

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

**SECRETARY JAMES KENNEY, in his
official capacity, *ex rel.*
NEW MEXICO ENVIRONMENT DEPARTMENT,
STATE OF NEW MEXICO,**

Plaintiff,

v.

Case No. D-307-CV-2025-01441

Arrieta, Manuel I.

CAMINO REAL REGIONAL UTILITY AUTHORITY,

Defendant.

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES AND MONETARY DAMAGES**

COMES NOW, Plaintiff Secretary James Kenney *ex rel.* New Mexico Environment Department, State of New Mexico (“NMED”), by and through its counsel of record, NMED Office of General Counsel and Robles, Rael & Anaya, P.C., hereby presents its Verified Complaint for Injunctive Relief and Civil Penalties and Monetary Damages. In support of its Verified Complaint for Injunctive Relief and Civil Penalties and Monetary Damages, NMED states:

PARTIES, JURISDICTION, AND VENUE

1. NMED is an executive agency within the government of the State of New Mexico which administers and enforces the requirements of the Environmental Improvement Act (“EIA”) at NMSA 1978, Sections 74-1-2 *et seq.* and Drinking Water Regulations at 20.7.10 NMAC, through its Drinking Water Bureau (“Bureau”).

2. Camino Real Regional Utility Authority (“CRRUA”) owns and operates a public drinking water system (“System”), PWS# NM3502507, located in Doña Ana County, New Mexico with a mailing address of PO Box 429, Sunland Park, New Mexico, 88063.

3. The System is a community water system as defined by Sections 10.7.10.7(C)(4) and 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.2, that regularly provides piped drinking water to approximately 19,466 residents in Doña Ana County and has approximately 7,318 service connections to serve consumers within Doña Ana County and the boundaries of the City of Sunland Park, New Mexico.

4. CRRUA is a “person” as defined by NMSA 1978, Section 74-1-3(F) and Sections 20.7.10.7.P(2) and 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.2.

5. CRRUA is a “supplier of water” as defined by Sections 20.7.10.7.(S)(10) and 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.2 because it is a person who owns or operates a public water system.

6. Pursuant to Section NMSA 1978, Section 74-1-10(B)(2) and Section 20.7.10.300(B) NMAC, the Secretary of NMED is authorized to commence a civil action for appropriate relief, including a temporary or permanent injunction, to protect the health of persons who are or may be served by CRRUA.

7. The acts and omissions giving rise to the claims asserted herein, along with the harm to New Mexico’s citizens described herein, occurred and are occurring in Doña Ana County, New Mexico.

8. Personal and subject matter jurisdiction is proper in the State of New Mexico, Doña Ana County, Third Judicial District Court.

9. Pursuant to NMSA 1978, Section 38-3-1(A), venue is proper in the State of New Mexico, Doña Ana County, Third Judicial District Court.

FACTS

10. NMED hereby incorporates paragraphs 1-9 of its Verified Complaint for Injunctive Relief and Civil Penalties and Monetary Damages (“Complaint”) as if the same were fully stated herein.

11. The federal maximum contaminant level (“MCL”) for arsenic, set at 0.010 milligrams per liter (“mg/L”), which is the equivalent of ten parts per billion (10 ppb), took effect in 2006 to protect public health from long-term exposure to this known carcinogen.

12. Pursuant to the EIA, the federal MCL was adopted by reference into the Drinking Water Regulations at 20.7.10.100(A) NMAC.

13. On February 24, 2009, the City of Sunland Park (“City”) and Doña Ana County (“County”) entered into a Joint Powers Agreement (“JPA”) for the purpose of combining all the City water and wastewater facilities and operations with certain defined County water and wastewater facilities and operations.

14. Pursuant to the Joint Powers Agreements Act, the City and the County entered into the JPA to exercise their common power to create an independent entity to own and operate water and wastewater utilities.

15. Pursuant to Section 5 of the JPA, CRRUA shall be governed by a board composed of:

- a. Two (2) elected officials from Sunland Park;
- b. Two (2) County Commissioners (one of the individuals would be the commissioner whose district includes Sunland Park);
- c. The New Mexico Senator (or a delegate) whose district includes the Sunland Park/Santa Teresa area;

d. The New Mexico Representative (or delegate) whose district includes the Sunland Park/Santa Teresa area; and

e. One (1) Member to be selected by the majority of the aforementioned six members. The member shall be a professional with real property development or engineering experience or a background in economic development.

16. The JPA was amended in February 2024 by which the City and the County sought “to clarify their mutual goals and objectives” and to facilitate the continuation of CRRUA as an independent entity to own and operate water and wastewater utilities.

17. Pursuant to Section 5 of the Amended JPA, dated February 2024, CRRUA shall be governed by an appointed board composed of seven members as follows:

a. Four (4) members to be appointed by the City of Sunland Park. Two (2) of the appointed individuals will be staff members with technical and subject matter expertise. One of the appointed individuals will be a member of the Governing Body, while the other appointed individual will be an independent representative from the community who has an interest in public utility oversight and possess related technical background. The independent representative shall be non-City/County employees.

b. Three (3) members to be appointed by Doña Ana County. One (1) of the appointed individuals will be a staff member with technical and subject matter expertise. One (1) of the appointed individuals will be a member of the Board of County Commissioners (BOCC), while the other appointed individual will be an independent representative from the community who has an interest in public utility

oversight and possesses related technical background. The independent representatives shall be non-City/County employees.

- c. There will be no residency or joint utility customer requirements for any appointed board member. All board members will be selected and appointed based on their knowledge of public utility operations, engineering, or business management.

