

Morning View Water Company  
P.O. Box 598  
Rigby, ID 83442

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2009 JUN -5 PM 1:59

morningviewhomes@qwestoffice.net IDAHO PUBLIC  
208-745-0029 UTILITIES COMMISSION

Idaho Public Utilities  
Jean Jewell, Secretary to the Commission  
472 W. Washington Street  
P.O. Box 83720  
Boise, ID 83720-0074

Mail Certified:  
7004 1350 0005 7734 0404

*MNV-W-09-01*

Jean,

Subject: Request for Rate Increase.

Enclosed please find a drafted summons from the Attorney General's office.

On April 24<sup>th</sup> 2009, the main pump motor on our large well burned up. Fortunately the contingency fund covered these expenses which were approximately, \$5,500.00 for labor and the new motor. This fund has been depleted except for around \$300.00

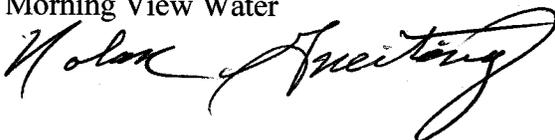
At this time D.E.Q. has required that we have an additional well to bring Morning View Water into compliance. They are also asking that we have a variable speed drive motor installed on the existing well to be used as a back up well. We are diligently trying to find financing, and expect this to set Morning View Water Company back at least \$30,000.00 in order to have completed.

We have noted that last year Rocky Mountain Power was given a rate increase of around 10%. We will be experiencing a very high electric bill this summer from our own well house. Our electric bill runs us about \$2,000.00 each month from May to September. We have 106 services using the water to irrigate their yards along with domestic use. The 10% increase does not reflect on our customer's current rate structure.

However, we regret that we will not be able to make our own Rocky Mountain electric payments, and are in dire need of relief. If we do not receive a sufficient rate increase to help cover cost and recoup our losses from abiding to D.E.Q.'s demands, we fear that Morning View Water Company will be out of business by August 2009.

Please advise us as what should be done to alleviate our situation. It is imperative that we hear from you. We desperately need to have at least a 25% rate increase to financially survive. Thanks again.

Sincerely,  
Nolan Gneiting  
Morning View Water



cc/ Bob Smith, I.P.U.C.  
cc/ Rob Harris, Holden, Kidwell,  
Crapo, & Hahn



Holden Kidwell  
Hahn & Crapo P.L.L.C.  
L A W O F F I C E S

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IDAHO PUBLIC  
UTILITIES COMMISSION

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Idaho Falls, Idaho 83405

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May 22, 2009

**VIA HAND DELIVERY**

Morning View Water Company  
c/o Nolan Gneiting  
P.O. Box 598  
Rigby, ID 83442

RE: Summary of Meeting with IDEQ Officials, Morning View Engineer Ryan Loftus, and Deputy Attorney General Courtney Beebe.

Dear Nolan:

This letter is intended to summarize a meeting held at the offices of IDEQ in Idaho Falls, Idaho, on May 21, 2009. Officials from both the Boise office and Idaho Falls office of IDEQ were in attendance, along with Deputy Attorney General Courtney Beebe, and Ryan Loftus from Aspen Engineering, Morning View's engineer. The intent of the meeting was to discuss the status of your disapproved water system, and ways to potentially deflect a potential complaint to be filed by the State of Idaho. When we initially arrived at the meeting, there were some good discussions, and eventually we were presented with a draft complaint that the State of Idaho is contemplating filing against you. A copy of that draft Complaint is attached. Based on this draft complaint, and on the comments made during the conference, the State of Idaho is very serious about issues surrounding your water system, and ready to move forward with the lawsuit.

When you initially visited with me approximately a month ago regarding this issue, and requested our representation, you indicated that you were seeking our services to help you resolve your issues with IDEQ. Our approach has therefore been to work collaboratively with the State, and to try to find ways to resolve matters relating to your water system to avoid the filing of a lawsuit. In our view, the costs and expense of defending a lawsuit could be better used in purchasing infrastructure and other materials that IDEQ has suggested. It is in that spirit that we make the following recommendations.

