

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 1489, UM1528, UCR 121, UCR 122, UCR 123, UCR 133, UCR 135

4 In the Matters of )  
5 JUDY BEDSOLE AND FISH MILL LODGES ) CUSTOMER BONNIE LUCAS'  
6 WATER SYSTEM, ) RESPONSE TO PETITION FOR  
7 Application for Abandonment of Utility and Other ) REHEARING, RECONSIDERATION,  
8 Water System. ) AND CLARIFICATION

9 Bonnie Lucas (Customer) opposes Judy Bedsole and Fishmill Lodges Water System  
10 (Petitioners) Petition for Rehearing, Reconsideration, and Clarification (“Petition.”). Customer will  
11 respond to Petitioners points in the order Petitioners made them.

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13 1. CHALLENGED ORDER RAISES SERIOUS ISSUES OF LAW.

14 There have been two Orders issued by the Public Utility Commission (PUC) regarding these  
15 dockets. The first was dated January 30, 2012 (which is now almost four years ago), and its purpose  
16 was to approve “a stipulation between Fish Mill Lodges Water System (Fish Mill), its owners, its  
17 customers, and the Commission Staff that resolves all issues in the referenced proceedings. Their  
18 settlement brings to conclusion numerous disputes regarding the provision of water to these  
19 customers.” See Order No. 12-027 I. Introduction.

20 The second Order, Order No. 15-364, which Petitioners object to in its Petition, did not adopt  
21 the “signed or partially signed stipulations referenced in the Order” as Petitioners allege, instead it  
22 merely stated that the “terms and conditions of the stipulated agreement as filed and recorded with  
23 Lane County on August 17, 2015 (Recording No. 2015-041159) remain binding on all parties.” See  
24 Section IV of the Order, number 3, hereafter “Stipulated Agreement.” While the Stipulated Agreement  
25 wasn’t recorded until August 2015, it had been signed by ALL the parties (not only by some as  
26 Petitioners alleges) in November 2011, and was approved by the PUC in January 2012. The terms of

1 the Stipulated Agreement were not considered at all in Order No. 15-364, except to determine whether  
2 or not the agreements reached had been executed or not.

3 Negotiations regarding the terms of the Stipulated Agreement took place primarily between  
4 Peter Mohr, who represented the Petitioners at that time, and my daughter, Barbara Bower, who is a  
5 licensed attorney in Oregon who assisted me. These negotiations were not quick and easy, but on the  
6 contrary, took many months. The PUC staff made many helpful suggestions about the kinds of things  
7 to consider in a water system agreement. The PUC staff did not force any terms on the parties, but the  
8 PUC staff did make sure the agreement was workable and that the operation of the water system as  
9 provided for in the Stipulated Agreement would comply with applicable laws.

10 If you check Jordan Ramis PC's website (<http://jordanramis.com/our-people/peter-d-mohr>),  
11 the firm with which Peter Mohr currently practices, you will see that Peter Mohr has been listed in  
12 Best Lawyers in America for Water Law (2013-2016), is a member of the Oregon Water Resource  
13 Congress and the American Water Works Association, has had his law degree since 1997, and has  
14 been practicing in Oregon since 2001. He has written numerous articles on water rights and has made  
15 numerous presentations concerning water rights, and municipal water supplies. The assertion that the  
16 legal ramifications of any agreement negotiated by Peter Mohr, a water rights and water system expert,  
17 were not considered on behalf of Petitioners is absolutely without merit.

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19 2. ORDER IS VOID ABINITIO BECAUSE COMMISSIONER DOES NOT HAVE JURISDICTION:

20 Petitioners allege that the Commission doesn't have subject matter jurisdiction because the  
21 PUC 1) doesn't have the power to cancel or create water rights or easements, and 2) that Petitioners  
22 are not a public utility.

23 The Commission did not create or cancel any water rights or easements. I applied for a Limited  
24 Water Use License with Oregon Water Resources, and was granted a Limited Water Use License by  
25 Oregon Water Resources, not by the PUC That was the only water right created in these matters. The  
26 portion of the Petitioners' water right relating to the real property owned by the Varenas's and that

1 portion relating to the real property owned by the Durland's was transferred from the Petitioners to the  
2 respective owner of the real property. No water rights were cancelled.

3 The only easement created was one across Petitioners' property on which the spring is located,  
4 for the benefit of Summit Water Association. The easement agreement creating this new easement  
5 was drafted by Peter Mohr, on behalf of Petitioners, not by the PUC. Other easements relating to the  
6 water system were also transferred to Summit Water Association. No easements were cancelled.

