



Oregon

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January 20, 2012

Via Electronic Filing and U.S. Mail

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
PO BOX 2148
SALEM OR 97308-2148

RE: Docket No. UM 1489 – In the Matter of FISH MILL LODGES WATER SYSTEM'S APPLICATION TO ABANDON WATER SERVICE TO ITS CUSTOMERS

Enclosed for electronic filing in the above-captioned docket is Staff's Testimony in Support of the Stipulation in Docket UM 1489.

/s/ Linda Martin

Linda Martin

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

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Email: Linda.Martin@state.or.us

c: UM 1489 Service List (parties)

**PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1489

**STAFF'S TESTIMONY IN SUPPORT OF
STIPULATION**

KATHY MILLER

**In the Matter of FISH MILL LODGES WATER
SYSTEM'S APPLICATION TO ABANDON WATER
SERVICE TO ITS CUSTOMERS**

January 20, 2012

CASE: UM 1489
WITNESS: K. Miller

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 300

**Testimony in Support
of the Stipulation**

January 20, 2012

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Kathy Miller. I am a Senior Water Utility Analyst in the Economic
4 Research and Financial Analysis Division of the Utility Program for the Public
5 Utility Commission (Commission). My business address is 550 Capitol Street
6 NE Suite 215, Salem, Oregon 97301-2551.

7 **Q. ARE YOU THE SAME KATHY MILLER WHO PREVIOUSLY FILED REPLY**
8 **TESTIMONY IN THIS PROCEEDING?**

9 A. Yes.

10 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

11 A. The purpose of my testimony is to introduce and support the Stipulation agreed
12 to by the Parties in Docket UM 1489.

13 **Q. WHO ARE THE PARTIES TO THE STIPULATION?**

14 A. The Parties to the Stipulation (Parties) are:

- 15 1. Fish Mill Lodges Water System (Water System);
16 2. Judy Bedsole as an individual, as sole proprietor of the Water System, and
17 as Trustee of the Bedsole Family Trust;
18 3. Shawn Bedsole and Cris (Charles) Bedsole;
19 4. Commission Staff (Staff); and
20 5. Customers Dennis and Barbara Varenas, Don and Suzanne Durland, and
21 Bonnie Lucas (the Customers).

1 In this document, when Staff refers to Judy Bedsole (Ms. Bedsole), Staff is
 2 referring to Ms. Bedsole in any or all of Ms. Bedsole’s capacities in this docket;
 3 whichever is applicable as specified in the Stipulation.

4 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

5 A. My testimony is organized as follows:

6 Issue 1, ----- Summary of the Stipulation.....2
 7 Issue 2, ----- The Water System..... 5
 8 Issue 3, ----- UM 1489 Application to Abandon Water Service 9
 9 Issue 4, ----- The Water Quality..... 10
 10 Issue 5, ----- The Regent..... 13
 11 Issue 6, ----- Emergency Funds..... 17
 12 Issue 7, ----- Other Specific Issues..... 19
 13 Issue 8, ----- Staff’s Recomendation..... 21
 14

ISSUE 1, SUMMARY OF THE STIPULATION

15 **Q. WHY IS A STIPULATION BETWEEN THE PARTIES NECESSARY?**

16 A. For years there has been a contentious, sometimes hostile, relationship
 17 between the Customers and Judy Bedsole and her sons, Shawn and Cris
 18 Bedsole. Ms. Bedsole does not want to be in the water business and will not,
 19 cannot, or refuses to take the action necessary to provide safe and adequate
 20 service to the Customers. The Stipulation resolves major issues and puts the
 21 Water System into the hands of the Customers who are receiving the water. In
 22 the Stipulation, Ms. Bedsole has agreed to transfer the Water System at no
 23 cost to an Entity (Entity) to be formed by the Customers. The individual
 24 Customers will obtain water right to the water source. The water source will be
 25 shared by the Customers' water rights and Ms. Bedsole's remaining water

1 rights. This Stipulation has been reached after months of negotiations between
2 the Parties.

