



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901**

**IN THE MATTER OF:** )  
 )  
San Carlos Apache Tribe of the San Carlos )  
Reservation, Arizona, and the )  
San Carlos Apache Tribal Utility Authority, )  
 )  
Respondents. )  
 )  
Proceedings pursuant to Section 1414(g) of the Safe )  
Drinking Water Act, 42 U.S.C. § 300g-3(g). )

Docket No. PWS-AOC-2017-600

**AMENDED  
ADMINISTRATIVE ORDER  
ON CONSENT**

**I. INTRODUCTION**

1. The United States Environmental Protection Agency, Region IX (“EPA”) and Respondent San Carlos Apache Tribe (“Tribe”), and Respondent San Carlos Apache Tribal Utility Authority (“Tribal Utility Authority”), voluntarily enter into this Amended Administrative Order on Consent (“Amended Order”) for the purpose of bringing the nine below-referenced public water systems (see Table 1) owned and operated by the Respondents into compliance with the requirements of the federal Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, and its National Primary Drinking Water Regulations (“NPDWRs”) at 40 C.F.R. Part 141. This Amended Order amends and supersedes the Administrative Order on Consent originally entered into between EPA and Respondents in October 2011 (EPA Docket Number PWS-AOC-2012-6000).

2. EPA and Respondents recognize that this Amended Order was negotiated in good faith and that Respondents have fully cooperated with the EPA with regard to issuance of this Amended Order.

3. EPA and Respondents recognize that Respondents’ participation in this Amended Order does not constitute an admission by Respondents of liability. Respondents neither admit nor deny the validity of the EPA Findings of Fact and Conclusions of Law set forth herein.

## **II. JURISDICTION**

4. EPA enters into and issues this Amended Order under the authority vested in the EPA Administrator by Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), which in turn has been delegated to the Director of EPA Region 9's Enforcement Division.

5. EPA and the Respondents enter into this Amended Order voluntarily. Respondents agree not to contest EPA's authority or jurisdiction to issue this Amended Order in this or in any subsequent proceeding to enforce the terms of this Amended Order. This Amended Order constitutes an enforceable agreement between the Respondents and EPA.

6. EPA has primary enforcement responsibility for the SDWA's public water system supervision program on the San Carlos Apache Indian Reservation ("Reservation"). No other governmental authority is approved to administer the public water system supervision program on the Reservation.

## **III. DEFINITIONS**

7. "Amended Order" shall mean this document, all attachments hereto, all subsequent modifications, and all submissions required by this Amended Order and approved by EPA.

8. "Day" shall mean a calendar day unless otherwise specified. In computing a prescribed period of time, the day of the event shall not be included. In computing any period of time under this Amended Order, 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 working day.

9. "Maximum Contaminant Level" ("MCL") shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as further defined at 40 C.F.R. § 141.2.

## **IV. EPA FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

EPA makes the following findings of facts and conclusions of law:

10. The Tribe is an “Indian Tribe” recognized by the United States Department of Interior under Section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. §§ 479a and 479a(1). The Tribe is an “Indian Tribe” within the meaning of Section 1401(14) of the Act and 40 C.F.R. § 142.2.

11. The Tribe’s Tribal Utility Authority provides utility services to residences, communities, and businesses located on the Reservation, and is thus a “municipality” within the meaning of Section 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and 40 C.F.R. § 142.2.

12. Respondents own and/or operate the following nine Systems:

TABLE 1 - SAN CARLOS APACHE TRIBE PUBLIC WATER SYSTEMS

System Name/PWS I.D.#	Population	Service Connections	No. of Active Ground Water Wells
Bylas/090400110	3160	530	3
Lower Peridot – Bush/090400111	276	46	1
Lower Peridot/090400112	778	117	1
Soda Canyon/090400237	185	101	1
Cutter/090400239 (Consecutive System)	562	91	0
Upper Peridot/090400242	706	136	1
Skill Center/090400273	254	39	1
Beverly Hills/090400699	582	97	1
New Regional System Upper Seven Mile - Three System Consolidation Project			
Peridot Height/090400113	8,478	1,417	8
Upper Seven Mile/090400114			
Gilson Wash/090400236			
Total	14,981	2,574	17

13. The Systems’ combined daily water service is to approximately 2,574 service connections or 14,981 residents on or around the San Carlos Apache Tribe of the San Carlos Reservation, Arizona, with the Tribal Utility Authority’s main office located at 1 White Mountain Avenue San Carlos, AZ 85550.

14. Each System provides water for human consumption through pipes and has at least 15 service connections and therefore meets the definition of a “public water system” in Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

15. Each System serves at least 25 year-round residents and thus qualify as a “community water system” (“CWS”) within the definition in Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

16. Each System, except for Upper Seven Mile Regional System, serves 3,300 persons or fewer and thus each meets the definition of a “small water system” provided at 40 C.F.R. § 141.2. The Upper Seven Mile Regional System serves greater than 3,300 and less than or equal to 50,000 persons and thus meets the definition of a “medium-size water system” provided at 40 C.F.R. § 141.2.

17. The source of water for each System is ground water.

18. Respondents own and operate nine public water systems and thus each Respondent meets the definition of a “supplier of water” provided in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. As a “supplier of water,” both Respondents must generally comply with the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its NPDWRs, which include the MCLs for contaminants set forth at 40 C.F.R. § 141.62.

#### **Violation of Total Coliform Routine Sampling Requirements**

19. Until April 1, 2016,<sup>1</sup> and pursuant to 40 C.F.R. § 141.21(a), community water systems were required to collect total coliform samples at sites that are representative of water throughout the distribution system according to a written sample siting plan and at a frequency determined by the populations served by the systems: Systems serving up to 1,000 persons must monitor for total coliform bacteria at least once a month, systems serving 2,501 to 3,300 persons must monitor three times a month, systems serving 3,301 to 4,100 persons must monitor four times a month and systems serving 7,601 to 8,500 persons must monitor nine times a month.

