

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 3, 2009**

REGULAR _____ CONSENT X EFFECTIVE DATE February 4, 2009

DATE: January 27, 2009

TO: Public Utility Commission

FROM: Kathy Miller

THROUGH: Lee Sparling, Marc Hellman, and Michael Dougherty

SUBJECT: FISH MILL LODGES WATER SYSTEM: (Advice No. 09-1) Requests adoption of an agreement/contract between Fish Mill Lodges Water System and customers.

STAFF RECOMMENDATION:

Pursuant to ORS 757.215, Staff recommends that the Commission suspend Advice No. 09-1, Fish Mill Lodges Water System's (Fish Mill or Utility) proposed customer agreement.

DISCUSSION:

Fish Mill is currently classified as a public utility pursuant to ORS 757.005 and a rate-regulated utility pursuant to ORS 757.061(6)(a). It provides water service to three residential properties and itself (Fish Mill Lodges). Fish Mill Lodges is a fishing resort located on the shores of Siltcoos Lake, in Westlake, near Dunes City, Oregon. The water system's source of water is a spring located approximately one mile away.

Regulatory History

In March 1999, Fish Mill filed an application to terminate water service to its customers (UW 64). In January 2000, Fish Mill filed an application for an exclusive service territory (WA 7). In November 2000, as part of a stipulation (in UW 64) and contingent on one another, the Commission simultaneously approved WA 7 (*See Order No. 00-738*) and dismissed UW 64 (*See Order No. 00-739*). In the stipulation, the Commission agreed not to adjudicate claims for the right to Fish Mill's water (based on property law) put forth by property owners who are not Fish Mill customers. Fish Mill's approved service territory included the three residential properties it now serves and Fish Mill Lodges.

On August 16, 2007, Fish Mill petitioned the Commission for rate regulation. In Docket WJ 16, Commission Order No. 07-391, issued September 10, 2007, the Commission approved Fish Mill's petition bringing it under rate regulation.

On September 17, 2007, Fish Mill filed its first general rate case. On April 24, 2008, the Commission issued Order No. 08-235, approving a 294.6 percent revenue increase, resulting in annual revenues of \$4,546 with a 9.5 percent rate of return on a rate base of \$1,736. In July 2008, Fish Mill filed a Motion for Reconsideration. The Commission denied Fish Mill's application for reconsideration in Order No. 08-430, issued August 22, 2008.

Current Filing

This memo addresses Fish Mill's new advice filing received January 5, 2009, requesting that the Commission adopt a proposed customer agreement. I have attached Fish Mill's filing, including the agreement, as Attachment A. Fish Mill states that the previous owners used this agreement.

Staff obtained a copy of an agreement used in 1972 by Blanche Fisher, who owned Fish Mill Lodges and the spring property at that time. Fish Mill's proposed agreement is similar to the 1972 agreement. However, the Commission did not regulate Fish Mill at that time.

The reasons underlying the need for this agreement are best stated by Fish Mill in its application:

. . . because of the problems they encountered because with local criminals and local governments manipulation of the laws that have led to the pollution of Siltcoos lake with Cyanobacteria a situation that this utility will not allow to happen to its facility and spring, so to protect our selves from violators of the law we must adopt this agreement because we can not provide safe and adequate service to FMLWS customers because of the OPUC interference with this utility spreading lies that not only interfere with this utility but with fish mill lodges by refusing this utility money it needs to operate and refusing to give assistance to this utility to make the necessary repairs and work towards a process to educate the local authorities that still refuse to acknowledge FMLWS as a public utility while refusing to let this utility close there by intentionally trying to force Both FMLWS and Fish Mill Lodges to financial doom.

Staff's review of the agreement finds that certain proposed conditions do not require a signed agreement because the Commission's current rules address them. The other

proposed conditions do not comply with the Commission statutes or administrative rules. Below I have listed the conditions of the agreement (as written) and responded accordingly.

1) Resident may, at his own expense and without liability to Owner, make or maintain appropriate connection to Owner's pipeline with a pipe not to exceed (1/2) inch in diameter and may draw surplus water from the pipeline of Owner exclusively for household use only at his dwelling house.