3 **Q. PLEASE SUMMARIZE THE MAIN POINTS OF THE STIPULATION.**

4 A. The following is a brief summary of the Stipulation's major points.

- 5 1. The Parties request the Commission appoint a Regent to operate and
6 manage the Water System on a temporary basis.
- 7 2. The Parties request the Commission use its emergency funds pursuant to
8 ORS 757.068 to make repairs to the Water System.
- 9 3. The Customers will form an Entity for the purpose of receiving ownership of
10 the Water System.
- 11 4. Ms. Bedsole will give to the Commission all documents necessary to
12 convey, transfer, release, quit claim, and assign the Water System; certain
13 water rights; and easements to the Entity and/or the Customers as outlined
14 in the Stipulation. The transfer is contingent upon Ms. Bedsole retaining
15 ownership of the spring and the right to use her remaining water right to
16 obtain water. The documents held by the Commission are to be released in
17 the manner prescribed in the Stipulation.
- 18 5. The Stipulation contains the conditions and terms for future water use by
19 Ms. Bedsole and other potential customers or water users.
- 20 6. The Parties agree not to interfere or harass the Regent or the Entity, take
21 any action that may affect the Water System, or use or withdraw water
22 except as permitted in the Stipulation.

- 1 7. If the Stipulation is adopted, the Parties request the Commission not pursue
2 civil penalties against Ms. Bedsole for any current violations and withdraw
3 the pending civil complaint.
- 4 8. If the Stipulation is adopted and upon the Commission's issuance of a Final
5 Order, the Parties agree to dismiss, discharge, and waive all actions,
6 demands, or claims involving the Parties to date.
- 7 9. The terms and conditions of the Stipulation as approved will be put forth in a
8 Memorandum of Stipulated Agreement to be created by Ms. Bedsole, the
9 Entity, and the Customers and recorded in the Official Records of Lane
10 County, Oregon.
- 11 10. The Parties request that the Commission will, upon confirmation that the
12 Parties have materially satisfied their obligation, issue a Final Order to:
- 13 a. Approve the transfer of the Water System to the Entity;
14 b. Withdraw its regulatory jurisdiction;
15 c. Release and deliver to the Entity and the Customers the documents
16 previously executed and filed with the Commission according to the
17 Stipulation;
18 d. Order the dismissal of all pending actions between the Parties;
19 e. Release the Regent from its appointment; and
20 f. Confirm the terms and conditions of the Stipulation as approved and
21 recorded in the Official Records of Lane County, Oregon, as the
22 Memorandum of Stipulated Agreement, remain binding.

1 11. The Parties request the Commission record the Final Order in the Official
2 Records of Lane County, Oregon.

3 **Q. IS THE STIPULATION SIGNED BY ALL PARTIES?**

4 A. Yes. Originally, on November 23, 2011, when the Stipulation was filed, the
5 Varenas were out of the Country. However, they returned and signed the
6 Stipulation on December 10, 2011.

7 **Q. WHAT IS STAFF'S RECOMMENDATION?**

8 A. Staff recommends the Commission adopt the Stipulation.

ISSUE 2, THE WATER SYSTEM

9 **Q. PLEASE DESCRIBE THE WATER SYSTEM AND ITS CURRENT**
10 **REGULATORY STATUS WITH THE COMMISSION.**

11 A. The Water System is a small, rate-regulated water utility located near Dunes
12 City, Oregon, which currently provides water service to the Customers. The
13 water source is a natural spring located on Tax Lot 701, owned by Ms. Bedsole.

14 According to a Feasibility Study completed in 2009 by HBH Consulting
15 Engineers, the spring is approximately 700 feet up a foot path with no vehicle
16 access. The water is captured via a 42" well casing (spring box) that sits over
17 the spring and is recessed into the ground approximately seven feet and
18 extends five feet above the surface. The spring gravity feeds a 3,000 gallon
19 storage tank. The storage tank is a clear, plastic tank located on the top of an
20 old, deteriorating redwood tank floor. The existing pump house is in poor
21 condition and does not have room to house a chlorination system, pumps, or
22 tanks.

