

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF PRETTY PRAIRIE,)
 KANSAS,)
)
 Defendant.)
 _____)

Civil Action No. 17-cv-1014

CONSENT DECREE

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INTRODUCTION

WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint concurrently with this Consent Decree alleging that Defendant, the City of Pretty Prairie, Kansas (“City”), violated the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.* (“SDWA” or “Act”), and regulations promulgated thereunder at 40 C.F.R. Part 141, and Kansas Statutes Annotated (“K.S.A.”) 65-161 *et seq.*, and regulations promulgated thereunder at Kansas Administrative Regulations (“K.A.R.”), K.A.R. 28-15-16 to 28-15-37 and K.A.R. 28-15a-2 to 28-15a-571, and seeking injunctive relief and civil penalties pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b).

WHEREAS, the City is a governmental entity organized and existing under the laws and constitution of the State of Kansas, a “municipality” pursuant to Section 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and a “person” pursuant to Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), K.S.A. 65-162a, K.A.R. 28-15a-2.

WHEREAS, the City owns and operates a Public Water System (“PWS”) and is a “supplier of water,” as defined by Sections 1401(4) and 1401(5) of the SDWA, 42 U.S.C. §§ 300f(4) and 300f(5), or a Public Water Supply System as defined by K.S.A. 65-162a, and regulations promulgated thereunder at 40 C.F.R. § 141.2, K.A.R. 28-15a-2, that utilizes a groundwater source.

WHEREAS, the City’s PWS is a “community water system,” as defined by 40 C.F.R. § 141.2, K.A.R. 28-15a-2, that serves approximately 300 service connections used by approximately 680 year-round residents.

WHEREAS, the EPA has granted the State, through the Kansas Department of Health and Environment (“KDHE”), primary enforcement responsibility for the PWSs within the State pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g-2, K.S.A. 65-162 *et seq.* KDHE was granted primacy for Phase II and V SDWA regulations in October 1995, which includes, but is not limited to, the authority to implement the Maximum Contaminant Level (“MCL”) for nitrate of 10 milligrams per Liter (“mg/L”).

WHEREAS, prior to KDHE’s grant of primacy for Phase II and V SDWA regulations, wherein the EPA had primary enforcement responsibility for implementing the nitrate MCL within the State of Kansas, the EPA found that the City had exceeded the MCL for nitrate and issued an Administrative Compliance Order to the City on January 4, 1994, under the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

WHEREAS, on June 27, 1994, following two challenges by the City in federal court regarding the EPA’s Administrative Compliance Order and the EPA’s denial of the City’s request for an exemption, the EPA and the City entered into an Amended Administrative Compliance Order on Consent under the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), requiring the City to implement one of three options to achieve compliance with the MCL for nitrate on a specified schedule rendering moot the pending lawsuits. By January 1995, the City had drilled a new water supply well and submitted three months of monitoring showing compliance with the MCL for nitrate.

WHEREAS, beginning in March 1995, monitoring of the City’s PWS indicated that nitrate levels began to exceed the nitrate MCL on occasion, and on October 15, 1996 the City entered into a Consent Order with KDHE establishing a “schedule of actions” for compliance with the MCL for nitrate in the City’s PWS. The KDHE Consent Order required, among other

things, (1) the City to prepare and submit to KDHE a “formal feasibility study” identifying options for MCL compliance if nitrate levels exceeded 15 mg/L in two of three consecutive quarters; and (2) revision of the Consent Order to include a schedule for implementation of a compliance option if nitrate levels exceeded 20 mg/L in two of three consecutive quarters.

WHEREAS, upon notice from KDHE that nitrate levels exceeded the 15 mg/L trigger established by the KDHE Consent Order, the City separately retained professional engineers Wilson & Company, Inc. and BG Consultants, Inc. to prepare and submit to KDHE feasibility studies for the City’s PWS.

WHEREAS, KDHE notified the City that PWS nitrate level exceeded 20 mg/L in two of three consecutive quarters in June 2014. On August 27, 2014 the City received BG Consultants’ 122-page Preliminary Engineering Report for water system improvements to address the nitrate issue. That report was promptly forwarded to KDHE. On August 20, 2015 EPA issued to the City a Notice of Violation for the nitrate level in the City’s PWS. By letter dated September 28, 2015, EPA offered the City an opportunity to engage in negotiations to establish a schedule for bringing the PWS into compliance with the nitrate MCL. KDHE has not been involved in the subsequent negotiations.

WHEREAS, on or about February 29, 2016, the Pretty Prairie City Council approved a preliminary engineering report for construction of a reverse osmosis treatment system to treat and remove nitrate in source water that supplies the City’s PWS.

WHEREAS, on or about April 14, 2016, the City’s consulting engineer Schwab Eaton submitted, and on or about April 19, 2016, KDHE approved, a waste stream summary review and disposal method for the City’s proposed reverse osmosis treatment system.

WHEREAS, the City does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I and XXI, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b); and over the Parties. Venue lies in this District pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b); and pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1395(a); because the City is located in this judicial district and the alleged violations, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree or any action by the United States to enforce this Decree, the City consents to the Court's jurisdiction over this Decree or such action and over the City, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.

4. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, including, the Mayor, the City Council members as well as any contractor or consultant retained to perform Work required under this Consent Decree. The City shall also post a copy of the Consent Decree on its official internet website.

5. In any action by the United States to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, the City Council members, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

6. No transfer of ownership or operation of any portion of the Pretty Prairie System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 7, the United States Attorney for the District of Kansas, and the United States Department of Justice, in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of the Pretty Prairie System without complying with this Paragraph constitutes a violation of this Decree.

III. OBJECTIVES

7. It is the express goal of the Parties in entering this Consent Decree that the City shall take all measures necessary to achieve and maintain continuous, long-term compliance with the Safe Drinking Water Act, including delivery of piped water for human consumption to customers of the City's PWS that achieves full compliance with the MCL of 10 mg/L for Nitrate, 40 C.F.R. § 141.62, K.A.R. 28-15a-11. All obligations under this Consent Decree shall be interpreted in a manner consistent with this goal.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the SDWA, or in regulations promulgated pursuant to that Act, shall have the meanings assigned to them in the SDWA, or such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Business day” or “business days” (whether or not capitalized) shall mean in computing any period of time under this Consent Decree that Saturday, Sunday, or any federal holiday are excluded.

“Calendar Year” shall mean the twelve (12) month period starting on January 1 and ending on December 31.

“City Council” or “Council” shall mean the Pretty Prairie, Kansas, Mayor and members of the City Council chartered under the laws of the state of Kansas, that are elected by the voters of the City to represent the other elected members of the governing body of the City of Pretty Prairie, Kansas, acting as the full membership of the Council as a whole, or as an individual Council member on behalf of the other members of the Council.

“Complaint” shall mean the complaint filed by the United States in this action.

“Consent Decree” or “Decree” shall mean this Consent Decree and all the appendices attached hereto and listed in the Table of Contents.

“Date of Entry” shall mean the date on which this Decree is approved and signed by the United States District Court for the District of Kansas.

“Date of Lodging” shall mean the date on which this Decree is lodged by the United States with the United States District Court for the District of Kansas for a period of public comment.

“Day” or “days” (whether or not capitalized) shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

“Defendant” or “City” shall mean the City of Pretty Prairie, Kansas, and any successors thereto.

“Deliverable” shall mean any written document or other work product, whether in hard copy or electronic format, required to be prepared and/or submitted by or on behalf of the City pursuant to this Decree.

“Distribution System” shall mean the system of conduits and appurtenances by which the water supply is distributed to customers as defined in K.A.R. 28-15a-2.

“DOJ” shall mean the United States Department of Justice and any of its successor departments, or agencies.

“Effective Date” shall have the definition provided in Section XVII.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

“Force Majeure” shall have the meaning defined in Paragraph 60.

“Funding Plan” shall mean the plan submitted by the City to the EPA pursuant to Paragraph 20(c) to perform PWS treatment system upgrades in the event the City believes it has not received adequate loan/grant funding as a result of its submissions under Paragraph 20(a)(i).

“Kansas public health laws” shall mean the Kansas public health statutes as provided in Kansas Statutes Annotated (“K.S.A.”) 65-161 *et seq.*, and the regulations promulgated pursuant thereto, including K.A.R. 28-15-16 to 28-15-37 and K.A.R. 28-15a-2 to 28-15a-571 and any updates thereto.

“KDHE” shall mean the Kansas Department of Health and Environment of the State of Kansas, and any of its successor departments or agencies.

“Maximum Contaminant Level” or “MCL” shall mean the maximum permissible level of contaminants in water which is delivered to any user of a public water system, as defined by 40 C.F.R. Part 141, and Kansas public health laws, K.A.R. 28-15a-2 to 28-15a-571.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

“Parties” shall mean the United States and the City of Pretty Prairie, Kansas.

“Public Water System” or “Public Water Supply System” or “PWS” shall mean a system that provides piped water for human consumption within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4) and 40 C.F.R. § 141.2, and Kansas public health laws K.S.A 65-162a and K.A.R. 28-15a-2.

“Pretty Prairie System” or “System” shall mean the PWS owned and/or operated by the City of Pretty Prairie, including but not limited to the Water Treatment Plant, the Distribution System and all source water supply structures and/or equipment owned, operated or

utilized by the City (e.g., wells, pipelines, treatment systems, storage units, and related structures and equipment) to collect, treat, and/or distribute public water for human consumption.

“Safe Drinking Water Act” or “SDWA” or “Act” shall mean the Safe Drinking Water Act, formally entitled the Public Health and Service Act, as amended, 42 U.S.C. § 300f, *et seq.*

“Section” shall mean a portion of this Decree identified by an uppercase Roman numeral.

“State” shall mean the State of Kansas acting through the Kansas Department of Health and Environment.

“United States” shall mean the United States of America, acting on behalf of the EPA.

“Water Treatment Plant” shall mean all facilities necessary for the City to treat and provide water through its Public Water System in compliance with 40 C.F.R. Part 141, and all applicable provisions of the Kansas public health laws, in accordance with the design approved by the KDHE.

“Work” shall mean all activities, including any submissions, plans, and memorandum required for permitting, or construction, the City is required to perform to achieve compliance by the Pretty Prairie System with all MCLs, including the MCL for Nitrate.