Condition 1, Issue 1: Customer Service Connection

Oregon Administrative Rule (OAR) 860-036-0060 requires the utility to furnish and install the customer service connection at its own expense. The utility may charge the customer a reasonable service connection charge, not including the cost and installation of the meter. All water utility service connections must comply with the Commission's current service connection rules. See OAR 860-036-0060. However, the residential customer service connections are already installed.

Condition 1, Issue 2: Surplus Water

Condition 1 states that the resident, "may draw surplus water from the pipeline . . ." Surplus water is not defined and is ambiguous. On its face, this may violate ORS 757.325, which states in part:

Undue preferences and prejudices.

(1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

If Fish Mill is providing surplus water to the three residential customers while providing regular water to Fish Mill Lodges, it is discriminatory to the residential customers.

Approval of Condition 1 could result in potential abuse, especially in a case where the owner of the water system is also a customer. The owner would have the authority to limit the water use of other customers. The possible extreme consequence of this condition would allow the owner to declare that there is no surplus water, leaving the residential customers with no water service.

In determining the capacity of the water system in WA 7 (service territory docket), the residential customers' estimated water use was included in the analysis. Therefore, residential water use is not surplus water.

In addition, the Commission rules provide recourse for limiting water use when it is necessary. OAR 860-036-0325 states, in part:

Water Supply

(1) Every water utility shall exercise due diligence to furnish a continuous and adequate supply of water to its customers.

(2) If a water utility finds that it is necessary to conserve or restrict the customers' use of water, it must provide written notice to its customers and the Commission before such restriction becomes effective.

(3) The Commission may formally or informally investigate the water utility's conservation or water restriction plan either on its own motion or by customer complaint. During or after such investigation, the Commission may change or alter the water utility's water conservation or restriction plan as it deems necessary.

In particular, OAR 860-036-0325(4) specifically addresses water shortages. It states that, "During times of water shortage, the water utility shall equitably apportion its available water supply among its customers with due regard to public health and safety." See ORS 860-036-0325.

2) In consideration, Resident shall pay to Owner the sum of \$_____ per year (until further notice) payable annually in advance on January 2nd of each year or with consent of Owner, semiannually in advance each year, _____ on January 2nd and _____ on July 2nd. It is expressly agreed that said payment is not for the service of water but for the right to make the above-mentioned connection.

Condition 2, Issue 1: Right to Receive Water

In Condition 2, Fish Mill states that the payment "is not for the service of water, but for the right to make the above-mentioned connection."

As a public utility, Fish Mill has a duty to provide water service to its customers. See ORS 757.020. In addition, Fish Mill has an exclusive service territory. It must provide water service to the customers within its exclusive service territory. OAR 860-036-0930 states, in part:

(2) A water utility shall serve only customers within its approved exclusive service territory and shall serve all applicants for service within such territory. The water utility may refuse service only as provided in OAR 860-036-0080.

Fish Mill may charge a reasonable service connection charge, as stated in Staff's discussion under Condition 1 above. However, it is a one-time, nonrecurring fee. It is inconsistent with the Commission's rules for any rate-regulated utility to levy an ongoing fee for either 1) a service connection or 2) the right to receive utility service.

Lastly, the agreement does not specify rates. Fish Mill's approved rate tariffs are on file with the Commission and must be adhered to until changed by the Commission. See Original Sheet No. 3, Schedule No. 1, Residential and Commercial Flat Rates, Attachment B.

3. No further connection to additional buildings or improvements other than one dwelling house shall be made by Resident without the execution by the parties of a separate agreement.

Condition 3, Issue 1:

Fish Mill brings up a legitimate concern. Any additional building or improvement made by a customer that requires water service creates the need for additional system capacity. However, Condition 3 states, "No further connection to additional buildings or improvements . . ." Staff believes that any further connection requires a new service connection. Therefore, this condition is unnecessary because Commission rules allow a utility to determine new connections based on system capacity. See OAR 860-036-0080. If Fish Mill wants this concern addressed specifically in its tariffs, it may submit a tariff filing with the Commission.