1 The distribution system is composed of 1 ½ inch transmission lines that
2 serve the Customers and, until recently, Fish Mill Lodges and RV Park (the
3 Resort). Ms. Bedsole is the sole proprietor of the Resort, an affiliated interest.
4 Ms. Bedsole installed a new well in 2011 to provide service to the Resort. Ms.
5 Bedsole claims that the Resort was disconnected from the Water System on
6 April 23, 2011.

7 Staff provided a summary of the Commission's regulatory history with the
8 Water System in UM 1489, Staff Direct Testimony, Staff/100, Miller/6-7.

9 **Q. PLEASE DESCRIBE MS. BEDSOLE'S HISTORY WITH THE**
10 **COMMISSION.**

11 A. The Commission and Staff have had dealings with Ms. Bedsole for over 14
12 years in 15 Commission dockets. An abbreviated history of the Commission's
13 involvement with Ms. Bedsole is attached to UM 1489; Staff Direct Testimony,
14 Exhibit 101, Staff/101, Miller/19-22.

15 **Q. WHAT OPEN DOCKETS ASSOCIATED WITH MS. BEDSOLE ARE**
16 **CURRENTLY BEFORE THE COMMISSION? PROVIDE A BRIEF**
17 **DESCRIPTION OF EACH CASE AND ITS CURRENT STATUS.**

18 A. The Commission currently has five open UCR dockets, two open UM dockets,
19 and one pending civil complaint involving Ms. Bedsole. They are:

- 20 1. UCR 121 Dennis and Barbara Varenas (Varenas) filed a billing complaint
21 against the Water System. Varenas' complaint states they had
22 been making regular monthly payments to the Water System,
23 but Ms. Bedsole had not cashed all of the checks and had

1 subsequently turned Varenas over to multiple collection
2 agencies.

3 At the January 26, 2011, evidentiary hearing, Ms. Bedsole
4 testified that she never received two of the checks and was
5 unable to cash the other checks because they were made out to
6 the wrong name. See Order 11-073 and 11-104.

7 This docket has been stayed pending the outcome of UM 1489.

- 8 2. UCR 122 Varenas filed a complaint against the Water System regarding
9 the disconnection of Varenas' water service. The Commission's
10 Consumer Services Section determined that Ms. Bedsole
11 disconnected the Varenas' service without a legitimate cause or
12 proper notice. The Commission issued Order No. 10-133
13 requiring Ms. Bedsole to reconnect water service. Ms. Bedsole
14 did not comply with the Commission's order.

15 This docket has been stayed pending the outcome of UM 1489.

- 16 3. Lane County Circuit Court Case #121008922

17 Due to the failure of Ms. Bedsole to comply with Commission
18 Order No. 10-133 in UCR 122, the Commission filed a complaint
19 in Lane County Circuit Court (Court) seeking a preliminary
20 injunction and ordering Ms. Bedsole to comply with the
21 Commission's order. The preliminary injunction was granted by
22 the Court. Ms. Bedsole was ordered to reconnect service to
23 Varenas and was prohibited from disconnecting service again

1 without an order from the Commission or the Court. Varenas'
2 service was restored. The preliminary injunction is still in place.
3 The civil complaint is ongoing, and a Court date has been
4 scheduled for February 22, 2012.

5 4. UCR 123 Varenas filed a complaint against the Water System for property
6 damage. This docket has been stayed pending the outcome of
7 UM 1489.

8 5. UCR 133 Varenas filed a complaint against the Water System for
9 providing contaminated water service. This docket has been
10 stayed pending the outcome of UM 1489.

11 6. UCR 135 Ms. Bedsole filed a complaint against Don Durland seeking to
12 permanently disconnect his service for failure to pay and
13 tampering. This docket has been stayed pending the outcome
14 of UM 1489.

15 7. UM 1489 Ms. Bedsole filed an application to abandon service to the
16 Customers. The Stipulation has been filed, and Staff is filing
17 this testimony in support of the Stipulation.

18 8. UM 1528 Ms. Bedsole filed a complaint to permanently disconnect Bonnie
19 Lucas and Varenas as customers. This docket has been stayed
20 pending the outcome of UM 1489.