V. CIVIL PENALTIES

9. Within 30 Days after the Effective Date, the City shall pay the sum of \$ 1500 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. The City shall pay the civil penalty due to the U.S. Department of Justice account, in accordance with instructions provided to the City by the Financial Litigation Unit ("FLU") of the

United States Attorney's Office for the District of Kansas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

City Clerk
City of Pretty Prairie
119 W. Main Street
Pretty Prairie, KS 67570

on behalf of the City. The City may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices).

At the time of payment, the City shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XVI. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in the United States v. The City of Pretty Prairie, Kansas and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-11526.

11. The City shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

12. If the City fails to pay the civil penalties required to be paid under Section V of this Consent Decree (Civil Penalty) when due, the City shall be liable for interest on any amounts overdue under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961. Interest is to be paid from the date said payment is due

until all amounts owed are paid. Late payment of the civil penalty shall be made in accordance with Section V, Paragraph 10, above. Stipulated Penalties shall be paid in accordance with Section X, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 10, above.

VI. GENERAL SAFE DRINKING WATER ACT COMPLIANCE

13. The City shall comply with Section 1412 of the SDWA, 42. U.S.C. § 300g-1, and with regulations promulgated thereunder at 40 C.F.R. Parts 141 and 142, and with all applicable Kansas public health laws with respect to the Pretty Prairie System.

14. Monitoring and Record Keeping Requirements. The City shall conduct monitoring and retain all records necessary for demonstrating compliance with the PWS requirements pursuant to 40 C.F.R. Part 141 and Kansas public health laws, including, but not limited to:

(a) Conduct all monitoring and analysis as required by 40 C.F.R. Part 141, Subpart C, including monitoring and analysis for nitrate specified at 40 C.F.R. § 141.23. Until the termination of this Consent Decree pursuant to Section XX (Termination), monitoring for nitrate shall be performed no less frequently than quarterly. If a well that has been placed on “emergency use only” status is used during a quarter, then that well must be tested for nitrate during that quarter. 40 C.F.R. § 141.23; K.A.R 28-15a-23.

15. Public Notifications. The City shall provide public notification of any violation of the National Primary Drinking Water Regulations as outlined in Appendix A to this Consent Decree, and in accordance with 40 C.F.R. Part 141, Subpart Q, and K.A.R. 28-15a-201 to 28-15a-210. The notifications provided under this Paragraph shall include the information required by

40 C.F.R. § 141.205, K.A.R. 28-15a-205, and, at a minimum, contain the information supplied in the sample notice included in Appendix A to this Consent Decree.

16. Compliance Reporting and Record Maintenance. The City shall comply with all reporting and record keeping requirements pursuant to 40 C.F.R. §§ 141.31 and 141.33; K.A.R. 28-15a-31 and 28-15a-33.

17. Personnel and Training. The City shall maintain adequate personnel to properly operate and maintain the Pretty Prairie System, and ensure that the System is operated by qualified personnel who meet requirements specified by the State, consistent with 40 C.F.R. § 141.130(c). The City shall maintain adequate personnel and/or retain sufficient contractors to ensure timely and effective compliance with the terms of this Consent Decree.

18. Funding. Beginning with its first fiscal year after the Effective Date of this Consent Decree, the City shall budget to ensure adequate funding for each operating year in an amount reasonably expected to be sufficient to operate and maintain the Pretty Prairie System in compliance with the SDWA and Kansas public health laws, and comply with all the requirements of this Consent Decree, including, but not limited to, sufficient funding to maintain adequate City personnel and contractors described in Paragraph 17, above. The City shall include in the Annual Report for each year, pursuant to Section IX, information regarding its System's operating budget. Nothing in this paragraph shall supersede or relieve the City of its obligations to comply with the Kansas Cash Basis Law, K.S.A. 10-1113 *et seq.*

VII. ALTERNATE DRINKING WATER

19. The City shall implement the Alternate Drinking Water Plan in accordance with the terms and schedules set forth in Appendix A to this Consent Decree, under which the City shall provide public notice regarding the Nitrate MCL violations to all persons served and provide an alternate source of drinking water for the At-risk Group (as defined in the Alternate Drinking

Water Plan), at no additional cost, until such time as monitoring of the PWS, as required by applicable regulations, demonstrates that the level of nitrate as nitrogen complies with the MCL of 10 mg/L, in accordance with the requirements of Section VIII of this Consent Decree. The City shall not make any changes to the Alternative Drinking Water Plan without express written approval by the EPA.

