

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: Plum River Fault Line Golf, Inc. and Meadowcrest Farms, Ltd. Public Water Supply Facility No. 4965201	ADMINISTRATIVE ORDER NO. 2016-WS-04
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TO: James Holst
Plum River Fault Line Golf, Inc.
42998 45th St., P.O. Box 218
Preston, IA, 52069

James Holst
Meadowcrest Farms, Ltd.
42998 45th St., P.O. Box 218
Preston, IA 52069

I. SUMMARY

This administrative order (order) is issued to James Holst, President, Plum River Fault Line Golf, Inc. (Plum River) and James Holst, President, Meadowcrest Farms, Ltd. (Meadowcrest), by the Iowa Department of Natural Resources (Department). This order is issued to resolve violations for failure to monitor for coliform bacteria and nitrate, failure to submit Water Use Reports, and failure to renew Water Use Permit No. 8064. This order requires you to:

1. Sample this public water supply (PWS) for coliform bacteria at least once per month, submit the sample to a laboratory certified by the Department, and perform required follow-up sampling when a positive result is obtained;
2. Sample this PWS for nitrate quarterly and submit the sample to a laboratory certified by the Department;
3. Completely disconnect Well No. 2 from the distribution system of this PWS;
4. Provide public notice as required by this order and as required by the Department in the future;
5. Comply with all monitoring requirements and all other conditions of this facility's PWS operation permit (permit);
6. Submit all missing Water Use Reports;
7. Renew Water Use Permit No. 8064; and
8. Pay an administrative penalty of \$9,000.00 to the Department within 60 days of receipt of this order.

Any questions regarding this order should be directed to:

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Relating to technical requirements:

Cecilia Naughton
Environmental Specialist
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-0289

Relating to legal requirements:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8248

Direct payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. James R. Holst, is President of Plum River, which operates the Plum River golf course located at 42998 45th Street, Preston, Iowa 52069. Meadowcrest owns the property on which the Plum River golf course is located. James Holst is the President of Meadowcrest. This facility, which includes a golf course, clubhouse and a residence, is located in Jackson County, Iowa. The facility has a food license and a liquor license. This PWS is seasonal and is open from April 1 through September 30 each year. The facility is classified as a transient noncommunity PWS.

2. The PWS system derives its water from two wells. The PWS system includes Well No.1, which is a Jordan well. This well was drilled in 1998 to a depth of 910 feet and is considered a deep well. Well No. 1 is equipped with a pitless adaptor and submersible pump and has been permitted by the Department as a PWS well. During the inspection on April 10, 2009, this well was used for irrigation only.

3. At the time of the 2009 inspection, the PWS was being supplied by Well No. 2. Well No. 2 was discovered during the April 10, 2009 inspection. This well provides water to the clubhouse and the residence and was not permitted for use as a PWS well by the Department. Well No. 2 does not meet PWS standards and has not been issued a permit by the Department. This well is buried, has a split seal for a cap, is surrounded by a cement driveway, and is covered with lime and has a bucket over the cap to protect it.

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4. On April 12, 2012, the Department's Water Supply Operation Section (WSOS) renewed the water supply operation permit (permit) for the PWS system. The permit required monthly sampling for total coliform bacteria and annual (once per year) sampling for nitrate. The permit also contained a compliance schedule that required the plugging of or disconnection of the PWS system from Well No. 2 by November 30, 2009. The compliance schedule required installation of a chlorination system by April 3, 2010 or connection to an alternate existing PWS system by July 11, 2010.

5. On February 13, 2015, the WSOS renewed the permit for this PWS. The permit included a compliance schedule that required disconnection of Well No. 2 from the PWS prior to April 1, 2015, the opening of the golf season at this PWS.

Coliform Bacteria Monitoring and Reporting

6. The 2012 and 2015 permits required the PWS system for this facility to be monitored for coliform bacteria at least once per month. Department rules also require that when a routine coliform bacteria sample is analyzed as containing coliform bacteria, additional recheck and routine samples shall be taken. These samples are required to be analyzed at a laboratory certified by the Department to conduct testing of Safe Drinking Water Act (SDWA) samples for coliform bacteria.