4. It is mutually understood and agreed to by the parties that by agreement Resident obtains no title or vested interest in or to the above-mentioned spring, pipeline or water supply. In the event of loss or destruction of the spring or pipeline or any part thereof, it shall be within the sole discretion of the Owner to make repairs or reconstruct said pipeline. In the event of destruction by whatever means and the Owner chooses to not repair or reconstruct, this agreement shall terminate without further notice of action.

Condition 4, Issue 1: Title or Vested Interest

The three residential properties served by the water system have a contractual agreement for water in their easement agreements.

Bonnie and Ralph Lucas bought their home in 1967. She states that when Frank and Agnes Tomasek wanted to sell Fish Mill Lodges to the Bedsoles in 1989, a title search

showed that no easement had been granted for the water line going through her property. At that time, an easement agreement, No. 8912726, was drawn up that applies to her property and the Morris' property. It states, in part, the following:

4. Grantee agrees that for so long as the water system serving the water pipeline and the pipelines are in place on the easement strip, that Grantor's property . . . and the property known as Lot 11, 12, & 13, Block 28 West Lake Subdivision Plat . . . shall have perpetual use of all reasonable necessary water flowing through the pipeline.

6. Grantee agrees to at all times maintain the water pipes located on the easement strip, and the water system serving said water pipes . . .

Julie Thibedeau and Tobee Bates bought their house from Wilma Simdorn in 1990. Ms. Simdorn's easement, dated April 4, 1989, states that, ". . . for as long as the water system serving the water pipelines are in place on the easement strip, . . . that Grantor's property . . . shall have perpetual use of all reasonably necessary water flowing through the pipeline."

Since that time, properties have been sold and repurchased. However, the easement agreements are perpetual and appurtenant to the property. Bonnie Lucas is the only original customer remaining. A copy of her Easement Agreement, No. 8912726, dated March 14, 1989, is provided as Attachment C.

Condition 4, Issue 2: Utility Sole Discretion to Repair or Reconstruct

Again, Fish Mill has a duty to furnish adequate and safe service, equipment, and facilities at reasonable rates. See ORS 757.020.

In addition, OAR 860-036-0305 requires the Utility to "have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service." It also requires that a utility shall, among other duties, inspect the system, keep maintenance and repair records, flush lines as needed, and make repairs and perform maintenance in a timely manner. See OAR 860-036-0305.

Fish Mill must make repairs. Not to do so would allow Fish Mill to deny service to the existing customers. This would be a violation of OAR 860-036-0710 (termination or abandonment of service), OAR 860-036-0080 (refusal of service), and OAR 860-036-0930 (exclusive service territory).

OAR 860-036-0710 states, in part:

Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination or Abandonment of a Water Service, or Disposal of a Water Utility

(1) Any water utility seeking to terminate, abandon service, or otherwise dispose of a water utility, excluding sales, transfers, or mergers, shall apply to and obtain approval from the Commission prior to such termination, abandonment, or disposal. Application requirements are found in OAR 860-036-0715.

If Fish Mill is concerned with customers tampering with utility plant or equipment, or plant damage due to some action on the part of the customer, the Commission rules already hold the customer responsible for the repair.

5. In the event of temporary interruption of Resident's connection for a period greater than (7) consecutive days, Resident shall be entitled to a credit upon advance payment to applied to the next due annual or semiannual payment determined by the ratio that the number of days of interruption bears to (365) days.

Condition 5, Issue 1: Interruption of Service

OAR 860-036-0075 requires a utility to keep a record of any interruption of service, make all reasonable efforts to prevent interruptions of service, endeavor to reestablish service with the shortest possible delay, and make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service for more than five minutes. See OAR 860-036-0075.

Condition 5, Issue 2: Out of Service Credits

Condition 5 states that Fish Mill is willing to provide out-of-service credits on its annual or semiannual payment for the right to receive water. As discussed under Condition No. 2, the Utility cannot charge the customers for the right to receive service. If Fish Mill wants to credit the monthly, semiannual, or annual water service charge, it may file a proposed tariff with the Commission. This also pertains to Condition 7. If the Utility were to install individual meters, this would not apply.

6. Owner is not in the business of nor does Owner sell water and therefore does not guarantee the quality of water obtained by Resident not the quantity of water available nor an uninterrupted flow though Owner's pipeline.