VIII. COMPLIANCE WITH NITRATE MCL

20. The City shall achieve and maintain full compliance by the Pretty Prairie System with all MCLs, including the MCL for Nitrate, and complete Work as follows:

(a) The City shall meet the following compliance schedule milestones:

(i) no later than November 30, 2016, submit documentation to the EPA demonstrating the timely submission of loan and/or grant applications by the City to adequately fund the proposed System upgrades to achieve compliance with the Nitrate MCL;

(ii) by no later than February 15, 2017, submit to the KDHE for review, with a copy to the EPA, a Design Memorandum (preliminary design summary) for the PWS treatment system upgrades to achieve and maintain compliance with the Nitrate MCL;

(iii) within 180 days after the later of (i) KDHE approval of the Design Memorandum, or (ii) receipt of funding requested pursuant to Subparagraph (a)(i), above, the City shall submit to the KDHE for review and approval, with a copy to the EPA, project plans, specifications, public water supply construction permit application, and other information as may be requested by the KDHE and/or the EPA to achieve compliance;

(iv) within 540 days of KDHE approval of plans, specifications and other submittals made pursuant to Subparagraph (a)(iii), above, the City shall complete all upgrades and improvements of the System to achieve compliance with the Nitrate MCL and the

requirements of this Consent Decree and request a final inspection by the KDHE of the Pretty Prairie System improvements; and

(v) within fourteen (14) days after completion of the KDHE final inspection requested pursuant to Subparagraph (a)(iv), above, the City shall submit to a laboratory certified by the KDHE, for laboratory analysis, water samples from the PWS confirming that the Pretty Prairie System is producing water that achieves compliance with all applicable MCLs established for public drinking water, and in particular, the Nitrate MCL. The City shall submit for analysis two additional water samples from the PWS to a laboratory certified by the KDHE – one each taken at Day 28 and Day 42 – confirming that water supplied by the PWS achieves compliance with all applicable MCLs established for public drinking water, and in particular, the nitrate MCL. All samples shall be collected and submitted to a KDHE certified laboratory in compliance with 40 C.F.R. § 141.23, K.A.R. 28-15a-23, and applicable State policies and guidelines. Results of all sample analysis under this Subparagraph shall be submitted to the EPA and KDHE, consistent with Paragraph 23 of this Consent Decree, within 7 days of the City's receipt of the results from the laboratory, with a statement from an authorized representative for the City certifying that the documents submitted are a true, correct and complete copy of the laboratory results.

(b) The City should meet the following interim compliance schedule milestones to ensure the Pretty Prairie System compliance project remains on schedule. Failure to meet such interim compliance schedule milestones shall not relieve the City of the obligation to comply with the final compliance date prescribed by the schedule in Subparagraph (a), above:

(i) within fifteen (15) days of KDHE approval of plans, specifications and other submittals made pursuant to Subparagraph (a)(iii), above, the City should advertise for bids

to complete improvements to the System to achieve compliance with the Nitrate MCL and the requirements of this Consent Decree; and

(ii) within one hundred twenty (120) days of advertisement for bids pursuant to Subparagraph (b)(i), above, the City should accept and award the contract for improvements to the System to achieve compliance with the Nitrate MCL and the requirements of this Consent Decree.

(c) In the event the City believes it has not received adequate loan and/or grant funding as a result of its requests submitted pursuant to Subparagraph (a)(i), above, to complete the Work, the City shall submit to the EPA, with a copy to the KDHE, by no later than March 1, 2017, a Funding Plan. The Funding Plan shall explain how much funding was requested, how much was received, why the City believes the funding to be inadequate to complete the Work required under the Consent Decree, and all plans, including a schedule, for pursuing additional funding. The Funding Plan shall also include a proposed schedule for performing Work required by this Decree (e.g., plans and specifications, completion of improvement etc.) in Paragraphs 20(a)(iii) through 20(b)(ii); the schedule shall include plans for performing Work for which sufficient funds have been approved or can be approved while the City pursues additional funding. The City's Funding Plan, including the proposed schedule, shall be subject to approval by the EPA, pursuant to Section IX, Paragraphs 40-44 (Reporting, Certification and Approval of Submittals). The approved schedule will replace the deadlines in Paragraphs 20(a)(iii) through 20(b)(ii) above.

IX. REPORTING, CERTIFICATION AND APPROVAL OF SUBMITTALS

21. Reports. The City shall submit the following notices and reports:

(a) Quarterly Reports. After the Effective Date of this Consent Decree and until termination of this Decree pursuant to Section XX (Termination), the City shall submit to the EPA Quarterly Reports, as identified in Subparagraphs (b) through (d), below, in accordance with Section XVI (Notices), by email, whenever feasible, or by either U.S. Mail or an overnight delivery service as determined appropriate, if delivery by email is determined not feasible. The first Quarterly Report shall include information for the period of time beginning after the Date of Lodging of this Consent Decree to the end of the quarter during which the Consent Decree is lodged, as set forth below.

(b) The City shall submit quarterly reports to the EPA, as described in this Paragraph, according to the following schedule:

January through March – report due by April 30

April through June – report due by July 31

July through September – report due by October 31

October through December – report due by January 31

(c) Each Quarterly Report shall describe the activities completed in the reporting period, including at a minimum:

(i) detailed information for all activities undertaken in compliance with Sections VI, VII and VIII of this Consent Decree, including, but not limited, to the status of construction, the status of permitting activities, compliance measures, completion of milestones, and any problems encountered, the results of all monitoring required pursuant to Paragraph 14, information regarding compliance with the Alternate Drinking Water Plan in Appendix A including copies representative of all public notices, the number of recipients of alternate

drinking water each month, information regarding dissemination of all public notices, any measure taken to provide alternate water, and any deviations from the Alternative Water Plan;

(ii) the anticipated significant actions or activities that will be performed in the next reporting quarter to comply with the requirements of this Consent Decree; and

(iii) any additional information that demonstrates that the City is implementing the remedial measures required in this Consent Decree; and

(iv) anything that would materially affect the City's ability to perform or implement the obligations under this Consent Decree, including any issues complying with the Kansas Cash Basis Law. The report should include proposed remedial measures.