20. Respondents violated 40 C.F.R. § 141.21(a) by failing to monitor for total coliform at any of their Systems pursuant to a written sample siting plan and by failing to perform bacteriological

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<sup>1</sup> Beginning April 1, 2016, the provisions of the Revised Total Coliform Rule at 40 C.F.R. 141, Subpart Y (§§ 141.851 – 141.861) took effect. *See* 78 Fed. Reg. 10270-10365 (February 13, 2013).

monitoring for total coliform at the required frequencies at all of their water systems except for Gilson Wash during the 2012 through 2015 calendar years (*see* Attachment 1 (Table 2 – Violations of Total Coliform Microbiological Monitoring Requirements)).

#### **Violations of Total Coliform MCL**

21. Until April 1, 2016, the MCL for microbiological contaminants set forth at 40 C.F.R. § 141.63(a)(2) was based on the presence or absence of total coliforms in a sample. For a PWS which collects fewer than 40 samples per month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

22. Respondents exceeded the monthly maximum MCL for total coliform bacteria in violation of 40 C.F.R. § 141.63(a)(2) at the Bylas and Upper Seven Mile water systems in 2012, 2013, 2014, and 2015; the Cutter water system in 2012, 2013, and 2015; and the Lower Peridot, Peridot Heights, and Gilson Wash water systems in 2012 (*see* Attachment 2 (Table 3 – Violations of Total Coliform MCL)).

#### **Violations of Total Coliform Monitoring Requirements Related to Repeat Sampling**

23. Until April 1, 2016, community water systems were required under 40 C.F.R. § 141.21(b)(1) to collect a set of repeat samples within 24 hours of being notified that a routine total coliform sample is total coliform-positive. A system which collects one routine sample per month or fewer must collect no fewer than four repeat samples for each total coliform-positive sample found. Systems which collect more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found.

24. Respondents violated 40 C.F.R. § 141.21(b)(1) by failing to sample for total coliform bacteria within 24 hours of being notified of positive total coliform results at the Bylas, Upper Seven Mile, and Cutter water systems in 2012, 2013, 2014, and 2015; the Beverly Hills water system in 2012, 2013, and 2014; the Lower Peridot and Upper Peridot water systems in 2012 and 2013; and the Peridot

Heights, Gilson Wash, Soda Canyon, and Skill Center water systems in 2012 (*see* Attachment 3 (Table 4 – Violations of Total Coliform Repeat Monitoring Requirements)).

**Violations of Total Coliform Repeat Monitoring Requirements  
Related to Routine Sampling**

25. Until April 1, 2016, under 40 C.F.R. § 141.21(b)(5) water systems collecting fewer than five routine samples per month that have one or more total coliform-positive results must collect at least five routine samples during the next month the system provides water to the public.

26. Respondents violated 40 C.F.R. § 141.21(b)(5) by failing to consistently collect at least five routine samples in the months following one or more total coliform positive samples at the Bylas and Cutter water systems in 2012, 2013, 2014, and 2015; the Lower Peridot and Upper Peridot water systems in 2012 and 2013; the Beverly Hills water system in 2012 and 2015; the Upper Seven Mile, Peridot Heights and Gilson Wash water systems in 2012; and the Soda Canyon water system in 2013 (*see* Attachment 4 (Table 5 – Violations of Total Coliform Repeat Monitoring Requirements Related to Routine Sampling)).

**Violation of Total Coliform Sampling Siting Plan Requirement**

27. The Revised Total Coliform Rule at 40 C.F.R. § 141.853 required the development of a written sample siting plan by March 31, 2016.

28. Respondents did not submit a written sampling siting plan by March 31, 2016, or at anytime thereafter, in violation of the Revised Total Coliform Rule at 40 C.F.R. § 141.853.

**Violation of Ground Water Rule Triggered Source Water Monitoring Requirements**

29. 40 C.F.R. § 141.402(a) requires a ground water system to conduct triggered source water monitoring if: (i) The water system does not provide at least 4-log treatment of viruses before or at the first customer for each ground water source; and (ii) the system is notified that a sample collected under 40 C.F.R. § 141.21(a) is total coliform-positive; or (iii) the system is notified that a sample collected under 40 C.F.R. §§ 141.854 through 141.857 is total coliform-positive.

30. 40 C.F.R. § 141.402(a)(2) further provides that a ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under 40 C.F.R. § 141.21(a) or 40 C.F.R. §§ 141.854 through 141.857.

31. Respondents violated 40 C.F.R. § 141.402(a)(2) by failing to conduct triggered source water monitoring at each ground water source in use at the Bylas and Upper Seven Mile water systems in 2012, 2013, 2014, and 2015; Beverly Hills water system in 2012, 2013, and 2014; Lower Peridot water system in 2012 and 2013; Peridot Heights, Gilson Wash, Soda Canyon, and Skill Center in 2012; and Upper Peridot in 2013 (*see* Attachment 5 (Table 6 – Violations of Ground Water Rule Triggered Source Water Monitoring Requirements)).

#### **Violation of Repeat Nitrate Monitoring Requirements**

32. 40 C.F.R. § 141.23(d) requires community water systems served by ground water to monitor for nitrate annually at each entry point to the distribution system that is representative of each well after treatment.

33. 40 C.F.R. § 141.23(d)(2) requires community water systems served by ground water to monitor quarterly for at least one year following any one sample in which the concentration is greater or equal to 50 percent of the MCL. The MCL for nitrate set forth at 40 C.F.R. § 141.62(b) is 10 milligrams per liter (“mg/L”).