The template of our discussion yesterday was based on an April 29, 2009 letter from IDEQ outlining a number of issues still relating to the water system. Some of those items

*Established in 1896*

simply sought clarifications of issues in the report prepared by Mr. Loftus, which were of minor consequence. However, there were items that were significantly discussed, and in my opinion, if Morning View follows the recommendations set forth below, it charts a path that would avoid a lawsuit from the State of Idaho, and bring your water system into compliance. We therefore strongly recommend that Morning View follow the below recommendations with exactness. Otherwise, the State will move forward with the filing of the complaint.

**Recommendation No. 1:** The State indicated it had not received copies of the quarterly notices prepared by Morning View, even though the notice itself indicates that a copy went to IDEQ. Effectively immediately, please ensure that copies of any notices are mailed to the IDEQ office in Idaho Falls, to the attention of Greg Eager and Rochelle Mason.

**Recommendation No. 2:** While not required under any rule or regulation, IDEQ realizes there are a number of individuals living within your development who only speak Spanish. They felt that because of the intent of the notice was to put individuals on notice relating to the water system, it would be beneficial to have those notices translated into Spanish. We are told that there are websites where English can be typed, and they will be translated into Spanish. Having briefly dealt with your office assistants, it seems they would be very capable of learning how to use this information. Additionally, you could arrange to have a bi-lingual person provide this information to those who speak Spanish. We recommend that you either (1) prepare notices in Spanish, or (2) have an individual translate the notice to those that do not speak English.

**Recommendation No. 3:** The report prepared by Mr. Loftus recommends that you have pressure settings between 50 and 75 psi. Yesterday, Mr. Loftus confirmed that the lower pressure setting was at 50, but the upper was only at 75. Mr. Eager repeated several times that he believed the recommendations contained in the engineering report should be followed by Morning View. Therefore, we strongly recommend you increase the upper pressure settings to 75 psi.

**Recommendation No. 4:** IDEQ has indicated that they have not received any pressure data from you. You have previously provided us pressure information that was obtained through IDEQ's equipment, but to date, no pressure data logger has been purchased by the company, and used throughout the system. As this issue was discussed, it appeared to Mr. Loftus and I that the information from the pressure logger, while helpful to IDEQ, would seemingly be more important to Morning View. If there are truly pressure problems with

individual residences, a data logger could protect the company from any of those claims. It is estimated that a continuous data logger would cost between \$500.00 and \$700.00. We recommend that one is purchased immediately, and used throughout the system at various periods of time so that Morning View gets a clear picture of what its system's strengths and weaknesses are. We would further note that you previously indicated there had been no pressure problems because of pressure measured at the pump. However, the pressure guidelines and rules followed by IDEQ require that a certain pressure be maintained throughout the system. This means that pressure needs to be measured at individual residences, not simply at the point at which water is diverted. A mobile continuous data logger would protect the company, and at the mere cost of \$500.00 to \$700.00, we recommend you purchase one within the next fourteen (14) days and begin collecting information.

**Recommendation No. 5:** There were significant discussion regarding use of the old well currently located on your property. Mr. Loftus discussed how the well was constructed, and in doing so, asked for an exemption for the required 58 foot liner for public water system, as retrofitting the well would be quite expensive. As an indication that IDEQ is interested in resolving these issues with you, Mr. Eager said he would be willing to waive that requirement, and leave the seal at its current 18 feet, if perhaps there are other cautionary measures implemented. However, before determining what other cautionary measures could be implemented, such as chlorination, the parties concluded it would be in everyone's best interests to have the well pump tested. A pump test of the well would allow Morning View to determine if it is still a viable place to have a backup well, or to feed additional water pressure into the system. It estimated that a pump test could cost anywhere between \$10,000.00 and \$20,000.00. While this might appear to be a significant cost, if the pump test proves the well is still a viable, it would be much less expensive to have the pump test instead of drilling a new well at another location within the development. We therefore strongly recommend that you immediately begin the process of having a pump test performed within the next thirty (30) days.

**Recommendation No. 6:** One of Mr. Loftus' recommendation in his report was the installation of variable speed drives in your pumps. You have previously provided me information on equipment that is commonly called a "soft start". In discussing this with IDEQ, the soft start does provide some benefits, but in their view, does not provide infrastructure that would help solve the pressure problem. In discussing the benefits of the variable frequency drives, it was concluded that installation of this equipment would assist with pressure problems, which is the largest concern held by IDEQ, and would have the

incidental benefit of saving power costs. Mr. Loftus estimates that installation of these would cost approximately \$10,000.00. We strongly recommend they be implemented and installed within the next thirty (30) days.