Condition 6, Issue 1: Definition of a Public Utility and Obligation and Duty to Serve

As discussed under Condition No. 2, Fish Mill is a public utility. It is also rate regulated, and as such, is in the business of providing (or selling) water. As previously discussed, Fish Mill has an obligation and duty to serve the customers (ORS 757.020) in its exclusive service territory (OAR 860-036-0930). The Commission rules and statutes outline the Utility's responsibilities. A utility cannot escape its responsibilities by claiming it is not in the business of selling water.

Condition 6, Issue 2: Quality of Water

Condition 6 claims that Fish Mill cannot guarantee the quality of the water. ORS 757.020 requires a public utility to furnish adequate and safe service. In addition, Commission rules require a public water utility to take appropriate measures to provide a reasonable continuous flow of potable water. OAR 860-036-0310 states:

Purity of Water Supply for Domestic Purposes

(1) A water utility delivering water for domestic purposes shall furnish a supply that shall at all times be free from bodily injurious physical elements and disease-producing bacteria. A water utility shall make such tests and take precautions as will ensure the constant purity of its water supply. A water utility shall keep a record of all such tests and reports.

(2) A water utility delivering water for domestic purposes shall furnish a supply that shall be reasonably free from elements that cause physical damage to customer's or applicant's property including but not limited to pipes, valves, appliances, and personal property. A water supply that causes such damage must be remedied within a reasonable time unless the conditions are such as to not reasonably justify the necessary investment. The water utility shall bear the burden of demonstrating that remedying the condition is not reasonably justified.

OAR-036-0301 states:

Quality of Water Service

(1) No water utility shall purposely or willfully provide substandard service or inadequate service where the water utility has the capacity to provide adequate service as determined by the Commission.

(2) The Commission may impose additional requirements notwithstanding that the water utility meets the standards set forth in OAR Division 036.

Condition 6, Issue 3: Water Quantity

As previously discussed, OAR 860-036-0325 requires that, “Every water utility shall exercise due diligence to furnish a continuous and adequate supply of water to its customers.”

OAR 860-036-0305 requires a water utility to “have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service.”

Approval of this condition would take away Fish Mill’s obligation and duty to provide adequate, continuous potable water.

7. This agreement may be terminated at any time by either party hereto upon (30) days written notice to the other party except that during the months of August and September of each year temporary termination of the connection may be made by Owner at the discretion of the Owner upon (3) days written notice to Resident. If such interruption occurs, Resident shall be entitled to credit for any such interruption.

Condition 7, Issue 1: Curtailment of Service

Fish Mill has told several customers, new homeowners, and Staff that it wants to get out of the water business. Fish Mill has been advised it cannot terminate service to its customers without Commission approval. This was made clear to Fish Mill in 1999 (UW 64, the Utility’s request to abandon service), and in response to customer complaints.

In a letter to Fish Mill, dated October 11, 2005, Staff wrote, “Pursuant to Oregon Administrative Rules (OAR), you cannot terminate, abandon, or dispose of a water system without prior approval of the Commission.”

In a January 4, 2007, letter to Fish Mill from Consumer Services (Marilyn Riback, Senior Compliance Specialist) wrote, “If you are considering abandoning the system, you must file with the Commission pursuant to OAR 860-036-0710.”

As previously discussed, a water utility can curtail water use when necessary due to limited supply in compliance with the rules and regulations of the Commission. However, as written, Condition 7 creates potential opportunities for abuse. Fish Mill could permanently terminate service to its residential customers upon 30-days notice. In addition, the Utility could temporarily terminate service to the residential customers with 3-days notice during August and September, allowing the Utility to supplement the water supply for the fishing resort at the detriment of the residential customers. This is discriminatory and violates ORS 757.325.

Condition 7, Issue 2: Service Credits for Service Interruptions

This issue has already been discussed under Condition 5.

8. This agreement constitutes the sole agreement of the parties and shall insure to be binding upon the heirs, successors or assigns of the Owner. This agreement is personal to the Resident, and any attempted sale or assignment of Resident's interest hereunder shall be nullity and Owner shall have the right to immediately terminate service to the offending residence at the expense of Resident.