(d) Annual Reports. After the Effective Date of this Consent Decree and until termination of this Decree pursuant to Section XX (Termination), the City shall submit to the EPA Annual Reports on July 31 of each year, in addition to the Quarterly Reports described above, that include the following information for the preceding calendar year:

(i) financial information regarding the Pretty Prairie System, that includes the approved budgets for capital and operating expenses, actual capital and operating expenses, average monthly operating reserve, actual revenue from drinking water collections, and the annualized average percent collections; and

(ii) general operating and maintenance activities information, including copies of operation and maintenance logs, logs associated with planned, preventative and unplanned repairs, process control monitoring logs, and sampling records and logs.

22. Notice of Violations of the Consent Decree. If the City violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the City shall notify the United States of such violation and its likely duration, in writing, within ten business Days of the

date the City first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the quarterly report is due, the City shall so state in the report. The City shall investigate the cause of the violation and shall then submit an amendment to the quarterly report, including a full explanation of the cause of the violation, within 30 Days of the Day the City becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the City of its obligation to provide the notice required by Section XI (Force Majeure).

23. All notices and reports required to be submitted pursuant to this Consent Decree shall be submitted to the recipients specified in accordance with Section XVI (Notices) of this Consent Decree.

24. Certification Statement. Each written notice, document or report submitted by the City to the United States under this Consent Decree shall be signed by an authorized official of the City, and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

25. Nothing in this Section relieves the City of the obligation to provide the requisite notice for purposes of Section XI (Force Majeure) of this Consent Decree.

26. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the SDWA or its implementing regulations or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

28. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

29. Review and Approval of Certain Submittals by the State. The City remains responsible for submitting all information or submittals to the KDHE in a timely manner, as may be required by State law. Such submittals include, but are not limited to, all routine or emergency reporting and any submittals required to be reviewed and approved by the KDHE. As anticipated by the provisions of this Consent Decree, or upon notice by the City to the EPA that a matter under the purview of this Consent Decree must be reviewed and approved by the State, the EPA will make reasonable efforts to coordinate with the City and the KDHE regarding such matters in an effort to foster efficient management of matters under this Consent Decree. The City's failure to make timely and complete submittals to the KDHE will not relieve the City

of its obligations under this Consent Decree nor will any resulting delay in receiving State approval be considered a Force Majeure event pursuant to Section XI.

30. In the event that the State's review of any submission to the State e.g. any plan, work plan, statement of work, report, or modification thereto, exceeds sixty (60) days, then the City should provide written notice to the EPA of all actions under this Consent Decree that will be delayed or otherwise affected by the KDHE's extended review.

31. If, in response to any submission to the State, the KDHE requests more information the City shall provide that requested information to KDHE within twenty (20) business days of such request by the KDHE or such longer time as agreed to by the EPA and KDHE in writing.

32. If the submission to the State is approved by KDHE, the City shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission to the State is conditionally approved or approved only in part by KDHE, the City shall, upon written direction of the KDHE take all actions required by the approved plan, report, or other item that the KDHE determines are technically severable from any disapproved portions.

33. If the submission to the State is disapproved in whole or in part by KDHE, then, the City shall correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs within twenty (20) business days or such longer time as agreed to by the EPA and KDHE in writing.

34. Any Stipulated Penalties applicable pursuant to Section X, below, to the original submission to the State, as provided in this Section IX (Reporting, Certification and Approval of Submittals) of this Decree, shall accrue during the time period specified in Paragraph 33 above, but shall not be payable unless the resubmission is untimely or is disapproved for material

deficiencies; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

35. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, the KDHE may again require the City to correct any deficiencies, in accordance with the preceding Paragraphs. EPA may deem the City to be out of compliance with this Consent Decree for failure to timely submit the submittal in compliance with the requirements of this Consent Decree, and may assess stipulated penalties pursuant to this Consent Decree, subject only to the rights of the City under the Dispute Resolution provisions of this Consent Decree.

36. Obligation to Implement State-Approved Submittal. In the event that the KDHE approves or approves with conditions any submittal pursuant to Section VIII, the City shall proceed to take any action or actions required to implement the submittal as approved.

37. Submittals to State and EPA are Enforceable. All submittals required to be approved pursuant to Section VIII, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon approval or approval with conditions.

38. Revisions to Submittals to State or EPA. The United States and the City recognize that the City may need or want to revise certain submittals during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XIX (Modification) of this Consent Decree. The City must obtain the EPA's prior written approval of any revision to the substance of any submittal.

39. Notice to EPA. The City shall provide notice to EPA in accordance with Section XVI (Notices) of any submittal to KDHE under this Consent Decree, including any resubmittal under Paragraph 33.