7. On May 22, 2012, the Department's Field Office No. 1 (FO 1) conducted a water supply sanitary survey at this PWS. During the sanitary survey, FO 1 was informed that the discharge line from Well No. 1 failed in 2010 and that Well No. 2 was placed back on line to provide water. After this change in wells from Well No. 1 to Well No. 2, the PWS experienced several bacteria MCL violations.

8. This PWS failed to take the required monthly coliform bacteria samples on numerous occasions and was notified of coliform bacteria monitoring violations by notice of violation (NOV) letters. This PWS was sent numerous NOV letters for failure to sample for coliform bacteria during the period of May 16, 2012 through April 30, 2015. NOV letters were issued for failure to monitor for coliform bacteria for April 2012, April 2013, May 2013, September 2013, and April 2015. The NOVs for these coliform bacteria monitoring violations were issued on May 16, 2012, May 16, 2013, June 18, 2013, October 1, 2013, and May 15, 2015. Public notice instructions sent with the NOV letters additionally advised this PWS that public notification was required to be given and that proof of public notice was required to be submitted to the Department. The Department has not received proof that public notice for these monitoring violations was given.

Nitrate Monitoring Requirements

9. The current permit for this PWS requires quarterly (four times per year) nitrate monitoring. The prior permit issued on April 4, 2012 also required quarterly nitrate

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monitoring. Nitrate samples are required to be analyzed at a laboratory certified by the Department to conduct testing of SDWA samples for coliform bacteria.

10. The WSOS notified the PWS of a nitrate monitoring violation through an NOV letter sent on October 18, 2012. The NOV letter was issued due to failure to sample for nitrate during the third quarter of 2012 as required by the permit. The NOV letter and public notice instructions sent with the letter advised the facility owner that public notification was required to be given for the nitrate monitoring violation and that proof of giving public notice was required to be furnished to the Department. To date the Department has not received proof that public notice for the nitrate monitoring violation was given by this PWS.

Public Notice Requirements

11. This PWS has received numerous coliform bacteria monitoring violations and one nitrate monitoring violation since April 1, 2012. The information sent with the NOV letters that informed this PWS of monitoring violations provided instructions and a sample for giving public notification. Despite public notice instructions and a sample notice, this PWS failed to give public notice of monitoring violations. The Department has not received proof of providing public notification for any of the monitoring violations despite the requirement to provide public notification and to provide proof to the Department that public notice was provided and despite public notice reminder letters from the Department.

Annual Water Supply Fee

12. The Department sent the annual water supply fee (fee) letters and invoices for the 2012 and 2014 fiscal years to this PWS. The letters advised this PWS that payment of the \$25.00 fee for the 2012 fiscal year was due by September 1, 2011 and that the fee for the 2014 fiscal year was due by September 1, 2013. The fees were not remitted timely as required by the invoices. The Department sent second notices to this PWS advising that these fees had not been received. The Department added a late fee of \$100.00 for both the 2012 fiscal year and the 2014 fiscal year since the annual water supply fees were not paid by the original due dates. These fees have not been paid to date. The fee for fiscal year 2016 was due by September 1, 2015. Since the fee for fiscal year 2016 was not paid timely, a late fee of \$100.00 has been assessed, increasing the fee due to \$125.00 for fiscal year 2016. The outstanding fees were paid in February 2016.

Illegal Cross Connection

13. FO 1 visited this PWS on May 29, 2015 pursuant to a work request. FO 1 determined that Well No. 2, the well not permitted by the Department, was plumbed into the PWS distribution system with the intent to use it as an emergency backup well. This cross connection constitutes an illegal cross connection. The Department does not permit

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connections between a PWS well and any other water system that does not meet the monitoring and drinking water standards required by 567 IAC chapter 43 in order to prevent backflow or backsiphonage of contaminants into a PWS.

