

ORDER NO. 02-849

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

WA 71

In the Matter of the Cline Butte Utility )  
Company's Application for Allocation )  
of Exclusive Territory to Provide Water )  
Service, Pursuant to ORS 758.300 )  
Through ORS 758.320. )

ORDER

**DISPOSITION: APPLICATION GRANTED**

On January 24, 2002, and as amended on September 3, 2002, Cline Butte Utility Company (applicant) filed under Oregon Administrative Rule 860-036-0900 an application with the Public Utility Commission (Commission) for an allocation of exclusive territory for the provision of water service. Applicant is requesting allocation of the service territory it adequately and exclusively served on October 23, 1999, and service territory to be served within six months of the application. See ORS 758.300, and Section 2 to 4, Chapter 695, Oregon Laws 1999. The territory sought is described in Appendix A. The Commission gave notice of the application on February 12, 2002, and amended notice on September 24, 2002, as required by Chapter 695, Oregon Laws 1999, Section 2(2). No requests for hearing were filed.

Applicant is an investor owned utility that provides water service to approximately 401 customers in Eagle Crest Phases II and III, and the Thornburgh property in Deschutes County, Oregon.

Based on its investigation, the Commission finds that the applicant was adequately and exclusively serving the territory described in Appendix A and covered by the current service territory application on October 23, 1999.

**FINDING OF FACTS**

**Merits of the Application**

Staff’s analysis of the company’s application indicates that the company has met the criteria required to demonstrate that the company adequately and exclusively provided water service to its current service territory as required in OAR 860-036-0900 through OAR 860-036-0930.

The criteria are:

1) Service Quality

The Commission Consumer Services Division recorded one resolved customer complaint on a proposed rate increase in 2001. Due to the inception of rate regulation for Cline Butte, a customer survey was conducted. Using the standard sampling technique, Commission surveys were sent to 196 of the 401 customers listed as current customers by the utility to determine the level of service quality being provided. 111 responses were received with 27 complainants. Tabulation of the below average or unacceptable responses follows.

	Below Average	Unacceptable
Water Quality	3	
Water Pressure	13	
Courteous Customer Service	4	1
Timely and Accurate Billings	3	2
Customer Confidence in Management/Operator	8	1
Communication Between Utility and Customers	10	2
Timely Resolution of Service Complaints	2	2

There do not appear to be system-wide problems. Explanatory letters on official complaint procedures were sent to the 27 customers.

2) Water Quality

The website for the Oregon Department of Human Services Drinking Water Program listed three violations, January 1997, July and August 2002. One, for consumer confidence reporting, remains open but is not considered a major deficiency. The other two involve coliform and nitrate non-reporting. The single enforcement action listed shows a return to compliance for the nitrate reporting in July 1998.

3) Water Capacity

Cline Butte has all three customer classes – residential, commercial/industrial, and irrigation. Average demand for the last year listed in the application, 1999, was 228,900 gallons per day (gpd). There was a peak demand of 865,000 gpd. The pumping capacity

3. Water Capacity (continued)  
is 4,464,000 gpd. The utility has water right permit numbers G-11313 and G-11762 for three wells with a maximum capacity of 4,680,000 gpd. There is also a 300,000-gallon storage tank.

The expanded service territory is planned to allow a maximum of 900 residential dwelling units. The units will include single-family residences, townhouses or condominiums, and duplexes, with some commercial activities. The final master plan was issued in July 2001 and is ongoing. Water right G-13856 for a fourth well, now under construction, has been issued. Its estimated maximum capacity is 2,160,000 gpd. The system appears adequate for the projected growth.

- 4) Technical Ability  
Cline Butte has provided service in the existing territory since 1996 to its residential customers. Irrigation service has been provided since 1992. The current operations manager's tenure began in October 1992 and he holds a certificate of competency for Water Distribution Level 1 and a Wastewater Collection System Operation Level II.
- 5) Exclusive Service  
All main and service lines are located within the utility easements recorded on various plats. A warranty deed was submitted conveying ownership to Cline Butte of the land upon which two of the wells previously discussed are located. The third well is located on a lot held by the property developer. When the platting process is completed, that lot will be sold to Cline Butte. The well is owned by the utility. A right-of-way agreement with the federal Bureau of Land Management covers the storage site. Finally, the utility office location is leased from the property developer.
- 6) Reasonable Rates  
Cline Butte is a rate-regulated entity with current authorization under Docket UW 85, Order No. 02-446.

## **OPINION**

### **Jurisdiction**

ORS 757.005 defines a public utility as “ any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of . . . water . . . directly or indirectly to or for the public.”

ORS 758.300 defines a water utility as " any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of water, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city. 'Water utility' does not include a municipal corporation."

**Applicable Law**

The 1999 Oregon Legislature enacted ORS 758.300 through 758.320, which provide that all public water utilities must file an application with the Commission seeking an order designating the service territory that the utility served adequately and exclusively on October 23, 1999, as exclusive service territory.

On April 11, 2000, the Commission adopted rules (AR 370) governing the allocation of exclusive service territory to water utilities. Oregon Administrative Rules 860-036-0900 through OAR 860-036-0930 specify the service territory application requirements and processes necessary to meet the requirements of ORS 758.300 through ORS 758.320.

**Disposition**

Applicant has met the service territory requirements and processes set out in OAR 860-038-0900 through OAR 860-036-0930 and is entitled to the exclusive territory described in Appendix A.

**CONCLUSIONS**

1. The Company is a public utility subject to the service territory jurisdiction of the Public Utility Commission.
2. The utility meets the requirements set out in OAR 860-036-0900 through OAR 860-036-0930.
3. The Company meets the requirements of ORS 758.300 through ORS 758.320.
4. The Application should be granted.

**ORDER**

IT IS ORDERED that the application of Cline Butte Utility Company for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.

Made, entered, and effective \_\_\_\_\_.

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**John Savage**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to 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 of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party to a hearing may appeal this order to a court pursuant to applicable law.

APPENDIX A

Description of Cline Butte Utility Company's exclusive service territory within Deschutes County, Oregon:

All Phases of the platted land and unplatted land within the boundaries of The Ridge at Eagle Crest, also known as Eagle Crest, Phase II, bounded on the east by Cline Falls Road and the north by State Highway 126.

Phase III property – the Northeast Quarter (NE1/4), and the Northwest Quarter (NW1/4) and the Southwest Quarter (SW1/4) of Section Sixteen (16), Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian.

Thornburgh property – the Southeast Quarter of Section Sixteen (16), Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian.