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IN THE CIRCUIT COURT OF THE STATE OF OREGON
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

PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

ORAL ARGUMENT REQUESTED

LOCAL RULE 5.010 CERTIFICATION

Conferral is not required for motions for summary judgment under ORCP 47.

MOTION FOR SUMMARY JUDGMENT

Plaintiff the State of Oregon, by and through its Oregon Health Authority, moves this Court under ORCP 47 for summary judgment in favor of Plaintiff. There are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law.

Plaintiff requests oral argument. Plaintiff estimates that thirty minutes is needed for oral argument. Plaintiff requests court reporting services.

I. INTRODUCTION

Since December, 2008, Defendants, Bette Carter and Rose Lodge Water Company, Inc., have provided unfiltered, improperly treated, and untested water to hundreds of people who are its customers in violation of Oregon Health Authority ("OHA") standards and requirements to implement the Oregon Drinking Water Quality Act. Upon discovering the violations, OHA has made a series of formal and informal attempts to guide Defendants into compliance administratively, including administrative settlement agreements. These attempts have not led to

1 Defendants' compliance. OHA determined that the public's continued use of unfiltered,
2 untreated, and untested water presents or threatens to present immediate serious public health
3 hazards and commenced this action pursuant to ORS 448.250(1). Defendants' failures constitute
4 a refusal to comply with the OHA standards and requirements. Accordingly, OHA respectfully
5 requests that this Court require the sale of the Boulder Creek and Bear Creek water systems
6 under a special master to a responsible party pursuant to ORS 448.250(2)(b).

7
II. CONCISE FACTS

8 Defendants own and operate two community public water systems in Lincoln County –
9 Boulder Creek and Bear Creek Hideout Water Systems. The Boulder Creek Water System
10 (“Boulder Creek”) provides water to approximately 350 people, and the Bear Creek Hideout
11 Water System (“Bear Creek”) provides water to approximately 275 people. Carlson Decl. ¶¶ 3
12 & 18, Exhibits 1 & 16. As water systems providing water for human consumption of surface
13 water, both systems and the parties that operate them are subject to regulation pursuant to the
14 Oregon Drinking Water Quality Act. ORS 448.115–448.285. The OHA¹ has the authority under
15 this statute to issue regulations and to take formal and informal administrative action to ensure
16 compliance with the statute. *Id.*

17 As discussed in more detail below (Sections III.C.1 and III.C.2), Defendants have
18 repeatedly failed to provide drinking water from a surface water source that has been properly
19 filtered and treated with disinfectants to remove particulates and contaminants. Defendants also
20 failed to test the water for contaminants, as required by OHA. There can be no dispute that OHA
21 correctly determined that Defendants' provision of unfiltered, improperly treated, and untested
22 drinking water threaten to present a public health hazard. *See* Section III.B. There is no genuine

23
24 ¹ During the 2009 Legislative Session the Legislature passed 2009 Or. Laws Chapter 595 (House
25 Bill 2009) that created the Oregon Health Authority (OHA). Certain programs that were under
26 the authority of the Department of Human Services (DHS) were transferred to OHA, including
all programs within the Oregon Public Health Division. The transition of programs from DHS to
OHA is still ongoing and until recently the Drinking Water Program still referred to itself as part
of DHS. Because of this change, this memorandum will refer to OHA for all state actions.
Rules adopted for the transition of programs to the OHA can be found at OAR 407, Division 43.

1 issue of fact that the Defendants have failed to comply with OHA requirements. Defendants did
2 not dispute that they had failed to comply with OHA requirements in administrative proceedings.
3 Instead, the parties entered administrative settlements that were intended to result in compliance
4 with OHA requirements. To date, Defendants are not in compliance with OHA standards and
5 requirements. Defendants' actions and inactions amount to a refusal to comply. See
6 Section III.C.

7 III. POINTS AND AUTHORITIES

8 A. Standard for Summary Judgment.

9 The Court must grant a motion for summary judgment if the pleadings and other
10 materials on file show that there is no genuine issue as to any material fact and that the moving
11 party is entitled to prevail as a matter of law. ORCP 47C. No genuine issue of material fact
12 exists if, viewing the record most favorably to the non-moving party, no objectively reasonable
13 juror could return a verdict for the non-moving party. *Id.*; *State v. Hewett Prof'l Group*, 321 Or.
14 118 (1995).

