

**PUBLIC UTILITY COMMISSION OF OREGON
INTEROFFICE CORRESPONDENCE**

DATE: September 9, 2015

TO: ALJ Patrick Powers

FROM: Malia Brock

THROUGH Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck

SUBJECT: Request for Final Order in Docket UM 1489

Staff recommends that the Commission issue a final order transferring Fish Mill Lodges water system (FML) to Summit Water Association LLC (Summit), releasing Oregon Water Services (OWS) as the regent, removing the Commission's regulatory jurisdiction from FML, resolving all remaining issues in Docket UM 1489, and dismissing other related dockets (UM 1528, UCR 121, UCR 122, UCR 123, UCR 133, and UCR 135), according to the terms of the stipulation approved in Order No. 12-027, issued on January 30, 2012 (Stipulation).

Docket UM 1489 began as an application filed by FML on July 12, 2010, to terminate service to its customers. The parties eventually negotiated a Stipulation to settle all issues between the parties. The Stipulation provided, in part, that the Commission would appoint a regent to operate and repair the water system and provide emergency funds of \$5,000 for repairs, and the customers would form an entity to take over the system.

BRIEF HISTORY OF DOCKET UM 1489

On July 12, 2010, FML filed a request to terminate water service to its customers. The application was docketed as UM 1489. Fish Mill Lodges and RV Park (Resort), an affiliate and customer of FML, drilled its own well, and claimed it was officially disconnected from the FML. This left three residential customers receiving water from FML.

Staff's published testimony on May 2, 2011. In its testimony, Staff recommended the Commission deny FML's application to terminate water service and have the Department of Justice draft an administrative complaint against FML seeking civil penalties due to FML's provision of unsafe and inadequate water service to its remaining customers. Staff alternatively recommended that FML be allowed to abandon water service if FML conveys the water system to the three remaining customers. Staff recommended a regent be appointed to operate and manage the water system during the interim.

On June 9, 2011, Staff filed an unopposed motion to delay the schedule to allow time for settlement discussions. On November 23, 2011, Staff filed a stipulation agreed to by all parties resolving all issues in UM 1489 and the other pending cases. Staff filed testimony in support of the stipulation on January 20, 2012. The stipulation was approved in Order No 12-027 issued on January 30, 2012. The stipulation provided that the Commission would provide emergency funding for \$5,000 of emergency repairs and a regent would be appointed to operate and repair the water system. Oregon Water Services (OWS) signed a contract with the Commission on

February 23, 2012, as regent to operate, manage, and repair the system. A compliance filing of documents (per the stipulation) was filed by FML on February 29, 2012.

OWS has been operating as the regent for FML since February 2012. Emergency repairs included a new pump house, pressure tank, pump, and UV treatment system. The regent provided work invoices for Staff review, and Staff recommended payment of the \$5,000 emergency funds on February 13, 2012.

The remaining conditions listed in the stipulation have been met.

STIPULATION

The Stipulation states that upon confirmation that the parties have materially satisfied their obligations under the stipulation; the Commission will issue a final order. OWS has been operating the water system since February, 2012 and has completed the emergency repairs. The Commission issued a check to OWS on February 26, 2013, for \$5,000. The three customers formed Summit Water Association, LLC to receive ownership of the water system. Summit will begin payments on the \$5,000 loan from the Commission when the final order is issued in Docket UM 1489 transferring the water system to Summit.

Staff has reviewed the conditions of the Stipulation (below) and finds that the conditions have been satisfied.

STIPULATED CONDITIONS

1. A regent will be appointed to operate, manage, evaluate, and repair the water system.
OWS was appointed as regent in February 2012 and completed the emergency repairs in the fall of 2012.
2. The Commission will provide \$5,000 in emergency funds to be repaid by the customers and water users.
The Commission issued a \$5,000 check on February 26, 2013, to OWS in payment of emergency repairs performed. The customers will commence repayment of the \$5,000 to the Commission beginning November 1, 2015.
3. The following legal documents will be conveyed to the Commission:
 - a. Proportionate interest in the water right associated with or appurtenant to the Durland and Varenas properties.
The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;
 - b. All rights, titles, and interests possessed in and to the water system except for the remaining interest in the water right appurtenant to Bedsole property.
The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;
 - c. A non-exclusive easements providing reasonable access on and across Tax Lot 701. The easement shall consist of an area five feet from the centerline of any section of the existing water line and 10 feet in all directions from the outside dimension of all other existing components of the water system.
The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;

- d. All interest possessed in easements and rights-of-way in and over the properties that provide access for operation and maintenance and transmit water to customer properties.

