Amended pursuant to Supreme Court Civil Rule 6-1(1)(a) on October 1, 2026
Original filed on March 31, 2026.



No. VLC-S-S-262422
Vancouver Registry

In the Supreme Court of British Columbia

Between

NICOLE CLARK

Plaintiff

and

SAGE MESA WATER & PUBLIC SERVICE CO. LTD. &
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTRY OF WATER, LAND AND RESOURCE STEWARDSHIP AND THE COMPTROLLER OF WATER RIGHTS

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
(b) serve a copy of the filed response to civil claim on Ms. Clark.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
(b) serve a copy of the filed response to civil claim and counterclaim on Ms. Clark and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on Ms. Clark,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. This proposed class action concerns the unsafe Sage Mesa Water System which provides drinking water to properties in the Regional District of Okanagan-Similkameen. Residents in the Sage Mesa area have been subject to both seasonal and permanent boil-water advisories since 2012. Some, including the Plaintiff Nicole Clark, have had a permanent boil-water advisory since 2019. The water system also does not have sufficient fire flow capacity to combat fires or reservoir overflow drainage, leaving residents at risk of physical injury and property damage.

2. The Defendants, Sage Mesa Water & Public Service Co., Ltd. and His Majesty the King in the Right of British Columbia, have known ~~of~~ that the water system poses an urgent risk to public safety ~~the issues with the water system~~ since at least ~~2012~~1990. Despite this, they have refused to adequately repair or upgrade the Sage Mesa Water System. Meanwhile, the cost of repairing and upgrading the water system has steadily increased.

3. The Defendants are in breach of the *Drinking Water Protection Act*, SBC 2001, ch. 9, requirement that water suppliers must provide users with potable water. The Defendants' actions violate their contracts with water users, the common law, and the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*. Further, the Defendants have been unjustly enriched by refusing to fix the water system for over a decade.

4. The Plaintiff seeks damages stemming from lack of adequate drinking water, fire flow capacity, overflow drainage, and apparatuses to prevent chemical spills. In the alternative, the Plaintiff seeks to recover from the Defendants the money they received from the Plaintiff and class members. In the further alternative, the Plaintiff seeks to recover from the Defendants the money they saved by failing to fix the defunct Sage Mesa Water System.

The Defendants

5. The Defendant, Sage Mesa Water & Public Service Co., Ltd. ("Sage Mesa Co.") is a British Columbia company with an address for service listed as Ministry of Forests, Lands, Natural Resource Operations and Rural Development, 3rd Floor, 395 Waterfront Cres., Victoria, BC V8W 9M1.

6. At all material times, Sage Mesa Co. owned the Sage Mesa Water System ("SM Water System"). Sage Mesa Co. established the SM Water System in 1968. The Public Utilities Commission of British Columbia issued a Certificate of Public Convenience and Necessity to Sage Mesa Co., pursuant to Order in Council 2089/1968. The SM Water System is Sage Mesa Co.'s sole business venture.

7. The Defendant, His Majesty the King in the Right of British Columbia (the "Crown"), as represented by the Ministry of Water, Land and Resource Stewardship and the Comptroller of Water Rights, is named in these proceedings pursuant to the provisions of the *Crown Proceedings Act*, R.S.B.C. 1996, c. 89 and amendments thereto.

8. By Seize Order 1378 issued on June 27, 1990, in the exercise of its powers under the *Utilities Commission Act*, the Crown seized and took possession of the business, property, records, offices and facilities of Sage Mesa Co., including the SM Water System (the "1990 Seize Order"). Since then, the Crown has maintained complete control over the management and operation of the SM Water System. At all materials times, the Crown, through and with its agents, servants and employees, was responsible for the management and operation of the SM Water System.

8.A. The Crown seized control of the SM Water System because the system lacks adequate disinfection equipment, meaning it could not provide a safe service to customers. The Deputy Comptroller of Water Rights (the "Deputy Comptroller") considered the issue 'urgent' given the continued health risk to customers. The Crown seized possession, control and management of the

SM Water System for the purpose of installing and placing into operation adequate disinfection equipment, among other things.

