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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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| <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SKULL VALLEY BAND OF GOSHUTE INDIANS,</p> <p style="text-align: center;">Defendant.</p> | <p>COMPLAINT</p> <p>Civil Action No: _____</p> <p>Judge: _____</p> |
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The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE CASE

1. This is a civil action for injunctive relief and civil penalties pursuant to Sections 1414 and 1431 of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. §§ 300g-3, 300i. Specifically, this civil action seeks to (a) require defendant Skull Valley Band of Goshute Indians ("the Tribe" or "Defendant") to perform corrective measures to protect the health of consumers served by its Public Water System ("PWS"), which also serves members of the public who visit the tribally owned and operated convenience store known as the Pony Express; (b) require the Tribe to achieve and maintain compliance with the SDWA, its implementing regulations, and an Emergency Administrative Order issued by the EPA; and, (c) obtain civil penalties to redress the Tribe's continuing violations of the SDWA, its implementing regulations, and the Emergency Administrative Order.

2. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and by 42 U.S.C. §§ 300g-3 and 300i.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1345, and 1355, as well as 42 U.S.C. §§300g-3 and 300i.

4. This Court has personal jurisdiction over Defendant because the Skull Valley Band of Goshute Indians is a federally recognized tribe, and, therefore, an "Indian Tribe" within the

meaning of 42 U.S.C. 300f(14), and a “person” for purposes of federal enforcement, within the meaning of 40 CFR § 141.2. The Tribe operates a PWS within the meaning of § 300f(4) and 40 CFR § 141.2, and a community water system (“CWS”) within the meaning of 42 U.S.C. § 300f(15) and 40 CFR § 141.2. The Tribe operates its business and the Skull Valley Indian Reservation is located in the State of Utah.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1395(a), and under 42 U.S.C. §§ 300g-3(b) and 300i(b), because the events giving rise to this action arose within this judicial district.

DEFENDANT

6. The Tribe is governed by an Executive Committee consisting of a Chairman, Vice-Chair, and Tribal Secretary, and the General Council, which is composed of all of its adult members.

STATUTORY AND REGULATORY FRAMEWORK

7. Pursuant to the authority under Section 1412 of the SDWA, 42 U.S.C. § 300g-1, EPA has promulgated National Primary Drinking Water Regulations (“NPDWRs”) setting maximum contaminant levels (“MCLs”) for specified drinking water contaminants. The term “maximum contaminant level” is defined in Section 1401(3) of the SDWA, 42 U.S.C. § 300f(3), as the “maximum permissible level of a contaminant in water which is delivered to any users of a public water system.”

8. The NPDWRs impose and define the acute MCL for total coliform bacteria as “[a]ny fecal coliform-positive repeat sample or E. coli-repeat sample, or any total coliform-positive

repeat sample following a fecal coliform-positive or E. coli-positive routine sample.” 40 CFR § 141.63(b). Because such violations may pose an acute risk to public health, this regulation also imposes public notification requirements. Id.

9. The NPDWRs establish that for “a system that collects fewer than 40 samples [per] month, if no more than one sample collected during a month is total coliform-positive, [then] the system is in compliance with the MCL for total coliforms.” 40 CFR § 141.63(a)(2).

10. A PWS that has one or more total coliform positive samples is required to collect at least five routine samples during the next month that the PWS provides water to the public. 40 CFR § 141.21(b)(5). The presence of total coliform in water samples may be an indicator of disease-causing organisms.

11. A Community Water System (“CWS”) is required to sample and analyze its water at least once per month to determine compliance with the MCL for total coliform. 40 CFR § 141.21(a)(2). A CWS is required to follow public notification procedures for any monitoring requirement or MCL violation. 40 CFR § 141.201-211.

12. A system which exceeds the MCL for total coliform must report the violation to EPA no later than the end of the next business day after it learns of the violation. 40 CFR § 141.21(g). A CWS also is required to report to EPA failure to comply with any NPDWR except where a different reporting period is specified. 40 CFR § 141.31(b).

13. EPA is authorized to issue an emergency administrative order pursuant to the emergency powers provision of Section 1431(a) of the SDWA, Section 1431, 42 U.S.C. § 300i(a), when appropriate State and local authorities have not acted to protect the public health. EPA has

primary enforcement responsibility for the SDWA in Indian country. 42 U.S.C. § 300j-11. The Tribe, as the local authority, failed to protect the public health pursuant to Section 1431, 42 U.S.C. § 300i, and the State of Utah is not authorized to do so under the SDWA.