18. Pursuant to the Amended JPA, the current Board of CRRUA is as follows:

- a. Javier Perea, Chair, Mayor, City of Sunland Park;
- b. Mario Juarez-Infante, Vice Chair, P.E., City Manager, City of Sunland Park;
- c. Gloria Gameros, Member, Commissioner, Doña Ana County;
- d. Hector Rangel, Member, Public Works Director, City of Sunland Park;
- e. Mark Rodriguez, Member, Community Member, Doña Ana County;
- f. Carlos Escarcega, Member, P.E., Community Member, City of Sunland Park; and
- g. Justin K. Weaver, Member, Doña Ana County.

19. The City and County integrated their separate water rights and water and wastewater systems located within the service area into one utility by conveying their water and wastewater facilities, along with other water and wastewater assets, improvements, and all property, including records related thereto, to CRRUA without cost.

20. CRRUA consolidated the Doña Ana Utilities Border Region Water System, Santa Teresa Water System, Santa Teresa Industrial Park, and Sunland Park Water System on or about July 1, 2013.

21. Since its formation, CRRUA has persistently failed to meet the basic requirement to provide clean and safe drinking, establishing a pattern of systemic noncompliance that has spanned more than a decade and exposed tens of thousands of consumers to unsafe drinking water.

22. Prior to the consolidation of the water systems to form CRRUA, the individual water systems which would become part of CRRUA were each issued administrative compliance orders in 2008 and 2009 for violating the Drinking Water Regulations.

23. Specifically, on May 27, 2008, NMED issued Administrative Compliance Order No. 2008-CO-007 to the Sunland Park Water System and on May 28, 2008, NMED issued Administrative Compliance Order No. 2008-CO-009 to Santa Teresa Industrial Park for violations of 20.7.10.100 NMAC, incorporating 40 CFR § 141.62(b) which requires a public water system to not exceed the running annual average for the arsenic maximum contaminant level ("MCL") of 0.010 milligrams per liter ("mg/L") which is the equivalent of ten parts per billion (10 ppb).

24. The foregoing Administrative Compliance Orders were resolved on September 15, 2008 by respective Stipulated Final Orders which required compliance with 20.7.10.100 NMAC, incorporating 40 CFR § 141.62(b) on an agreed upon schedule.

25. Additionally, on February 10, 2009, NMED issued Administrative Compliance Order No. 2009-CO-004 to Doña Ana Utilities Border Region Water System for violations of 20.7.10.100 NMAC, incorporating 40 CFR § 141.62(b) which requires a public water system to not exceed the running annual average for the arsenic MCL of 0.010 mg/L which is the equivalent of ten parts per billion (10 ppb).

26. Administrative Compliance Order No. 2009-CO-004, including the schedule of compliance provided therein, became final on March 10, 2009.

27. Thereafter, on December 17, 2009, NMED issued Administrative Compliance Order No. 2009-CV-038 to CRRUA for the Santa Teresa Water System violations of 20.7.10.100 NMAC, incorporating 40 CFR § 141.62(b) which requires a public water system to not exceed the

running annual average for the arsenic MCL of 0.010 mg/L which is the equivalent of ten parts per billion (10 ppb).

28. Administrative Compliance Order No. 2009-CV-038, including the schedule of compliance provided therein, became final on January 16, 2010.

29. Rather than improving oversight and service delivery, the consolidation of the water systems pursuant to the JPA centralized responsibility in CRRUA which would go on to continue to violate the Drinking Water Regulations, including but not limited to exceeding the arsenic MCL.

30. On February 24, 2014, the Bureau mailed a certified letter, return receipt requested, to CRRUA informing CRRUA that it had failed to take corrective action as required by the above Stipulated Final Orders and Administrative Compliance Orders. In the same correspondence, CRRUA was informed that it may be assessed civil penalties for each instance of noncompliance and was also requested to provide documentation to verify any corrective measures that had been taken.

31. On March 21, 2014, CRRUA responded to request an extension of time to comply with Administrative Compliance Order No. 2009-CV-038 and noted that compliance at the Santa Teresa Industrial Park, and Doña Ana Utilities Board Regional Water System as the result of completion of an arsenic treatment plant in April 2013, as well as compliance at the Sunland Park Water System as the result of completion of an arsenic treatment plant in August 2011.

32. The arsenic treatment plants were an investment intended to bring CRRUA into compliance with federal drinking water standards. However, even with these systems in place, CRRUA repeatedly failed to operate and maintain them properly, ultimately allowing arsenic-polluted water to flow into homes, schools, and businesses.

33. By early 2013, the Sunland Park and Santa Teresa Industrial Park systems had briefly achieved compliance with the arsenic MCL. In stark contrast, the Border Area system immediately failed to meet the standard and remained in violation continuously from at least February 9, 2013 through March 2025, with recorded arsenic levels ranging from 11 to 22 parts per billion.

34. Despite CRRUA's claims of compliance, CRRUA did not achieve continuous compliance with 20.7.10.100 NMAC, incorporating 40 CFR § 141.62(b) and, therefore, in 2015, NMED issued ten (10) Notices of Violation ("NOVs") containing forty-seven (47) violations for incidences of exceedances of the arsenic MCL dating back to 2012.

35. Further, in 2016, NMED discovered that CRRUA had been intentionally bypassing arsenic treatment systems at both the Sunland Park and Santa Teresa Industrial Park facilities, deliberately allowing untreated, contaminated water to enter the distribution system.

36. A sanitary survey conducted on June 9, 2016, confirmed that CRRUA, only after NMED identified that it had intentionally bypassed the treatment plants, had begun working with contractors to bring the treatment plants back online.

37. Due to continued violations and failure to come into compliance with the required schedules of compliance, including the requested extension, NMED instituted DWB No. 16-15 and issued CRRUA an Administrative Compliance Order and Assessment of Civil Penalty in July 2016.