15 B. There is No Genuine Issue of Fact that OHA Correctly Determined that 16 Defendants' Actions Present or Threaten to Present a Public Health Hazard Requiring Immediate Action.

17 ORS 448.250 gives OHA the authority to institute an action against a water supplier
18 “[w]henever a water system or part thereof presents or threatens to present a public health hazard
19 requiring immediate action to protect the public health, safety and welfare.” ORS 448.250(1).
20 Defendants have provided unfiltered, untreated, and untested surface water to their Boulder
21 Creek customers since December 15, 2008 and to their Bear Creek customers at least since
22 December 2009. Carlson Decl. ¶¶ 10 & 20, Exhibits 8, p. 2, & 18, p. 2. This failure to treat and
23 filter surface water distributed for human consumption presents or threatens to present immediate
24 and serious public health hazards.

25 Unfiltered and untreated water can contain a number of pathogens or chemicals that pose
26 serious threats to public health, including *Giardia lamblia*, *E. coli*, *Campylobacter*,

1 *Cryptosporidium*, norovirus, *Salmonella*, *Shigella*, *Vibrio cholerae*, nitrates, arsenic, and
2 disinfection products such as trihalomethanes (“THM”) and haloacetic acids (“HAA5”).²
3 Cieslak Decl. ¶ 6; Farrer Decl. ¶ 4. The pathogens in unfiltered water “pose serious human
4 health risks including but not limited to diarrhea, dehydration, kidney failure, bleeding problems,
5 intestinal perforation, and sepsis.” Cieslak Decl. ¶ 8. Further, “[t]hese illnesses are sometimes
6 fatal.” *Id.* *E. coli* and *Cryptosporidium* have caused serious large-scale outbreaks of infection in
7 the United States, *Id.* at ¶¶ 11–12. Nitrates “can cause methemoglobinemia or ‘blue baby
8 syndrome’ in infants less than 6 months of age,” and in pregnant and nursing women, “if present
9 in high enough concentrations.” Cieslak Decl. at ¶ 5. HAA5 can cause serious “reproductive
10 problems like miscarriages and birth defects” and “injury to the brain, nerves, liver, kidneys,
11 eyes, and reproductive systems.” Farrer Decl. ¶¶ 7–8. Arsenic can “cause cancer of the skin,
12 bladder, and lungs.” *Id.* at ¶ 9. Defendants’ provision of unfiltered and untreated water, at a
13 minimum, threatens to present a public health hazard.

14 Even when customers are asked to boil their water, they remain at risk. Cieslak Decl.
15 ¶¶ 8–9. Boiling water will kill dangerous bacteria, but it has no effect on chemical
16 contamination. Farrer Decl. ¶ 10. Therefore, those customers that diligently boil their water
17 could still be exposed to dangerous chemicals, such as nitrates, HAA5, and arsenic. Also,
18 customers can be exposed to dangerous bacteria by bathing or washing dishes in water that has
19 not been boiled. Cieslak Decl. ¶¶ 8–9. Some customers may no longer diligently boil their
20 water after having to do so for so long a time. *Id.* at ¶ 9. Finally, Defendants have failed and
21 continue to fail to sample the water supply for dangerous bacteria and chemicals and have failed
22 and continue to fail to report the sampling results to the OHA Drinking Water Program (DWP),
23 as required. Carlson Decl. ¶ 10, Exhibit 8.

24 _____
25 ² Disinfection byproducts are formed when disinfectants used to treat water react with bromide
26 and/or natural organic matter (i.e., decaying vegetation) present in the source water. Different
disinfectants produce different types or amounts of disinfection byproducts. Disinfection
byproducts for which regulations have been established have been identified in drinking water,
including trihalomethanes, haloacetic acids, bromate, and chlorite.

1 Over the past two years, several of Defendants’ customers have experienced illnesses that
2 may have been caused by ingesting unfiltered and untreated water. Customers Stan Bates and
3 Sandra Strand, who live in Arizona most of the year, suffered from “very bad diarrhea,” intense
4 cramping of the lower abdominal area, and “flu-like symptoms” during the twelve weeks they
5 spent in Oregon in 2009, despite receiving flu shots and experiencing no symptoms while in
6 Arizona even during flu season. Bates Decl. ¶¶ 1–2; Strand Decl. ¶ 7. Once they began boiling
7 their water in 2010, Mr. Bates experienced no symptoms, although his “wife became sick again,
8 which [they] suspect was the result of her using the dishwasher and shower.” *Id.* at ¶ 3.

