



# Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services**

**Public Health Division**

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BEFORE THE STATE OF OREGON  
DEPARTMENT OF HUMAN SERVICES  
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Bear Creek Hideout Water System /  
Rose Lodge Water Co., Inc., PWS  
OR4100482

Respondent

NOTICE OF VIOLATION AND  
ADMINISTRATIVE ORDER

To: Bette Carter  
Bear Creek Hideout Water System/Rose Lodge Water Co., Inc.  
PO Box 123  
Otis, OR 97368

Rose Lodge Water Co., Inc. (Rose Lodge) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211) that owns and operates the Bear Creek Hideout Water System (Bear Creek WS).

Rose Lodge, as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

The Bear Creek WS is a community public water system that serves between 101 and 300 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0295.



## **Bear Creek WS**

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The Oregon Department of Human Services, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Agency) held preliminary meetings with Elizabeth and Jim Walter in mid-December 2009 to discuss operation of the Bear Creek WS. It was identified at that time that the system was providing unfiltered surface water to its customers due to the previous groundwater sources for the system not meeting the water system demand. Pursuant to its authority under ORS 448.150, the Agency has further investigated the operation of the Bear Creek WS.

The Agency found, during its investigation that, at some point prior to December 2009, Rose Lodge began using unfiltered surface water to supplement the water produced by its existing groundwater sources in supplying water to the customers of the Bear Creek WS. This is a violation of the treatment techniques specified in OAR 333-061-0032 which requires that surface water receive adequate treatment before being delivered to customers, and represents a potential public health hazard. Furthermore, it was determined during the sanitary survey conducted on December 31, 2009 that the Bear Creek WS lacked an operator certified at the appropriate level to be in direct responsible charge of the water system.

This Notice of Violation and Administrative Order (Order) is being issued to Rose Lodge for specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.285) and rules found during the Agency's investigation.

### DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: On December 31, 2009 the Lincoln County Health Program conducted a sanitary survey of the Bear Creek WS. This survey identified that the Bear Creek WS was utilizing both a groundwater well and a surface water source to supply water to the Bear Creek WS. OAR 333-061-0032 requires surface water to be treated to remove or inactivate pathogenic microorganisms before being supplied to customers, but the Bear Creek WS is not currently utilizing adequate treatment before delivering the water to customers, which is a violation of OAR 333-061-0032.
- Violation No. 2: The December 31, 2009 sanitary survey identified that Rose Lodge is not utilizing an operator certified at the appropriate level to be in direct responsible charge of the Bear Creek WS. This is a violation of OAR 333-061-0225.

- Violation No. 3: Rose Lodge failed to submit nitrate sampling results for the 2009 annual monitoring period as required by OAR 333-061-0036(2)(d).
- Violation No. 4: The December 31, 2009 sanitary survey identified that a tracer study or alternative had not been completed to verify disinfectant contact time at the Bear Creek WS, which is a violation of OAR 333-061-0050(6)(a)(R).
- Violation No. 5: The December 31, 2009 sanitary survey identified that the disinfection contact chamber does not possess an effluent flowmeter or adequate alternative, which is a violation of OAR 333-061-0050(6)(a)(S) and also identified as a significant deficiency in OAR 333-061-0076(4)(d)(A).

**ACTIONS REQUIRED TO ACHIEVE COMPLIANCE**

Rose Lodge is required to conduct the corrective actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) allegedly violated (ORS 448.255(3)).

- Compliance Action No. 1: Rose Lodge must submit construction plans for a surface water treatment system indicating how it will comply with the treatment requirements specified in OAR 333-061-0032. These construction plans must be submitted no later than June 30, 2010.
  - Plans must be prepared by a professional engineer pursuant to OAR 333-061-0060(1)(b), and approved in advance, before installation, by the Agency (OAR 333-061-0060(1)(a)).
  - Plans shall have sufficient detail to completely and clearly illustrate what will be constructed and how the water system will meet any applicable construction standards specified in OAR 333-061-0050 (OAR 333-0061-0060(1)).
  - Submit any plans and the required plan review fee to: Marsha Fox, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450. Please contact the Agency for the plan review fee amount, and make the check out DHS Health Services.
- Compliance Action No. 2: Rose Lodge must complete construction of the surface water treatment system no later than December 31, 2010.