The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;

- e. A deed sufficient to convey a portion of water right to Bonnie Lucas equal to the amount of the proportional interest in the water right conveyed to other customers in the event that Ms. Lucas cannot obtain a water right to the spring.

The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;

- f. Any other documents required by Oregon Water Resources Department (WRD) necessary for Ms. Lucas to make application for a water right to WRD.

The documents were received by the Commission on February 29, 2012, and reviewed for completeness by the Commission's legal counsel;

- g. A Memorandum of Stipulated Agreement

The Memorandum of Stipulated Agreement was originally requested by the new water customer owners of Summit for filing in Lane County in conjunction with the Stipulation, approved by Commission Order 12-027. The customer owners of Summit have waived the Memorandum of Stipulated Agreement, preferring to file only the Stipulation in Lane County Circuit Court.

4. The Memorandum of Stipulated Agreement will be recorded in the official records of Lane County, Oregon;

The Stipulation was filed and recorded with Lane County official property records of Lane County on August 17, 2015, Recording No. 2015-041159.

5. The three remaining customers will form an entity to receive ownership of the water system, excluding ownership of the spring.

The customers formed Summit Water Association, LLC on November 4, 2014, Secretary of State Registry No. 1059347-98.

6. The entity will contract with a third party, independent contractor with experience and qualifications to operate the system when the regent is released;

Summit Water Association LLC has contracted with OWS, a certified operator, to continue as operator of the water system after issuance of the final order. The contract was signed by all parties on July 29, 2015.

7. The Commission will deliver the documents identified above to specified grantees simultaneously with the Commission's final order.

Staff recommends the Commission deliver the specific documents to the grantees with issuance of the final order.

8. The regent will determine the future location of Valve No.1, and will notify the Commission and parties of the location.

The regent identified the location of Valve No. 1 as required in the Stipulation and provided notification of the location to the Commission and the parties. The location of Valve No. 1 is noted in Attachment A.

9. The regent will locate and cap water service to Fish Mill Lodges and RV Park.

The regent located the water line to Fish Mill Lodges and RV Park and capped the line on June 26, 2012.

10. The regent will determine the future location of Valve No.2 and notify the Commission and parties of the location.

The regent identified the location of Valve No. 2 as required in the Stipulation and provided notification of the location to the Commission and the parties. The location of Valve No. 2 is noted in Attachment B.

11. The regent will include a list of repairs and expenses incurred during the month and the monthly metered usage on each month's water bill.
Staff has review OWS bills and confirmed that the bills include a list of repairs and expenses incurred each month.
12. Ms. Lucas will file an application with WRD for a water right to the spring.
Ms. Lucas filed an application to WRD on April 30, 2012, seeking a water use permit to FML's spring. WRD issued a Proposed Final Order on January 29, 2013. The protest period closed March 15, 2013, and no protest was filed. Attachment C is WRD's Final Order, dated April 25, 2013, approving Ms. Lucas' application as proposed by the Proposed Final Order, and issuing water use Permit S-54813.
13. The parties agreed that all past and current claims, causes of action, or demands subject to the Commission's jurisdiction involving the water system against each other, their respective officers, directors, employees, advisors, agents, representative, or attorneys will be stayed pending the Commission's entry of a Final Order . Upon issuance of the final order, the parties agree that all such stayed actions, demands, or claims as well as any alleged violation of the stipulation of any other claims, causes of action, or demands involving the water system that arose between the date of the Commission's order approving the Stipulation and the date of its final order shall be mutually released, dismissed, discharged, and waived.

CHANGES

Judy Bedsole requested to connect to the water system at Valve No. 2 on April 18, 2014. OWS made the connection in accordance with the Stipulation on June 20, 2014. Fish Mill Lodges and RV Resort continues to receive water service from Valve No. 2. Fish Mill Lodges was billed and OWS has received payment in full for the connection fee and Bedsole's proportional cost of the emergency repairs.