40. Approval of Deliverables by EPA. After review of any submission to EPA, e.g. any plan, report, or other item that is required to be submitted pursuant to this Consent Decree to EPA, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

41. If the submission is approved by EPA pursuant to Paragraph 40, the City shall take all actions required by the plan, report, or other document, in accordance with the schedules, and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part by EPA pursuant to Paragraph 40(b) or (c), the City shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section XII (Dispute Resolution).

42. If the submission is disapproved in whole or in part by EPA pursuant to Paragraph 40(c) or 40(d), the City shall, within twenty (20) business days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval. If the resubmission is approved in whole or in part by EPA, the City shall proceed in accordance with the preceding Paragraph.

43. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require the City to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the City's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

44. Any stipulated penalties applicable to the original submission, as provided in Section X, shall accrue during the 15 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

X. STIPULATED PENALTIES

45. The City shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including making any submissions or performing any Work, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

46. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, the City shall pay a stipulated penalty of \$100 per Day for each Day that the payment is late.

47. PWS Violations. The following Stipulated Penalties shall accrue per violation for each violation of the following requirements of Sections VI (General SDWA Compliance) of the Consent Decree occurring:

<u>Violation Type</u>	<u>Period of Non-Compliance</u>	<u>Stipulated Penalty</u>
Monitoring and Record Keeping	Quarterly	\$2,500.00/quarter

48. Public Notice and Alternate Water Supply. The following Stipulated Penalties shall accrue for failure to provide an alternate water supply in accordance with the requirements of Paragraph 15, Section VII (Alternate Drinking Water) and Appendix A to this Consent Decree:

<u>Violation Type</u>	<u>Period of Non-Compliance</u>	<u>Stipulated Penalty</u>
Failure to Provide Alternate Water Source	1-14 th day	\$600/day
	15-30 th day	\$1200/day
	31 st day and beyond	\$2500/day
Public Notification in Compliance With Appendix A	1-14 th day	\$50/day
	15-30 th day	\$100/day
	31 st day and beyond	\$150/day

49. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section IX (Reporting, Certification and Approval of Submittals) of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-14 th day	\$25
15 th -30 th day	\$50
31 st and beyond	\$100

50. Compliance Schedule Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of a compliance deadline in Section VIII, Paragraphs 20(a) and 20(c) (Compliance with Nitrate MCL) of the Consent Decree (stipulated penalties do not apply to interim compliance schedule milestones under Paragraph 20(b)):

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-14 th day	\$100
15 th -30 th day	\$250
31 st and beyond	\$750

51. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

52. The City shall pay any Stipulated Penalty within thirty (30) days of receiving a written demand by the United States, unless the United States and the City enter into Dispute Resolution, in which case the provisions of Paragraph 54 apply.

53. The United States may, in the unreviewable exercise of its discretion, reduce or waive any Stipulated Penalties otherwise due the United States under this Consent Decree.

54. Stipulated Penalties shall continue to accrue as provided in Paragraph 51, above, during any Dispute Resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, the City shall pay accrued penalties agreed or determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of the United States' decision or order;

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph (c), below;

(c) If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

55. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Paragraphs 19 and 20 that have occurred after the Date of Lodging but prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

56. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

57. If the City fails to pay Stipulated Penalties according to the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. §1961, accruing as of the date payment became due.

58. The payment of penalties and interest, if any, shall not alter in any way the City's obligation to complete the performance of the requirements of this Consent Decree and any applicable federal, State or local laws, regulations, or applicable permits.

59. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XI. FORCE MAJEURE

60. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include the City's financial inability to perform any obligation under this Consent Decree.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic transmission in accordance with Paragraph 86 within 5 days after the date the City first knew that the event might cause a delay. Within 15 days thereafter, the City shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that

event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City knew or should have known. The City shall ensure that the contract terms for any construction or operating contractor for the PWS include a provision requiring notification to the City within 7 days of any circumstance that could potentially result in a delay.

62. If the EPA agrees that a force majeure event has occurred, the EPA will agree to extend the time for the City to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. The EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. When the EPA agrees to a material extension of time of greater than 12 months, the appropriate modification shall be made pursuant to Section XIX (Modification) of this Consent Decree.

63. If the EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify the City in writing of their decision.

64. If the City elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 60 and 61. If the City carries this

burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

66. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement of the United States and the City. If the United States and the City cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

67. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

68. The United States shall serve its Statement of Position within forty-five (45) days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the City unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

69. The City may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

70. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

71. Standard of Review:

(a) Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 67 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by the EPA under this Consent Decree; the adequacy of the performance of Work undertaken pursuant to this Consent Decree; and all other disputes that are

accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

72. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 67, the City shall bear the burden of demonstrating that its position complies with the requirements of this Consent Decree and better further the Objectives specified in Section III. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 54. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

73. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right to enter the Pretty Prairie System at all reasonable times, generally during business hours, upon presentation of credentials, to:

- (a) monitor the progress of activities required under this Consent Decree;
- (b) verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- (c) obtain samples;

(d) obtain evidence, including but not limited to photographs and videography of elements of the Pretty Prairie System; and copies of records, files, papers and other relevant documents; and

(e) assess the City's compliance with the SDWA and this Consent Decree.