**Recommendation No. 7:** Towards the end of the discussion with IDEQ, it was evident that they are receiving a number of complaints from individuals within the system. Much favor would be gained with IDEQ if there was a vast improvement in your public relations with those serviced by the Company. While not recommended by IDEQ, but strongly recommended by myself, within the next three weeks, we would strongly recommend you hold a public meeting for patrons of your water system, to provide them an update, and a forum to discuss the issues currently facing the system, and your plan of action in moving forward. In the context of that meeting, we would request that the homeowners cease providing complaints to IDEQ and instead we would ask for their patience as we seek to improve the system. Additionally, we would strongly recommend you obtain an email list, where any notices could be emailed and received by the parties immediately. This type of an approach would certainly give the impression that Morning View is much more interested in providing information to patrons of the business, rather than moving on as they have previously. It would further please those that regulate your water system and would certainly earn you favor with those regulators.

**Recommendation No. 8:** As stated above, you have sought our services to help you resolve your outstanding issues with IDEQ, and to have your system brought online to where it is no longer a disapproved system. Currently, Jefferson County will not approve the construction of any new buildings within your development under a disapproved system. This is a motivating factor in how we move forward. In our opinion, IDEQ has given us a clear path forward on how we resolve these issues. If they are not followed with exactness, they are ready, willing, and able to file their complaint. If Morning View decides to follow our recommendations as discussed above, IDEQ will further insist that we sign what is commonly called a "Tolling Agreement". In the State of Idaho, there is a two year statute of limitations on enforcing the provisions of a consent order. A tolling agreement is an agreement between the State of Idaho and the regulated individual which contractually binds the parties not to raise the statute of limitations defense in the event a complaint is filed more than two years after the date of non-compliance. We would strongly recommend that you sign the tolling agreement, which would give you additional time to deal with the infrastructure issues facing the water system.

In sum, we recommend the following items be undertaken or completed within the next 30 to 60 days.

1. Immediately begin copying IDEQ with all correspondence and quarterly notices:
2. Translate the quarterly notices and other notices into Spanish:
3. Increase your upper pressure settings to 75 psi immediately;
4. Within the next fourteen (14) days, purchase a continuous data logger, and begin logging data at various points in the system:
5. Within the next thirty (30) days, have a pump test performed on the well located on your property to determine its feasibility as a source of public water for this system.
6. Install variable speed drives on the Morning View pumps within the next 30 days:
7. Within three to four weeks, hold a public meeting with patrons of your company to discuss the path forward and our recommendations, and to request they not file any complaints with IDEQ while these issues are further investigated and implemented:
8. Obtain an email list for patrons of your water system:
9. Sign a tolling agreement so the State of Idaho will not file its complaint in either September or October:

While the above recommendations will certainly assist with IDEQ, we are aware that the above recommendations would require money to implement them. The topic of funding was discussed at our meeting, in both the context of long term planning, such as obtaining water meters, and short term such as, in performing the pump test and installing the variable speed drives. We believe you would be able to obtain private financing for the immediate installation of the variable speed drives, the pump test, and purchasing of the pressure data logger. We estimate these costs to total between \$20,000.00 and \$25,000.00. Additionally, we have some information that could be followed up on relative to obtaining loans or grants for the purchase of the water meters to be installed throughout the system. We can discuss these in more detail at your convenience.

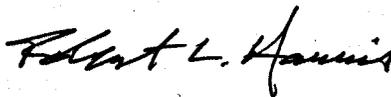
In previous meetings with you, you indicated that it appears IDEQ is singling you out, and that you have complied with all of their regulations. I am not clear at this point as to where there appears to have been a break down in communication between IDEQ and Morning View. In meeting with IDEQ officials, in my view, they are not singling you out. The impression I have from Mr. Greg Eager is that he is eminently patient, and still willing to work these issues out. This is evidenced by the fact that he would be willing to allow the well located on your property to be used as part of the public water system without requiring

an expensive retrofit for the upper seal. This could save you approximately \$100,000.00 to \$150,000.00, which would be the cost of drilling a new well.