7 Petitioners also allege that it was not a public utility. The Stipulated Agreement, which  
8 Petitioners signed, states in Article 5, in the first paragraph that "Fish Mill is a rate-regulated **water**  
9 **utility...**" If this were not true, why did Petitioners sign the Stipulated Agreement? Petitioners were  
10 well aware of the contents of this Agreement. My daughter, Barbara Bower, indicated to me many  
11 times that Peter Mohr had to "check with his client" before he could agree on their behalf to a certain  
12 provision, or that his client wanted a particular provision included. Even if he had not informed his  
13 client, Article 32 of the Stipulated Agreement specifically provides that "*[a]ll Parties have had the*  
14 *opportunity to seek the assistance of legal counsel ... and by their signatures below confirm that*  
15 *they understand the legal significance of the terms and conditions contained herein.*" (Emphasis  
16 added, see pg. 30 of the Stipulated Agreement).

17 There is other evidence that Petitioners recognized that it was a Public Utility. In the first  
18 paragraph of Petitioners' letter dated June 22, 2010, asking the PUC for an Order Authorizing  
19 Abandonment of Water Service, which was assigned Docket No. UM 1489 by the PUC, Petitioners' s  
20 attorney at the time, Benjamin Kearney states: "This firm has been retained by Applicant and this letter  
21 serves as an application on its behalf, in accordance with OAR 860-036-0715, for an order authorizing  
22 abandonment of service of Fish Mill Lodges Water System. The **affected water utility** property  
23 consists of lots 5, 6, 7, and 8 of block 28 plat, Westlake, Oregon. (Emphasis added). OAR 860-036  
24 deals specifically with Water Utilities and Associations. Therefore, in 2010, Petitioners considered  
25 itself to be a water utility.

26 Furthermore, in Petitioners letter dated March 5, 2011 addressed to the PUC regarding Bonnie

1 Lucas, which together with a letter of the same date also addressed to the PUC re. Dennis & Barbara  
2 Varenas, which was to serve as the complaint in Docket No. UM 1528, Judy Bedsole states: “I would  
3 like to file a complaint against Bonnie Lucas for keeping a road way in use on her property at 4830  
4 Summit Ave., Westlake OR 97493 and allowing commercial traffic to flow across the roadway which  
5 violates Bonnies’[sic] easement with Fish Mill Lodges Water System (FMLWS) and therefore also  
6 violating [sic] *utility regulations* ....” (Emphasis added). Further on in that letter Judy Bedsole stated  
7 “The *utility* requests Bonnie Lucas be removed from FMLWS so the *utility can abandon the*  
8 *easement* in the problem road way.” In the letter of the same date to the PUC regarding the  
9 Varenases, Judy Bedsole states: that the Varenases “refus[ed] the *utility* access to the property for  
10 inspection of *utility facilities*...” In both letters, as well as the one referred to above, Petitioners refer  
11 to itself as a “Utility.” Why are Petitioners now claiming that it is not a utility? The letter regarding  
12 Bonnie Lucas also demonstrates that it was Petitioners that sought to abandon an easement, not the  
13 PUC.

14 Finally, given Peter Mohr’s qualifications and expertise in water law, if the PUC did not have  
15 jurisdiction to take any of the actions they took, he would have been the first to point it out on behalf  
16 of his client.

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### 18 3. PETITONERS HAVE NO RIGHT TO FUTURE WATER:

19 The Stipulated Agreement provides specifically that the Petitioners can receive water from the  
20 water system through Valve No. 1 and/or Valve No. 2. See pages 10 & 11 of the Stipulated  
21 Agreement. Petitioners are required to pay its *proportionate* share of the monthly operating costs of  
22 the water system based upon the amount of water they used that month. See pages 13 and 14 of the  
23 Stipulated Agreement. Petitioners do not bear a “disproportionate share of the costs going forward”  
24 as they allege. Petitioners can be disconnected only if it fails to pay. See page 18 of the Stipulated  
25 Agreement. Petitioners offers no support whatsoever for its position in this paragraph other than its  
26 own statements.

1 4. PETITIONERS REQUEST THE FOLLOWING BE INCORPORATED:

2 While Petitioners request something be incorporated, they do not state what precisely that  
3 language is. The Stipulated Agreement was voluntarily entered into between the parties. Petitioners  
4 were well-represented by legal counsel. A voluntarily entered into agreement is not a “taking.”  
5 Besides, Petitioners did not want to operate the water system, as it stated in Petitioners letter to the  
6 PUC dated June 22, 2010 (the complaint for Docket No. UM 1489) -- “Applicant desires to abandon  
7 the *water utility’s* service due to financial constraints associated with the operation of a *water utility*.  
8 It is inefficient and overly burdensome on the water system to continue to provide *regulated water*  
9 *utility service* to such a small number of customers.” (Emphasis Added). They further stated that  
10 “current customers ... will need to find water service elsewhere.”