9. In 2009, the Crown and Sage Mesa Co. contracted with Regional District of Okanagan-Similkameen ("RDOS") to conduct day-to-day operations on the SM Water System. RDOS is responsible for daily maintenance, minor immediate repairs and notifying the Defendants of the need for capital repairs. The Crown is responsible for implementing capital repairs. The Crown also sets budgets and determines the rates charged to customers. Sage Mesa residents pay the Crown for water services through HLW Accountants, which deposits the funds into a restricted bank account controlled by the Comptroller of Water Rights.

10. While Sage Mesa Co. still owns SM Water System, ~~it~~ the owners of Sage Mesa Co. have ~~has~~ no decision-making authority regarding its management nor operation. The Deputy Comptroller acts as the ex-officio director of Sage Mesa Co. and moved the headquarters of Sage Mesa Co. to the office of the Deputy Comptroller in Victoria, BC. At all material times the owners of Sage Mesa Co., had no involvement in management of the water system. They were not privy to the financials of the Sage Mesa Co. At all material times, the Crown has had signing authority on behalf of Sage Mesa Co. The Crown used its control of Sage Mesa Co. to expressly direct wrongful acts to be done, as described at paragraphs 14-19 and Part 3 below.

The SM Water System

11. SM Water System is the only privately owned water system in British Columbia under complete management by the Crown. It is located approximately 2 km north-west of the City of Penticton. The SM Water System services approximately 250 properties including residential properties and two golf courses in the West Bench area. The SM Water System provides water to properties in RDOS, including Sage Mesa, Sandstone, Westwood Properties, Pine Hills Golf Course, WOW Golf Course, and Husula Highlands.

12. The SM Water System is split into two pressure zones: an Upper Zone and a Lower Zone. The Upper Zone supplies 176 connections. The Lower Zone supplies 68 connections.

13. The SM Water System sources water from Okanagan Lake, using a chlorination process to provide drinking water. Water is chlorinated at the lake pump station and sent to the Lower Zone.

For the Upper Zone, the water is sent through at a booster station and re-chlorinated as it is boosted to higher elevation.

14. The Defendants are aware the SM Water System is inadequate. RDOS has repeatedly warned the Defendants that the SM Water System presents a danger to users and surrounding properties. Between 2012-2025, RDOS reported the following issues to the Defendants, among others:

a) The system relies on one level of treatment – the addition of sodium hypochlorite – to disinfect the water. This chlorination process turns the lake water into drinking water. This single level of water treatment is problematic. Various micro-organisms can live through the chlorination process. Specifically, giardia and cryptosporidium can survive the chlorination process. The single level of treatment falls below the minimum standards for drinking water set out in the Interior Health Authority's 4.3.2.1.0 Drinking Water Objectives. This standard requires a minimum of two levels of treatment for water that is at risk of containing pathogens, such as water from Okanagan Lake.

b) There is insufficient chlorine contact time between the water and the added sodium hypochlorite to adequately disinfect the water. A minimum contact time of 20 minutes is set out in the Interior Health Authority's 4.3.2.1.0 Drinking Water Objectives. The SM Water System provides only 4 to 6 minutes of chlorine contact time for many properties supplied by the Lower Zone.

c) The water intake is not strategically located. Its placement in Okanagan Lake is too shallow. In the summer, the shallow water temperatures rise to approximately 25 degrees Celsius. This is far above the maximum intake water temperature of 15 degrees Celsius set out in the guidelines for Canadian Drinking Water Quality.

d) The Lower Zone and Upper Zone reservoirs must be replaced due to insufficient fire flow capacity and rapid deterioration.

e) The Lower Zone reservoir has no overflow drainage, meaning there is a risk of over spilling causing flooding in the Sage Mesa area. Many homes in the Sage Mesa area are built on silt bluffs which are susceptible to landslides in a flooding event.

f) Sodium hypochlorite is added using a home-made hoist system which does not meet applicable safety standards. This creates a risk of environmental damage due to spilling the sodium hypochlorite in a riparian area.

g) The turbidimeter, which measures the water's cloudiness caused by the presence of dangerous suspended particles, is faulty and has been since 2008.

h) There is no cooling system in the sodium hypochlorite room which leads to faster degradation of the chemical in excessive heat, such as the summer months.

i) There is no fire alarm or security monitoring in the lake pump station.

j) There is no power backup system.

k) The vertical turbines and pipes which supply the water and sodium hypochlorite are rapidly corroding due to chlorine gas and need to be replaced.

l) The flow meters are at the end of their life and need to be replaced.

m) The intakes screen and pipe are rapidly corroding and need to be replaced.