Condition 8, Issue 1: Service to New Owners of Property in the Exclusive Service Territory

The sale of property/home receiving service within Fish Mill's exclusive service territory does not and cannot nullify Fish Mill's obligation and duty to serve water to that property/home. As discussed, Fish Mill is obligated and has a duty to serve its customers pursuant to ORS 757.020 and its service territory (OAR 860-036-0930).

Consumer Services has dealt with three complaints (2005 – 2007) from the sellers, buyers, or potential buyers of the residential property served by Fish Mill. The complaints allege that Fish Mill either refused to provide the new owner an application or stated that Fish Mill would not serve the new homeowner, or both. Fish Mill is aware that it must serve the new owners of the three residential properties in its service territory.

In 2005, a residential customer (seller) claimed Shawn Bedsole said that he had a choice to decide whether to provide service to the new owners, and that Fish Mill would not serve the new homeowners. In a letter to Shawn Bedsole, dated January 12, 2005, Staff explained that the Commission's approved service territory includes an obligation to provide service to customers within its service territory, and Fish Mill could only refuse service as provided by the Commission's rules.

On January 24, 2007, Staff addressed the same issue in a letter to Fish Mill. The letter stated, "In short, Mr. Durland's property is within Fish Mill's approved exclusive service territory. Therefore you cannot deny service without cause pursuant to OAR 860-036-0930 . . ."

Consumer Services is currently working on Fish Mill's fourth complaint on the same issue with another recent homebuyer.

Fish Mill requests the Commission adopt and grandfather in the proposed agreement. Fish Mill's application states (as written):

In short we ask you to acknowledge this long standing and previously adopted before the very suspicious situation that led to the OPUC taking this utility under its control, a utility rule that should already be grandfathered in because it has been used by previous owners of this system.

This long-standing and previous agreement was used prior to any Commission regulation of Fish Mill. In October 1989, Fish Mill sent the same agreement (or a similar version) to its residential customers requesting each to sign the document. All three customers refused.

By requesting that this agreement be grandfathered in, it appears the Utility is asking the Commission to accomplish what it could not do in 1989. Grandfathering in this agreement would be discriminatory and violate numerous Commission statutes and rules. In addition, ORS 757.205 through ORS 757.259 have strict requirements regarding retroactive ratemaking.

It appears that the proposed agreement is an attempt to get out of the water business. If adopted, the agreement would provide several different paths through which Fish Mill could terminate water service to its residential customers. In addition, the agreement would essentially nullify any regulation by the Commission.

The proposed agreement is not in the best interest of the public. Adoption of the agreement would be detrimental to the residential customers. The conditions contained within the agreement are either unnecessary or contrary to the Commission's directive, statutes, and rules.

Staff is requesting the agreement be suspended for up to six months; however, it is possible that it will not take that long.

PROPOSED COMMISSION MOTION:

Pursuant to ORS 757.215, the proposed agreement filed by Fish Mill Lodges Water System be suspended for six months, effective February 3, 2009.

Miller CP)

Shawn Bedsole 2/14/14

Michael Dougherty
Program Manager
Corporate Analysis & Water Regulation
Oregon Public Utility Commission
(503) 378-3623
michael.dougherty@state.or.us

Advice 09-1

Hello Mr. Dougherty

Here is the Advice filing or letter of request to adopt the accompanying agreement that has been on file and used by previous owners of this utility written by there attorneys because of the problems they encountered because with local criminals and local governments manipulation of the laws that have led to the pollution of Siltcoos lake with Cyanobacteria a situation that this utility will not allow to happen to its facility and spring, so to protect our selves from violators of the law we must adopt this agreement because we can not provide safe and adequate service to FMLWS customers because of the OPUC interference with this utility spreading lies that not only interfere with this utility but with fish mill lodges by refusing this utility the money it needs to operate and refusing to give assistance to this utility to make the necessary repairs and work towards a process to educate the local authorities that still refuse to acknowledge FMLWS as a public utility while refusing to let this utility close there by intentionally trying to force Both FMLWS and Fish Mill Lodges to financial doom.

In short we ask you to acknowledge this long standing and previously adopted before the very suspicious situation that led to the OPUC taking this utility under its control, a utility rule that should already be grandfathered in because it has been used by previous owners of this system.

Please help this utility to adopt this as soon as possible as it is necessary for the safe and affective operation of this utility.