Staff's Account Review

During the regency, Staff has monitored and reviewed the regency account for FML. No material errors or misstatements were found in the accounting practices of the regent. Staff tested the following issues:

- All bills issued to customers of FML by the Regent were calculated correctly and accurately;
- All expenses incurred by the Regent for repairs were duly authorized and the repairs actually occurred;
- All payments made by customers were recorded completely and accurately; and
- The current account balance as recorded by the Regent matches that of the Bank.

To ensure that bills were correct and accurate, Staff reviewed each bill and verified the two individual components, the monthly flat rate and the variable monthly surcharges for electricity and repairs. All expenses were supported by invoices or other appropriate documentation. For all repair work performed by the Regent, Staff ensured all repair work expenses were authorized by emails by Staff. Staff also compared the sum of the bank deposits and accounts receivable to the total amount billed to the three Fish Mill customers during the regency. No material errors or misstatements were found in the accounting for revenues and expenses by the Regent.

AUDIT

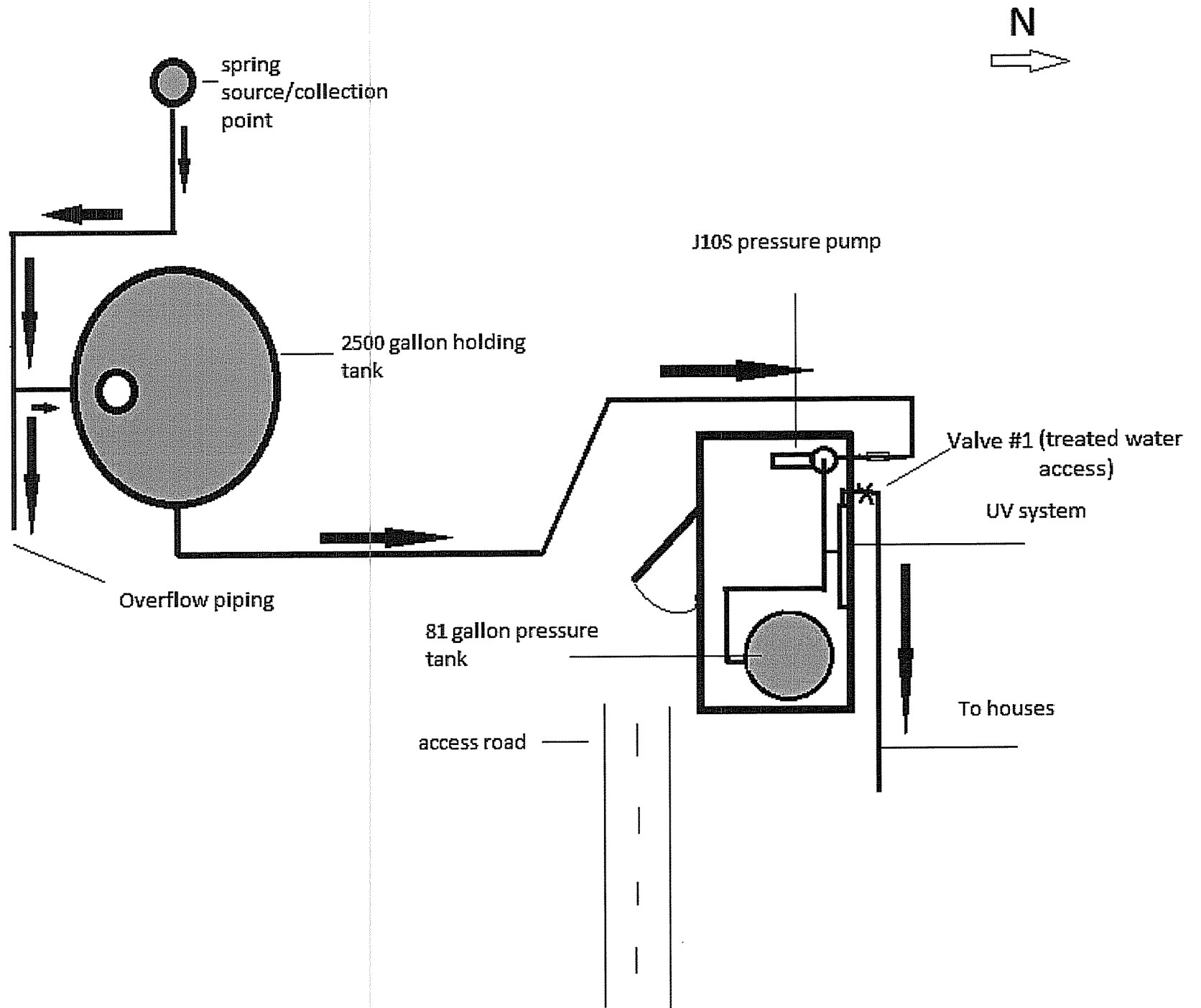
In compliance with the Stipulation, an audit of the accounts was performed by a licensed CPA on Staff. The account has a remaining balance of \$1,631.69 as of May 31, 2015. Staff recommends any balance be given to Summit Water Association, Inc. The report is shown as Attachment D.