- Compliance Action No. 3: Rose Lodge must demonstrate that all system users receive drinking water that consistently meets all applicable state and federal drinking water laws and rules no later than March 31, 2011.
- Compliance Action No. 4: Rose Lodge must issue a public notice for failure to comply with surface water treatment requirements. The notice will direct water users to boil water before using the water for drinking or cooking purposes, and include the adverse health effects language specified in OAR 333-061-0097(5)(c). The notice must be issued every calendar quarter, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-0025). The notice must be hand delivered to every customer served by the water system, and also posted in conspicuous locations within the area served by the water system (OAR 333-061-0042(3)(a)(D)). A copy of the notice must be submitted to the Agency no later than 10 days after completing the public notification in accordance with OAR 333-061-0040(1)(i).
- Compliance Action No. 5: Rose Lodge must designate an operator certified at the appropriate level to be in direct responsible charge of the water system no later than June 30, 2010 (OAR 333-061-0225). The designation must be submitted in writing to: Dottie Reynolds, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.
- Compliance Action No. 6: Rose Lodge must complete a tracer study to verify that its disinfection process is meeting water treatment requirements and achieves adequate contact time, as required by OAR 333-061-0050(6)(a)(R), no later than October 31, 2010.
- Compliance Action No. 7: Rose Lodge must install a flowmeter or an adequate alternative on the effluent from the contact chamber as required by OAR 333-061-0050(6)(a)(S) no later than October 31, 2010.

#### INTERIM OPERATING REQUIREMENTS

- Rose Lodge must accurately record the turbidity every day, prior to any water storage, and immediately notify the Agency if the recorded turbidity ever exceeds 5 NTU. Rose Lodge must also accurately record the pH, temperature, and chlorine residual every day, after any water storage and prior to the first water user. All of this

information must be reported to the Agency within 10 days of the end of every calendar month until completion of all compliance actions identified in this Order.

### GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.285 and administrative rules OAR 333-061-0005 to 333-061-0295, which remain in full force and effect.

This Order does not relieve Rose Lodge of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by the Agency to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with all requirements in this Order by the specified due dates may result in additional enforcement action, which may include assessment of civil penalties in the amount of \$100 per day per violation (OAR 333-061-0090).

### NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (chapter 183, Oregon Revised Statutes). If you want a hearing you must file a written request for hearing with the Agency within 10 days from the date this notice was mailed. If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. The request for hearing must be sent to: David E. Leland, Manager; DHS - Drinking Water Program; PO Box 14450; Portland, OR 97293.

If you do not make a timely request for a hearing, the Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 71 days from the day this Order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

**Bear Creek WS**

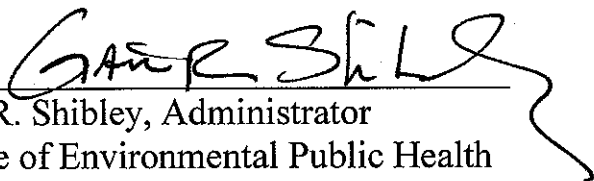
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If you do not request a hearing and the Agency subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

The Agency has designated the Agency's complete file on Bear Creek WS as the record in this case for purposes of proving a prima facie case upon default.

If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0407.

Dated this 28<sup>th</sup> day of April, 2010.



Gail R. Shibley, Administrator  
Office of Environmental Public Health

- cc: Fred Kalish, DHS-DWP
- Karen Kelley, DHS-DWP
- Kathy Miller, PUC
- Shannon O'Fallon, Oregon Department of Justice
- Harold Rogers, USEPA
- Elizabeth Walter, Bear Creek WS

DATE of Service: April 29, 2010



Brad K. Daniels

By certified and first class mail.