9 Another customer, Lisa Herndon, suffered from a stomach sickness that lasted two
10 months during the summer of 2010, which she attributes to being exposed to unfiltered and
11 untreated water. Herndon Decl. ¶ 3. Her sixteen-year old son has been suffering from digestive
12 problems and malnourishment for over a year. *Id.* at ¶ 6. At nearly six feet tall, her son weighs
13 110 pounds because he cannot properly absorb amino acids and nutrients from his food, a
14 condition Ms. Herndon fears is caused by his exposure to unfiltered and untreated water. *Id.*

15 Finally, another customer, Constance Wentz, contracted H1N1 in 2009 and ultimately
16 needed to have a section of her intestine removed to combat the illness. Wentz Decl. ¶ 3. When
17 she returned from the hospital with an ostomy bag, she found she had considerable difficulty
18 keeping it clean because her water was unfiltered and untreated. *Id.* Additionally, in 2010, her
19 dog contracted *Giardia*, which could have been caused by drinking water that had not been
20 boiled. *Id.* at ¶ 8.

21 Additionally, Defendants have regularly failed to provide water at a water pressure of at
22 least 20psi, as OAR 333-061-0025(7) requires. Wentz Decl. ¶ 6; Herndon Decl. ¶ 2; Cox Decl.
23 ¶ 2; Carlson Decl. ¶¶ 12–13, 21–22, & 26, Exhibits 10–11, 19–20, & 24. When their water
24 pressure falls below this level, Defendants’ customers cannot perform many basic daily functions
25 necessary to maintain sanitary conditions, such as flushing the toilet, washing their dishes, their
26 clothes, or themselves. Wentz Decl. ¶ 6; Herndon Decl. ¶ 2; Cox Decl. ¶ 2. This presents a

1 public health hazard for customers by forcing them to live in unsanitary conditions and is
2 particularly acute with regard to some customers with special needs. Wentz Decl. ¶ 3 (customer
3 who was recovering from a lengthy hospital stay at risk from lack of sufficient water).

4 Finally, Defendants' customers have lodged and recorded numerous complaints with the
5 OHA. Customers have complained of overly chlorinated water. Carlson Decl. ¶¶ 12 & 23,
6 Exhibits 10 & 21. Many have complained about frequent significant reductions in water
7 pressure (*see, e.g.*, Carlson Decl. ¶¶ 12, 21–22, & 26, Exhibits 10, 19–20, & 24), including the
8 total loss of water for several days. *See, e.g.*, Wentz Decl. ¶ 6; Cox Decl. ¶ 2; Carlson Decl.
9 ¶¶ 12–13 & 21–22, Exhibits 10–11 & 19–20. These complaints have continued despite legal
10 requirements to ensure adequate pressure, OAR 333-061-0025(7), and to ensure that customers
11 are not exposed to unhealthy amounts of chlorine. OAR 333-061-0032(2)(c)(F); OAR 333-061-
12 0036(4)(s)(A).

13 On January 21, 2011, the Oregon Public Utilities Commission issued an order
14 immediately appointing a regent to temporarily manage, operate and maintain the water systems.
15 The PUC's order provides short-term and temporary relief for customers, primarily to address no
16 and low water pressure issues, but it is not a long-term solution to the drinking water quality
17 issues. Carlson Decl. ¶ 28, Exhibit 26 at p. 4, ¶ 4 (appointing regent) and at pp. 10-11 (noting
18 that the OHA Drinking Water Program is seeking a long-term solution through this action).

19 Defendants' provision of untreated, untested, and unfiltered surface water currently
20 presents immediate public health hazards by exposing Boulder Creek and Bear Creek customers
21 to the many different pathogens and chemicals present in unfiltered and improperly treated
22 water. Defendants' violations alone threaten to present a public health hazard. As further
23 evidenced here, customers have been sickened and complained of the water, further
24 demonstrating an actual or threat of a public health hazard.

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1 **C. There is No Genuine Issue of Fact that Defendants Have Refused to Comply**
2 **with the Standards and Requirements of the Oregon Health Authority.**

3 Defendants have been out of compliance with drinking water standards and requirements
4 since at least December 15, 2008 for Boulder Creek, and since at least December 2009 for Bear
5 Creek. Carlson Decl. ¶¶ 10 & 20, Exhibits 8, p. 2, & 18, p. 2; *see also*, Carlson Decl. ¶¶ 4 & 19,
6 Exhibits 2 & 17. When OHA discovered this noncompliance, it attempted to help Defendants
7 achieve compliance. Despite these efforts, Defendants continued to provide their customers with
8 unfiltered and improperly treated surface water that had not been tested for contaminants in
9 violation of OHA requirements. Defendants' actions amount to a refusal to comply with the
10 Drinking Water Quality Act, OHA regulations, and OHA orders issued in an attempt to guide
11 Defendants into compliance.