As stated in the opening of this letter, you have requested our services in an attempt to bring your water system into compliance. As we have reviewed the complaint, and have further understood the regulations, the likelihood of you successfully defending the enclosed draft complaint is not very good. Our advice is to avoid the filing of the complaint at all costs, avoid incurring significant attorney fees and costs in defending the lawsuit, and instead direct funds you would pay in attorneys fees and costs to the purchase of equipment that would better improve your system. Attorneys are hired to provide the best advice to their clients, and our advice to you is to follow to exactness the above recommendations. To the extent you do not, then the purpose for which you have hired us, providing legal advice, is of no value. Therefore, if the above recommendations are not followed, we will withdraw from representing you any further in this matter. In our view, now is not the time to argue any further with IDEQ, as they have simply lost their patience. We trust we can have an open and frank discussion about how we move forward, and whether or not you intend to follow the above recommendations with exactness. In our view, this is the only way we can protect you from expensive litigation with the State.

If you have any questions or concerns, we will be happy to discuss them with you additionally.

Best Regards,



Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Ryan Loftus - Hand Delivery

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Attorney General

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Chief, Natural Resources Division

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Attorneys for Plaintiff

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IDAHO PUBLIC  
UTILITIES COMMISSION

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

STATE OF IDAHO, DEPARTMENT  
OF ENVIRONMENTAL QUALITY,

Plaintiff,

v.

Nolan Gneiting, d/b/a Morningview Water  
Company,

Defendant.

CASE NO. \_\_\_\_\_

COMPLAINT

Filing Fee: Exempt [Category A]  
Idaho Code § 31-3212

Plaintiff, the Idaho Department of Environmental Quality ("Department"), by and through the Office of the Attorney General, makes this complaint and claim for relief against Nolan Gneiting, d/b/a Morningview Water Company ("Defendant"), alleging as follows:

## NATURE OF THE CASE

1. This is a civil action initiated pursuant to the Idaho Environmental Protection and Health Act (EPHA), Idaho Code § 39-101 *et seq.*, specifically, I.C. § 39-108, and the terms and conditions of a consent order dated October 25, 2007, between the Department and Defendant ("Consent Order," attached hereto as Appendix I). The Department seeks specific performance of the unperformed terms of the Consent Order and seeks a permanent mandatory injunction requiring the Defendant to comply with IDAPA 58.01.08 as alleged below.

2. The Department seeks penalties of not more than ten thousand (\$10,000) per violation or one thousand (\$1,000) for each day of continuing violation, whichever is greater, pursuant to Idaho Code § 39-108(5).

3. The Department seeks expenses incurred in bringing this action to enforce the EPHA, IDAPA rules promulgated thereunder, and/or the Consent Order, as provided by Idaho Code § 39-108(6).

4. The Department also seeks reasonable attorneys' fees, witness fees, and reasonable expenses as provided by Idaho Code § 12-117 and I.R.C.P. 54.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code § 39-108(3)(b) and Idaho Code § 1-705.

6. This Court has personal jurisdiction over the Defendant pursuant to Idaho Code § 5-514(a-c) for the reason that the Defendant has committed acts within the State of Idaho out of which this cause of action arises and which violate the laws of the State of Idaho. Additionally, the Defendant owns real property within the State of Idaho,

which is related to the subject matter involved in this action.

7. Venue is proper in the Court, pursuant to Idaho Code § 39-108(3)(b) and Idaho Code § 5-404, because the violations and acts and omissions alleged herein occurred and the action arose in Rigby, Jefferson County, Idaho.

### PARTIES

8. The Department is a duly authorized governmental entity, established pursuant to Idaho Code § 39-104 and charged by the legislature with responsibility to enforce the Rules of the Department of Environmental Quality.

9. Nolan Gneiting is a person within the meaning of Idaho Code § 39-103(11).

10. Morningview Water Company is a person within the meaning of Idaho Code § 39-103(11).

### FACTUAL ALLEGATIONS

11. Idaho Code § 39-108(3)(a)(iv) states that if the recipient of a notice of violation under ID § 39-108(3)(a)(i) and the Director of the Department "agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

12. Idaho Code § 39-108(3)(a)(v) provides that "a consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court,

specific performance of the consent order and such other relief as authorized in this chapter.”

13. Idaho Code § 39-108(b) allows the Department to commence a civil enforcement action “in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any rule, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The Director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.”

14. Idaho Rule for Public Drinking Water Systems 58.01.08.003.87 defines a public drinking water system as a “system for the provision to the public of water for human consumption through pipes or other August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves on average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.”