34. Respondents violated 40 C.F.R. § 141.23(d)(2) by failing to monitor for nitrate quarterly at the Soda Canyon water system following nitrate monitoring results that were greater or equal to 50 percent of the MCL on December 29, 2013 (5.59 mg/L); September 15, 2014 (5.37 mg/L); and September 2, 2015 (4.96 mg/L).

### **Violations of Arsenic MCL**

35. The MCL for arsenic set forth at 40 C.F.R. § 141.62(b) is 0.010 mg/L (or 10 micrograms per liter (“ug/L”)).

36. Pursuant to 40 C.F.R. § 141.23(i)(1), compliance at a public water system conducting arsenic monitoring at a frequency greater than annually is determined by the running annual average (“RAA”). If the RAA for any sampling point is greater than the MCL, then the system is out of compliance; and if any one sample would cause the MCL to be exceeded on an RAA, then the system is out of compliance immediately.

37. Respondents’ Soda Canyon water system exceeded the arsenic MCL of 10 ug/L immediately in the first quarter of 2013 based on the analytical results of arsenic sampling showing arsenic in drinking water at 102 ug/L and continued to exceed the MCL through fourth quarter 2015 (*see* Attachment 6 (Table 7 - Violations of Arsenic 10 ug/L MCL at Soda Canyon PWS). Respondents’ Upper Seven Mile water system exceeded the arsenic MCL in 2013 through 2015 at its River Well sampling location (*see* Attachment 7 (Table 8 – Violations of Arsenic ug/L MCL at Upper Seven Mile PWS)). It also exceeded the arsenic MCL at its Noline Well sampling location in first quarter 2014 (11 ug/L RAA) and second quarter 2014 (11 ug/L RAA).

### **Violation of Arsenic Monitoring Requirements**

38. 40 C.F.R. § 141.23 requires all community water systems to conduct monitoring to determine compliance with the arsenic MCL specified at 40 C.F.R. § 141.62(b).

39. 40 C.F.R. § 141.23(c)(7) requires systems which detect arsenic above the arsenic MCL to monitor quarterly beginning in the next quarter after the detection of arsenic above the MCL occurred.

40. Respondents violated 40 C.F.R. § 141.23(c)(7) by failing to conduct quarterly monitoring for arsenic at the Soda Canyon water system in 2013 and 2015 (*see* Attachment 6 (Table 7 - Violations of Arsenic 10 ug/L MCL at Soda Canyon PWS) and at the Upper Seven Mile water system River Well

sampling location in 2013 and 2015 (*see* Attachment 7 (Table 8 – Violations of Arsenic 10 ug/L MCL at Upper Seven Mile PWS)) and at the Noline Well sampling location in 2013 and 2014.

#### **Violations of Lead and Copper Monitoring**

41. 40 C.F.R. § 141.86(d) requires small and medium size community water systems to monitor tap water for lead and copper twice a year – once every six months – until the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods, at which point the system may reduce the frequency of monitoring to once per year.

42. Respondents violated 40 C.F.R. § 141.86(d) by failing to monitor tap water at their Lower Peridot Bush system for lead and copper twice a year – during each of two consecutive six-month monitoring periods.

#### **Violations of Public Notice Requirements**

43. 40 C.F.R. Part 141, Subpart Q requires public water systems to provide public notice of any failure to comply with MCL violations and monitoring requirements. Specifically, 40 C.F.R. § 141.203 requires a Tier 2 public notice no later than 30 days of the system learning of certain violations (*e.g.*, MCL violations), and 40 C.F.R. § 141.204 requires a Tier 3 public notice no later than one year of the system learning of certain other violations (*e.g.*, monitoring violations).

44. Respondents violated 40 C.F.R. Part 141, Subpart Q, by failing to provide the required Tier 2 notices for MCL violations found above in paragraphs 22 (total coliforms) and 37 (arsenic) in 2013 through 2015. Respondents also failed to provide required Tier 3 notices for the monitoring violations found above in paragraphs 20, 24 and 26 (total coliforms), 40 (arsenic), 34 (nitrate), and 42 (lead and copper), and for the failure to conduct triggered source water monitoring in 2013 through 2015 found in paragraph 31 above.

## **V. COMPLIANCE PROVISIONS**

Based on the foregoing findings and pursuant to EPA's authority under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), Respondents agree and are hereby ORDERED to conduct the following activities:

45. **Letter of Intent:** No later than fifteen (15) days from this Amended Order's Effective Date, Respondents shall transmit to EPA a letter summarizing any steps already taken by Respondents to comply with this Amended Order, the SDWA, and its implementing regulations at 40 C.F.R. Part 141, *i.e.*, the NPDWRs.

46. **Implement Initial Priority Actions:**

a. **Provision of Alternative Water to Customers of the Soda Canyon System Until System Achieves Compliance with the SDWA:** No later than forty-five (45) days from this Amended Order's Effective Date, Respondents shall cease using the Soda Canyon System's well for drinking water and instead provide drinking water that meets all applicable SDWA requirements at 40 C.F.R. Part 141 by either providing hauled drinking water to drinking water storage tanks that will be temporarily installed and plumbed into the System's existing distribution system or by installing residential filtration devices, or by a combination of both. The installation of any residential filtration devices shall be done in accordance with all applicable SDWA requirements and policies. Hauled water for delivery to the System shall meet all applicable SDWA requirements, meet daily water supply demand, and shall also meet the minimum requirements for hauled water listed in Appendix A to this Amended Order. Respondents shall consult with the EPA representatives identified in paragraph 71 at least fifteen (15) days prior to providing hauled water as an alternative drinking water supply and comply with any additional written direction from EPA for hauled water that results from this consultation.

b. **Monitoring of Alternative Water Quality:** Respondents shall conduct monitoring of all alternative water in accordance with all applicable NPDWR requirements. If Respondents install

filtration treatment as an initial priority action, Respondents shall also immediately commence monthly arsenic MCL testing at the tap at each residence where filtration is installed.

c. Fire Protection and Public Safety. Respondent shall immediately commence work to rehabilitate the Soda Canyon System's existing storage tank for purposes of ensuring adequate water for fire protection and public safety.

