

ORDER NO. 13 310

ENTERED AUG 27 2013

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1665

In the Matter of

PIGEON POINT WATER SUPPLY  
COMPANY,

An Investigation Under ORS 756.515.

ORDER

**DISPOSITION: REGENT APPOINTED**

In this order, we find that Pigeon Point Water Supply Company (Pigeon Point) is currently unable to meet its duties and obligations as a regulated utility providing water service to its members. Based on that finding, we conclude that it is necessary to appoint a regent to fulfill all operational, administrative, and maintenance duties for Pigeon Point.

**I. FINDINGS OF FACT**

Pigeon Point is a customer-owned association that provides water service to certain tracts of land within the Pigeon Point subdivision located near Gold Beach, Oregon. The subdivision includes nine lots located along the Pacific Ocean, as well as an undeveloped 65-acre parcel that borders the west side of Highway 101. The development also includes one parcel located on the east side of Highway 101. That parcel is served by a private well and not Pigeon Point.

Pigeon Point uses water from two wells that feed four 2,500 gallon water tanks located on the undeveloped 65-acre parcel. The well water has a high concentration of iron, and must be treated to remove iron bacteria. Currently, Pigeon Point serves five lots that have been developed.<sup>1</sup>

Various disputes have arisen among land owners within the subdivision. Certain homeowners receiving water (Weihman, Ashton, White, and Talaga), and an owner of two undeveloped tracts (Laengel), contend that the owner of the undeveloped 65-acre parcel (Macaluso) is not eligible for membership in Pigeon Point. They object to the Macaluso's use of water for livestock, and further argue that Pigeon Point water may only be used for residential household purposes. These land owners also contend that the Macaluso's illegally inhabit the property with no sanitary services, that their possession of

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<sup>1</sup> For a further discussion of the background facts, see Order Nos. 13-073 and 13-201.

livestock is prohibited under county zoning requirements, and that they have illegally constructed storage sheds.

These land owners further contend that the Macalunos are preventing access to the water storage tanks located on the Macalunos' property, have tampered with filter systems that remove iron bacteria, and cut distribution facilities that serve the developed sites. They also claim that the Macalunos have blocked access to their home sites by tampering with private gates and installing a gate across a common access road.

In turn, the Macalunos contend that they are eligible for membership in Pigeon Point and that their use of water to maintain livestock is permitted under Pigeon Point's governing documents and county zoning requirements. The Macalunos also allege that they own the common access road, and that all actions regarding the use of their land are legal. They contend that the other landowners are harassing them, illegally trespassing on their property, and have poisoned their livestock. The Macalunos believe that other landowners are upset that a developer sold them the property, and are trying to force them to sell the property and leave.

These disputes have lead to various legal actions. Mr. Talaga called the sheriff after an alleged attack by Mr. Macaluso. Mrs. Macaluso filed a police report alleging that the partner of Ms. White and Mr. Ashton struck her with their vehicle. Pigeon Point filed a lawsuit against the Macalunos seeking a declaration that the Macalunos are not entitled to water from Pigeon Point. The arbitrator ruled for the Macalunos, but limited the decision by finding only that by signing the sale contract that did not guarantee water rights, the Macalunos' did not surrender any water rights they may have from Pigeon Point. The arbitrator also ordered Pigeon Point to pay the Macalunos \$31,000 for legal fees and costs.

Two other property owners (Burson and Bruton) filed a petition requesting the Commission assert jurisdiction over Pigeon Point under ORS 757.061. These owners claimed that Pigeon Point was not complying with its by-laws governing water rates and billing, and were charging members exorbitant fees for purposes of recovering amounts to pay legal fees and judgments related to the Macaluso lawsuit. Burson and Bruton also alleged Pigeon Point lacked an adequate water supply to serve its members. Based on these allegations, we found cause to assert jurisdiction and granted the petition in Order No. 13-073.