STAFF RECOMMENDATION

Staff finds that all conditions of the Stipulation in Docket No. 1489 have been completed. Staff requests a final order:

1. Approving the transfer of the water system to Summit;
2. Releasing the regent from its appointment;
3. Confirming the terms and conditions of the stipulation as noticed under the memorandum of Stipulated Agreement previously recorded remain binding, with specific reference to the memorandum's recording number in the official property records of Lane County, Oregon;
4. Releasing, dismissing, discharging, and waiving all stayed actions, demands, or claims as well as any alleged violation of the stipulation of any other claims, causes of action, or demands involving the water system that arose between the date of the Commission's order approving the stipulation and the date of its final order;
5. Record the Final Order in the official records of Lane County, Oregon;
6. Order the release and delivery of the documents held by the Commission and identified to the grantees specified in the stipulation;
7. Withdraw regulatory jurisdiction from Fish Mill Lodges water system and owner, Judy Bedsole;¹ and
8. Order Summit Water Association to reimburse the Commission's \$5,000 loan in monthly payments of \$416.67 beginning 30 days after issuance of the final order, until the loan is repaid in full.

¹ Upon the transfer of the water system to the Association, jurisdiction must be removed because the Association will be serving only its membership and will no longer meet the definition of a public utility in ORS 757.005.





To see all the details that are visible on the screen, use the "Print" link next to the map.



Imagery ©2013 DigitalGlobe, S

⊗ = Capped Line, previous access line to Fish Mill Lodges

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number S-87803

Final Order

Appeal Rights

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On April 30, 2012, Bonnie Lucas submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on January 29, 2013. The protest period closed March 15, 2013, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

Order

Application S-87803 therefore is approved as proposed by the Proposed Final Order, and Permit S-54813 is issued as limited by the conditions proposed by the Proposed Final Order.

DATED April 25, 2013

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director
Water Resources Department

P.U.C.

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This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF LANE

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BONNIE LUCAS
PO BOX 87
WESTLAKE, OR 97493

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-87803

SOURCE OF WATER: A SPRING, TRIBUTARY TO SILTCOOS LAKE

PURPOSE OR USE: DOMESTIC USE EXPANDED FOR ONE HOUSEHOLD

MAXIMUM RATE/VOLUME: 0.01 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 3230 GALLONS PER DAY

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: APRIL 30, 2012

POINT OF DIVERSION LOCATION: SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 34, T19S, R12W, W.M.; 200 FEET NORTH AND 200 FEET WEST FROM SE CORNER, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 34
TOWNSHIP 19 SOUTH, RANGE 12 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.