47. **Develop and Submit a Revised Compliance Plan**: No later than forty-five (45) calendar days from this Amended Order's Effective Date, Respondents shall submit for EPA's review and approval a revised draft written compliance plan ("Compliance Plan") that describes in detail the steps and schedule Respondents will follow to return their Systems to compliance with the SDWA<sup>2</sup>. Respondents shall provide the draft Compliance Plan for review to the EPA enforcement officer at the address provided in paragraph 71 below, and on the same day provide the EPA tribal program manager with a copy at the address provided in paragraph 71 below.

48. EPA shall a) approve the draft Compliance Plan; b) approve the draft Compliance Plan upon specified conditions; c) approve part of the draft Compliance Plan and disapprove the remainder; or d) disapprove the draft Compliance Plan. If EPA disapproves the draft Compliance Plan, it will provide written comments to Respondents explaining the reason(s) for its disapproval. Respondents shall correct all deficiencies and resubmit the draft Compliance Plan for approval within thirty (30) days of receipt of notice of EPA's disapproval. A final Compliance Plan must be submitted to EPA no later than June 30, 2017.

49. The Compliance Plan shall, at a minimum, include:

- a. An enforceable schedule with specific milestones that Respondents will follow to bring all systems into compliance with the SDWA.

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<sup>2</sup> Respondents previously provided a Compliance Plan to EPA on December 14, 2015.

- b. Specifically, an enforceable schedule for the Soda Canyon and Upper Seven Mile water systems will illustrate the start and finish dates of terminal elements and summary elements of projects which include but are not limited to:
  - i. Application for a project feasibility or engineering study to mitigate the arsenic MCL.
  - ii. Milestones for implementation of the arsenic feasibility study; and
  - iii. Milestones for implementation of an Arsenic Mitigation Strategy based on the arsenic feasibility study.
  - iv. Milestones for identification of either appropriate filtration or a treatment plant sufficient to ensure the delivery of drinking water that meets the arsenic MCL.
- c. Standard Operating Procedures for when and where drinking water monitoring will be conducted. The Standard Operating Procedures shall describe the controls Respondents will establish to minimize positive total coliform results, to ensure the performance of routine monitoring, repeat monitoring, triggered monitoring and assessments in accordance with the Act, and to ensure adequate treatment of the Systems' water sources to minimize the public's exposure to microbiological contaminants in drinking water. The Standard Operating Procedures shall clearly explain the circumstances that will trigger monitoring and/or assessments.
- d. Capacity Development Strategy to achieve and maintain compliance with the Act. The Capacity Development Strategy shall include a description of the financial controls that Respondents will put in place to acquire and manage sufficient financial resources to ensure the Systems achieve and maintain compliance with the Act for a minimum of 10 years. To this end, the Capacity Development Strategy shall provide for, at a minimum:
  - (i) A Water Rate Study; and

(ii) Development of a Capital Improvement Plan that projects and assesses which projects need to be completed to achieve and maintain compliance with the Act, which shall include, but are not limited to: Asset improvements, infrastructure repairs, and infrastructure replacements.

50. **Implement the Compliance Plan**: Upon approval by EPA of the Compliance Plan submitted by Respondents, Respondents shall implement the Compliance Plan expeditiously, and comply with all enforceable milestones, deadlines, and other requirements described in the Compliance Plan

51. **Monitor for Total Coliform**: Respondents shall comply with all aspects of the Revised Total Coliform Rule, 40 C.F.R. §§ 141.851 through 141.861, including collection of a set of coliform bacteria samples at each water system within thirty (30) days of the Order's effective date, and in every month thereafter, for analysis at a certified laboratory.

52. **Submit Total Coliform Sample Siting Plan**: Within twenty-five (25) days from the Order's effective date, Respondents shall submit the written sample siting plan required by 40 C.F.R. § 141.853 for each of its Systems to EPA for its review. EPA provides its contact information in paragraph 71 below.

53. **Comply with the Ground Water Rule**: Respondents must conduct triggered source water monitoring at each ground water source in use at all nine systems in accordance with 40 C.F.R. § 141.402(a)(2).

54. **Monitor for Nitrates**: Within thirty (30) days of the Consent Order's effective date, Respondents must monitor for nitrate at the Soda Canyon water system in accordance with 40 C.F.R. § 141.23 and have submitted the samples to a certified laboratory for analysis.

55. **Comply with the Arsenic MCL**: Respondents must comply with the running annual average MCL for arsenic at every arsenic sampling point at the Soda Canyon and Upper Seven Mile public water systems no later than September 30, 2018. Respondents shall notify EPA in writing of the date they

initially meet the arsenic MCL within 10 days of receiving the analytical results of sampling from the laboratory.

56. **Continue Quarterly Monitoring for Arsenic:** Respondents shall continue quarterly sampling for arsenic at the Soda Canyon and Upper Seven Mile public water systems at all compliance sampling points until directed otherwise by EPA in writing, in accordance with 40 C.F.R. § 141.23(c)(8). Respondents shall comply with additional and more frequent arsenic sampling and analysis requirements if EPA determines in writing that these additional requirements are necessary for determining compliance with the arsenic MCL, or are otherwise necessary and appropriate to assist with achieving or overseeing compliance with the arsenic MCL and this Order.

57. **Monitor for Lead and Copper:** Respondents must comply with all aspects of the lead and copper requirements found at 40 C.F.R. Subpart I (“Control of Lead and Copper”) including taking a second round of samples from the Lower Peridot Bush water system no later than December 31, 2016 in accordance with 40 C.F.R. § 141.86.