38. As a result of the Administrative Compliance Order and Assessment of Civil Penalty in DWB No. 16-15, the parties engaged in settlement negotiations in 2016 and entered a Stipulated Final Order which imposed agreed upon compliance deadlines into 2016, 2017, 2018, 2019.

39. From 2016 to 2020, CRRUA repeatedly requested deadline extensions for some of its compliance obligations under Administrative Compliance Orders and Stipulated Final Orders issued by NMED. In response, NMED amended the terms of Stipulated Final Order DWB 16-15 (CO) through written agreements to extend certain deadlines from 2018 to 2022 and from 2019 to 2023.

40. Despite years of documented arsenic contamination in the Border Area, construction of a new treatment plant did not begin until 2022 and was not completed until the end of 2023, nearly a decade after exceedances were first identified.

41. During that time, CRRUA knowingly left thousands of consumers exposed to unsafe drinking water, delaying critical infrastructure while repeatedly promising compliance it never delivered.

42. Additionally, in October 2015, the U.S. Environmental Protection Agency (“EPA”) issued Administrative Order CWA 2016-1816 against CRRUA for egregious violations of the Clean Water Act. The action followed inspections in November 2014 and February 2015, which uncovered a list of serious violations, including discharges of pollutants into waters of the United States in excess of permit limits, unauthorized and unpermitted discharges, failure to notify regulators of new sources, gross mismanagement of wastewater treatment facilities, and the lack of competent operational staff.

43. In August 2016, the U.S. Environmental Protection Agency issued Administrative Order SDWA-06-2016-1224 against CRRUA for sustained violations of the Safe Drinking Water Act. The order cited CRRUA’s repeated and uncorrected exceedances of the arsenic maximum contaminant level (MCL) running annual average (RAA) during every quarter of 2015 and the first half of 2016.

44. The findings by NMED and the U.S. Environmental Protection Agency revealed a public utility not just struggling with compliance, but functionally incapable of meeting the most basic responsibilities of a public water and wastewater provider.

45. On August 28, 2019, a sanitary survey of the Camino Real Regional Utility Authority water system identified nine significant deficiencies, including issues related to inadequate site security, missing or unscreened components, lack of inspection records, compromised infrastructure, and the use of non-verified materials. These deficiencies required CRRUA to submit a corrective action plan within 30 days and complete corrective actions within 120 days.

46. On March 16, 2020, NMED issued a NOV to CRRUA for failure to correct significant deficiencies identified during the August 28, 2019, sanitary survey, within 120 days of receiving written notice from the State of significant deficiencies. The NOV notified CRRUA of the requirement to provide public notice of the violation.

47. A routine sanitary survey conducted by NMED on December 5-6, 2023, uncovered that CRRUA had once again had intentionally taken its arsenic treatment systems offline and bypassed them at the Sunland Park, Santa Teresa Community, and Santa Teresa Industrial Park facilities for over a year. At no point during this extended period did CRRUA notify NMED or the public of this unlawful action.

48. As a result, residents were unknowingly consuming untreated water in violation of both federal and state health standards. This deliberate failure to notify by CRRUA constituted a serious breach of public trust and triggered multiple violations, including failure to maintain treatment, failure to notify regulators, and failure to issue required public health warnings.

49. In response to CRRUA's concealed year-long bypass of critical arsenic treatment systems and as a result of CRRUA's ongoing inability to properly operate such treatment systems, CRRUA had to issue a "do not drink" advisory to protect the public from continued exposure to unsafe water. This extraordinary action—reserved for the most serious threats to public health—was necessary only because CRRUA had failed to take even the most basic steps to correct the deficiencies, alert regulators, or warn its consumers.

50. On December 12, 2023, NMED issued a NOV to CRRUA because it discovered that, once again, the Industrial Park Arsenic Treatment Plant, the Sunland Park Arsenic Treatment Plant, and the Santa Teresa Community Arsenic Treatment Plant were offline and intentionally bypassed for over one year allowing untreated water into the distribution system.

51. On the same date, NMED also issued an NOV to CRRUA for failure to notify customers of high arsenic levels and provide customers with appropriate action to take in order to protect themselves against any waterborne hazards.

52. On January 12, 2024, CRRUA reported that all arsenic treatment plants had been returned to service. On January 24, 2024, samples were collected and results showed all tested locations (excluding the Border Area) had arsenic concentrations below 10 ppb.

53. On January 17, 2024, NMED issued a NOV to CRRUA for failure to correct significant deficiencies one (1) through four (4) identified during the December 6, 2023, sanitary survey by the required date of January 15, 2024. The NOV notified CRRUA of the requirement to provide public notice of the violation. These deficiencies included operator unfamiliarity with treatment processes, interruptions in the treatment process, inadequate process control monitoring and record keeping, and insufficient chemical dosage records. The NOV also notified CRRUA of the requirement to provide public notice of the violation.

54. On February 2, 2024, NMED issued Administrative Compliance Order and Assessment of Civil Penalties No. 2024-ACOP-01,¹ citing CRRUA for a series of grave, intentional, and compounding violations. These included: operating arsenic treatment systems in bypass mode without notification, delivering noncompliant and potentially hazardous water to the public, failing to correct longstanding deficiencies identified in both the 2019 and 2023 sanitary surveys, and exceeding the arsenic MCL in the first quarter of 2024 at the Santa Teresa Industrial Park arsenic treatment plant, with a running annual average of 0.035 mg/L, more than three times the prescribed MCL. This Administrative Compliance Order and Assessment of Civil Penalties was contested by CRRUA and the current enforcement action No. DWB 24-13 was initiated.

55. On March 7, 2025, after learning that CRRUA failed to collect all of the required lead and copper samples during 2024, NMED issued yet another NOV for violations of 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.86 which is designed to protect residents from exposure to toxic metals through drinking water, underscoring that even after multiple enforcement actions, CRRUA remained unwilling, or unable, to carry out its most basic monitoring responsibilities.

