

ORDER NO. 01-863

ENTERED OCT 15 2001

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

WA 4

In the Matter of the Application by )  
Labish Gardens Water System for )  
Allocation of Exclusive Territory for ) ORDER  
Provide Water Service, Pursuant to )  
ORS 758.300 Through ORS 758.320. )

**DISPOSITION: APPLICATION GRANTED**

On January 19, 2000, Labish Gardens Water System (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. 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 3, 2000, as required by Chapter 695, Oregon Laws 1999, Section 2(2). No requests for hearing were filed.

Applicant is a sole proprietorship that provides water service to approximately six customers in the Lake Labish Road NE, Salem, Oregon area.

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

A Commission survey was sent to the five customers listed in the application to determine the level of service quality being provided. Two responses were received. One customer wrote a lengthy complaint on poor water pressure and company encouragement of low usage. An explanatory letter on the required procedure for consumer complaints was sent. The other respondent gave an across-the-board average rating. The Commission Consumer Services section had no record of complaints on Labish Gardens Water System.

2) Water Quality

The Oregon Health Division's records show tests of the utility's water quality were satisfactory.

3) Water Capacity

The system source is an unmetered well with a 250-gallon storage tank. Per a conversation with the owner, the system was created approximately 40 years ago for 15 customers and has decreased to the current six customer total. In that period, there has never been a service failure. This seems a reasonable index of satisfactory water capacity given the non-availability of any measurement means.

4) Technical Ability

The Oregon Health Division does not require a certified operator for this size of utility. The operator-owner listed repair, golf course supervision, and electronic and hand tools instruction experience.

5) Exclusive Service

The operator-owner stated that the system is located on a public right of way. Per ORS 758.010 (1) except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free

of charge, and over lands of private individuals, as provided in ORS 772.210. Since the service territory is outside the Salem city limits, Labish Gardens Water System appears to have the authority necessary to serve the territory exclusively.

6) Reasonable Rates

The \$13.33 monthly charge is below the level for Commission regulation. No challenge is made to the reasonableness of this charge.

## OPINION

### Jurisdiction

ORS 757.005 defines a public utility as “ any corporation, company, individual, association of individuals, or its lessees, trustees, or receivers that own, 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.”

### 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 Labish Gardens Water System 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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**Phil Nyegaard**  
Acting 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. A party to a hearing may appeal this order to a court pursuant to 756.580.

APPENDIX A

Description of Sunriver Water's exclusive service territory:

North of Lockhaven/Hazelgreen along Lake Labish Road from 5790 to 6080.