15. The Defendants have known of safety issues with the SM Water System since 1990. However, ~~The~~ the Defendants have made no attempt to fix the above issues. As a result of the Defendants' inaction, RDOS residents have been subject to numerous boil water advisories:

a) In 2012, the Interior Health Authority informed RDOS and the Defendants that a seasonal boil water advisory would be required during times of high water flows for properties supplied by the Lower Zone. The water posed risks to human health due to the presence of viruses, bacteria and protozoa. The Interior Health Authority issued a seasonal boil water advisory for properties in the Lower Zone.

b) In 2017, following a heavy rainfall, the Interior Health Authority issued a boil water advisory for the Upper Zone, and later the Lower Zone. The boil water advisory remained in place for two months after which it was downgraded to a water quality advisory.

c) In 2018, RDOS tested a sample of its water and found the results were not in line with the temperature nor turbidity levels required to be potable water. The Interior Health Authority issued a seasonal boil water advisory to all recipients of water from the SM

Water System. The boil water advisory lasted approximately two months for the Upper Zone, and approximately five months for the Lower Zone.

d) In 2019, the Interior Health Authority issued a permanent boil water advisory for users of the SM Water System. For the Upper Zone, the boil water advisory remained in effect for almost a year and has been reinstated during freshet periods in the Spring. For the Lower Zone, the boil water advisory has been in effect for approximately seven years. It remains and will be in effect until appropriate engineering and capital upgrades have been made on the system.

16. Properties supplied by the SM Water System have also been subject to various water quality advisories.

17. Rather than identifying and coordinating ways to fix and upgrade the SM Water System, the Defendants asked RDOS to consider acquiring the SM Water. Since December 2022, RDOS has been engaged in the utility acquisition process. ~~If RDOS acquires the SM Water System, future capital repairs and upgrades will be funded by users through increases to utility bills and property taxes, as well as potential grants if approved.~~

18. During a public meeting in October 2024, RDOS informed residents of the SM Water System's issues and its intention to acquire the system. RDOS stated that the Crown was refusing to repair the system. During this meeting, a representative of Interior Health Authority advised that the Authority would order the SM Water System be shut down if residents vote against RDOS's acquisition.

19. After this meeting, the Comptroller of Water Rights issued a notice to SM Water System customers. In this notice, the Comptroller stated that, given the potential acquisition by RDOS, the Crown would not consider any investment in, or capital upgrades to, the SM Water System. The Comptroller estimated the cost to repair the system would be $18.4 million, plus $14.6 million for future improvements to the distribution network.

20. In a 2026 notice provided to Sage Mesa residents, the Ministry of Water, Land and Resource Stewardship stated the SM Water System does not meet Interior Health water treatment objectives and requires upgrades to fire protection, watermain replacement and water treatment. The cost of these upgrades is estimated to be $31 million to $33 million.

20.A. In April 2026, residents voted against RDOS's acquisition. Afterwards, the Comptroller of Water Rights approved monthly rate increases on Sage Mesa residents, increasing from $105 in 2025 to $190 in 2026 and $250 in 2027.

The Plaintiff and the Class

21. The Plaintiff, Nicole Clark, is a resident of RDOS. Ms. Clark and her husband purchased a home in RDOS in 2006. The home is located on Sage Mesa Drive, which is supplied by the Lower Zone.

22. Ms. Clark pays for water to be supplied from the SM Water System to her home. She pays fees to a collection agent (HLW Accountants), which acts as agent for the Defendants.

23. Ms. Clark's property was subject to seasonal boil water advisories from 2012 to 2019. In 2019, her home was put on a permanent boil water advisory which remains in place.

24. The boil water advisories have been difficult on Ms. Clark and her family. Ms. Clark's son, daughter-in-law, and her granddaughter lived at her home during COVID-19. Ms. Clark and her family had to take extra precautions to prevent her newborn granddaughter from drinking any tap water or accidentally drinking water in the bath. It is also difficult to clean any cookware, plates, and baby utensils/pacifiers as these must be washed with boiled or bottled water.