15. Defendant Nolan Gneiting is the president and sole share holder of the Morningview Water Company according to the 2009 Annual Report on file with the Idaho Secretary of State.

16. Defendant owns and operates a public drinking water system (“System”) that serves approximately one hundred and six (106) connections and approximately two hundred twenty five (225) persons on a daily basis in Rigby, Jefferson County,

Idaho.

17. Idaho Rule for Public Drinking Water Systems 58.01.08.552.01.b.i requires that "[a]ny public water system shall be capable of providing sufficient water during maximum day demand conditions, including fire flow to maintain a minimum pressure of twenty (20) psi throughout the distribution system, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises."

18. Idaho Rule for Public Drinking Water 58.01.08.552.01.b.ii requires that "[a]ny public water system constructed or significantly modified after July 1, 1985, shall maintain a minimum pressure of forty (40) psi throughout the distribution system, during peak hourly demand conditions, excluding fire flow, measured at the service connection or along the property line adjacent to the consumer's premises."

19. Idaho Rule for Public Drinking Water 58.01.08.552.01.b.v requires that "[w]hen pressures within the system are known to have fallen below twenty (20) psi, the water system must provide public notice and disinfect the system."

On July 5, 2007, the Department investigated and verified a consumer complaint from a connection to the System regarding inadequate pressure and discovered that pressure in the system fell below twenty pounds per square inch (20 psi) during a 24-hour period.

21. On July 6, 2007, the Department notified Defendant of the System's inadequate pressure by letter and required Defendant to remedy the inadequate pressure within ten (10) days.

22. On July 23, 2007, the Department conducted additional pressure testing at

five (5) connections to the System, and discovered the average pressure in the System during a twenty-four hour period was twenty-two pounds per square inch (22 psi).

23. On July 25, 2007, the Department notified the Defendant of the results of the July 23, 2007, pressure testing by letter and required the Defendant to diagnose and correct pressure deficiencies by August 6, 2007. The letter included notification to the Defendant of IDAPA 58.01.08.552.01.b.v, and required the Defendant to provide public notification of pressure loss to each connection to the System.

24. By letter of August 8, 2007, the Department notified the Defendant of the Defendant's failure to notify the Department of any efforts to diagnose the System's pressure deficiencies or corrective actions taken to resolve the System's pressure deficiencies by August 6, 2007.

25. On August 16, 2007, by letter the Department notified the Defendant that the Department had suspended the System for failure to diagnose and resolve pressure deficiencies.

26. On September 12, 2007, the Department issued a Notice of Violation ("NOV") pursuant to I.C. § 39-108(a)(i) and notified the Defendant of multiple violations of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08). The NOV provided the Defendant an opportunity for a compliance conference and the Department held a compliance conference with the Defendant on September 26, 2007.

27. Pursuant to I.C. § 39-108(a)(iv) and (v), the Department and the Defendant, entered into a Consent Order on October 25, 2007.

28. Paragraph 9.b of the Consent Order requires the Defendant to provide quarterly public notices to each connection to the System by mail or hand delivery,

informing the consumers of the Department's disapproval of the System and shall identify the violations in the September 12, 2007, NOV, as required by IDAPA 58.01.08.150. Paragraph 9.b. of the Consent Order also required the Defendant to "continue to provide quarterly public notices until such time as the Department notifies [the Defendant] in writing that quarterly notices are not longer required." Additionally, the Defendant agreed to "provide the Department with proof of each quarterly notification via the Department's supplied notification form and a copy of each quarterly notification within ten days of completion."

29. The Defendant failed to provide to each residence connected to the System a Second Quarter of 2008 Public Notice for the period of April 1, 2008, through June 30, 2008, or provide a copy of the Second Quarter Public Notice to the Department as required by paragraph 9.b. of the Consent Order.

30. The Defendant failed to provide to each residence connected to the System a First Quarter of 2009 Public Notice for the period of January 1, 2009, through March 31, 2009, and provide a copy of the First Quarter Public Notice to the Department as required by paragraph 9.b of the Consent Order.

31. Paragraph 9.c of the Consent Order requires the Defendant to submit to the Department, within ninety (90) days, "a written plan detailing how [the Defendant] will ensure that the System shall be made capable of maintaining a minimum pressure of forty pounds per square inch (40psi) throughout the distribution system during peak hourly demand conditions, measured at the service connection or along the property line adjacent to the consumer's premises as required by IDAPA 58.01.08.552.01.b.ii." The plan must include a local pressure monitoring study and assurance that the

facility plan and listed the reasons for disapproval of the facility plan.