Water Use Permit

14. Water use permits are required by municipalities, industries, agricultural and golf course irrigators, farms, and agribusinesses and any other user of over 25,000 gallons of water per day. This is sometimes referred to as the water allocation or the water rights permit. These permits are required under Iowa laws that originated during the droughts of the 1950's. The stated purpose of the law is to assure that the water resources of the state be put to beneficial use to the fullest extent possible, that the waste or unreasonable use, or unreasonable methods of use, of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use of the people. The law applies to the use of water from streams and reservoirs, gravel pits, quarries, and other sources. Basically, it allows a system of accounting for the uses of water so that compliance with the law is possible.

The authority for regulating water allocation arises from the mission the State has to protect public health and welfare. The use of water by one person can affect other nearby water users and the general public. Iowa's water allocation program works to sort through various competing uses to make sure the water uses are fairly distributed. The program attempts to do the following:

- Use an administrative procedure to resolve water use conflicts.
- Use a permitting program to ensure consistency in decisions on the use of water.
- Involve the public in issuing water allocation permits and in establishing water use policies.

Water use reporting is important because it is the data utilized to make decisions when water allocation conflicts arise. The damage from not complying is that conflicts cannot be meaningfully resolved, or have to be resolved arbitrarily rather than scientifically.

15. On August 18, 2009, a renewal application for a water use permit was mailed to the owner of the PWS facility. On August 26, 2009, Water Use Permit No. 8064 expired. On February 25, 2010, February 24, 2011, and January 4, 2012, renewal applications for a water use permit were mailed to this PWS facility owner. The Department did not receive a response to any of the renewal letters and did not receive any completed renewal applications for the PWS facility owner.

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Water Use Reports

16. On November 25, 2008, the Department sent a blank water use report form to this PWS owner. On August 2, 2011, the Department sent blank water use report forms for 2008, 2009, and 2010 to this PWS owner. On June 12, 2012, blank water use report forms were sent to the PWS owner. On June 17, 2013, a blank water use form was sent to the PWS owner. On April 24, 2014, blank water use forms for 2010, 2011, 2012 and 2013 were sent to the PWS owner. The Department did not receive any completed water use forms for 2008 through 2014.

17. The only communication received from this PWS owner was a response to a letter sent to all water use permit holders using Jordan Aquifer wells. A note was received from the PWS owner that stated the following. "I am a minimal user of golf course irrigation. The average monthly electrical bill for the pump May to September 2014 is under \$500." Electrical cost is not a valid substitute for actual water usage measured in gallons or acre-feet or an annual water use report. The owner must provide written documentation, pumping records, or pump specifications if the owner does not believe that 25,000 gallons of water is pumped on any given day.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a PWS system as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other PWS. This facility is a transient noncommunity water system.

3. Rule 567 IAC 40.2(455B) further defines a "transient noncommunity water system" (TNC) as "a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year." This facility is a transient noncommunity water system.

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Public Water Supply Operation Permit

4. 567 IAC 43.2(2) indicates “Except as provided in 43.2(3) and 43.2(4), no person shall operate any public water supply system or part thereof without, or contrary to any condition of, an operation permit issued by the director.” This facility has operated a PWS system contrary to conditions of its permit.

Coliform Bacteria Monitoring

5. 567 IAC 41.2(1) requires a transient noncommunity water system to be sampled for coliform bacteria at least once per calendar quarter. More frequent sampling may be required and was required by the permit issued for this facility. When positive results are obtained in a routine sample, additional follow-up sampling is required. Subparagraph “c” (1) of the subrule requires that bacterial samples must be collected at sites which are representative of water throughout the distribution system, according to a written sampling plan that meets the criteria of the subparagraph.

6. Subrule 83.1(3) requires samples to be analyzed for coliform bacteria at a laboratory certified by the Department to conduct testing of SDWA samples. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of bacteria analyses of its water supply for a period of five years. This facility has had repeated coliform bacteria monitoring violations.

Nitrate Monitoring

7. Subrule 41.3(1), subparagraph “c”(5), requires a transient noncommunity water system to be sampled at least once every year, and have the samples analyzed for nitrate, in accordance with prescribed analytical procedures. Repeat monitoring is required to be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The Department may allow a ground water system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N. The repeat monitoring frequency is required to be monthly for at least one year following any one sample in which the concentration is greater than or equal to 10.0 mg/L as N.