25. Given the unsafe tap water, Ms. Clark resorted to purchasing 5-gallon jugs of water for drinking. This is both inconvenient and costly. She also purchased a water filter for cooking and hygienic purposes.

26. Ms. Clark is shocked that she may now be responsible for the costly SM Water System repairs that the Defendants were supposed to undertake years ago. She will turn 65 next year and had intended to retire. However, if she must pay hundreds of thousands of dollars to fix the water system, she will not be able to retire. This has caused her to experience high stress, poor sleep, anger, fear and resentment.

27. Ms. Clark is also stressed about the possibility of a forest fire impacting the community given the SM Water System's inadequate fire flow capacity. She is worried about the possibility of a flood and landslide impacting her personal safety and her property.

28. Lastly, Ms. Clark is stressed about the SM Water System's impact on her home's value. She has considered selling her home if RDOS acquires the SM Water System. However, the purchase prices of homes in the Sage Mesa area have declined since issues with the SM Water System became public.

29. Ms. Clark brings this claim on behalf of herself and other property owners and residents in areas supplied with water by the SM Water System (the "Class"). The Class will be defined in the Plaintiff's application for class certification.

30. As a result of the Defendants' years of inaction as described above, Class members have faced and continue to face:

a) A lack of adequate potable water for consumption, including for food preparation.

b) A lack of adequate potable water suitable for non-drinking purposes such as showing, washing clothes, and personal hygiene.

c) Exposure to, and reliance on, contaminated water.

d) A lack of sufficient fire hydrant water to combat fires in the community.

e) Inadequate fire flow to respond to fires.

f) Unreasonable and unnecessary exposure to landslides and flood damage.

g) Unreasonable and unnecessary exposure to a spill of sodium hypochlorite in a riparian area

31. The Defendants' inaction caused Ms. Clark and Class members to suffer:

a) Adverse health effects including infections, diarrhea, and others.

b) Adverse psychological effects including severe anxiety, depressions, fear, and loss of sleep.

c) Poor hygiene.

d) Substantial inconvenience and cost in obtaining safe water for drinking, food preparation, bathing, and personal hygiene.

e) Diminution in property values.

32. Through this lawsuit, Ms. Clark and Class members seek to hold the Defendant accountable for their wrongdoing and to obtain compensation.

Part 2: RELIEF SOUGHT

33. The Plaintiff claims:

a) an order certifying this action as a class proceeding and appointing Nicole Clark as representative plaintiff under the *Class Proceedings Act,* RSBC 1996, c. 50;

b) a declaration that the Crown breached the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*;

c) damages pursuant to section 24 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*;

d) general and special damages;

e) restitution of the moneys received by the Defendants in respect of their wrongful acts;

f) disgorgement of the moneys saved by the Defendants in respect of their wrongful acts;

g) aggregate damages;

h) punitive damages for the Defendants' repeated, willful, knowing, and continuing infringement of the Plaintiff's and Class members' interests and rights under the *Drinking Water Protection Act* and the the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*;

h.a) recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c.27, and comparable legislation in the other provinces and territories;

i) the costs of notice and administration of the plan of distribution;

j) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and

k) such further and other relief as to this Honorable Court may seem just.

Part 3: LEGAL BASIS

The Drinking Water Protection Act

34. Section 6 of the *Drinking Water Protection Act*, SBC 2001, ch. 9 requires a water supplier to provide users served by the water supply system with drinking water from that system that is potable water. This is the minimum statutory standard. Owners cannot delegate this duty to third parties. It informs the Defendants' duties at common law, in contract, and under the *Canadian Charter of Rights and Freedoms*.

35. Both Defendants are owners and water suppliers under the *Drinking Water Protection Act*. Sage Mesa Co. is an owner and water supplier because it owns the water supply system. The Crown is an owner and water supplier because it is responsible for the ongoing operation of the water supply system and because it is in charge of managing that operation.

35.A The Defendants breached section 6 of the *Drinking Water Protection Act* by failing to provide potable water to users of the SM Water System.

