order may merely request records, samples, or other existing data/documents to help clarify what or who caused the endangerment before ordering other actions be taken, and a subsequent order(s) would

Actions,” U.S. EPA, OSWER Directive No. 9833.0-1a, March 7, 1990. “Guidance on CERCLA Section 106 Judicial Actions,” U.S. EPA, OSWER Directive No. 9835.7, February 24, 1989. “Issuance of Administrative Orders for Immediate Removal Actions,” U.S. EPA, OSWER Directive No. 9833.1, February 21, 1984. “Use of CERCLA § 106 to Address Endangerments That May Also be Addressed Under Other Environmental Statutes,” U.S. EPA, January 18, 2001. “Endangerment Assessment Guidance,” U.S. EPA, OSWER Directive 9850.0-1, November 22, 1985. “Guidelines for Using the Imminent Hazard, Enforcement and Emergency Response Authorities of Superfund and Other Statutes,” U.S. EPA, May 11, 1982. “Guidance on the Use of Section 7003 of RCRA,” U.S. EPA, October 20, 1997. “Guidance on Using Order Authority under Section 112(r)(9) of the Clean Air Act, as Amended, and on Coordinated Use with Other Order and Enforcement Authorities,” U.S. EPA, April 17, 1991. “Guidance on Use of Section 303 of the Clean Air Act,” U.S. EPA, September 15, 1983. “Guidance on Use of Section 504, the Emergency Powers Provision of the Clean Water Act,” U.S. EPA, July 30, 1993. “Final Guidance on the Issuance of Administrative Orders Under Section 311(c) and (e) of the Clean Water Act,” U.S. EPA, July 1, 1997. “Toxic Substances Control Act: Compliance/Enforcement Guidance Manual,” U.S. EPA, August 1984.

⁴⁸ Under Section 7003 of RCRA, EPA may “‘authorize[] the cleanup of a site, even a dormant one, if that action is necessary to abate a present threat to the public health or the environment[,]’ but that it ‘could not order the cleanup of a waste disposal site which posed no threat to health or the environment.’ Because the ‘authority conferred . . . by section 1431 of SDWA is quite as broad as that conferred by RCRA,’ we believe the limitations under the latter provision are equally applicable to the former. As is the case with RCRA, EPA cannot order cleanup under section 1431 of SDWA when there is no threat to the public’s health.” W.R. Grace & Co., 261 F.3d at 340 (citing United States v. Price, 688 F.2d 204, 214 (3d Cir. 1982)).

⁴⁹ See H.R. 93-1185, at 35.

address the potential harm. For example, if a PWS is contaminated with benzene, toluene, and xylene, and there are five gasoline service stations located near the PWS, an initial order could require each of the service stations to test for leaks in their underground storage tanks. However, Regions should keep in mind that the delay involved with such an approach (e.g., a series of orders) must be weighed against the danger posed by the contaminant(s) in the water, the need to protect public health as soon as possible and concerns with issuing a broader initial order with additional requirements. For instance, in an area with karst geology and more than one source of nitrate contamination, the Agency, to protect public health, has the authority to issue multiple formal administrative orders containing enforceable milestones (e.g., control discharges) and, if necessary, requirements for the provision of alternative drinking water until compliance is achieved. Issues like this should be discussed during the required consultation with OECA before taking Section 1431 action.

EPA may even use Section 1431 authority to reach parties that are not responsible for the endangerment. Orders to a non-responsible party ordinarily should be limited to those instances where no responsible party exists or is suspected and the issuance of an order to a non-responsible party is the most appropriate means to protect or mitigate the endangerment. For example, an order may require a PWS, contaminated by unknown polluters, to filter or relocate its water source.

Taking Action Under Section 1431

Components of an Administrative Order

The recommended basic components of a Section 1431 order are:

- EPA's Statutory Authority
- Findings of Fact
- Conclusions of Law
- Conditions or Actions Required by the Emergency Order - Should also contain a statement that requires the respondent to advise the Agency of his or her intentions to comply with the terms of the order in a specified short time frame (e.g., 24 hours)
- General provisions to address issues such as modification, termination and judicial review (e.g., the *Sackett* language described above)
- Name and Address of EPA Contact

- Opportunity to Confer for Orders Against Federal Agencies⁵⁰

Civil Judicial Action

If a judicial order is sought, the Agency must still determine that an “imminent and substantial endangerment” exists. If proceeding judicially, the Region, OECA and DOJ will draft and discuss the appropriate court filings.