8. Subrule 83.1(3) requires the samples to be analyzed for nitrate at a laboratory certified by the Department to conduct tests of SDWA samples. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of chemical analysis of its water supply for a period of ten years. This facility has received one nitrate monitoring violation for failure to take a yearly sample.

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Public Notification of Violations

9. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS system which fails to perform monitoring required by rule to notify persons served by the system within three months. Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system.

10. The public notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of additional information. Subrule 567 IAC 42.4(1)"c", provides that the PWS shall submit a representative copy of the public notice to the Department within ten days of completion of the notice. This PWS did not comply with public notice requirements for failure to monitor on repeated occasions.

Annual Water Supply Fee

11. Iowa Code section 455B.183A(2)"b" authorized the Commission to adopt fees for operation permits for PWS systems. This Iowa Code section imposed a \$25.00 fee on PWS systems not owned or operated by a community and serving a transient population. Subrule 43.2(1) was adopted pursuant to this Iowa Code section. This subrule requires payment of a nonrefundable fee for the operation of a PWS system by September 1, of each year. For transient noncommunity systems the fee is \$25.00. The subrule also allows the addition of a late fee of \$100.00 if the fee is not paid timely. This PWS has not paid the annual fee of \$25.00 and late fee of \$100.00 for fiscal years 2012 and 2014. The \$25.00 annual fee for fiscal year 2016 was due by September 1, 2015 and has not been paid timely. The annual fee and late fee now total \$125.00 for fiscal year 2016. The past due annual fees were paid in February 2016.

Compliance Schedule Violation

12. Subrule 567 IAC 43.2(2) requires that no person shall operate any PWS system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Subrule 43.2(5)"a" provides that operation permits may contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the Department, to ensure that the PWS system is properly maintained, to ensure that potential hazards to the water consumer are eliminated promptly, and to ensure that the requirements of the SDWA are met. Subrule 43.2(5)"b" provides that where one or more MCLs, treatment techniques, designated health advisories, or action levels cannot be met immediately, a compliance schedule for achieving compliance with standards may be made a condition of the permit. This

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facility owner has not complied with the appendices included in two permits for this facility that required that this PWS not use unpermitted Well No. 2.

Cross-Connection Control

13. Subrule 567 IAC 43.1(4) requires the following. “To prevent backflow or backsiphonage of contaminants into a public water supply, connection shall not be permitted between a public water supply and any other system which does not meet the monitoring and drinking water standards required by this chapter.” This PWS system has failed to exercise cross connection control concerning its two wells and distribution system.

Water Use Permit

14. Water use permits are required to be renewed pursuant to subrule 567 IAC 52.5(1). This PWS has failed to renew its water use permit following expiration of that permit in 2009.

Water Use Reports

15. Department subrule 567 IAC 52.6(1) requires each permit holder to submit to the Department at least annually, as prescribed by the Department, reports of the water used, diverted or stored and any other information considered necessary by the Department. This PWS failed to submit water use reports as required by Department rules. The Jordan rule became law August, 2015. Pursuant to 567 IAC 52.4(3)“c”, pumping levels in the Jordan well must not exceed 300 feet below the 1977 baseline level. Since this permit holder is not reporting, the Department does not have the necessary information to determine if this level has been exceeded.

V. ORDER

THEREFORE, the Department orders Plum River and Meadowcrest to comply with the following provisions in order to abate and redress violations of Department rules and the facility's PWS operation permit:

1. You are required to completely disconnect Well No. 2 from the PWS distribution system within 60 days of receipt of this order.

2. You are required to monitor this facility on a monthly basis for coliform bacteria and to maintain full compliance with the coliform bacteria monitoring requirements included in the permit and in letters from the Department. This includes taking all required repeat and additional routine samples required by the Department in the event of an unsatisfactory coliform bacteria sample.