Negligence

36. The Defendants owe the Plaintiff and Class members a duty of care to exercise reasonable care in the ownership, operation, maintenance, inspection, monitoring, testing, repair, and management of the SM Water System. This includes a duty to provide potable water, adequate fire flow capacity and adequate reservoir overflow drainage. It also includes a duty to prevent a spill of chemicals.

37. The duty of care is informed by and not less than the requirements set by section 6 of the *Drinking Water Protection Act*, SBC 2001, ch. 9, but does not depend solely on the statute. The duty of care is also informed by and not less than the requirements set out in drinking water and fire protection regulations in British Columbia and Canada. The duty of care is further informed by the Crown's 1990 Seize Order.

37.A. The Crown's seizure of the possession, control and operation of the SM Water Utility creates a private law duty of care to ensure the water supplied to customers is safe and the service is adequate. The SM Water Utility remains a private utility managed under the *Water Utility Act*, R.S.B.C. 1996, c. 485.

38. The close proximity between a water system owner/manager and its users establishes this duty of care. It was reasonably foreseeable that users of the SM Water System would suffer loss and harm if the Defendants failed to exercise reasonable care in their ownership, operation, maintenance, inspection, monitoring, testing, repair, and management of the SM Water System. The failure to provide potable water will foreseeably cause loss and harm to users of the water system. The failure to provide adequate fire suppression water flow will foreseeably cause loss and harm to residents and properties owners. The failure to provide adequate reservoir overflow drainage will foreseeably cause loss and harm to residents and properties owners. The failure to prevent the spill of chemicals in a riparian area will foreseeably cause loss and harm to residents and properties owners.

39. The Defendants conduct fell below the standard of care, as described at paragraphs 14-17 above. For over 36 years, the Defendants knew the SM Water System needed repairs and capital upgrades. The Defendants knew the system was not always providing potable water and posed an urgent risk to customer safety. The Crown seized possession, control and operation of the SM Water System for this purpose. The Defendants knew the water system was inadequate for fire protection and reservoir overflow drainage. The Defendants knew the water system did not accord with the requirements of the applicable legislation and regulations. Despite this, the Defendants made little or no attempt to make the needed repairs and capital upgrades to the water system. The Defendants failed to exercise even the care which a careless person would undertake. The Defendants' lack of action constitutes intentional and wilful misconduct.

40. The Defendants knew or ought to have known that a breach of the duty of care would cause loss or damage to the Plaintiff and Class members.

41. As a result of the breaches of the duty of care set out above, the Plaintiff and Class members have suffered loss and damages, as described at paragraphs 24–31 above. Class members will continue to suffer loss and damages until an adequate water system is put in place.

Negligent Supply of Dangerous Goods

42. In addition, or in the alternative, the Defendants negligently supplied water through the SM Water System that posed a real and substantial danger to the Class members and their properties as described at paragraphs 14-17 above. There is imminent risk of physical harm to Class members

and their property. The Interior Health Authority has threatened to shut down the water system if repairs are not made.

43. The Defendants have refused to fix the SM Water System to ensure it no longer poses a danger. Instead, they asked RDOS to acquire the water system, wherein the Plaintiff and Class members will have to fund the repairs to the system.

44. The Plaintiff and Class members seek to recover from the Defendants the economic loss they have incurred, and will in the future incur, to avert the danger of personal injury or damage to property, as described in Part 1 above.

Breach of the Canadian Charter of Rights and Freedoms

45. In addition, or in the alternative, the Plaintiff claims damages pursuant to section 24 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982* for the ~~Defendants'~~ Crown's breach of section 7 of the *Canadian Charter of Rights and Freedoms*.

46. Section 7 protects the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

47. ~~Both Defendants'~~ The Crown's actions are subject to the *Canadian Charter of Rights and Freedoms* ~~due to the Crown's involvement~~. The Crown exercises control over Sage Mesa Co. and the SM Water System pursuant to section 97 of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473.

48. Section 7 places an obligation on the ~~Defendants~~ Crown, who undertook to provide a water system in a residential community, to ensure the water system is safe. This includes the requirement that the water is potable, that the water supply have sufficient fire flow capacity, that reservoirs have adequate reservoir overflow drainage, and that there are adequate apparatuses to prevent chemical spills.

49. As described in Part 1 above, the Crown ~~Defendants have~~ breached section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*.