74. Upon request, the City shall provide EPA or its authorized representative's splits of any samples taken by the City or its representatives, contractors, or consultants. Upon request, EPA shall provide the City splits of any samples taken by EPA.

75. Until five years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

76. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States at least ninety (90) days prior to the destruction of any such documents, records or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the City shall deliver any such documents, records, or other such information to EPA. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege

recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted. However, no documents, records, or other information created or generated pursuant to a requirement of this Consent Decree shall be withheld on grounds of privilege. Communications or consultations with counsel regarding the requirements of this Consent Decree may be withheld on grounds of privilege.

77. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

78. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain records or information imposed by applicable federal or state laws, regulations, permits, or orders.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

79. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

80. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. With the exception of violations alleged in the Complaint and resolved under Paragraph 79, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Safe Drinking Water

Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Pretty Prairie System, whether related to the violations addressed in this Consent Decree or otherwise.

81. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq*, or with any other provisions of federal, state, or local laws, regulations, or permits.

82. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the System, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 79.

83. This Consent Decree does not limit or affect the rights of the City or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of

third parties, not party to this Consent Decree, against the City, except as otherwise provided by law.

84. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

85. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by the City.

XVI. NOTICES

86. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, indicate the title "United States v. The City of Pretty Prairie, Kansas" in the subject matter line of the transmittal's cover page, and be addressed as follows:

To the United States:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-11526
eescdcopy.enrd@usdoj.gov

&

Chief, Water Enforcement Branch &
Water, Wetlands and Pesticides Division
Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219
huffman.diane@epa.gov

Chief, Water Programs Branch
Office of Regional Counsel
Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219
breedlove.dan@epa.gov

To the EPA only, as opposed to the United States:

Chief, Water Enforcement Branch &
Water, Wetlands and Pesticides Division
Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219
huffman.diane@epa.gov

Chief, Water Programs Branch
Office of Regional Counsel
Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219
breedlove.dan@epa.gov

For verbal notification:
Chief, Water Enforcement Branch
913/551-7544

To the State of Kansas through KDHE:

Director, Bureau of Water &
Kansas Department of Health and Environment
1000 Jackson St. – Suite 420
Topeka, KS 66612-1367

Chief, Public Water Supply Section
Bureau of Water
Kansas Department of Health & Environment
1000 SW Jackson St. – Suite 420
Topeka, KS 66612-1367
Cathy.Tucker-Vogel@ks.gov

For verbal notification:
Director, Bureau of Water
785/296-5500

For Verbal notification:
Chief, Public Water Supply Section
785/368-7130

To The City of Pretty Prairie, Kansas:

City Clerk
City of Pretty Prairie, Kansas
P.O. Box 68
Pretty Prairie, KS 67570

Wyatt A. Hoch, Esq.
Foulston Siefkin LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, KS 67206
whoch@foulston.com
Counsel for Pretty Prairie

87. Where specifically authorized within this Consent Decree, or as agreed by the Parties in writing, submittals may be made via electronic transmittal to the e-mail address for each addressee identified in Paragraph 86, above.

88. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address.

89. Notices submitted pursuant to this Section shall be deemed submitted upon the date they are postmarked, provided to a reputable overnight delivery service, or where appropriate, sent via electronic mail, provided a message of non-deliverability is not received, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

90. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided however, that the City agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Decree before entry, or the Court declines to enter the Decree, then the preceding requirement to perform duties scheduled to occur prior to the Effective Date shall terminate.

XVIII. RETENTION OF JURISDICTION

91. The Court shall retain jurisdiction over the case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

92. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where a modification agreed upon by the United States and the City constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Non-material changes to this Decree (including Appendices) may be made by written agreement of the United States and the City without Court approval. Any modification to the schedule provided in Paragraph 20 which results in a change to the final deadline for achievement of compliance with the Nitrate MCL, Paragraph 20(a), of 12 months or less will not be considered a material modification.

93. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution) of this Decree, provided, however, that, instead of the burden of proof provided by Paragraph 71, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

94. After the City has completed the requirements of Sections VI, VII and VIII (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with the Nitrate MCL in accordance with Paragraph 20(a)(v) for a period of three years, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the City may serve upon the United States a Request for Termination, stating that the City has satisfied those requirements, together with all necessary supporting documentation.

95. Following receipt by the United States of the City's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the City has satisfactorily complied with the requirements for termination of

this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

96. If the United States does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section XII. However, the City shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

97. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The City hereby consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the City in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES/SERVICE

98. Each undersigned representatives of the City and the Section Chief of the Environmental Enforcement Section for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

99. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

100. The City agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

101. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are not representations, agreements, or understandings related to the settlement other than those expressly contained in this Consent Decree.