21 **Q. IF THE COMMISSION ADOPTS THE STIPULATION AND STAFF'S**
22 **RECOMMENDATION, DOES IT RESOLVE ALL THE OPEN DOCKETS**
23 **AND COMPLAINTS ASSOCIATED WITH MS. BEDSOLE TO DATE?**

1 A. Yes, if the Stipulation is adopted and all parties fulfill their obligations as set
2 forth in the Stipulation and the Commission's order approving the Stipulation,
3 the Parties agree to dismiss, discharge, and waive all actions upon the
4 Commission's issuance of its Final Order.

ISSUE 3, UM 1489 APPLICATION TO ABANDON WATER SERVICE

5 **Q. PLEASE EXPLAIN DOCKET UM 1489.**

6 A. Ms. Bedsole filed an application to abandon service to the Customers on
7 July 12, 2010. The application was docketed as UM 1489. In the application,
8 Ms. Bedsole claimed: (1) financial constraints; (2) burdensome regulation;
9 (3) legal and regulatory costs; and (4) customer abuses, complaints, and
10 disputes as justification for abandoning water service.

11 A prehearing conference was held on January 31, 2011. After the
12 prehearing conference, the Parties began initial negotiations towards a
13 settlement. On March 8, 2011, Staff filed an unopposed motion to hold the
14 UM 1489 schedule in abeyance for 45 days to give the Parties more time to
15 reach a settlement; however, the Parties failed to reach an agreement.

16 On May 2, 2011, Staff filed testimony addressing Ms. Bedsole's
17 abandonment application and the issues of financial constraints, burdensome
18 regulation, and legal and regulatory costs. Staff found no merit to Ms.
19 Bedsole's application to abandon service. Staff recommended the Commission
20 deny the application. See UM 1489, Staff Direct Testimony, Staff/100 and
21 Staff/101.

1 At the same time, Phil Boyle, the Commission's Consumer Services Section
2 Manager, also filed testimony addressing Ms. Bedsole's allegation of customer
3 abuses, complaints, and disputes. See UM 1489, Staff/200. Mr. Boyle's
4 analysis of each specific incident claimed by Ms. Bedsole concluded that they
5 did not support her application to abandon service.

6 On the same day testimony was filed, Ms. Bedsole's attorney withdrew from
7 the case. Ms. Bedsole quickly retained a new attorney and efforts to negotiate
8 a settlement began again. After months of negotiations, Staff filed the
9 Stipulation on November 23, 2011.

10 **ISSUE 4, WATER QUALITY**

11 **Q. DESCRIBE THE WATER QUALITY BEING PROVIDED TO THE** 12 **CUSTOMERS AND THE ROLE OF THE OREGON HEALTH AUTHORITY** 13 **DRINKING WATER PROGRAM (DWP).**

14 A. The Customers are currently under a "boil water notice" and have been for over
15 a year due to the presence of E-coli in the water. The Oregon Health Authority
16 Drinking Water Program (DWP) enforces the Environmental Protection
17 Agency's (EPA) water quality standards to water systems serving four or more
18 connections in Oregon.

19 The DWP was initially involved with the Water System. In its Final Order
20 issued on May 31, 2011, the Oregon Health Authority wrote the following in its
21 Finding of Fact:

22 2. On September 16, 2010, a routine water sample was taken
23 from Fish Mill Lodges Cabin 5. When tested, the samples
24 showed that total coliforms were present but E. coli was absent.

1 (Ex. A2) Four additional samples taken on September 21, 2010
2 confirmed the presence of both total coliforms and E. coli in Fish
3 Mill Lodge's water supply. (Ex A3-A6).
4

5 According to the Oregon Drinking Water Quality Act of 1981 and associated
6 administrative rules, the confirmed presence of E-coli represents an acute
7 public health hazard requiring immediate corrective action (OAR 333-061-
8 0025(2)). Ms. Bedsole did not take immediate corrective action to resolve the
9 water contamination issue. The DWP assessed Ms. Bedsole a \$1000 civil
10 penalty. When Ms. Bedsole did not pay the fine, DWP filed a lien against her
11 real property. The water contamination issue continues to date. It has not
12 been resolved.