58. **Report Analytical Results of Lead and Copper Monitoring to EPA:** Respondents shall report the second round of lead and copper monitoring results taken in 2016 to EPA by January 10, 2017, in accordance with 40 C.F.R. § 141.90.

59. **Comply with Consumer Confidence Report Requirements:** By July 1, 2017, Respondents must comply with the CCR requirements of 40 C.F.R. §§ 141.151 through 141.155, beginning with the preparation and distribution of the CCRs for each of their Systems for calendar year 2016. Respondents shall provide a copy of the calendar years 2015 and 2016 CCRs to EPA along with certification of the distribution and content of the reports in accordance with 40 C.F.R. § 141.155(c).

60. **Provide Public Notifications of Arsenic MCL Violations:** By December 31, 2016, Respondents must provide the Tier 2 notices for the ongoing arsenic MCL violations. Respondents shall

also submit a certification and a representative copy of this notice to EPA within 10 days of completion of each public notification in accordance with 40 C.F.R. § 141.31(d).

61. **Provide Overdue Public Notifications of MCL and Monitoring Violations:** Respondents must inform the public about total coliform MCL violations that occurred in 2013 - 2015 (see paragraph 22) and the failure to conduct required monitoring found above in paragraphs 20, 24 and 26 (total coliforms), 40 (arsenic), 34 (nitrate), and 42 (lead and copper), and for the failure to conduct triggered source water monitoring in 2013 through 2015 found in paragraph 31 above (*see* Attachment 9 for a Table of Violations). This may be provided in the next CCR, but no later than July 1, 2017. Respondents shall also submit a certification and a representative copy of this notice to EPA within 10 days of completion of each public notification in accordance with 40 C.F.R. § 141.31(d).

62. **Provide EPA with Quarterly Progress Reports:** Respondents must submit written reports to EPA that describe Respondents' progress in implementing its Compliance Plan, including milestones achieved or delayed during the previous quarter, and Initial Priority Actions. The first Quarterly Progress Report shall be due by January 31, 2017. Subsequent reports shall be due no later than ten (10) days after the last day of every calendar quarter thereafter, *i.e.*, the second Quarterly Progress Report is due April 10, 2017. Respondents must submit Quarterly Progress Reports until otherwise directed by the EPA or the termination of this Order.

63. **Conduct Quarterly Meetings:** Respondents must convene quarterly meetings (by teleconference or at a centralized meeting location) and invite the Indian Health Services, the EPA and any meaningful parties to:

- a. Discuss the adequacy of Respondents' compliance with the Amended Order and its Compliance Plan;
- b. Establish any necessary managerial and governance protocols that will assist in Respondents' compliance with the Amended Order and Compliance Plan; and

c. Discuss how to best promote long term and efficient drinking water compliance at the System. The first meeting shall be held at a date to be determined by Respondents in November of 2016. The second meeting shall be held at a date to be determined by the Respondents in February of 2017. Invitations to meetings must be provided at least fifteen (15) days in advance. Subsequent meetings must be held no later than twenty (20) days after the last day of every calendar quarter thereafter, *i.e.*, the third Quarterly Meeting will be held no later than April 20, 2017.

64. **Notify EPA of Delays:** If any event occurs that causes or is likely to cause delay in the achievement of any requirement or time frame specified in this Amended Order, Respondents shall notify EPA in writing, within ten (10) business days of learning of such event, of the anticipated length and cause of the delay, whether the delay constitutes a *force majeure* event, as defined in Paragraph 67, the measures Respondents have taken and/or to be taken to prevent or minimize the delay and the timetable by which Respondents intend to implement these measures and achieve the requirement or meet the time frame. Respondents shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not extend any deadline or time frame in this Amended Order.

65. If, upon receiving the notice required under Paragraph 64, EPA agrees that the delay or anticipated delay in compliance with this Amended Order has been or will be caused by circumstances that constitute a *force majeure* event as defined in Paragraph 67, the compliance date may be extended for a period of time no longer than the delay resulting from the circumstances causing the delay. In such event, the EPA Enforcement Division may grant an extension of time.

66. Respondents have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay was or will be warranted under the circumstances, that Respondents exercised or are using their

best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this section.

67. “*Force majeure*,” for purposes of this Amended Order, is defined as any event arising from causes beyond Respondents’ control, or of any entity controlled by Respondents, or of Respondents’ contractors, which delays or prevents the performance of any obligation under this Amended Order despite Respondents’ best efforts to fulfill the obligation. The requirement that Respondents exercise “reasonable best efforts to fulfill the obligation” includes using best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work to be performed under this Amended Order, failure to diligently pursue funding source(s) for work to be performed under this Amended Order, including federal and state funding sources, or normal inclement weather.

68. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Amended Order has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of EPA’s decision and any delays will not be excused.

69. **Submit Additional Information**: Respondents shall submit to EPA such additional documents and information as EPA may reasonably request to determine Respondents’ compliance with this Amended Order.

70. All submittals to EPA made pursuant to this Amended Order must be accompanied by the following certification signed by Respondents’ representative(s):

*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 ensure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person(s) who managed the system, or of person(s) directly responsible for gathering the information, I certify that the information is, to the best of my knowledge and belief, 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.*

71. Respondents must submit all information required under this Amended Order to:

Allison Watanabe  
Enforcement Officer  
Enforcement Division (ENF 3-3)  
U.S. Environmental Protection Agency,  
Southern California Field Office  
600 Wilshire Blvd. Suite 1460  
Los Angeles, CA 90017  
Phone: (213) 244-1807  
Fax: (213) 244-1850  
E-mail: watanabe.allison@epa.gov

Andrew Sallach, P.E.  
Tribal Program Manager  
Drinking Water Office (WTR 3-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105  
Phone: (415) 972-3503  
Fax: (415) 972-3549  
E-mail: sallach.andrew@epa.gov

## **VI. GENERAL PROVISIONS**

72. Subject to delays associated with *force majeure* delays, Respondents shall fully implement each item of this Amended Order, including meeting the compliance schedules provided for in the EPA-approved Compliance Plan. Respondents' failure to fully implement all requirements of this Amended Order in the manner and time periods required shall be deemed a violation of this Amended Order and the SDWA.