50. Failing to provide potable water, adequate fire flow capacity, adequate reservoir overflow drainage, and adequate prevention of chemical spills exposes residents and property owners to a host of serious physical injuries, property damage, and psychological harm, including server

emotional distress, some of which is caused by fear and uncertainty about the safety and security of Class members' water supply.

51. The ~~Defendants'~~ Crown's deprivations of security of the person have not been in accordance with the principles of fundamental justice because they are arbitrary, overbroad, and grossly disproportionate.

52. None of the ~~Defendants'~~ Crown's actions are consistent with a free and democratic society, and none of them represents a reasonable limit on Class members' rights. The breach cannot be justified under section 1 of the *Canadian Charter of Rights and Freedoms.*

53. In these circumstances, it is appropriate to award damages to Class members under section 24(1).

Breach of Contract

54. In addition, or in the alternative, the Plaintiff claims damages for breach of contract. Class members were in a contractual relationship with the Defendants for the supply of water to their properties and their community. It was an express, or in the alternative implied, term of each Class members' agreement with the Defendants that the water system would supply potable water, that it would have sufficient fire flow capacity, that it would have adequate reservoir overflow drainage, and that it would have adequate apparatuses to prevent chemical spills in a riparian area. As described in Part 1 above, the Defendants breached these contractual obligations. The Plaintiff and Class members suffered loss and damage as a result.

54.A. The Plaintiff and Class members pay money to the Crown under this contract. The money is collected by the Crown's agent HLW Accountants. HLW Accountants deposits the money into a restricted bank account controlled by the Comptroller of Water Rights.

Private Nuisance

55. As described in Part 1 above, the Defendants' actions, by commission and omission, have caused a substantial and unreasonable interference with Class members' use and enjoyment of their property and lands. The Defendants are liable to Class members for this nuisance.

55.A Pursuant to the 1990 Seize Order, the Crown took possession, control and management of the SM Wayer System and all associated monies.

55.B. By exercising control and management of the SM Water System, the Crown prevented the Sage Mesa Co's owners from fixing issues with the water system.

55.C. The Crown actively transfers water from Lake Okanagan through a system it operates. It supplies this water to Sage Mesa residents. The Crown is required to ensure that the supply of water to residents is safe. As described at paragraphs 14-17 above, the Crown has failed to do this. The Crown is liable in nuisance for its misfeasance in distributing unsafe drinking water.

Public Nuisance

55.D. As described in Part 1 above, the Defendants unreasonably interfered with the public's interest in questions of health, safety, morality, comfort or convenience.

55.E. The Plaintiff and Class members have suffered special damages including personal injury and/or damage to private property as described in paragraphs 23-31 above. The Defendants unreasonably interfered with public rights, including access to infrastructure, utilities, and emergency services, and thereby caused the Plaintiff and Class members to experience personal injury and damage to personal or real property that exceeded the harms suffered by the public at large.

Unjust Enrichment

56. In addition, or in the alternative, the Plaintiff and Class members claim restitution from the Defendants. The Defendants realized substantial cost savings from the continued breach of their duties ("Unjust Savings").

57. The Unjust Savings resulted from expenditures that the Defendants were obligated to make in 1990 and onwards to ensure the SM Water System could provide potable water to users, had adequate fire flow suppression, had adequate reservoir overflow drainage, and had adequate apparatuses to prevent chemical spills. The Unjust Saving were realized only through the ~~Defendants'~~ Crown's inaction in repairing and upgrading the water system. This is described in Part 1 above.

57.A. The Crown stated it intends to charge the Plaintiff and Class members higher rates and special levies until sufficient funds are raised to repair the water system. The Crown stated it will not repair the system until the money is fully raised. Accordingly, the Plaintiff and Class members

are paying, and will continue to pay, higher rates and special levies in exchange for non-potable water from an unsafe water system. The Defendants were unjustly enriched to the extent of the Unjust Savings.

58. There is no juristic reason the Defendants should be entitled to retain the Unjust Savings.

59. Class members suffered a corresponding deprivation. They paid the ~~Defendants~~ Crown for a safe water supply that would provide potable water, adequate fire flow suppression, and adequate reservoir overflow drainage. It will cost them millions of dollars to put the water system into a state where it will provide those levels of supply.