These disputes have affected Pigeon Point's ability to provide water service to its members. The President of Pigeon Point has resigned. The Vice-President and Treasurer have also threatened to resign. The system is in a state of disrepair, and is not being professionally maintained. The ozone treatment system, designed to remove iron bacteria, is not currently functional. Many of the distribution lines were lying above the ground and not buried as required by code. Due to the lack of funds, electricity used to run the well pumps was disconnected for a period of time earlier this summer.

## II. CONCLUSIONS OF LAW

### A. Applicable Law

ORS 756.515(1) allows the Commission to summarily investigate any matter subject to its jurisdiction if it believes that any service offered by a utility is unsafe or inadequate. ORS 756.515(2) and (3) further allow the Commission to hold hearings on any matter investigated and make such finding and orders that the Commission deems necessary.

OAR 860-036-0365 allows the Commission to appoint a regent to fulfill the functions and obligations of a water system when the owner of the water system has demonstrated that the owner is incapable of or refuses to provide adequate service to its customers.

### B. Discussion

As a customer-owned association, Pigeon Point requires a level of cooperation among its members to provide safe and adequate water service. That needed cooperation is not currently present. Owners of property within the Pigeon Point subdivision are embroiled in a wide variety of disputes including eligibility to receive and use water from the association, the lawful use of property, and allegations of harassment and physical abuse.

Although the water system appears to be a primary reason for many of these disputes, it is being neglected and falling into disrepair. Pigeon Point currently lacks leadership, the system is not being adequately maintained, and it does not meet code requirements.

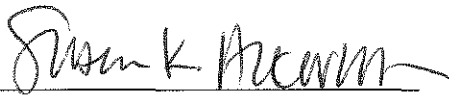
For these reasons, Pigeon Point is incapable or unwilling to effectively operate and manage the water system to provide safe and adequate service to its customers as required by our rules and regulations. To protect the association and its members, we have no choice but to conclude that Pigeon Point should be managed and operated by a qualified and competent regent.

Although the appointment of a regent will help ensure that the water system is maintained and operated to provide adequate and safe service to its members, we emphasize that this decision will not resolve many of the outstanding disputes that currently plague the Pigeon Point subdivision. Specifically, the appointment of a regent will not resolve issues as to eligibility for membership in the association and other matters that must be decided under the associations' articles of incorporation and by-laws. Further, questions as to county zoning requirements and ownership of property must be addressed by Curry County officials. In short, the appointment of a regent is just one step that must be taken to resolve the numerous disputes that have arisen between the property owners within the Pigeon Point subdivision.

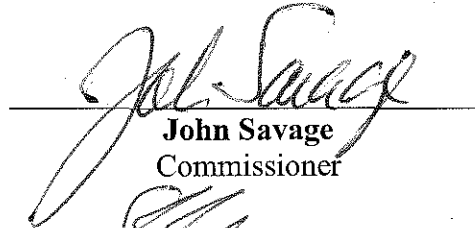
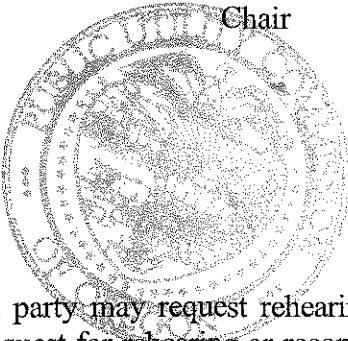
## III. ORDER

IT IS ORDERED that:

1. The Chief Operating Officer of the Public Utility Commission of Oregon must enter into a contract with a qualified water operator to perform the duties of a regent for Pigeon Point Water Supply Company.
2. Public Utility Commission of Oregon Staff must monitor the activities of the regent and provide an accounting of all monies received and expended by the regent during the period the regent serves.
3. Pigeon Point Water Supply Company must cooperate with and provide the appointed regent access to the property of the utility, maps of the system, customer information and accounts, and any other information required by the regent to perform its duties.

Made, entered, and effective AUG 27 2013.

**Susan K. Ackerman**  
Chair



**John Savage**  
Commissioner



**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484. OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.