56. In response to the on-going enforcement action in DWB 24-13, CRRUA agreed to conduct voluntary bi-weekly arsenic testing at all of its arsenic treatment plants.

57. CRRUA has failed at least two voluntary arsenic tests at the Santa Teresa Industrial Park arsenic treatment plant in 2025.

¹ This Administrative Compliance Order was first amended on March 1, 2024 to correct typographical errors and again amended on May 23, 2025 to address the recalculation of the civil penalty as required by the New Mexico Environment Department, Drink Water Bureau Enforcement and Penalty Policy.

58. More specifically, a voluntary test conducted on April 23, 2025 indicated that the Santa Teresa Industrial Park arsenic treatment plant tested above the MCL at twelve parts per billion (12 ppb).

59. CRRUA did not notify the public of the April 23, 2025 test results demonstrating the exceedance of arsenic contaminants until approximately nine (9) days after it received the report regarding the same.

60. Thereafter, a voluntary test conducted on May 6, 2025 indicated that the Santa Teresa Industrial Park arsenic treatment plant tested again above the MCL at twelve parts per billion (12 ppb).

61. The failed voluntary test of May 6, 2025 followed CRRUA's public assurances after the April 23, 2025 failed test that it had taken steps to reduce the arsenic levels at the Santa Teresa Industrial Park arsenic treatment plant and implemented "timely and proper corrective actions" to prevent further exceedances.

62. CRRUA did not notify the public of the May 6, 2025 test results demonstrating the continuing exceedance of arsenic contaminants for approximately three (3) days after it received the report regarding the same.

63. Further, a sample collected by NMED in accordance with the 3-year monitoring schedule at Santa Teresa Industrial Park arsenic treatment plant during the second (2nd) quarter of 2025 indicated that the arsenic contaminant level was 15 parts per billion (15 ppb), illustrating that CRRUA's public assurances have been meaningless and ineffective to correct the ongoing deficiencies.

64. Based on the foregoing facts and circumstances, CRRUA has had actual knowledge of the systemic failures to achieve continuous compliance since at least 2013 yet has failed to take

timely, meaningful, or effective action to correct the pattern and practice of noncompliance, thereby demonstrating its knowing, willful, deliberate, reckless, grossly negligent, and negligent noncompliance with the Drinking Water Regulations.

65. Through its deliberate and intentional pattern and practice resulting in on-going non-compliance, CRRUA has placed New Mexicans at significant risk of continued exposure to dangerous levels of arsenic contaminants in drinking water delivered through the System.

66. According to the Agency Toxic Substances Disease Registry's Arsenic Tox Profile, chronic and acute exposure to arsenic contaminants cause both cardiovascular effects and skin cancer in humans. *See ATSDR Arsenic Tox Profile*, 40, (Nov. 8, 2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp2.pdf>.

67. In addition to skin cancer, there are a number of case reports and epidemiological studies that indicate that ingestion of arsenic also increases the risk of internal tumors (mainly of bladder and lung, and to a lesser extent, liver, kidney, and prostate).” *Id.* at 38.

68. Chronic exposure to arsenic contaminants is defined as exposure for 365 or more days. *ATSDR Arsenic Tox Profile*, 514, (Nov. 8, 2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp2.pdf>.

69. Chronic exposure can lead to peripheral neuropathy (numbness, tingling, and pain in the hands and feet), cognitive deficits, and impaired neurological development in children exposed in utero or early in life. *Id.*

70. Prolonged exposure to arsenic contaminants is associated with adverse health effects including respiratory disease, anemia, peripheral neuropathy, and peripheral vascular disorders. *See Biological effects and epidemiological consequences of arsenic exposure, and*

reagents that can ameliorate arsenic damage in vivo, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC5593671/>.

71. Symptoms of long-term exposure to arsenic include pigmentation changes and hyperkeratosis. See *Arsenic*, (Dec. 7, 2022), <https://www.who.int/news-room/fact-sheets/detail/arsenic>.

72. Furthermore, prolonged exposure can contribute to and worsen the progression of respiratory diseases such as chronic obstructive pulmonary disease (COPD) and other chronic lung diseases. See *ScienceDirect*, <https://www.sciencedirect.com/science/article/abs/pii/S0278691523004465>; See also *Study adds lung damage to harmful effects of arsenic*, UChicago Medicine (Aug. 22, 2013), <https://www.uchicagomedicine.org/forefront/news/study-adds-lung-damage-to-harmful-effects-of-arsenic>.

73. Additionally, studies have shown an association between type II diabetes and arsenic exposure. See *Biological effects and epidemiological consequences of arsenic exposure, and reagents that can ameliorate arsenic damage in vivo*, PMC <https://pmc.ncbi.nlm.nih.gov/articles/PMC5593671/>.

74. Exposure during pregnancy and early childhood can lead to adverse outcomes, including lower birth weight, impaired cognitive development, and increased risk of diseases later in life. See *ATSDR Arsenic Tox Profile*, 87, (Nov. 8, 2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp2.pdf>.

75. Chronic exposure can also affect the liver (hepatotoxicity) and kidneys (nephrotoxicity), and may lead to hematological problems (e.g., anemia). *Id.* at 188-189.

76. Acute exposure to arsenic contaminants in excess of the federal MCL for fourteen days or less also causes severe adverse health effects. *ATSDR Arsenic Tox Profile*, 513, (Nov. 8, 2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp2.pdf>.

77. The most prominent symptoms of acute exposure results from gastrointestinal distress, causing severe abdominal pain, nausea and vomiting, and diarrhea. *ATSDR Arsenic Tox Profile*, 40-41, (Nov. 8, 2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp2.pdf>.