73. Respondents' failure to comply with all of the applicable requirements of the SDWA and 40 C.F.R. Part 141 may subject it to additional enforcement actions, including but not limited to judicial or administrative actions.

74. This Amended Order constitutes the entire agreement of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Amended Order. This Amended Order, however, will not prohibit, prevent, or otherwise preclude EPA from taking whatever action(s) it deems appropriate to enforce the SDWA in any manner and will not prohibit, prevent, or otherwise preclude EPA from enforcing or using this Amended Order in subsequent administrative proceedings. Nothing in this Amended Order constitutes a waiver, suspension or modification of the requirements of

the SDWA, or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Amended Order is not an election by EPA to forgo any civil or administrative action otherwise authorized under the law.

75. Violations of any term of this Amended Order may subject Respondents to (i) a civil judicial penalty of up to \$53,907 per day of violation, as assessed by the United States District Court, under Sections 1414(b) and 1414(g)(3)(A) and (C) of the SDWA, 42 U.S.C. §§ 300g-3(b) and 300g-3(g)(3)(A) and (C), and 40 C.F.R. § 19.4, or (ii) an administrative penalty of up to \$37,561 after notice and opportunity for hearing, under section 1414(g)(3)(A) and (B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A) and (B).

76. This Amended Order does not relieve Respondents of any responsibilities or liabilities established pursuant to any applicable local, state, or federal law.

77. The provisions of this Amended Order are severable. If any provision of this Amended Order is found to be unenforceable, the remaining provisions will remain in full force and effect.

78. The provisions of this Amended Order are binding upon Respondents and their successors or assigns.

79. Providing false or misleading information may subject Respondents to civil or criminal enforcement, or both.

80. Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to this Amended Order, including any right of judicial review under Section 1448(a) of the SDWA, 42 U.S.C. § 300j-7(a).

81. This Amended Order may be amended or modified by written agreement of EPA and Respondents.

82. Except for any data, reports, records, documents, and information required by this Consent Order, Respondents may assert business confidentiality claims under 40 C.F.R. Part 2, Subpart B for any

other information (in whatever form) provided to EPA or may assert that such information is privileged as recognized by and consistent with federal law.

83. Respondents' undersigned signatories certify to their authority to execute this Consent Order and to legally bind the Respondents to the terms of this Amended Order.

**VII. EFFECTIVE DATE AND TERMINATION**

84. This Order shall become effective five (5) business days after signature by the EPA and will remain in effect until Respondents demonstrate compliance with the terms and conditions of this Amended Order and are granted termination pursuant to Paragraph 85.

85. After one year of completing all conditions of this Amended Order, and being in continuous compliance with the requirements of this Amended Order and the SDWA, Respondents may request in writing that EPA terminate this Amended Order. Such request shall include a discussion of why termination is appropriate. EPA shall either agree to the request and terminate this Amended Order, or reject the request and provide a written response to Respondents containing EPA's reasons for not terminating the Amended Order. EPA's decision not to terminate the Amended Order shall not foreclose Respondents' opportunity to make additional termination requests at a later date.

IT IS SO AGREED AND ORDERED:

**For Respondent SAN CARLOS APACHE TRIBE:**

  
\_\_\_\_\_  
The Honorable Terry Rambler, Chairman  
San Carlos Apache Tribe

Date: 9/29/16  
Approved as to form:

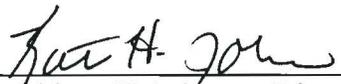
By:  9/30/16  
Tribal Attorney General (Date)

**For Respondent SAN CARLOS APACHE TRIBAL UTILITY AUTHORITY:**

  
\_\_\_\_\_  
Jonathan Kitcheyan, President  
San Carlos Apache Tribal Utility Authority

Date: 9/29/16

**For U.S. ENVIRONMENTAL PROTECTION AGENCY – REGION IX:**



Kathleen H. Johnson, Director  
Enforcement Division

U.S. Environmental Protection Agency – Region IX

Date: 11/1/16

ATTACHMENT 1

TABLE 2 - VIOLATIONS OF TOTAL COLIFORM MICROBIOLOGICAL MONITORING REQUIREMENTS<sup>3</sup>

System Name	Pop.	Monitoring Frequency	Major & Minor Monitoring Violations/Month*			
			2012	2013	2014	2015
Bylas	2929	3x/month	Aug (Major)	Jun, Oct (Major)	No violation	Jan (Major)
Lower Peridot Bush	35	1x/month		Jul – Dec (Major)	Jan – Dec (Major)	Jan, Mar, Jul, Jun (Major)
Lower Peridot	710	1x/month	No violation	No violation	No violation	Jan (Major)
Peridot Heights	2700	3x/month	Aug (Major)			
Upper Seven Mile	7814 (2013-2015)	3x/month (2012) 9x/month (2013-2015)	No violation	Aug, Oct (Minor)	Jun (Minor)	Jan (Major)
Gilson Wash	3200	3x/month	No violation			
Soda Canyon	160	1x/month	Jun, Aug (Major)	No violation	Apr, May, Aug (Major)	Jan (Major)
Cutter	442	1x/month	Aug (Major)	No violation	No violation	Mar (Major)
Upper Peridot	598	1x/month	Aug (Major)	Apr (Major)	Aug (Major)	Mar (Major)
Skill Center	275	1x/month	Aug (Major)	No violation	No violation	Jan, Mar (Major)
Beverly Hills	378	1x/month	Aug (Major)	No violation	No violation	Mar (Major)

\* A “major” monitoring violation is a failure to take all five of the required routine samples. A “minor” monitoring violation is a failure to take some (but not all) of the required routine samples.