By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

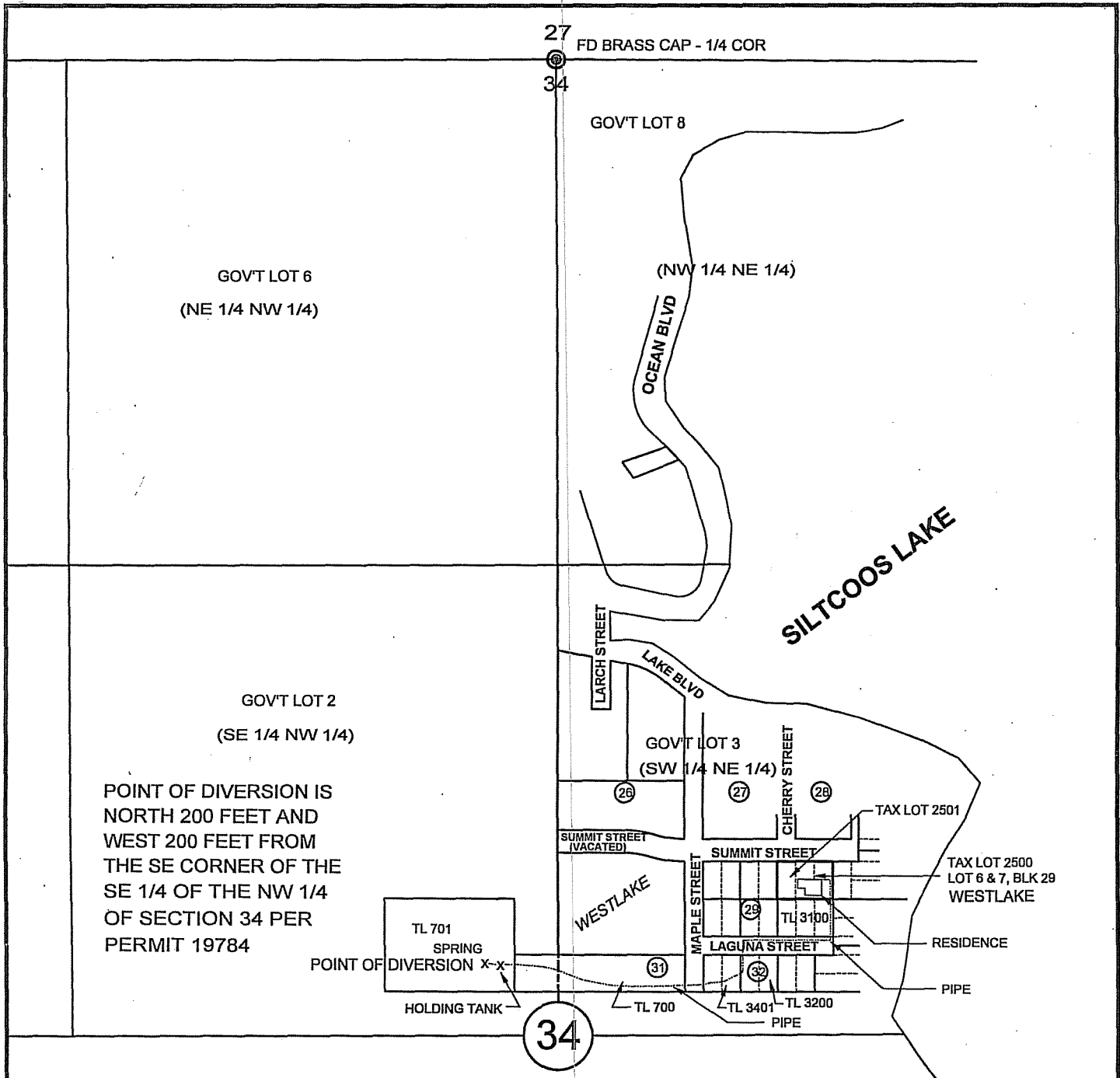
Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued April 25, 2013



E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director



**APPLICATION
WATER RIGHTS MAP
MID COAST BASIN**

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APR 30 2012

WATER RESOURCES DEPT
SALEM, OREGON

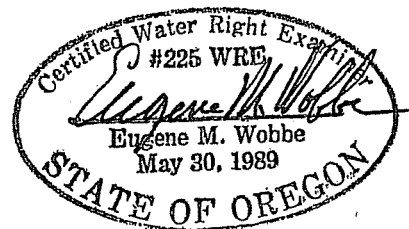
POINT OF DIVERSION
SE 1/4, NW 1/4, SEC 34, T19S, R12W, W.M.
19-12-34-2, T.L. 701