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3. You are required to sample this PWS for nitrate at least once per quarter as required by the permit, submit the samples to a laboratory certified by the Department for nitrate analysis, timely report the results to the Department, and maintain the records of such analyses for ten years.

4. You are required to provide public notice of the bacteria and nitrate monitoring violations since 2013 as required by Department rules within 30 days of receipt of this order and submit proof of providing public notice to the Department within ten days of completion of the notice. You are required to provide public notice as required by the Department for any future coliform bacteria and nitrate monitoring violations.

5. You are required to comply with all requirements of a PWS system and the permit reissued for this PWS.

6. You are required to submit all missing water use reports as identified in this order.

7. You are required to renew water Use Permit No. 8064,

8. An administrative penalty of \$9,000.00 is assessed by this order. The administrative penalty is required to be paid to the Department within 60 days of your receipt of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

a. Economic Benefit. There have been cost savings to the facility by not taking the samples required by the permit for this facility. The facility has avoided paying for the cost of sample analysis and the cost of shipping the samples to a certified laboratory. There have also been avoided costs for the savings in staff salary for the time not spent collecting and preparing samples for shipping and for the time not spent in preparing, posting, and delivering the public notice and in mailing the public notice certification to the Department. The amount assessed for this factor reflects the delayed cost of replumbing the distribution system to remove the cross connection with the unpermitted well. It also reflects the delayed cost of monitoring and reporting the water usage and renewing the water use permit. The total economic benefit assessed by this order is set at \$3,000.00.

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b. Gravity of the Violation. One of the factors the Department considers in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, the Iowa Code authorizes substantial civil penalties.

Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time. Issuance of an administrative order that includes an administrative penalty appears to be as the most equitable and efficient means of resolving the matter.

The use of an unpermitted well for the source of public water supply is an actual and grave threat to public health. The unpermitted well was brought into use for the PWS following the failure of the permitted well discharge line. The age and construction defects of this well place it in the Significant Deficiency category. Cross connection between a PWS and an unpermitted water source creates a significant risk to human health and creates a threat to the integrity of a regulatory program. The owner's recalcitrance to address the problem has led to significant expense and effort by the Department in detecting, documenting, and responding to multiple violations.

The failure to report water usage pursuant to the water use permit can result in pulling more water out of an aquifer than may be sustainable. It places legitimate users at a disadvantage. The Jordan Aquifer, the aquifer used by this PWS owner, is already under stress. Water withdrawn from the Jordan Aquifer has more than tripled in the last 50 years to about 23.8 billion gallons per year in 2010. Groundwater levels in Linn, Johnson and Webster counties are now declining.

Because of the importance of the safe drinking water program, self-monitoring and reporting to the safe drinking water program, the water use permit program and water use reporting requirements, the Department assesses \$3,000.00 for this factor, due to multiple violations.

c. Culpability. The facility owner has received numerous contacts by the Department by phone, letters, and FO 1 site visits, which have been disregarded. The responsible party has been made fully aware of the responsibilities of a PWS and of a water use permit holder. Despite these contacts, this PWS remains non-compliant with the stated rules and the permits issued for this facility. The 2012 and 2015 reissued permits contained compliance schedules to disconnect the unpermitted well or otherwise remedy the deficiencies. The last deadline of April 2015 has been missed, and no action to correct the situation has been performed. In addition, another bacterial monitoring violation occurred. The amount of \$3,000.00 is assessed for this factor, due to multiple violations.

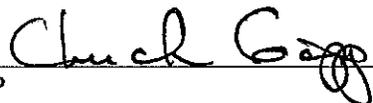
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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and subrule 561 IAC 7.4(1), as adopted by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order.



CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18th day of
May, 2016

Plum River Fault Line Golf, Inc. and Meadowcrest Farms, Ltd.- Water Supply Facility No. 4965201, Cecilia Naughton- Water Supply Operations Section, Amber Sauser- Field Office No. 1, Diana Hansen- Legal Services Bureau, II.B.2.a(1), II.B.2.a(2); II.B.2.b; II.B.2.f; II.B.2.g; III.B.1; and III.C.