Thank you
Shawn bedsole

RECEIVED

2009 JUN -5 A 8:20

P.U.C.

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2007, by and between JUDY BEDSOLE, hereinafter referred to as "Owner", and _____ hereinafter referred to as "Resident".

WITNESSETH

Owner owns a certain parcel of land in what is known as Westlake, Oregon, upon which there is a spring which has been developed to supply water to the premises of the Owner, and Resident is the owner of a dwelling house in Westlake, Dunes City, Oregon and desires to secure surplus water from said spring for household use and the development of the spring involves a pipeline to which it would be convenient for Resident to attach thereto and Owner is willing to allow such attachment.

NOW THEREFORE, IT IS MUTUALLY AGREED:

1. Resident may, at his own expense and without liability to Owner, make or maintain appropriate connection to Owner's pipeline with a pipe not to exceed (1/2) inch in diameter and may draw surplus water from the pipeline of Owner exclusively for household use only at his dwelling house.
2. In consideration, Resident shall pay to Owner the sum of \$ _____ per year (until further notice) payable annually in advance on January 2nd of each year or with consent of Owner, semiannually in advance each year, _____ on January 2nd and _____ on July 2nd. It is expressly agreed that said payment is not for the service of water but for the right to make the above-mentioned connection.
3. No further connection to additional buildings or improvements other than one dwelling house shall be made by Resident without the execution by the parties of a separate agreement.
4. It is mutually understood and agreed to by the parties that by agreement Resident obtains no title or vested interest in or to the above-mentioned spring, pipeline or water supply. In the event of loss or destruction of the spring or pipeline or any part thereof, it shall be within the sole discretion of the Owner to make repairs or reconstruct said pipeline. In the event of destruction by whatever means and the Owner chooses to not repair or reconstruct, this agreement shall terminate without further notice or action.
5. In the event of temporary interruption of Resident's connection for a period greater than (7) consecutive days, Resident shall be entitled to a credit upon advance payment to applied to the next due annual or semiannual payment determined by the ratio that the number of days of interruption bears to (365) days.

6. Owner is not in the business of nor does Owner sell water and therefore does not guarantee the quality of water obtained by Resident nor the quantity of water available nor an uninterrupted flow though Owner's pipeline.

7. This agreement may be terminated at any time by either party hereto upon (30) days written notice to the other party except that during the months of August and September of each year temporary termination of the connection may be made by Owner at the discretion of the Owner upon (3) days written notice to Resident. If such interruption occurs, Resident shall be entitled to credit for any such interruption.

8. This agreement constitutes the sole agreement of the parties and shall insure to be binding upon the heirs, successors or assigns of the Owner. This agreement is personal to the Resident, and any attempted sale or assignment of Resident's interest hereunder shall be nullity and Owner shall have the right to immediately terminate service to the offending residence at the expense of Resident.

IN WITNESS WHEREOF, the parties have set their hand and seals on the date first above written

_____ date _____
Resident

_____ date _____
Resident

Address

Owner
Judy Bedsole

4844 Fish Mill Way
PO. Box 95
Westlake, OR 97493
542.997.2511

SCHEDULE NO. 1

RESIDENTIAL & COMMERCIAL FLAT RATES

Available: To customers of the Utility at Dunes City, Oregon, and vicinity.

Applicable: To residential and commercial premises.

Residential Flat Rate

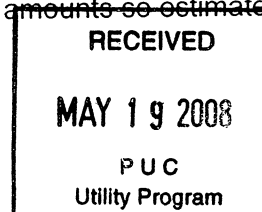
Service Meter Size	Monthly Flat Rate	Usage Allowance
Any size	\$53.87	None

Commercial Flat Rate

Service Meter Size	Monthly Flat Rate	Usage Allowance
Any size	\$217.22	None

Special Provisions:

1. These rates are based on continuous service. Discontinuation of service may not be employed to avoid monthly charges for service. See Rule No. 26, Voluntary Discontinuance.
2. Water used during the construction of buildings, etc., shall be metered. Charges shall be made at the rates specified in this schedule. When setting of a meter is impracticable, the amount of water used shall be estimated, and the charges shall be made at specified rates for the ~~amounts so estimated.~~