<sup>3</sup> Table 2 of this AOC reflects Systems’ populations prior to January 1, 2016. Table 1 of this AOC reflects current Systems’ populations.

ATTACHMENT 2

TABLE 3 - VIOLATIONS OF TOTAL COLIFORM MCL

System Name	Months Total Coliform MCL Violations Occurred			
	Calendar Year 2012	Calendar Year 2013	Calendar Year 2014	Calendar Year 2015
Bylas	Oct	Aug	Apr, Sep	May
Lower Peridot Bush		No monitoring reported	No monitoring reported	No violation
Lower Peridot	Nov	No violation	No violation	No violation
Peridot Heights	Oct			
Upper Seven Mile	Jul, Sep, Oct	Jan, Mar, Apr, May, Jul, Sep	Jan, Feb, Mar, Jul, Aug, Dec	Aug
Gilson Wash	Apr, Jun, Jul, Aug			
Soda Canyon	No violation	No violation	No violation	No violation
Cutter	Mar	Oct	No violation	May
Upper Peridot	No violation	No violation	No violation	No violation
Skill Center	No violation	No violation	No violation	No violation
Beverly Hills	No violation	No violation	No violation	No violation

ATTACHMENT 3

TABLE 4 - VIOLATIONS OF TOTAL COLIFORM REPEAT MONITORING REQUIREMENTS

System Name	Minimum Repeat Samples	Major & Minor Monitoring Violations/Month*			
		2012	2013	2014	2015
Bylas	3	Oct (Major)	Aug (Major)	Mar, Apr, Nov (Major) Sep (Minor)	May (Major)
Lower Peridot Bush	4		No violation	No violation	No violation
Lower Peridot	4	Jun, Sep (Major) Jul, Oct (Minor)	Jul, Aug (Major)	No violation	No violation
Peridot Heights	3	Dec (Major) Oct, Nov (Minor)			
Upper Seven Mile	3; 3	May, Jul, Sep, Oct (Major)	Jan, Apr, May, Jun, Jul, Aug, Sep, Dec (Major) Mar (Minor)	Jan, Feb, Mar, May, Jun, Jul, Aug, Dec (Major)	Apr, May, Jun, Jul, Aug, Sep, Oct (Major)
Gilson Wash	3	Jun, Jul, Aug, Oct (Major) May (Minor)			
Soda Canyon	4	Jul (Major)	No violation	No violation	No violation
Cutter	4	Jun, Oct (Major)	Jul (Major)	Mar, Apr, Jul, Dec (Major)	Apr, May, Jul, Oct (Major)
Upper Peridot	4	Oct (Minor)	May (Major)	No violation	No violation
Skill Center	4	Oct (Major)	No violation	No violation	No violation
Beverly Hills	4	Jun (Major) Oct (Minor)	Jul (Major)	Dec (Major)	No violation

\* A “major” monitoring violation is a failure to take all of the required repeat samples. A “minor” monitoring violation is a failure to take some (but not all) of the required repeat samples.

ATTACHMENT 4

TABLE 5 - VIOLATIONS OF TOTAL COLIFORM REPEAT MONITORING REQUIREMENTS RELATED TO ROUTINE SAMPLING

System Name	Major & Minor Violations/Month*			
	2012	2013	2014	2015
Bylas	Nov (Minor)	Sep (Minor)	Apr, Oct, Dec (Minor)	June (Minor)
Lower Peridot Bush		No violation	No violation	No violation
Lower Peridot	Jul, Aug, Oct, Nov, Dec (Minor)	Aug, Sep (Minor)	No violation	No violation
Peridot Heights	Dec (Minor)			
Upper Seven Mile	Aug, Oct, Nov (Minor)	N/A	N/A	N/A
Gilson Wash	Jun, Sep (Minor)			
Soda Canyon	No violation	Aug (Minor)	No violation	No violation
Cutter	Jul (Minor)	Aug, Nov (Minor)	Apr, July, Aug, Oct (Minor)	Jan (Major) May, Jun, Aug, Nov (Minor)
Upper Peridot	Nov (Minor)	Jun (Minor)	No violation	No violation
Skill Center	No violation	No violation	No violation	No violation
Beverly Hills	Jul (Minor)	No violation	No violation	Jan (Major)

\* A “major” monitoring violation is a failure to take all five of the required routine samples. A “minor” monitoring violation is a failure to take some (but not all) of the required routine samples.

ATTACHMENT 5

TABLE 6 - VIOLATIONS OF GROUND WATER RULE TRIGGERED SOURCE WATER MONITORING REQUIREMENTS

System Name	Triggered Source Water Samples <sup>4</sup>	Major & Minor Monitoring Violations/Month*			
		2012	2013	2014	2015
Bylas	2	Oct (Minor)	Aug (Major)	Mar, Apr, Sep, Nov (Major)	May (Major)
Lower Peridot Bush	1		No violation	No violation	No violation
Lower Peridot	1	Jun, Sep (Major)	Jul, Aug (Major)	No violation	No violation
Peridot Heights	2	Oct, Nov (Minor) Dec (Major)			
Upper Seven Mile	2 (2012) 7 (2013-2015)	May, Sep (Major) Oct (Minor)	Jan, Mar, Apr, May, Jun, Jul, Aug, Sep, Dec (Major)	Jan, Feb, Mar, May, Jun, Jul, Aug, Dec (Major)	Apr, May, Jun, Jul, Aug, Sep, Oct (Major)
Gilson Wash	2	Jun, Aug (Major) Jul, Oct (Minor)			
Soda Canyon	1	Jul (Major)	No violation	No violation	No violation
Cutter	N/A	N/A	N/A	N/A	N/A
Upper Peridot	1	No violation	May (Major)	No violation	No violation
Skill Center	1	Oct (Major)	No violation	No violation	No violation
Beverly Hills	1	Jun (Major)	Jul (Major)	Dec (Major)	No violation

\*A “major” monitoring violation is a failure to take all of the required samples. A “minor” monitoring violation is a failure to take some (but not all) of the required samples.