14. Pursuant to Section 1431 of the SDWA, 42 U.S.C. § 300i, the United States may bring a civil judicial action to require compliance with an emergency administrative order issued by the EPA, as well as to seek civil penalties for violations of such order.

15. Section 1431 of the SDWA, 42 U.S.C. §300i(b), provides that any person who violates or refuses to comply with an emergency administrative order issued by EPA may be subject to a civil penalty of not more than \$16,500 for each day in which such violation occurs or failure to comply continues after March 15, 2004. See Debt Collection Improvement Act of 1996, Pub. L. No. 101-134, and 40 C.F.R. § 19.4 (Table).

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

16. The Tribe owns and operates the Skull Valley PWS located within the exterior boundaries of the Skull Valley Indian Reservation in Tooele County, Utah, for the provision to the public of piped water for human consumption. The PWS is supplied by a groundwater source from one well. The well serves the Skull Valley community distribution system, consisting of seven service connections, serving approximately 30 residents per day and to the Pony Express Store, located on State Highway 196, which serves an unknown transient population. The Tribe owns the Pony Express Store.

17. Although the Indian Health Service designed and constructed the Skull Valley community distribution system to serve the homes and a community center, the line from the end

of the distribution system to the Pony Express Store was installed by the Tribe at a later date.

Because this line was not properly designed or constructed, and the standard PVC piping used for drinking water lines was not used, the line is subject to frequent freezing and cracking. This, along with other deficiencies in the system, results in pressure losses throughout the system, and the potential for introduction of bacteriological contamination.

18. The Tribe is a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 CFR § 141.2, and is also subject to the requirements of Part B of the Act, 42 U.S.C. §§ 300g - 300g-9, and its implementing regulations, 40 CFR Part 141.

19. The Tribe's PWS regularly serves an average of at least 25 individuals daily and is, therefore, a PWS within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4) and 40 CFR § 141.2, and a CWS within the meaning of 40 CFR § 141.2.

20. EPA determined, based on water quality sampling results from the system conducted in August and September 2005 that the bacteriological quality of the Tribe's drinking water system "may present an imminent and substantial endangerment to the health of persons." 42 U.S.C. § 300i(a).

21. The samples included the following: (a) fecal coliform-positive water sample collected on September 6, 2005; (b) total coliform-positive water sample collected on August 22, 2005; (c) total coliform-positive special purpose water sample collected on August 30, 2005.

22. The Tribe also has a previous history of E. Coli, total and fecal coliform-positive sampling results and of chronic operational problems at the PWS, including but not limited to loss of water pressure and lack of a qualified operator.

23. Fecal coliform and E. coli are bacteria whose presence indicate that the water may be contaminated with human or animal waste. Microbes in these wastes can cause diarrhea, cramps, nausea, headaches, or other symptoms. These bacteria can pose a special health risk to infants, young children, and people with severely compromised immune systems.

EFFORTS TO OBTAIN COMPLIANCE

24. On September 13, 2005, EPA issued to the Tribe an Emergency Administrative Order under Section 1431, 42 U.S.C. § 300i(a), in response to unsafe water quality monitoring results collected by the Tribe on September 6, August 22, and August 30, 2005, indicating that a contaminant was present in or likely to enter the PWS, therefore creating imminent and substantial endangerment to the health of persons.

25. Based on EPA's enforcement responsibility for the SDWA in Indian Country, the Emergency Administrative Order requires the Tribe to perform corrective measures related to its PWS, which are necessary to ensure adequate protection of public health.

26. The Tribe complied with some but not all of the Emergency Administrative Order requirements. In particular, the Tribe failed to comply with the requirements of the Emergency Administrative Order designed to prevent recurrence of fecal contamination.

27. The EPA transmitted six letters to the Tribe between November 2005 and August 2006 in an attempt to finalize the Tribe's corrective actions to address bacteriological contamination, and established a final deadline of September 30, 2006, as the completion date for all actions, including system modifications.

VIOLATIONS

28. The Tribe has not fully met the requirements of the Emergency Administrative Order. As a result, the system may pose an imminent and substantial endangerment to the health of persons. 42 U.S.C. § 300i.