13 The condition of the water system and the current maintenance practices
14 are a public health hazard. OAR 333-061-0020 (156) defines "Public Health
15 Hazard" as a condition, device or practice which is conducive to the
16 introduction of waterborne disease organisms, or harmful chemical, physical, or
17 radioactive substances into a public water system, and which presents an
18 unreasonable risk to health. Details of the water contamination are found in
19 UM 1489, Staff Direct Testimony, Staff/100, Miller/15-18.

20 **Q. CAN DWP ENFORCE THE WATER QUALITY STANDARDS?**

21 **A.** Generally, Staff looks to the DWP to enforce water quality standards. However,
22 when Ms. Bedsole disconnected water service to the Resort, the Water System
23 was reduced to three customers, which is below the threshold criteria required
24 by DWP to enforce the EPA's water standards. Therefore, enforcement
25 responsibilities now fall to the Commission.

1 **Q. IS THE WATER SYSTEM IN VIOLATION OF ANY OF THE COMMISSION'S**
2 **STATUTES AND RULES?**

3 A. Yes. According to the Commission's Consumer Services Section and Staff, the
4 Water System has been in violation of the following statutes and rules for over
5 a year:

6 **ORS 757.020**

7 **Duty of utilities to furnish adequate and safe service at**
8 **reasonable rates**

9 Every public utility is required to furnish adequate and safe
10 service, equipment and facilities . . .

11 **OAR 860-036-0305**

12 **Maintenance and Repair of Plant and Equipment**

13 (1) A water utility shall have and maintain its entire plant and
14 system in such condition that it will furnish safe, adequate, and
15 reasonably continuous service.

16 (6) A water utility shall make repairs and perform maintenance
17 to its water system in a timely manner to prevent future damage
18 to the water system; to reduce wear and tear on equipment and
19 water plant; and to minimize customers' inconvenience, loss of
20 water flow, low water pressure, or inadequate service.
21

22 **OAR 860-036-0310(1)**

23 **Purity of Water Supply for Domestic Purposes**

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

30 **OAR 860-036-0325**

31 **Water Supply**

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

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ISSUE 5, THE REGENT

Q. WHY DOES THE WATER SYSTEM NEED A REGENT?

A. Ms. Bedsole has stated that she cannot and will not fix the Water System.

The water is unsafe and the Water System is in disrepair. A Regent is needed to operate, manage, evaluate, and make repairs to the Water System.

Q. UNDER WHAT AUTHORITY CAN THE COMMISSION APPOINT A REGENT?

A. According to ORS 756.040, the Commission represents the customers and shall use its powers and jurisdiction to protect the customers and obtain adequate service for them.

ORS 756.040

(1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility . . . and the public generally in all controversies respecting rates, valuations, service and all matter of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility . . . in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

According to OAR 860-036-0365, under certain circumstances, the Commission can appoint a regent to take over the management and operation of a water system. The criteria for such an appointment are shown below:

OAR 860-036-0365**Compliance Enforcement by Commission Appointment of Regent(s)
to Operate and Manage a Water System**

(1) In extreme circumstances when the water utility owner, operator, or representative demonstrates to the Commission's satisfaction an unwillingness or incapacity or refusal to effectively operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards, the Commission may appoint a regent(s) to operate and manage the water system. This procedure will be accomplished under an Interim Operating Agreement until long-term water provision can be ensured.

(2) The regent(s) appointed to operate, maintain, and repair the system must be a certified operator(s) or a qualified water utility(ies).

(3) The appointment of the regent(s) may also include responsibility for billing and collection, customer service, and administration of the system.

(4) If the Commission authorizes an operating account for receiving and dispersing funds by the regent(s), a Commission staff member will be a signator on such account to monitor all transactions.

(5) The regent will record all transactions in a general ledger and shall supply a copy of the ledger and bank statement to Commission staff member each month.

(6) At the end of the Interim Operating Agreement, Commission staff will make a final accounting of all monies received and transacted. Disbursement of surplus funds will be determined by the Commission.