78. Furthermore, acute exposure causes cardiovascular effects such as hypotension, arrhythmias, altered myocardial depolarization, and ischemic heart disease. *See Id.*

79. Acute exposure to arsenic contaminants in excess of 10 ppb can also lead to neurological symptoms such as headaches, confusion, dizziness, seizures, encephalopathy, peripheral neuropathy, or even, in severe cases, coma. *See Id.* at 200.

80. Finally, in very severe cases, acute arsenic poisoning can rapidly lead to multi-organ failure, involving the liver, kidneys, lungs, and cardiovascular system, potentially resulting in death if not treated promptly. *See Understanding Arsenic Poisoning: Causes, Sym, Medical Toxicology* <https://medicaltoxic.com/blogs/understanding-arsenic-poisoning-causes-symptoms-and-prevention>.

COUNT I: STATUTORY PUBLIC NUISANCE

81. NMED hereby incorporates paragraphs 1-80 of its Complaint as if the same were fully stated herein.

82. NMED asserts this cause of action pursuant to NMSA 1978, Section 30-8-1(B) which allows a civil action to abate a public nuisance to be brought by verified complaint against CRRUA which has created and maintained a public nuisance.

83. CRRUA has continuously been put on notice that its longstanding mismanagement of the System demonstrates that it is unable to achieve continuous compliance with the EIA and Drinking Water Regulations such that a substantial number of New Mexico citizens have historically been and are now at continued risk from prolonged arsenic exposure.

84. CRRUA has intentionally and knowingly maintained the System, which serves approximately 19,466 citizens of New Mexico, in violation of the EIA and Drinking Water Regulations.

85. CRRUA is required by state law to maintain and keep the System in compliance with the requirements of the EIA and NMED Drinking Water Regulations.

86. CRRUA's failure to maintain the System is in violation of the EIA and Drinking Water Regulations and is therefore injurious to public health, safety, and morals.

87. CRRUA's failure to maintain the System is in violation of the EIA and Drinking Water Regulations and therefore interferes with the exercise and enjoyment of public rights in violation of the state Public Nuisance Act, Section 38-8-8, NMSA1978.

88. Allowing CRRUA to continue to knowingly maintain the System in violation of the state Public Nuisance Act, the EIA and Drinking Water Regulations will result in irreparable harm to a substantial number of New Mexico citizens.

89. The threatened injury to New Mexico citizens from CRRUA's failure to maintain the System in violation of the state Public Nuisance Act, the EIA and Drinking Water Regulations outweighs any damages a preliminary and permanent injunction might cause CRRUA.

90. The issuance of a preliminary and permanent injunction will serve the public interest in access to safe and sustainable drinking water and will not be adverse thereto.

91. There is a substantial likelihood that NMED will prevail on the merits.

92. A preliminary and permanent injunction to abate the public nuisance knowingly and intentionally caused by CRRUA from its maintenance of the System in violation of the state Public Nuisance Act, the EIA and Drinking Water Regulations is necessary and proper.

93. NMED respectfully requests that the Court issue a preliminary and permanent injunction which:

- a. Appoints a receiver to monitor, oversee, and control all daily operations, including fiscal and technical decisions, as well as operations and maintenance of the system by CRRUA for the duration of the Joint Powers Agreement;
- b. Orders CRRUA to conduct, at its own cost, a third-party evaluation of the arsenic treatment plants and implementation of necessary corrective actions;
- c. Mandates that CRRUA, at its own cost, conduct real time monitoring of the arsenic levels associated with each of its treatment plants and share the results in parts per billion to the public and NMED;
- d. Requires CRRUA to provide arsenic test strips free of charge to all consumers served by the System;
- e. Directs that CRRUA provide a third-party source of drinking water for delivery to consumers during any incidence in which the parts per billion of arsenic exceed the maximum contaminant levels as set forth in Drinking Water Regulations;
- f. Orders CRRUA to conduct its regular monthly public meetings at 5:30 p.m. in accordance with its Resolution Establishing the Open Meetings Policy of the Camino Real Regional Utility Authority;
- g. Mandates that CRRUA allow for public participation by unrestricted public comment at each of its public meetings;

- h. Requires the establishment, at CRRUA's own cost, of a community-based health assessment for chronic arsenic exposure and treatment to be conducted by an independent health care provider; and
- i. Awards civil penalties and creates a civil penalty formula, pursuant to the NMSA 1978, Section 30-8-1 *et seq.*, the EIA, and Drinking Water Regulations, that contains escalation clauses based on CRRUA's failure to maintain the system and direct that such penalties be paid into NMED's Water Conservation Fund, which is the proper fund for said penalties and may be used to support the Department's Utility Operator Certification Program.

94. Pursuant to NMSA 1978, Section 30-8-8(C), CRRUA shall be "adjudged to pay all court costs and a reasonable fee for the complainant's attorney" incurred by NMED.

95. NMED also respectfully requests that this Court award any and all further relief that is deemed to be just and proper under the facts and circumstances set forth in this Complaint.

COUNT II: COMMON LAW PUBLIC NUISANCE

96. NMED hereby incorporates paragraphs 1-95 of its Complaint as if the same were fully stated herein.

97. NMED asserts this cause of action based on its inherent *parens patriae* authority and does not assert or usurp claims on behalf of any individual or non-State entity harmed in his or her person or property by CRRUA's conduct.

98. Due to longstanding mismanagement, CRRUA has knowingly and intentionally maintained the System, which serves approximately 19,466 citizens of New Mexico, in violation of the EIA and Drinking Water Regulations.

99. CRRUA has repeatedly been put on notice by the NMED Drinking Water Bureau and its own testing that its longstanding mismanagement of the System demonstrates that it is unable to achieve continuous compliance with the EIA and Drinking Water Regulations such that a substantial number of New Mexico citizens have historically been and are now at continued risk from prolonged arsenic exposure.