29. Specifically, the Tribe is in violation of the Emergency Administrative Order (and the corrective action plan incorporated therein) for failing to: 1) complete specified system modifications to address bacteriological contamination on or before September 30, 2006, including operation of continuous disinfection equipment and maintenance of adequate water pressure (not lower than 20 pounds per square inch or “psi”); 2) monitor for monthly total coliform in September and October 2006; 3) comply with the total coliform MCL in December 2006; 4) comply with the Disinfectant Residuals, Disinfection Byproducts and Disinfection Byproduct Precursors Rule (40 C.F.R. Part 141, subpart L); and 5) submit monthly progress reports to EPA on or before October 15, November 15, and December 15, 2006, and January 15, 2007. 42 U.S.C. § 300i.

30. In addition, the Tribe failed to comply with the NPDWRs, including failure to: 1) prepare the 2003, 2004, and 2005 consumer confidence reports (“CCRs”) containing complete and accurate drinking water data for each year and deliver these reports to the Tribe’s customers; 2) collect sufficient lead and copper annual samples for 2004, 2005, and 2006; 3) report all monitoring results within the required time; 4) collect repeat total coliform samples after the September 2005 total coliform positive sample; 5) report NPDWR violations to EPA; 6) and provide public notice of NPDWR violations. 42 U.S.C. § 300g-3.

FIRST CLAIM FOR RELIEF
(Injunctive Relief)

31. Paragraphs 1 through 30 are re-alleged and incorporated by reference as if fully set forth below.

32. Pursuant to Sections 1414 and 1431, 42 U.S.C. §§ 300g-3, 300i, the United States seeks permanent injunctive relief to require the Tribe to comply with the SDWA and all regulations promulgated thereunder, including the Emergency Administrative Order, and to permanently enjoin the Tribe from future violations of the SDWA and all regulations promulgated thereunder.

33. To date, the Tribe has not complied with all of the requirements of the Emergency Administrative Order; as a result, the Tribe continues to provide water that may pose an imminent and substantial endangerment to the health of persons, in violation of the SDWA and its implementing regulations. 42 U.S.C. §§ 300g-3, 300i.

34. Therefore, unless permanently restrained, the Tribe will continue to violate the SDWA and its implementing regulations, including the Emergency Administrative Order.

SECOND CLAIM FOR RELIEF
(Civil Penalty)

35. Paragraphs 1 through 34 are re-alleged and incorporated by reference as if fully set forth below.

36. The Tribe has violated the Emergency Administrative Order. Pursuant to Section 1431(b) of the SDWA, 42 U.S.C. § 300i(b), and the Debt Collection Improvement Act of 1996, Pub. L. No. 101-134, and 40 C.F.R. § 19.4 (Table), the Tribe is liable for a civil penalty not to

exceed \$16,500 for each day in which such violation occurs after September 30, 2006 (the date that the Tribe was required to comply with all the terms of the Emergency Administrative Order).

37. The Tribe has failed to comply with the NPDWRs of the SDWA. Pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), and the Debt Collection Improvement Act of 1996, Pub. L. No. 101-134, and 40 C.F.R. § 19.4 (Table), the Tribe is liable for a civil penalty not to exceed \$32,500 for each day in which such violation occurs after September 30, 2006 (the date that the Tribe was required to comply with all the terms of the Emergency Administrative Order) through January 12, 2009, and \$37,500 for each day in which such violation occurs after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, The United States of America requests that this court grant it relief as follows:

(1) Find that the Tribe provides and is continuing to provide water that may pose an imminent and substantial endangerment to the health of persons;

(2) Grant permanent injunctive relief to require the Tribe to comply with the SDWA and all regulations promulgated thereunder and enjoin the Tribe from future violations of the SDWA and all regulations promulgated thereunder, including orders issued to it by the EPA;

(3) For violating the Emergency Administrative Order, enter judgment against the Tribe and in favor of the United States for civil penalties up to the amount of \$16,500 for each day of each such violation occurring after September 30, 2006 (the date that the Tribe was required to comply with all the terms of the Emergency Administrative Order);

(4) For violating the NPDWRs of the SDWA, enter judgment against the Tribe and in favor of the United States for civil penalties up to the amount of \$32,500 for each day of each such violation occurring after September 30, 2006 (the date that the Tribe was required to comply with all the terms of the Emergency Administrative Order) through January 12, 2009, and \$37,500 for each day in which such violation occurs after January 12, 2009;

(5) Order the Tribe to undertake any remedy that protection of the public health may require; and

(6) Grant the United States such further relief as is just and appropriate.

Respectfully submitted,

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