**Q. DOES THIS SITUATION MEET THE NECESSARY CRITERIA REQUIRED
IN OAR 860-036-0365 FOR THE COMMISSION TO APPOINT A REGENT?**

A. Yes. This is an extreme situation where the Customers do not have safe drinking water. As previously stated, this is an acute public health hazard. Ms. Bedsole has demonstrated that she is unwilling, incapable, or refusing to effectively operate, manage, and repair the water system to provide safe and

1 adequate service to the Customers. In addition, when the water became
2 contaminated, Ms. Bedsole refused to perform the necessary actions to ensure
3 that the contamination was resolved in accordance to the Commission's and
4 DWP's statutes and rules, even after Lane County Environmental Health
5 offered to perform the necessary water tests at no cost to Ms. Bedsole.

6 See Staff/100, Miller/20 and Staff/101, Miller/6-7 and 9-10.

7 It is important to note that in a similar situation, Bear Creek and Boulder
8 Creek Water Systems were also on a boil water notice. The owner also
9 demonstrated that she was unwilling, incapable, or refused to resolve the water
10 systems' problems. In that case, the Commission appointed a regent to run the
11 two water systems while the DWP filed a complaint in court to force the sale of
12 the two systems to a responsible party.

13 **Q. DOES STAFF HAVE A REGENT IN MIND TO OPERATE AND MANAGE**
14 **THE WATER SYSTEM?**

15 A. Yes. Staff contacted the Oregon Association of Water Utilities for names of
16 responsible water operators in the area who might be willing to accept the
17 position of Regent. However, given that the Water System's past history has
18 demonstrated that it is difficult to work with, the small customer base, the
19 remote location of the facilities, and the lack of certified operators in the area;
20 the options for a possible Regent were limited. Staff found a local rate-
21 regulated water system with a certified operator willing to take on the operation
22 and management of the Water System for an interim period. Dan Reitz, of
23 Oregon Water Service, has agreed to be Regent.

1 **Q. WHAT METHOD WILL BE USED TO HIRE THE REGENT?**

2 A. Staff proposes using the same method previously used in appointing regents
3 for First on the Hill Water System and, more recently, Bear Creek and Boulder
4 Creek Water Systems. Staff has drawn up an Interim Operating Agreement
5 (contract) approved by the Commission's Procurement Officer and the
6 Department of Justice. If the Commission approves the Stipulation, the
7 contract is ready to sign and the Regent will begin its duties as soon as
8 possible.

9 **Q. WHAT ARE THE CURRENT RATES TO THE CUSTOMERS AND WHAT**
10 **WILL THE REGENT CHARGE FOR ITS SERVICES?**

11 A. The tariffed monthly flat rate for water service to each Customer is \$53.87.
12 Oregon Water Services has agreed to manage and operate the Water System
13 for \$150.00 per month. Repairs and improvements to the Water System will be
14 charged according to the following schedule:

15 Certified Operator Service \$65 per hour.

16 Labor \$35 per hour.

17 Equipment at cost.

18 Office work \$25 per hour.

19 Additional mailings at cost.

20 Supplies and materials at cost.

21 **Q. HOW WILL THE REGENT BE PAID FOR ITS SERVICES?**

22 A. Customers will pay their monthly bills to the Regent. The Regent will use the
23 revenue for compensation according to the contract. Staff will review and

1 approve all repairs and improvements. Any services performed outside of the
2 standard operations and management of the Water System will be assessed to
3 the customers as a surcharge. The Regent will record all transactions and
4 submit such financial records to Staff each month. Staff will monitor the
5 activities of the Regent. At the end of the contract, Staff will make a final
6 accounting of all monies received and transacted. Disbursement of surplus
7 funds will be determined by the Commission.

8 **ISSUE 6, EMERGENCY FUNDS**

9 **Q. PLEASE EXPLAIN THE PARTIES' REQUEST FOR EMERGENCY FUNDS** 10 **IN MORE DETAIL.**

11 A. In Paragraph 2 of the Stipulation, the Parties request that the Commission use
12 its emergency funds, pursuant to ORS 757.068 and OAR 860-036-0370, to
13 repair the Water System to provide the customers with safe drinking water.