Degree of Support

Development of a Record

The issuance of a Section 1431 order as an administrative action must be supported by an adequate written record. Therefore, the Regions should ensure that the findings of fact in the order are adequately supported by documents in the record showing the basis for EPA’s technical determinations. Similarly, before bringing a judicial action under Section 1431, Regions should ensure that sufficient information has been compiled and can be presented to a court to support the action. This information would take the form of technical documents (e.g., such as statements from a toxicologist), other background materials, such as records of correspondence indicating the State and local authorities are not acting sufficiently to protect public health or have requested that EPA act on their behalf, and memoranda to the file. Regions should refer to OECA’s May 16, 2013 “Guidance on Developing Administrative Records for Unilateral Administrative Enforcement Orders.” Additionally, EPA issued general guidance on administrative records (“EPA’s Action Development Process: Administrative Records Guidance,” September 2011).

Absolute Proof Not Required

Even though EPA should strive to create a record basis to support its Section 1431 actions, the Regions should recognize that EPA does not need uncontroverted proof that contaminants are present in or likely to enter the water supply or that an imminent and substantial endangerment may be present before acting under Section 1431.⁵¹ Similarly, EPA does not need uncontroverted proof that the recipient of the order is the person responsible for the contamination or threatened contamination. Courts generally will give deference to EPA’s technical findings of imminent and substantial endangerment. The purpose of Section 1431 actions is to prevent harm from occurring. Extensive efforts to document the available information should be avoided, where the delay in obtaining such information or proof could impair attempts to prevent or reduce the hazardous situation. The Region may use, for example, sampling data from public and/or private wells, the exceedance of the unreasonable risk to health level, data from toxicological studies, and/or the opinion of a

⁵⁰ See Steven A. Herman memorandum.

⁵¹ See U.S. v. Conservation Chemical Co., 619 F. Supp. at 193 (because of scientific and medical uncertainties, proof with certainty is impossible).

toxicologist or other expert as evidence that an “imminent and substantial endangerment” may exist.⁵²

State and Local Authorities Have Not Acted

As stated previously, before taking an action under Section 1431, EPA must explain and document, as necessary, why the ordered action is needed even if state or local governments may have taken or are taking actions to protect public health. As highlighted above, EPA makes this determination in each specific case and, significantly, when assessing the actions of a State, tribal, territory or local authority, potential responses may vary based on particular factual circumstances. This is another important issue to discuss with OECA during the consultation process when contemplating a Section 1431 action in a particular matter. The Region should have a written basis for its finding that federal action is necessary notwithstanding action by a State, tribal, territorial or local authority; that state or local authorities requested assistance; or that EPA is working with the State or local authority. This may consist of a telephone log or written communications (e.g., emails or letters), that serves to document contact between EPA and State and local authorities.

Headquarters Contact

The Region must consult with OECA before issuing an administrative Section 1431 order or referring a Section 1431 matter to DOJ. OECA will coordinate with other Headquarters offices as appropriate (e.g., OW, OGC). OECA is committed to providing feedback to the Regions as soon as possible, which typically is within 24 to 48 hours, and has responded even earlier where the endangerment is acute. Consulting with OECA staff in advance may protect against subsequent adverse judicial determinations.

Regardless of whether the Region prepares an administrative order or requests that a court issue a judicial order, OECA requests that the Region submit copies of all final orders for its central files. The Region’s emergency action should also be reflected in the Agency’s Integrated Compliance Information System (ICIS). ICIS is the database of record for all federal enforcement actions.

No Citizen’s Suits To Compel EPA Action Under Section 1431

SDWA Section 1449 authorizes citizen’s suits against EPA when the Agency has failed to take actions that are mandatory under the statute. Because EPA’s authority to act under Section 1431 is discretionary, citizen’s suits to compel EPA to act under Section 1431 are not authorized.⁵³

⁵² See Attachment 4.

⁵³ See U.S. v. Hooker Chemicals & Plastics Corp., 101 F.R.D. 451, 455 (W.D.N.Y. 1984).