100. CRRUA's intentional and knowing failure to maintain the System in accordance with the EIA and Drinking Water Regulations creates an unreasonable interference with a right common to the public.

101. CRRUA's intentional and knowing failure to maintain the System in accordance with the EIA and Drinking Water Regulations interferes with those who come in contact with it and are entitled to the exercise of a public right to clean and safe drinking water.

102. CRRUA's intentional and knowing failure to maintain the System in accordance with the EIA and Drinking Water Regulations negatively affects the community served by the System at large.

103. CRRUA's intentional and knowing mismanagement of the System, which has resulted in an on-going pattern of maximum contaminant levels of arsenic being present in public drinking water, is a public nuisance in fact.

104. CRRUA's intentional and knowing failure to maintain the System in accordance with the EIA and Drinking Water Regulations is a public nuisance per se and is, therefore, a nuisance at all times and under any circumstances.

105. Allowing CRRUA to continue to intentionally and knowingly maintain the System in violation of the EIA and Drinking Water Regulations is a common law public nuisance in fact and per se will result in irreparable harm to a substantial number of New Mexico citizens.

106. The threatened injury to New Mexico citizens from CRRUA's maintenance of the System in violation of the EIA and Drinking Water Regulations creates a common law public nuisance in fact and per se and outweighs any damages a preliminary and permanent injunction might cause CRRUA.

107. The issuance of a preliminary and permanent injunction will serve the public interest in a safe and sustainable supply of drinking water and will not be adverse thereto.

108. There is a substantial likelihood that NMED will prevail on the merits.

109. A preliminary and permanent injunction to abate the common law public nuisance knowingly and intentionally caused by CRRUA from its maintenance of the System in violation of the EIA and Drinking Water Regulations is necessary and proper.

110. NMED respectfully requests that the Court issue a preliminary and permanent injunction which:

- a. Appoints a receiver to monitor, oversee, and control all daily operations, including fiscal and technical decisions, as well as operations and maintenance of the system by CRRUA for the duration of the Joint Powers Agreement;
- b. Orders CRRUA to conduct, at its own cost, a third-party evaluation of the arsenic treatment plants and implementation of necessary corrective actions;
- c. Mandates that CRRUA, at its own cost, conduct real time monitoring of the arsenic levels associated with each of its treatment plants and share the results in parts per billion to the public and NMED;
- d. Requires CRRUA to provide arsenic test strips free of charge to all consumers served by the System;

- e. Directs that CRRUA provide a third-party source of drinking water for delivery to consumers during any incidence in which the parts per billion of arsenic exceed the maximum contaminant levels as set forth in Drinking Water Regulations;
- f. Orders CRRUA to conduct its regular monthly public meetings at 5:30 p.m. in accordance with its Resolution Establishing the Open Meetings Policy of the Camino Real Regional Utility Authority;
- g. Mandates that CRRUA allow for public participation by unrestricted public comment at each of its public meetings;
- h. Requires the establishment, at CRRUA's own cost, of a community-based health assessment for chronic arsenic exposure and treatment to be conducted by an independent health care provider; and
- i. Awards civil penalties and creates a civil penalty formula, pursuant to the NMSA 1978, Section 30-8-1 *et seq.*, the EIA, and Drinking Water Regulations, that contains escalation clauses based on CRRUA's failure to maintain the system and direct that such penalties be paid into NMED's Water Conservation Fund, which is the proper fund for said penalties and may be used to support the Department's Utility Operator Certification Program.

111. CRRUA's intentional and knowing mismanagement of the System, resulting in repeated exceedances of the maximum contaminant levels for arsenic, is willful, reckless, or in total disregard of the rights of New Mexico's citizens to clean drinking water, entitling NMED to an award of punitive damages.

112. NMED further requests that the Court award full and fair compensatory and punitive damages in an amount to be proven at trial of this matter.

113. NMED also respectfully requests that this Court award its fees and costs and any and all further relief that is deemed to be just and proper under the facts and circumstances set forth in this Complaint.

COUNT III: PRIMA FACIE TORT

114. NMED hereby incorporates paragraphs 1-113 of its Complaint as if the same were fully stated herein.

115. NMED asserts this cause of action based on its inherent *parens patriae* authority and does not assert or usurp claims on behalf of any individual or non-State entity harmed in his or her person or property by CRRUA's conduct.

116. CRRUA has engaged in a series of deliberate, intentional acts which, while potentially lawful in form, were undertaken with knowledge and intent to avoid regulatory oversight and delay compliance with lawful environmental obligations, to the detriment of NMED and the New Mexico's citizens that it serves.

117. These acts include but are not limited to:

a. Intentionally, deliberately and knowingly bypassing arsenic treatment systems without notification for over a year at three key drinking water facilities (Sunland Park, Santa Teresa Community, and Santa Teresa Industrial Park), resulting in the delivery of arsenic contaminated water to thousands of New Mexico citizens;

b. Failing to notify NMED and the public of the intentionally and deliberately bypassed systems, thereby impeding NMED's ability to respond, mitigate risks, and enforce its statutory duties;

c. Failing for more than a decade to construct an arsenic treatment plant in the Border Area, despite continuous and serious MCL violations and knowing and deliberate

exposure of New Mexico citizens to arsenic in excess of maximum contaminant levels and despite the fact that it had access to the funding to do so;

d. Deliberately, intentionally, and knowingly allowing systemic deficiencies to persist despite numerous warnings, inspections, and enforcement actions, including deficiencies that were identified as early as 2008 and remain unaddressed as of 2025.

118. These acts were not the result of mere oversight, but were taken deliberately, intentionally, knowingly and willfully, with a clear intent to evade regulatory compliance, minimize operational costs, and conceal noncompliance, with full knowledge that such actions would undermine NMED's regulatory role and endanger public health, safety and welfare.