12 ORS 448.250(2)(b) provides a "court may require the sale of a water system under a
13 special master to a responsible party if the water supplier refuses to comply with the standards
14 and requirements of the [OHA]." ORS 448.250(2)(b). OAR 333-061-0025 provides that water
15 suppliers are directly responsible for taking all reasonable precautions to assure that the water
16 delivered to the public does not exceed acceptable contamination levels and to assure that public
17 water systems are free of public health hazards. OAR 333-061-0025. OAR 333-061-0032
18 provides that any public water system with a surface water source or a groundwater source under
19 the direct influence of surface water must provide treatment of that source water that complies
20 with specific treatment technique requirements provided by OHA. OAR 333-061-0032. By
21 consistently failing to filter, treat, and test the surface water they provide to their customers since
22 December 2008, Defendants have shown a refusal to comply with these OHA standards and
23 requirements.

24 1. Boulder Creek

25 OHA began attempting to guide Defendants into compliance as early as August 15, 2008
26 by notifying them that they were in violation of monitoring and reporting requirements for
 disinfection byproducts for Boulder Creek. Carlson Decl. ¶ 5, Exhibit 3. On March 23, 2009,

1 OHA notified Defendants that they were in violation of monitoring and reporting requirements
2 for disinfection byproducts, volatile organic chemicals, and arsenic. *Id.* at ¶ 6, Exhibit 4. On
3 April 30, 2009, OHA again contacted Defendants to notify them of the same monitoring and
4 reporting violations. *Id.* at ¶ 7, Exhibit 5. On May 15, 2009, OHA informed Carter that she
5 needed to do testing immediately and file a report as soon as possible. *Id.* at ¶ 8, Exhibit 6.
6 Despite all of these contacts, Defendants submitted no testing results.

7 On August 6, 2009, after nearly a year of Defendants' refusal to comply with monitoring
8 and reporting requirements, OHA issued a Notice of Violation. *Id.* at ¶ 9, Exhibit 7, pp. 1–3.
9 The Notice listed three ongoing reporting violations, three corresponding compliance actions,
10 and notified Defendants that failure to comply would result in further enforcement actions. *Id.* at
11 pp 1–2. The violations included the failure to submit: (1) Water quality reports as required by
12 OAR 333-061-0036(5)(b) for each month from September 2008 to June 2009; (2) Volatile
13 organic chemical sampling results for 2008 as required by OAR 333-061-0036(3)(b); and (3)
14 Disinfection byproduct sampling results for the first two quarters of 2009 as required by OAR
15 333-061-0036(4)(c). *Id.*

16 On April 14, 2010, OHA filed a Notice of Violation and Administrative Order for
17 Boulder Creek (“Boulder Creek Administrative Order”) listing five violations of OHA rules and
18 mandating compliance actions. Carlson Decl. ¶ 10, Exhibit 8, pp 1–4. The violations included
19 failure to: (1) Maintain an adequate filtration system from December 15, 2008 to the date of the
20 Notice; (2) Report results for monthly monitoring of turbidity as required by OAR 333-061-
21 0040; (3) Submit nitrate sampling results for 2009 as required by OAR 333-061-036(2)(d); (4)
22 Complete a tracer study to verify disinfectant contact time as required by OAR 333-061-
23 0050(6)(a)(R); and (5) Maintain an effective effluent flowmeter in Boulder Creek's disinfection
24 contact chamber as required by OAR 333-061-0050(6)(a)(S). *Id.* at pp. 2–3. The Administrative
25 Order required Defendants to: (1) Submit construction plans for an adequate filtration system;
26 (2) Complete construction of a filtration system by October 31, 2010; (3) Complete a tracer

1 study; (4) Install an adequate flowmeter; (5) Submit required monitoring results and nitrate
2 sampling results; (6) Issue a boil water notice to Boulder Creek customers; and (7) Submit to
3 OHA by May 15, 2010 the identification of the certified operator of Boulder Creek. *Id.* at ¶. 3-4.