11 Petitioners and its predecessors have been providing water to the properties currently owned  
12 by me, the Varenases and the Durlands (“the Customers”) since the 1950's or for almost 65 years. The  
13 Customers depend on that water. Wells do not tend to work in this area (as Petitioners apparently have  
14 personally found out, or they would not have connected to the Water System through Valve No. 2).  
15 None of the Customers are located immediately beside Siltcoos Lake, which means that for them to  
16 get water from the lake, as proposed, they would not only have had to get water rights to the lake, but  
17 also easements allowing new pipelines to be built across neighboring property. Once there, the lake  
18 is subject to numerous algae blooms which means that even if the customers went to all that expense  
19 to build a pipeline to the lake, they still might not have good water.

20 Since the Stipulated Agreement went into effect, the Regent was appointed to operate the  
21 system, and the emergency loan from the PUC was received by the Regent, the water system has been  
22 repaired, cleaned up with treatment, and is now operating cost effectively in compliance with the  
23 Oregon Health Authority Drinking Water Section rules and regulations. It now provides good, clean,  
24 water to all of the customers, as well as to the Petitioners. There have been no problems. It would  
25 seem that this water system in the condition it is in now is much more conducive to the success of  
26 Petitioners’ resort business rather than as it was – contaminated with e-coli (which is considered a

1 health threat by the Oregon Health Authority Drinking Water Section such that the water must be  
2 boiled before it can be used), and poor pressure.

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4 5. SPECIFIC AREAS OF CLARIFICATION:

5 a.) Petitioners must follow the Stipulated Agreement, regardless of how it perceives it. The  
6 provisions in the Stipulated Agreement were necessary for Summit Water Association to be able to  
7 operate the water system, whether or not the Petitioners now perceive these provisions as affecting its  
8 rights adversely. Petitioners' rights were considered in the Stipulated Agreement, which Petitioners  
9 voluntarily signed.

10 b.) Petitioners are allowed access to water through the water system only as provided by the  
11 Stipulated Agreement, through Valve No. 1 and/or Valve No. 2. It cannot use (or take) the pipeline  
12 system or pipeline easements for its own use. No further clarification is needed. The Stipulated  
13 Agreement specifically provides that the Petitioners can be disconnected only if it fails to pay the  
14 balance due plus any accrued interest within 30 days of the initial due date. See page 18 of the  
15 Stipulated Agreement.

16 c.) Petitioners, pursuant to the Stipulated Agreement must pay its *proportionate* share of the  
17 monthly costs (see page 14 of the Stipulated Agreement) and a specific percentage of capitalization  
18 costs (see pages 15 and 16 of the Stipulated Agreement). Petitioners have in fact been complying with  
19 this provision. A meter has been installed at the Spring and at Valve No. 2. Petitioners' share of  
20 monthly operating costs varies with its use of the water as determined by the meter readings as  
21 outlined in the Stipulation. In a typical month, Petitioners use 70% of the total water passing through  
22 the water system. Allowing Petitioners to pay 25% of the monthly operational costs while it gets to  
23 use 70% of the water, would not be fair to the other three customers. Asking Petitioners to pay for  
24 what it uses is not unfair, unreasonable, or unusual.

25 d.) The Stipulated Agreement does not provide that Summit Water Association has the right  
26 to disconnect Petitioners for anything other than nonpayment. PUC continued jurisdiction is not

1 necessary to ensure that Petitioners can continue to use Summit Water Association’s services.

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3 FINAL COMMENTS:

4 Petitioners have not been unfairly treated nor have they suffered “irreparable injury.”  
5 Petitioners were very well represented by a water rights and municipal water expert during the  
6 negotiation of the Stipulated Agreement, and Petitioners personally took an active part in reaching the  
7 agreement. Petitioners knew what was in the Stipulated Agreement before they voluntarily signed it.  
8 The PUC did not force the Petitioners to do anything. The negotiations between the parties resulted  
9 in a Water System that provides good, clean, uncontaminated water, to all of the customers as well as  
10 to the Petitioners. Everyone benefits from the Stipulated Agreement.

11 Petitioners had the opportunity to clean up this water system itself. Petitioners were asked to  
12 do so on many occasions. Had Petitioners done so, there would be no Stipulated Agreement, no  
13 Summit Water Association, and no Valve Nos. 1 and 2. Instead Petitioners chose to seek to abandon  
14 the water system which 1) had been providing water to the Customers for almost 65 years, 2) would  
15 have left the customers with no viable opportunities for water, and 3) would have left the Petitioners  
16 with no clean, uncontaminated water for its own resort customers. Now that the Water System has  
17 been restored, and everyone is benefitting, Petitioners seem to seek to either set all of the hard work  
18 aside and take back control of the water system (since easements are necessary to operate the water  
19 system), or in the alternative, to not have to pay its proportional cost for the water they receive.  
20 Neither position is reasonable.

21 I request that Petitioners request for Rehearing, Reconsideration, and Clarification be denied.

22 Respectfully submitted,

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24   
25 Bonnie Lucas  
Customer Intervenor

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