PLACE OF USE
SW 1/4, NE 1/4, SEC 34, T19S, R12W, W.M.
19-12-34-1-3, T.L. 2500 & 2501
LANE COUNTY, OREGON

FOR: BONNIE C. LUCAS
P.O. BOX 87
WESTLAKE, OR 97493

PREPARED BY: WOBBE & ASSOCIATES, INC.
510 KINGWOOD ST. / P.O. BOX 3093
FLORENCE, OR 97439
DATE: APRIL 10, 2012

THIS MAP IS FOR THE PURPOSE
OF IDENTIFYING THE LOCATION
OF THE WATER RIGHT ONLY.
THERE IS NO INTENT TO PROVIDE
DIMENSIONS OR LOCATION OF
PROPERTY OWNERSHIP LINES.



S81803

**PUBLIC UTILITY COMMISSION OF OREGON
INTEROFFICE CORRESPONDENCE**

DATE: June 24, 2015

TO: Bryan Conway

FROM: Laurel Anderson

THROUGH: Bruce Hellebuyck

SUBJECT: Agreed Upon Procedures, Oregon Water Service's Regency of the Summit Water Association

Summary

I reviewed the cash transactions and the supporting data for Oregon Water Service's (OWS) Regency of the Summit Water Association (Summit), pursuant to a contract between OWS and the Oregon Public Utility Commission (OPUC), effective February 23, 2012. Under this contract, OWS and OPUC opened a separate operating account at US Bank. All payments by rate payers were to be deposited in this account and monthly expenses necessary to maintain and operate the water systems were to be paid from the revenues received under the oversight of the OPUC. Pursuant to the termination of this contract OPUC staff has calculated an ending balance as of May 31, 2015, and funds remaining are to be disbursed by OPUC order.

The objectives of this review were:

1. To review all revenues received by OWS related to its regency appointment of Summit;
2. To review all expenses incurred by OWS associated with its regency appointment of Summit; and
3. To review the Account Closure and Final Disbursement calculations proposed by OWS and verified by OPUC staff.

I relied on the internal audit work of OPUC Staff and performed procedures on information documented in the working papers of Staff.

Analysis

Pursuant to Commission Order No. 12-027 entered on January 30, 2012 (Docket UM 1489), OWS was appointed as regent to temporarily manage, operate and maintain the water system, Fish Mill Lodges Water System (Fish Mill). The three customers formed Summit Water Association, LLC to receive ownership of the water system. When the final order is issued in Docket UM 1489 the water system will be transferred to Summit. As part of the same order, Staff monitored all monies received and expended by the regent during its time of service. OPUC Staff performed audits on reported revenues and

expenditures of OWS for the period of April 1, 2012 to May 31, 2015. Staff found no material misstatements in the reported revenues and expenses for the financial accounts of OWS relating to Fish Mill.

Discussion

I began my review by reading the State of Oregon Personal/Professional Services Contract between Oregon Water Service and the OPUC.

I obtained copies of bank statements for the checking account at US Bank. I received copies of all invoices paid and deposits made. I obtained the bank statement for the period ending 5/31/2015 and reconciled the bank account. I recalculated the bank reconciliation done by OWS as of 5/31/2015, with no exceptions noted.

I reviewed the deposits and disbursements spreadsheet prepared by OPUC staff. The small number of transactions allowed me to review 100 percent of those transactions. I viewed the invoices for these transactions and agreed the amount and description to Staff workpapers. I found no exceptions.

I compared the Excel meter readings worksheet from January to May, 2015 to the numbers found on the individual bills sent to customers, and noted no exceptions. These meter readings are used to calculate the percentage of water usage by Fish Mill Lodges. Fish Mill is billed a percentage of the Regent's management fee and actual invoices paid to maintain the water system based on usage. The remainders of the expenses are then billed to the three water customers. I reviewed the calculation of the percentages used, and the meter readings based on photographs of the meters provided by OWS. OPUC staff found no unexpected differences or questionable charges.

The results of testing confirm that expenses paid and revenues received by OWS in association with the Fish Mill regency are appropriate, accurate and authorized.