14 ORS 757.068 states:

15 **Use of fees to make emergency repairs to water service** 16 **plants.**

17 (1) In each biennium the Public Utility Commission may use
18 not more than \$5,000 of the fees collected under ORS 756.310
19 to make emergency repairs to the plants of public utilities
20 providing water service. The commission may expend moneys
21 under the provisions of this section only if the commission
22 determines that:

23 (a) Customers of the utility are without service and are likely
24 to remain without service for an unreasonable period of time;

25 (b) The utility is unwilling or unable to make emergency
26 repairs, or cannot be found after reasonable effort; and

27 (c) Restoration of the service is necessary for the health and
28 safety of the customers of the utility.

1 (2) The commission shall attempt to recover fees used under
2 this section from the utility providing water service. The
3 commission may also recover a penalty as provided in ORS
4 756.350 from the time the fees are expended. [2003 c.202 §8]

5 OAR 860-036-0370 states:

6 **Expenditure of Fees Collected Under ORS 756.310 to Make**
7 **Emergency Repairs**

8 (1) The Commission may use up to \$5,000 per biennium of
9 the fees collected under ORS 756.310 to make emergency
10 repairs for water utilities. The Commission may expend monies
11 under the provisions of this rule if the Commission determines
12 that:

13 (a) Customers of a utility are without service and are likely to
14 remain without service for an unreasonable period of time;

15 (b) The utility is unwilling or unable to make emergency
16 repairs, or cannot be found after reasonable effort; and

17 (c) Restoration of the service is necessary for the health and
18 safety of the customers of the utility.

19 (2) The Commission shall promptly attempt to recover fees
20 used under this rule from the utility providing water service. No
21 interest shall accrue on the outstanding balance.

22 (3) The Commission may also recover penalties as provided
23 in ORS 756.350 from the time the fees are expended.

24 Our legal counsel has advised Staff that this situation meets the
25 requirements of ORS 757.068 and OAR 860-036-0370. The Commission
26 requires that public water utilities provide customers with safe and potable
27 water. Without safe and potable water, the Customers are not receiving
28 adequate and safe service pursuant to ORS 757.020.

29 Ms. Bedsole has demonstrated that she is unwilling or unable to make
30 emergency repairs, let alone operate and maintain the system as necessary
31 to provide the Customers with safe and adequate service. The Customers do

1 not own the Water System; therefore, they cannot make repairs. In addition,
2 the Customers are lay persons that do not have the knowledge or ability to
3 evaluate and repair the system or the immediate funds to do so; therefore,
4 without Commission intervention, the Customers will remain without safe and
5 adequate water, facing risks to their health. Safe water service is necessary
6 for the health and safety of the Customers.

7 Other regulated industries shut off service when it threatens the health of
8 the customers. However, in the water industry, a boil water notice is issued
9 and the unsafe water continues to flow. This apparent contradiction is due to
10 the unsanitary conditions and additional health risks created as a result of
11 shutting the water off; i.e., the customers would not be able to flush toilets,
12 take baths, etc.

13 Should the Commission adopt the Stipulation and grant the use of the
14 emergency funds, the Regent will make repairs and levy a proportional
15 surcharge on the Customers for the recovery of the emergency funds. Future
16 customers and water users of the Water System are also subject to their
17 proportional share of the emergency repairs.

18 **ISSUE 7, OTHER SPECIFIC ISSUES**

19 **Q. PLEASE DESCRIBE THE WATER RIGHT MENTIONED IN**
20 **PARAGRAPH 6 OF THE STIPULATION. EXPLAIN WHAT ROLE THE**
21 **WATER RIGHT PLAYS IN THE STIPULATION.**

22 A. The water right identified in Paragraph 6 is a water right issued by the Water
23 Resources Department (WRD) to Ms. Bedsole. This particular water right

1 identifies the specific tax lots that are allowed to receive water from the spring.
2 This water right allows Ms. Bedsole to divert water from the spring to provide
3 water service to a 12-cabin motel and one house located on specific tax lots
4 owned by Ms. Bedsole, and to provide water service to specific tax lots owned
5 by Varenas and Durland. As seen in Paragraph 7, Ms. Bedsole has agreed to
6 convey to Varenas and Durland that portion of the water right appurtenant to
7 the specified tax lots owned by Varenas and Durland.

