

CIRCUIT COURT

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
AT O' CLOCK M
BY
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its
OREGON HEALTH AUTHORITY,

Plaintiff,

v.

BETTE CARTER, and ROSE LODGE
WATER CO., INC.,

Defendants.

Case No. 110025

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
ORDERING THE SALE OF DEFENDANTS'
WATER SYSTEMS

This matter came before the Court, the Honorable Sheryl Bachart, for a hearing on Plaintiff's Motion for Summary Judgment on April 4, 2011. Plaintiff appeared by and through its attorney, Stephanie M. Parent, Senior Assistant Attorney General. Defendant Bette Carter appeared *pro se*. Defendant Rose Lodge Water Company, Inc. did not make an appearance.

The Court reviewed Plaintiff's written submissions and evidence in support of its motion for summary judgment. Defendants did not submit any opposing affidavits or declarations or supporting documents. The Court heard oral argument on the motion from Plaintiff's counsel and Defendant Bette Carter. Being fully apprised, based upon the record before the Court there is no genuine issue as to any material fact and Plaintiff is entitled to prevail as a matter of law as follows:

1. Defendants have failed and continue to fail to comply with the standards and requirements of the Oregon Health Authority ("OHA") that implement the Oregon Drinking Water Quality Act, including providing unfiltered, improperly treated, and untested water to the people who are customers of Rose Lodge Water Company, Inc. on the Boulder Creek and Bear

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Department of Justice
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Portland, OR 97201
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1 Creek Hideout Water Systems, and as set forth more fully in Plaintiff's Motion for Summary
2 Judgment and the Declaration of Joseph Carlson and the exhibits referenced in and attached
3 thereto. Defendants did not dispute that they have failed to comply with the OHA standards and
4 requirements in the administrative proceedings that preceded this action, nor have Defendants
5 done so in this action.

6 2. The Rose Lodge Water Company, Inc. water systems present or threaten to
7 present a public health hazard. Defendants have provided unfiltered, untreated and untested
8 surface water to Boulder Creek customers since December 15, 2008 and to Bear Creek
9 customers at least since December 2009. As set forth more fully in Plaintiff's Motion for
10 Summary Judgment and the Declarations of Paul Cieslak, M.D. and David Farrer, Defendants
11 have provided to customers unfiltered and untreated surface water that may contain pathogens or
12 chemicals that could pose serious threats to public health, including *Giardia lamblia*, *E. coli*,
13 nitrates and arsenic. People who are customers of Rose Lodge Water Company, Inc. have
14 experienced diarrhea, stomach cramping, digestive problems and other flu-like symptoms, as set
15 forth in the Declarations of Stan Bates, Barbara Strand, Lisa Herndon and Constance Wentz.
16 Defendants do not dispute any of the foregoing.

17 3. OHA attempted to bring the water systems into compliance with the standards and
18 requirements through administrative proceedings and settlement agreements to no avail.
19 Defendants' failure to comply with the OHA standards and requirements for two years or more
20 on the Boulder Creek system and one year or more on the Bear Creek water system amounts to a
21 refusal to comply.

22 4. Defendants' water systems present or threaten to present a public health hazard
23 requiring immediate action to protect the public health, safety and welfare.

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1 NOW THEREFORE, IT IS HEREBY ORDERED, for the reasons stated in Plaintiff's
2 Motion for Summary Judgment and supporting evidence, which Defendants did not rebut, and
3 based on the findings and conclusions above:

4 1. Plaintiff's Motion for Summary Judgment is GRANTED;

5 2. The Rose Lodge Water Company, Inc. Boulder Creek and Bear Creek Hideout
6 water systems shall be sold under a special master to a responsible party as provided by ORS
7 448.250(2)(b);

8 3. Plaintiff shall submit to the Court and serve upon the parties a proposed order for
9 the Court to appoint a special master to oversee the sale of the water system, including the
10 proposed special master's qualifications, as well as proposed duties, scope of work, method of
11 compensation and any other necessary information; and

12 4. Defendants may respond to the proposed order to appoint a special master within
13 five days of service of the proposed order, after which the Court will consider the submissions
14 and appoint a special master to oversee the sale of the water systems.

15 DATED this 12th day of April, 2011.

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18 HONORABLE SHERYL BACHART
19 Circuit Court Judge

20 Submitted by: Stephanie M. Parent
21 Senior Assistant Attorney General
22 Of Attorneys for Plaintiff
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STATE OF OREGON
LINCOLN COUNTY
CLERK

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CERTIFICATE OF SERVICE

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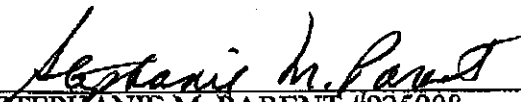
I certify that on April 8, 2011, I served the foregoing ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ORDERING THE SALE OF
DEFENDANTS' WATER SYSTEMS upon the parties hereto by the method indicated below,
and addressed to the following:

Bette Carter
19 N. Yodel Lane
Otis, OR 97368

- HAND DELIVERY
- MAIL DELIVERY
- OVERNIGHT MAIL
- TELECOPY (FAX)
- E-MAIL

Rose Lodge, Inc.
19 N. Yodel Lane
Otis, OR 97368

- HAND DELIVERY
- MAIL DELIVERY
- OVERNIGHT MAIL
- TELECOPY (FAX)
- E-MAIL


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