Issue Date		Effective Date	May 15, 2008
Issued By	FISH MILL LODGES WATER SYSTEM		
Signature			
Name & Title			

WPTCO 81517/20-5377
19 12 34 24 1300/2000
Acct 873669/873727
19 12 34 2 701/#1056884

8912726

EASEMENT

Attachment C
Pg 1 of 5

25-
10-

DATED: March 14, 1989

PARTIES: Ralph L. and Bonnie C. Lucas (Grantor)
Frank L. and Agnes M. Tomasek (Grantee)

In consideration of the terms and conditions herein, Grantor conveys to Grantee, which term includes their heirs, successors, and assigns, a perpetual nonexclusive easement (hereinafter easement strip) to use a strip of land ten (10) feet wide, described as follows:

East ten (10) feet of Lot 7 Block 29 West Lake Subdivision Plat, as platted and recorded in Book 7, Page 2, Lane County Oregon Plat Records in Lane County, Oregon.

~~2068~~MAR.24'89#D4REC 25.00
~~2068~~MAR.24'89#D4PFLND 10.00

The terms of this easement are as follows:

1. Grantee, their agents, and independent contractors shall use the easement strip for the purpose of installation and maintenance of underground water pipelines.
2. Grantor reserves the right to use the easement strip for their own use, not inconsistent with grantee's use.
3. Grantor reserves the right to grant use rights for the easement strip to third parties.
4. Grantee agrees that for so long as the water system serving the water pipeline and the pipelines are in place on the easement strip, that Grantor's property as defined in paragraph 8 of this easement, and the property known as Lot 11, 12, & 13, Block 28 West Lake Subdivision Plat, as platted and recorded in Book 7, Page 2, Lane County Oregon Plat Records in Lane County, Oregon (neighboring property) shall have perpetual use of all reasonably necessary water flowing through the pipeline.
5. Grantee agrees that the rate charged to the Grantor and the neighboring property for use of the pipeline, water system, and water, shall not be raised above the existing rate of \$180.00 per year (existing rate) for Grantors property and the same amount for the neighboring property, unless the average of the basic rate charged to individuals for water service (excluding sewer and water usage based on the amount of water used) by 1) Eugene Water and Electric Board (EWEB) or its successor and 2) the City of Florence or its successor, for a one year period of time equals or exceeds

8912726

the existing rate. Then and in that case at the option of Grantees, a new rate shall be established equal to or less than said average as modified from time to time by said EWEB and City of Florence.

6. Grantee agrees to at all times maintain the water pipes located on the easement strip, and the water system serving said water pipes, which system is located on Parcel I described more fully in Exhibit A attached hereto, in good condition and repair, including the connections from the water pipelines to Grantor's and the neighboring property's individual water pipes, at Grantee's sole expense. Grantee further agrees to return the easement to the same condition it was in before Grantee, its agents, or independent contractors commenced work on the pipes. This includes replacing or repairing any damage done to Grantor's nearby landscaping, at Grantee's sole expense.

7. Grantee agrees to indemnify and defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee's use of the easement strip. Grantee assumes all risk arising out of its use of the easement strip and Grantor shall have no liability to Grantee for any condition existing thereon.

8. Grantee agrees that except in the case of emergency, Grantee shall give Grantor and neighboring property prior written notice of not less than 24 hours of their intent to perform maintenance or repairs on the water system or pipelines, if the maintenance or repairs will interrupt the flow of water through the pipelines.

9. The easement is across the real property owned by Grantor and described as follows:

Lot 7 of Block 29 West Lake Subdivision Plat, as platted and recorded in Book 7, Page 2, Lane County Oregon Plat Records in Lane County, Oregon.

Additional property of Grantor: Lots 5 and 6, Block 29, West Lake Subdivision Plat, as platted and recorded in Book 7, Page 2, Lane County Oregon Plat Records in Lane County, Oregon. All lots described in this paragraph are collectively referred to in this easement as "Grantors Property".

10. This easement shall be perpetual; however in the event that the pipeline does not carry water for a period of three years, is otherwise abandoned by Grantee, or Grantee fails to meet the terms and conditions of this easement, the easement shall, at the option of Grantor, expire and Grantee shall upon request execute a recordable document evidencing such expiration.