8 However, in the case of the third Customer, Bonnie Lucas, the water right
9 owned by Ms. Bedsole does not provide any water to Ms. Lucas' property. In
10 Paragraph 12 of the Stipulation, Ms. Lucas agreed to file for her own water right
11 with WRD.

12 Paragraph 12 of the Stipulation goes on to say that if Ms. Lucas is unable
13 to obtain the right to use the spring water, then Ms. Bedsole will convey to
14 Ms. Lucas a portion of her remaining water right. The documents necessary
15 to accomplish this will be executed and delivered to the Commission and, if
16 necessary, released in the manner prescribed in the Stipulation.

17 **Q. PLEASE EXPLAIN PARAGRAPHS 8 AND 9 OF THE STIPULATION**
18 **REGARDING VALVES NOS. 1 AND 2 IN MORE DETAIL.**

19 A. Although Ms. Bedsole states that she is not currently receiving any water from
20 the spring, she may desire to do so in the future. Paragraphs 8 and 9 outline
21 the details of Ms. Bedsole's future withdrawal of water.

22 Ms. Bedsole owns Tax Lot 701, where the spring is located, and the
23 property where the Resort sits, which is downstream of the water distribution

1 to the Customers. At such time that Ms. Bedsole indicates where and when
2 she desires to receive water, one or two valves will be installed by the Entity to
3 provide water. Valve No. 1 will be located in Tax Lot 701 and/or Valve No. 2
4 will be located downstream of the Customers' service. Ms. Bedsole and the
5 Customers agree that Ms. Bedsole's water facilities be placed in such a way to
6 provide the least amount of interaction between them.

7 The monthly operations and capital improvement cost allocations
8 associated with Valves Nos. 1 and 2 are described in Paragraph 10 of the
9 Stipulation.

10 **ISSUE 8, STAFF'S RECOMMENDATION**

11 **Q. WHAT IS STAFF'S RECOMMENDATION?**

12 A. Staff recommends the Commission:

- 13 • Adopt the Stipulation in the matter of UM 1489 as a resolution of all matters
14 regarding Ms. Bedsole and the Customers before the Commission.
- 15 • Appoint a regent (Regent) to temporarily operate, manage, and repair the
16 Water System.
- 17 • Use its emergency funds to aid in the repairs to the Water System to
18 provide the Customers with safe drinking water.
- 19 • Not pursue civil penalties against Ms. Bedsole for any current violations.
- 20 • Withdraw its civil complaint pending in Lane County Circuit Court on the
21 condition that Ms. Bedsole agrees to sign a stipulated judgment of
22 dismissal, without prejudice, of the civil case.

- 1 • Order Ms. Bedsole to deliver the legal documents as prescribed in the
2 Stipulation to the Commission within 30 days of the Commission's order
3 adopting the Stipulation.
- 4 • Order the Customers to form an Entity to receive ownership of the Water
5 System within 15 days of the Commission's order adopting the Stipulation.

6 **Q. DOES STAFF HAVE ANYTHING OTHER TO ADD?**

7 A. Yes. Staff believes that in order for the Commission to fulfill its statutory
8 obligation, it must secure safe and adequate service for the Customers. The
9 Water System has created a public health hazard that threatens the health of
10 the Customers. The situation can be resolved through either this Stipulation or
11 the possibility of extensive legal recourse.

12 The Customers understand that the Water System has a lot of problems,
13 many of which may not be known until the Regent can assess the situation.
14 The Customers are the ones affected by the unsafe water. They are the ones
15 concerned with the integrity and maintenance of the Water System and its
16 water quality. The Customers are willing to take on these problems in order
17 to obtain control over their water.

18 Staff believes that the Stipulation between the Parties is a preferred
19 alternative to extensive legal processes that may be required to resolve this
20 situation.

21 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

22 A. Yes.

UM 1489
Service List (Parties)

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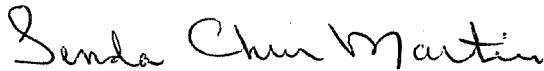
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CERTIFICATE OF SERVICE

UM 1489

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 20th day of January, 2012 at Salem, Oregon.



Linda Chur Martin
Public Utility Commission
Regulatory Operations
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Salem, Oregon 97301-2551
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