119. NMED has suffered actual harm as a result of CRRUA's misconduct, including diversion of public resources, erosion of public trust, damage to NMED's statutory enforcement credibility, and harm to the citizens of the communities it is legally mandated to protect.

120. CRRUA's actions were not justified, as no legitimate operational, financial, or legal necessity excused their knowing violations of drinking water law and concealment of threats to public health.

121. Allowing CRRUA to continue to intentionally and knowingly maintain the System in violation of the EIA and Drinking Water Regulations is a prima facie tort which will result in irreparable harm to a substantial number of New Mexico citizens.

122. The threatened injury to New Mexico citizens from CRRUA's maintenance of the System in violation of the EIA and Drinking Water Regulations creates a common law public nuisance in fact and per se and outweighs any damages a preliminary and permanent injunction might cause CRRUA.

123. The issuance of a preliminary and permanent injunction will serve the public interest in safe and sustainable supply of drinking water and will not be adverse thereto.

124. There is a substantial likelihood that NMED will prevail on the merits.

125. A preliminary and permanent injunction to abate the common law public nuisance knowingly and intentionally caused by CRRUA from its maintenance of the System in violation of the EIA and Drinking Water Regulations is necessary and proper.

126. NMED respectfully requests that the Court issue a preliminary and permanent injunction which:

- a. Appoints a receiver to monitor, oversee, and control all daily operations, including fiscal and technical decisions, as well as operations and maintenance of the system by CRRUA for the duration of the Joint Powers Agreement;
- b. Orders CRRUA to conduct, at its own cost, a third-party evaluation of the arsenic treatment plants and implementation of necessary corrective actions;
- c. Mandates that CRRUA, at its own cost, conduct real time monitoring of the arsenic levels associated with each of its treatment plants and share the results in parts per billion to the public and NMED;
- d. Requires CRRUA to provide arsenic test strips free of charge to all consumers served by the System;
- e. Directs that CRRUA provide a third-party source of drinking water for delivery to consumers during any incidence in which the parts per billion of arsenic exceed the maximum contaminant levels as set forth in Drinking Water Regulations;

- f. Orders CRRUA to conduct its regular monthly public meetings at 5:30 p.m. in accordance with its Resolution Establishing the Open Meetings Policy of the Camino Real Regional Utility Authority;
- g. Mandates that CRRUA allow for public participation by unrestricted public comment at each of its public meetings;
- h. Requires the establishment, at CRRUA's own cost, of a community-based health assessment for chronic arsenic exposure and treatment to be conducted by an independent health care provider; and
- i. Awards civil penalties and creates a civil penalty formula, pursuant to the NMSA 1978, Section 30-8-1 *et seq.*, the EIA, and Drinking Water Regulations, that contains escalation clauses based on CRRUA's failure to maintain the system and direct that such penalties be paid into NMED's Water Conservation Fund, which is the proper fund for said penalties and may be used to support the Department's Utility Operator Certification Program.

127. CRRUA's intentional and knowing mismanagement of the System, resulting in repeated exceedances of the maximum contaminant levels for arsenic, is willful, reckless, or in total disregard of the rights of New Mexico's citizens to clean drinking water, entitling NMED to an award of punitive damages.

128. NMED further requests that the Court award full and fair compensatory and punitive damages in an amount to be proven at trial of this matter.

129. NMED also respectfully requests that this Court award its fees and costs and any and all further relief that is deemed to be just and proper under the facts and circumstances set forth in this Complaint.

COUNT IV: NEGLIGENCE PER SE

130. NMED hereby incorporates paragraphs 1-129 of its Complaint as if the same were fully stated herein.

131. NMED asserts this cause of action based on its inherent *parens patriae* authority and does not assert or usurp claims on behalf of any individual or non-State entity harmed in his or her person or property by CRRUA's conduct.

132. CRRUA is subject to, and has repeatedly and negligently violated, numerous mandatory statutory requirements of the EIA and regulatory requirements of the Drinking Water Regulations.

133. The EIA and Drinking Water Regulations were enacted specifically to protect the health, safety, and welfare of the public, including consumers of water provided by the System.

134. CRRUA violated the EIA and Drinking Water Regulations in numerous ways, including but not limited to:

- a. Operating arsenic treatment plants while offline and negligently and intentionally bypassing the arsenic treatment system for over a year without notification to the public or to NMED;

- b. Delivering drinking water which exceeds the maximum contaminant levels to New Mexico citizens for extended periods of time;

- c. Failing to issue public health warnings, including notices of violations and health advisories, as required by statutory and regulatory authorities;

- d. Failing to correct known deficiencies at arsenic treatment plants despite numerous warnings, inspections, and enforcement actions, including deficiencies that were identified as early as 2008 and remain unaddressed as of 2025.

135. These violations were not technical nor isolated, but were negligent, systemic, recurring, and deliberate over the course of more than a decade and continue to be repeated despite repeated warnings, enforcement actions, and opportunities to achieve continuous compliance.

136. The class of persons to be protected by the applicable statutory and regulatory authorities include New Mexico's citizens who consume public drinking water delivered by the System and NMED, whose function is to protect the public through enforcement of such statutory and regulatory authorities.

137. NMED, acting on behalf of the State of New Mexico and its citizens, is within the class of persons directly affected by CRRUA's failure to comply with the EIA and Drinking Water Regulations.

138. CRRUA's failure to comply with the EIA and Drinking Water Regulations have caused the type of harm the EIA and Drinking Water Regulations are designed to prevent.

139. As a direct and proximate result of CRRUA's negligent, intentional and knowing failure to maintain the System in accordance with the EIA and Drinking Water Regulations, NMED and New Mexico's citizens have suffered and continue to suffer irreparable harm.