11. This easement is granted subject to all prior easements or encumbrances of record.

12. This easement is not personal or in gross, but is to be appurtenant to the following described property owned by Grantee:

See Exhibit "A" attached hereto and incorporated herein by reference thereto.

13. In the event that suit, action or other legal proceeding is instituted upon this easement, or any matter arising therefrom, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements allowed by law, costs of evidencing title and such sum as the court may adjudge reasonable as an attorney's fee in said suit, action or other proceeding, including appeals therefrom.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed the day and year first written above.

GRANTORS:

Ralph L. Lucas
Ralph L. Lucas

Bonnie C. Lucas
Bonnie C. Lucas

GRANTEES:

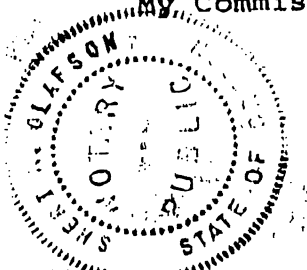
Frank L. Tomasek
Frank L. Tomasek

Agnes M. Tomasek
Agnes M. Tomasek

STATE OF OREGON)
)
County of Lane)

The foregoing instrument was acknowledged before me this 15th day of March, 1989, by Ralph L. Lucas.

Shirley M. Johnson
Notary Public for Oregon
My Commission Expires: 8-6-89



8912726

STATE OF OREGON)
)
County of Lane)

15th The foregoing instrument was acknowledged before me this
day of March, 1989, by Bonnie C. Lucas.

BECKY ZIEMER
NOTARY PUBLIC - OREGON
My Commission Expires _____

Becky Ziemer
Notary Public for Oregon
My Commission Expires: 10-9-92

STATE OF OREGON)
)
County of Lane)

22 The foregoing instrument was acknowledged before me this
day of March, 1989, by Frank L. and Agnes M. Tomasek.

NORMA G. RUSSELL
NOTARY PUBLIC - OREGON
My Commission Expires _____

Norma G. Russell
Notary Public for Oregon
My Commission Expires: 6-20-89

8912726

PARCEL I

Beginning at the most Southerly Southwest corner of Westlake, as platted and recorded in Volume 7, Page 2, Lane County Oregon Plat Records, in Lane County, Oregon, prior to vacation of Block 31, said point also being 2520 feet South of and 105 feet West of the 1/4 section corner between Sections 27 and 34, in Township 19 South, Range 12 West of the Willamette Meridian, Lane County, Oregon; thence from said beginning point due West 350 feet, thence due North 250 feet, thence due East 350 feet, thence due South 250 feet, to the point of beginning, all in Lane County, Oregon.

PARCEL II

Beginning at the Northwest corner of Lot 4, Block 28, of Westlake, as recorded in Book 7, Page 2, Lane County Oregon Deed Records, and run thence North 71° 44' West 10.52 feet to the center line of the alley running North and South in said block; thence North 13.19 feet along the Northerly extension of said alley centerline to the bank of Siltcoos Lake, thence following the bank of Siltcoos Lake, the following courses: South 87° 47' East 67.83 feet; thence South 59° 58' East 110.02 feet; thence South 25° 39 1/2' East 88.99 feet; thence South 21° 25' West 189.62 feet to the center line of Summit Avenue as that vacated in said plat; thence West 122.10 feet to the Southerly extension of the East line of the alley in said Block 28, thence North 298.00 feet to the point of beginning, in Section 34, Township 19 South, Range 12 West of the Willamette Meridian, Lane County, Oregon, being Lots 4 through 10 inclusive and vacated street abutting said lots in the plat of Westlake, by reason of vacation order recorded June 7, 1946, in Book 322, Page 261, Deed Records of Lane County, Oregon.

PARCEL III

The East half of Lot 14, Block 28, WESTLAKE, as platted and recorded in Book 7, Page 2, Lane County Oregon Plat Records, in Lane County, Oregon.

8912726

State of Oregon,
County of Lane--ss.

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at

24 MAR 89 10: 17

Reel 1564R

Lane County OFFICIAL Records.
Lane County Clerk

By: *John E. Fawcett*
County Clerk