<sup>4</sup> Numbers of triggered source water samples are determined by EPA.

ATTACHMENT 6

TABLE 7 – VIOLATION OF ARSENIC 10 ug/L MCL AT SODA CANYON PWS

Monitoring Date	Quarter (Calendar Year)	Result(s) (ug/L)	Running Annual Average (ug/L over four quarters)
2013			
March 5, 2013	1st	102	106
No monitoring performed	2nd	N/A	106
No monitoring performed	3rd	N/A	106
December 27, 2013	4th	99	101
2014			
March 25, 2014	1st	12	56
June 22, 2014	2nd	116	76
September 15, 2014	3rd	8	59
December 22, 2014	4th	101	59
2015			
March 25, 2015	1st	9	59
No monitoring performed	2nd	N/A	39
August 31, 2015	3rd	7	39
December 14, 2015	4th	120	45

## ATTACHMENT 7

TABLE 8 - VIOLATION OF ARSENIC 10 ug/L MCL AT UPPER SEVEN MILE PWS (River Well)

Monitoring Date	Quarter (Calendar Year)	Result(s) (ug/L)	Running Annual Average (ug/L over four quarters)
2013			
March 5, 2013	1st	32	23
April 4, 2013	2nd	15	20
No monitoring performed	3rd	N/A	20
December 27, 2013	4th	14	20
2014			
March 25, 2014	1st	13	14
June 22, 2014	2nd	10	12
September 15, 2014	3rd	11	12
December 22, 2014	4th	12	12
2015			
March 25, 2015	1st	16	12
June 30, 2015	2nd	12	13
No monitoring performed	3rd	N/A	13
December 16, 2015	4th	19	16

ATTACHMENT 8

TABLE 9 - VIOLATIONS OF PUBLIC NOTICE REQUIREMENTS IN 2013 THROUGH 2015

System Name	Violations of the <b>Tier 2</b> Public Notice Requirements for Failing to Notify the Public of the following MCL Violations:	Violations of the <b>Tier 3</b> Public Notice Requirements for Failing to Notify the Public of Respondents' Failure to conduct monitoring related to:
Bylas	Total Coliforms	Total Coliforms Triggered source water monitoring
Lower Peridot Bush	No Tier 2 public notice violation	Total Coliforms Lead and Copper
Lower Peridot	Total Coliforms	Total Coliforms Triggered source water monitoring
Peridot Height	Total Coliforms	Total Coliforms Triggered source water monitoring
Upper Seven Mile	Total Coliforms Arsenic	Total Coliforms Triggered source water monitoring Arsenic
Gilson Wash	Total Coliforms	Total Coliforms Triggered source water monitoring
Soda Canyon	Arsenic	Total Coliforms Triggered source water monitoring Nitrate Arsenic
Cutter (Consecutive System)	Total Coliforms	Total Coliforms
Upper Peridot	No Tier 2 public notice violation	Total Coliforms Triggered source water monitoring
Skill Center	No Tier 2 public notice violation	Total Coliforms Triggered source water monitoring
Beverly Hills	No Tier 2 public notice violation	Total Coliforms Triggered source water monitoring

**APPENDIX A**  
**HAULED WATER - MINIMUM REQUIREMENTS**

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1. All hauled water for delivery to a public water system shall be obtained from a source that is approved by USEPA or is a regulated public water system in compliance with all applicable SDWA requirements.
2. Thoroughly cleaned and disinfected food products tanks may be used to haul water, and tanks or reservoirs that were previously used for transportation of products other than those stated above are specifically prohibited.
3. Tanks and reservoirs shall be constructed of non-toxic corrosion-resistant material and the contents protected from pollution arising from leaks, drainage, dust or for any other reason. Materials or products that come into contact with the water shall conform to ANSI/NSF Standard 61,<sup>5</sup> and such materials and products and materials shall include but are not limited to:
  - a. Process media, such as carbon and sand;
  - b. Joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
  - c. Lubricants;
  - d. Pipes and related products, such as tanks and fittings;
  - e. Mechanical devices used in treatment, transmission, or distribution systems such as valves, chlorinators, and separation membranes; and
  - f. Surface coatings and paints
4. Roof hatches shall be fitted with a watertight cover.
5. A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.
6. Hoses that are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.
7. A water hauler shall, at all times, maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added at the time water is loaded into the container.
  - a. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements. Such records shall be maintained for at least three years and made available to USEPA for review upon request.

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<sup>5</sup> ANSI/NSF Standard 61 may be referenced on-line at: <http://www.nsf.org/services/by-industry/water-wastewater/municipal-water-treatment/nsf-ansi-standard-61>

- b. The operator of trucks engaged in hauling or transporting public domestic water shall have available approved test kits for the determination of chlorine and other disinfectants levels and shall perform such tests.
8. A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled **“For Drinking Water Use Only.”**
9. Filler-lines or hoses shall be flushed to remove all forms of contamination before being used to fill tanks of reservoirs.
10. No part of the filler-line or hose shall be permitted to come into contact with water or any surface area within the tank.
11. No person shall engage in hauling or transporting water intended for public potable use without valid authorization to do so from the San Carlos Apache Tribal Utility Authority.