XXIV. FINAL JUDGMENT

102. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this _____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE
District of Kansas

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. The City of Pretty Prairie, Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

Dated: 01-10-2017

s/ Thomas A Mariani Jr.
THOMAS A. MARIANI JR.¹
NY Bar No. 2003374
Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

Dated: 01-13-2017

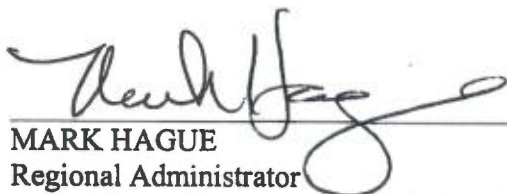
s/ Rachel A Hankey
RACHEL HANKEY
CA Bar No. 226325
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
301 Howard St, Ste 1050
San Francisco, CA 94105
Telephone:(415) 7446471
Facsimile: (415) 744-6476
Rachel.hankey@usdoj.gov

¹ Please note that Thomas A. Mariani, Section Chief, does not want to receive ECF notifications.

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. The City of Pretty Prairie, Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:


FOR THE UNITED STATES OF AMERICA (Continued):

Dated: 1/6/17



MARK HAGUE
Regional Administrator
United States Environmental Protection Agency
Region 7
11201 Renner Road
Lenexa, Kansas 66219
Telephone: 913-551-7006

Dated: 1/5/2017



PATRICIA GILLISPIE MILLER, KS Bar # 12096
Senior Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Road
Lenexa, Kansas 66219
Telephone: (913) 551-7283
miller.patriciag@epa.gov

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. The City of Pretty Prairie, Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR DEFENDANT THE CITY OF PRETTY PRAIRIE, KANSAS:

Dated: Jan 4, 2017

Michael B. Seyb
Mayor



Wyatt A. Hoch
Wyatt A. Hoch, KS Bar # 11747
Foulston Siefkin LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, KS 67206
Attorneys of Record for the City of Pretty Prairie, Kansas
Telephone: (316) 267-6371
whoch@foulston.com

APPENDIX A

CITY OF PRETTY PRAIRIE

ALTERNATE DRINKING WATER PLAN

Pretty Prairie's public water supply (PWS) currently contains nitrates at levels greater than the maximum contaminant level (MCL) established by the U.S. Environmental Protection Agency. The people most likely to be impacted by nitrates in drinking water are pregnant and nursing mothers and infants under 6 months old. The City is currently developing a project to treat the water supplied through its PWS that complies with the nitrate MCL. In the interim, the City will continue to provide bottled water to its customers and visitors that complies with all state and federal drinking water standards under the parameters of this policy.

Provision of Bottled Water

Pretty Prairie will provide, free of charge, bottled water to its customers and visitors who are pregnant and to caregivers for children under six months of age (together the "At-risk Group"). Pretty Prairie PWS customers, including local businesses that serve water for consumption to the At-risk Group may obtain bottled water coupons and pick up bottled water from the City Office at 119 West Main during the hours of 8am to 5 pm, Monday through Friday and 9am to 12 noon on Saturday. City Office, staff will assist in carrying the water to the customer's vehicle. Pretty Prairie will also make bottled water available, without charge, for the At-risk Group at school district booster club concession stands and the Pretty Prairie Rodeo courtesy corral. Sufficient amounts of alternative water will be provided for both drinking and cooking purposes. The City will provide 16 gallons of water per person at a time during each month. If a customer runs out of bottled water, then they may request and will receive additional water as necessary.

Public Notices of Nitrate MCL Violations and the Availability of Bottled Water

The City will provide public notice of each violation of the nitrate MCL in compliance with the requirements of K.A.R. 28-15a-201 to 28-15a-210 and 40 C.F.R. Part 141, Subpart Q. The public notice of nitrate MCL violations and information about the availability of bottled water, will be posted on the City's website, included with the next PWS bill following a violation, and posted and distributed as described in this Plan.

A copy of the public notice is attached. The City's website will, within twenty-four hours of confirmation of each violation of the nitrate MCL, post a notice of the violation and include information about the availability of bottled water to customers and visitors to the community, including the Pretty Prairie Rodeo, golf course, local businesses and school events. The City's website will also include a list or table indicating the most recent nitrate MCL violation and all previous nitrate MCL violations during the prior two years.

The City will include the nitrate violation public notice and information regarding the availability of bottled water in the next PWS bill issued following a violation. The City will ensure that public notices are posted at any public water fountain served by the PWS and at any event on City property where water from the PWS is made available for consumption. The City will request that any local businesses or events also post notice when water from the PWS is made available for consumption. If the City provides permits to any public events, posted notices will be made a permit requirement where water from the PWS is made available for consumption.

The City will provide a copy of the most-current nitrate violation public notice, and describe the process for requesting bottled water, to each new water customer when water service is established and their utility deposit is made.

The City will request the school district, local care home, child care providers, and any local businesses such as restaurants that may serve water from the PWS to post the nitrate violation public notices, including information regarding requesting bottled water, in a conspicuous location for their consumers. The City will contact these venues directly by phone at least once a year to determine whether notices are posted and request posting.

The City will provide each nitrate violation public notice to the Reno and Kingman County Health Departments. The City will contact those health departments at least once a year to find out if the health departments recommend any further actions.

The City will provide to the KDHE and the USEPA Region 7 a copy of each nitrate violation public notice and other water-quality notices given to City water customers.

Customer Privacy

In order to better protect their privacy, water customers and visitors may now pick up bottled water from the City Office. This eliminates the customer's exposure to one less public setting. City staff have developed a privacy procedure to not disclose bottled-water customers' names when they request or receive bottled water.