140. Allowing CRRUA to continue to negligently, intentionally and knowingly maintain the System in violation of the EIA and Drinking Water Regulations is negligence per se which will result in irreparable harm to a substantial number of New Mexico citizens.

141. The threatened injury to New Mexico citizens from CRRUA's maintenance of the System in violation of the EIA and Drinking Water Regulations is negligent per se which causes damages to New Mexico citizens which outweighs any damages a preliminary and permanent injunction might cause CRRUA.

142. The issuance of a preliminary and permanent injunction will serve the public interest in safe and sustainable drinking water and will not be adverse thereto.

143. There is a substantial likelihood that NMED will prevail on the merits.

144. NMED respectfully requests that the Court issue a preliminary and permanent injunction which:

- a. Appoints a receiver to monitor, oversee, and control all daily operations, including fiscal and technical decisions, as well as operations and maintenance of the system by CRRUA for the duration of the Joint Powers Agreement;
- b. Orders CRRUA to conduct, at its own cost, a third-party evaluation of the arsenic treatment plants and implementation of necessary corrective actions;
- c. Mandates that CRRUA, at its own cost, conduct real time monitoring of the arsenic levels associated with each of its treatment plants and share the results in parts per billion to the public and NMED;
- d. Requires CRRUA to provide arsenic test strips free of charge to all consumers served by the System;
- e. Directs that CRRUA provide a third-party source of drinking water for delivery to consumers during any incidence in which the parts per billion of arsenic exceed the maximum contaminant levels as set forth in Drinking Water Regulations;
- f. Orders CRRUA to conduct its regular monthly public meetings at 5:30 p.m. in accordance with its Resolution Establishing the Open Meetings Policy of the Camino Real Regional Utility Authority;
- g. Mandates that CRRUA allow for public participation by unrestricted public comment at each of its public meetings;

- h. Requires the establishment, at CRRUA's own cost, of a community-based health assessment for chronic arsenic exposure and treatment to be conducted by an independent health care provider; and
- i. Awards civil penalties and creates a civil penalty formula, pursuant to the NMSA 1978, Section 30-8-1 *et seq.*, the EIA, and Drinking Water Regulations, that contains escalation clauses based on CRRUA's failure to maintain the system and direct that such penalties be paid into NMED's Water Conservation Fund, which is the proper fund for said penalties and may be used to support the Department's Utility Operator Certification Program.

145. CRRUA's negligent, intentional and knowing mismanagement of the System, resulting in repeated exceedances of the maximum contaminant levels for arsenic, is willful, reckless, or in total disregard of the rights of New Mexico's citizens to clean drinking water, entitling NMED to an award of punitive damages.

146. NMED further requests that the Court award full and fair compensatory and punitive damages in an amount to be proven at trial of this matter.

147. NMED also respectfully requests that this Court award its fees and costs and any and all further relief that is deemed to be just and proper under the facts and circumstances set forth in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Secretary James Kenney *ex rel.* New Mexico Environment Department, State of New Mexico respectfully requests that this Court enter judgment in his favor and against CRRUA and for the Court to issue an order granting the following forms of relief:

- a. A preliminary and permanent injunction which:

- Appoints a receiver to monitor, oversee, and control all daily operations, including fiscal and technical decisions, as well as operations and maintenance of the system by CRRUA for the duration of the Joint Powers Agreement;
- Orders CRRUA to conduct, at its own cost, a third-party evaluation of the arsenic treatment plants and implementation of necessary corrective actions;
- Mandates that CRRUA, at its own cost, conduct real time monitoring of the arsenic levels associated with each of its treatment plants and share the results in parts per billion to the public and NMED;
- Requires CRRUA to provide arsenic test strips free of charge to all consumers served by the System;
- Directs that CRRUA provide a third-party source of drinking water for delivery to consumers during any incidence in which the parts per billion of arsenic exceed the maximum contaminant levels as set forth in Drinking Water Regulations;
- Orders CRRUA to conduct its regular monthly public meetings at 5:30 p.m. in accordance with its Resolution Establishing the Open Meetings Policy of the Camino Real Regional Utility Authority;
- Mandates that CRRUA allow for public participation by unrestricted public comment at each of its public meetings;

- Requires the establishment, at CRRUA's own cost, of a community-based health assessment for chronic arsenic exposure and treatment to be conducted by an independent health care provider; and
 - Awards civil penalties and creates a civil penalty formula, pursuant to the NMSA 1978, Section 30-8-1 *et seq.*, the EIA, and Drinking Water Regulations, that contains escalation clauses based on CRRUA's failure to maintain the system and direct that such penalties be paid into NMED's Water Conservation Fund, which is the proper fund for said penalties and may be used to support the Department's Utility Operator Certification Program.
- b. An award of full and fair compensatory and punitive damages in an amount to be proven at trial of this matter;
 - c. An award of fees and costs incurred in this action; and
 - d. Any and all further relief that is deemed to be just and proper under the facts and circumstances set forth in this Complaint.

Respectfully Submitted,

ROBLES, RAEL & ANAYA, P.C.

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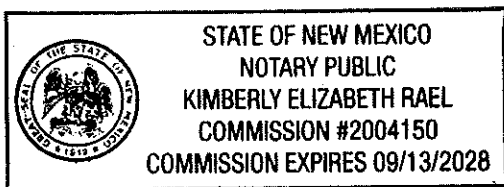
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On this 28th day of May, 2025, I affirm under penalty of perjury under the laws of the State of New Mexico that the statements in this Verification are true and correct.


James Kenney, Secretary
New Mexico Environment Department

The foregoing instrument was sworn, subscribed, and acknowledged before me by Secretary James Kenney of the New Mexico Environment Department on this 28th day of May, 2025.

Kimberly Baed
Notary Public



9/13/28