36. On January 13, 2009, the Department received a complaint regarding pressure loss at the System from one of the connections to the System.

37. Defendant has failed provide public notice of pressure loss that occurred in the System on January 13, 2009, as per IDAPA 58.01.08.552.01.b.v.

38. On April 22, 2009, the Department received a complaint regarding pressure loss at the System from one of the connections to the System.

39. Defendant has failed to provide public notice of pressure loss to System's consumers that occurred in the System on April 22, 2009, as per IDAPA 58.01.08.552.01.b.v.

40. Idaho Rule for Public Drinking Water Systems IDAPA 58.01.02.100.06 incorporates 40 C.F.R. 141.26(1), which requires all public drinking water systems to monitor quarterly for Radium 226.

41. On January 4, 2008, the Department notified the Defendant by letter that it must monitor the System for Radium 226 quarterly throughout 2008.

The Defendant failed to monitor the System for Radium 226 as per IDAPA 58.01.02.100.06, incorporating 40 C.F.R. 141.26, for the period of April 1, 2008, through June 30, 2008, and failed to submit the results to the Department. Sample was received on January 1, 2009.

43. Idaho Rule for Public Drinking Water Systems 58.01.02.100.03 incorporates 40 C.F.R. 141.23(d) which requires all public drinking water systems to monitor annually for nitrates.

44. The Defendant failed to monitor the System for nitrate as per IDAPA

58.01.08.100.03, incorporating 40 C.F.R. 141.23(d), during the year of 2008 and failed to submit the results to the Department.

45. The Department notified the Defendant that it had not received documentation of nitrate sampling by letter of January 15, 2009. Department received a nitrate sample on January 21, 2009.

#### COUNT I

##### Violation of Consent Order Paragraph 9.b

46. Plaintiff realleges each and every allegation contained in paragraphs 1-45 herein.

47. Defendant has failed to perform the actions required pursuant to the Consent Order.

48. Defendant is in breach of the Consent Order by virtue of his failure to submit to the Department or provide to each residence connected to the System a Second Quarter of 2008 Public Notice for the period of April 1, 2008, through June 30, 2008, or provide a copy of the Second Quarter Public Notice to the Department as required by Paragraph 9.b of the Consent Order.

49. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### COUNT II

##### Violation of Consent Order Paragraph 9.b

50. Plaintiff realleges each and every allegation contained in paragraphs 1-49 herein.

51. Defendant has failed to perform the actions required pursuant to the

Consent Order.

52. Defendant is in breach of the Consent Order by virtue of his failure to submit to the Department or each residence connected to the System a First Quarter of 2009 Public Notice for the period of January 1, 2009, through March 31, 2009, and provide a copy of the First Quarter Public Notice to the Department as required by paragraph 9.b of the Consent Order.

53. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

**COUNT III**  
**Violation of Consent Order Paragraph 9.c**

54. Plaintiff realleges each and every allegation contained in paragraphs 1-53 herein.

55. Defendant has failed to perform the actions required pursuant to the Consent Order.

56. Defendant is in breach of the Consent Order by virtue of his failure to submit a written plan detailing how the Defendant will ensure that its System will be made capable of maintaining a minimum pressure of forty (40) psi throughout the distribution system, during peak hourly demand, excluding fire flow, measured at the service connection along the property line adjacent to the consumer's premises, in accordance with IDAPA 58.01.08.552.01.b.ii. as required by paragraph 9.c of the Consent Order.

57. Plaintiff is entitled to an order of specific performance of the terms and conditions of the Consent Order.

58. The Plaintiff is entitled to a permanent mandatory injunction requiring that the Defendant maintain forty pounds per square inch (40 psi) of pressure in the System as required by IDAPA 58.01.552.01.b.ii.

59. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

**COUNT IV**  
**Violation of Consent Order Paragraph 9.c**

60. Plaintiff realleges each and every allegation contained in paragraphs 1- 59 herein.

61. Defendant has failed to perform the actions required pursuant to the Consent Order.

62. Defendant is in breach of the Consent Order by virtue of his failure to submit a detailed facility plan to the Department within ninety (90) days as required by paragraph 9.d of the Consent Order.

63. Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

**COUNT V**  
**Violation of IDAPA 58.01.08.100.06, Failure to Monitor Radium**

64. Plaintiff realleges each and every allegation contained in paragraphs 1-63 herein.

65. Defendant has failed to monitor the System for Radium 226 as per IDAPA 58.01.02.100.06, incorporating 40 C.F.R. 141.26, for the period of April 1, 2008, through

June 30, 2008, and failed to submit the results to the Department.

66. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### **COUNT VI**

#### **Violation of IDAPA 58.01.08.100.03, Failure to Monitor Nitrate**

67. Plaintiff realleges each and every allegation contained in paragraphs 1-64 herein.

68. Defendant failed to monitor the System for nitrate as per IDAPA 58.01.08.100.03, incorporating 40 C.F.R. 141.20(d), during the year of 2008 and failed to submit the results to the Department.

69. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### **COUNT VII**

#### **Violation of IDAPA 58.01.08.552.01.b.v, Failure to Provide Public Notice of Pressure Loss**

70. Plaintiff realleges each and every allegation contained in paragraphs 1-69 herein.

69. Defendant has failed provide public notice of pressure loss that occurred in the System on January 13, 2009, as per IDAPA 58.01.08.552.01.b.v.

72. The Department is entitled to a permanent mandatory injunction requiring that the Defendant comply with IDAPA 58.01.08.552.01.b.v.

73. The Defendant is liable to the Department for penalties, costs, expenses,

June 30, 2008, and failed to submit the results to the Department.

66. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### **COUNT VI**

#### **Violation of IDAPA 58.01.08.100.03, Failure to Monitor Nitrate**

67. Plaintiff realleges each and every allegation contained in paragraphs 1-64 herein.

68. Defendant failed to monitor the System for nitrate as per IDAPA 58.01.08.100.03, incorporating 40 C.F.R. 141.10(d), during the year of 2008 and failed to submit the results to the Department.

69. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### **COUNT VII**

#### **Violation of IDAPA 58.01.08.552.01.b.v, Failure to Provide Public Notice of Pressure Loss**

70. Plaintiff realleges each and every allegation contained in paragraphs 1-69 herein.

69. Defendant has failed provide public notice of pressure loss that occurred in the System on January 13, 2009, as per IDAPA 58.01.08.552.01.b.v.

72. The Department is entitled to a permanent mandatory injunction requiring that the Defendant comply with IDAPA 58.01.08.552.01.b.v.

73. The Defendant is liable to the Department for penalties, costs, expenses,

witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

### COUNT VIII

#### Violation of IDAPA 58.01.08.552.01.b.v, Failure to Provide Public Notice of Pressure Loss

74. Plaintiff realleges each and every allegation contained in paragraphs 1-71 herein.

75. Defendant has failed to provide public notice of pressure loss that occurred in the System on April 22, 2009, per IDAPA 58.01.08.552.01.b.v. and Defendant failed to submit a copy of the public notice to the Department.

76. The Department is entitled to a permanent mandatory injunction requiring that the Defendant comply with IDAPA 58.01.08.552.01.b.v.

77. The Defendant is liable to the Department for penalties, costs, expenses, witness fees and attorney's fees pursuant to Idaho Code § 39-108(5) and Idaho Code § 12-117.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Idaho Department of Environmental Quality, respectfully requests the Court grant the following relief:

A. Assess against the Defendant, as authorized by Idaho Code § 39-108, civil penalties of up to ten thousand dollars (\$10,000) for each separate violation and one thousand dollars (\$1,000) for each day of continuing violation.

B. Issue a permanent mandatory injunction, as authorized by Idaho Code § 39-108, requiring the Defendant to perform the terms and conditions of the Consent Order and IDAPA 58.01.08 as specified above.

C. Provide other such injunctive relief as the Court deems appropriate according to proof.

D. Assess against Defendant all costs, expenses, witness fees and attorney's fees incurred by Plaintiff pursuant to Idaho Code § 39-108 and Idaho Code § 12-117, in an amount according to proof.

E. Grant such other relief as the Court deems equitable and just.

DATED this \_\_\_ day of May, 2009.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

COURTNEY BEEBE  
Deputy Attorney General  
Attorney for Plaintiff

**DRAFT**