60. The Plaintiff and Class members seek restitution for the expenses a) paid to the Defendants, b) incurred to purchase potable water, and c) which will be incurred to put a safe water system into place.

Disgorgement

61. In addition, or in the alternative, the Plaintiff and Class members are entitled to disgorgement in the amount of the Unjust Savings described in paragraphs 56-57.A. above. This is an alternative form of relief under the torts of negligence, nuisance and for breach of contract.

62. The Plaintiff and Class members have a legitimate interest in preventing the Crown's ~~Defendants'~~ Unjust Savings. The Defendants' Unjust Savings created a risk to the Plaintiff's and Class members' personal safety, their properties and the community as a whole.

63. In these circumstances, conventional forms of damage may be inadequate. While it is possible to quantify the Plaintiff's and Class members' losses caused by being denied access to potable water, it may not be possible to quantify losses for the years of being denied access to a water system with adequate fire flow suppression, reservoir overflow drainage and apparatuses to prevent chemical spills. These losses may not be measurable solely in economic terms.

Punitive Damages

64. The Defendants' misconduct, as described at paragraphs 14-19 above, was oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. It violated the trust and security of users of the SM Water System. There is no good reason why the

Defendants chose to let the SM Water System fall into disrepair while boil water advisories continued to be issued.

65. The Defendants' actions are part of a pattern of willful disregard for users' interests, safety, and security. The Defendants' actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

Health Care Cost Recovery

65.A The Plaintiff and Class members have a claim for the recovery of health care costs incurred on their behalf by the British Columbia Ministry of Health Services and by other provincial and territorial governments. The plaintiffs plead the *Health Care Cost Recovery Act,* S.B.C. 2008, c. 27 and the comparable legislation from the other provinces and territories.

Joint and Several Liability

66. Except where a single Defendant is expressly identified, the Defendants are jointly and severally liable for the actions of and damages allocable to any of them. ~~As described in Part 1 above, the Defendants have acted as a single entity in all aspects of the operation and management of the SM Water System.~~

Discoverability

67. Though the boil water advisories have been long standing, the Defendants wrongful conduct was not reasonably discoverable until the public disclosures in 2024. Further, it was only at that time that the Plaintiff and Class members were made aware of the SM Water System's inadequacies and safety issues regarding fire flow suppression, reservoir overflow drainage, and spills of sodium hypochlorite.

68. Until October 2024, the Defendants concealed from the public that the SM Water System does not accord with regulatory drinking water standards and requirements for fire flow capacity. The Defendants ~~also~~ hid that they were actively disobeying the 1990 Seize Order by refusing to provide any capital upgrades, including installing adequate disinfection equipment. The Defendants hid their intention to not invest in, or otherwise fix, the SM Water System.

69. The Plaintiff and Class members could not reasonably have known that they had claims for the above causes of action, and that a court proceeding was the appropriate means to remedy their

injuries, losses and damages, until at least October 2024 when the information was publicized. Further, the Plaintiff's and Class members' injuries, losses and damages are ongoing.

70. The Plaintiff and Class members plead and rely on sections 8 and 21 of the *Limitation Act*, SBC 2012, c 13.

Plaintiff's address for service:	**Klein Lawyers LLP** Attention: David A. Klein 400 – 1385 West 8th Avenue Vancouver, BC V6H 3V9
Fax number address for service (if any):	(604) 874-7180
Place of trial:	Vancouver, BC
The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1

Date: ~~March 31~~October 1, 2026



Signature of lawyer for the plaintiff
David A. Klein

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and if of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of the Defendants' failure to repair and upgrade the Sage Mesa Water System

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident
[ ] medical malpractice
[ ] another cause

A dispute concerning:

[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[x] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

1. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982,* and amendments thereto;

2. *Class Proceedings Act,* RSBC 1996, Chapter 50, and amendments thereto;

3. *Court Order Interest Act*, R.S.B.C. 1996, Chapter 79, and amendments thereto;

4. *Crown Proceedings Act*, R.S.B.C. 1996, c. 89 and amendments thereto

5. *Drinking Water Protection Act*, SBC 2001, Chapter 9, and amendments thereto; and,

6. *Limitation Act*, SBC 2012, Chapter 13, and amendments thereto.