4 Defendants failed to comply with numerous aspects of the Boulder Creek Administrative
5 Order, including the requirements to submit water quality data and an adequate contract with a
6 certified water operator. Carlson Decl. ¶ 11, Exhibit 9. In response, OHA issued a Notice of
7 Intent to Impose a Civil Penalty of \$2,700 on June 29, 2010. Defendants requested a hearing in
8 response to this Notice and on September 29, 2010, OHA entered into a Settlement Order with
9 Defendants. Carlson Decl. ¶ 14, Exhibit 12. This agreement reduced Defendants' civil penalty
10 to \$270 and held the remainder in abeyance as long as Defendants complied with the agreement.
11 *Id.*

12 2. Bear Creek

13 On April 29, 2010, OHA also filed a Notice of Violation and Administrative Order for
14 Bear Creek (Bear Creek Administrative Order) listing five violations of the OHA rules and
15 mandating compliance actions. Carlson Decl. ¶ 20, Exhibit 18, pp 1–4. The violations and
16 compliance actions are substantially the same as those listed in the Boulder Creek Administrative
17 Order, except they gave Defendants until December 31, 2010 to construct an adequate filtration
18 system for Bear Creek, as opposed to the October 31, 2010 deadline for Boulder Creek. *Id.*

19 3. Recent Refusals to Comply

20 By November 19, 2010, Defendants still had not complied with the Boulder Creek and
21 Bear Creek Administrative Orders. Carlson Decl. ¶¶ 15 & 24, Exhibits 13 & 22. In response,
22 OHA told Defendants that OHA would draft Settlement Agreements for both systems and send
23 them to Defendants to review and sign, if agreeable. *Id.* The purpose of the agreements was to
24 set specific deadlines that would lead to the construction and operation of an adequate filtration
25 system for both water systems. The Boulder Creek agreement acted as an amendment to the
26 settlement signed by the parties on September 29, 2010 and stated that the remaining civil

1 penalty held in abeyance in that order would continue to be held in abeyance as long as
2 Defendants complied with the amended settlement. *Id.* at ¶ 16, Exhibit 14. The Bear Creek
3 agreement was in lieu of civil penalties for Defendants' noncompliance with the Bear Creek
4 Administrative Order. *Id.* at ¶ 25, Exhibit 23. OHA emailed both draft Settlement Orders to
5 Defendants, but received no response. It was not until December 14, 2010, that Defendants
6 signed the Orders and returned them to OHA. *Id.* at ¶¶ 16 & 25, Exhibit 14 & 23. OHA signed
7 the Orders on December 17, 2010. *Id.*

8 The Orders gave Defendants several new deadlines designed to ensure the construction
9 and operation of an adequate filtration system. *Id.* at ¶¶ 16 & 25, Exhibits 14, pp. 2–3, & 23,
10 pp. 2–3. The first deadline required Defendants to submit documents necessary for the
11 completion of an application for a loan to fund construction of the filtration system to Oregon
12 Business Development Department by December 31, 2010. *Id.* at ¶¶ 16 & 25, Exhibit 14, p. 2, &
13 Exhibit 23, p. 2. To date, Defendants have not submitted a complete application. OHA has
14 issued Orders notifying Defendants of their failure to comply with the Settlement Orders and that
15 these Orders are no longer in effect. Carlson Decl. ¶¶ 17 & 27, Exhibit 15 & 25.

16 By failing to filter, treat, or test the water they provide to their customers, Defendants
17 have failed to comply with the Drinking Water Quality Act and with the standards and
18 requirements of the OHA. OHA has made numerous informal attempts to guide Defendants into
19 compliance. Yet, Defendants have largely ignored these attempts. OHA has also used formal
20 means to attempt to force Defendants into compliance. Yet, Defendants have largely ignored
21 these attempts. Defendants' failure to comply with Drinking Water Quality Act, OHA
22 regulations, and OHA Administrative Orders and Civil Penalty Orders is nothing short of a
23 complete refusal to comply with the standards and requirements of the OHA.

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1 **D. Boulder Creek and Bear Creek Water Systems Should be Sold Pursuant to**
2 **ORS 448.250(2)(b).**

3 Because Defendants have continually refused to comply with the standards and
4 requirements of the OHA, the Court should require the sale of Boulder Creek and Bear Creek
5 under a special master to a responsible party as expressly provided by ORS 448.250(2)(b). The
6 sale of the system must be conditioned on approval by the Drinking Water Program to ensure
7 any potential purchaser is willing and able to comply with OHA standards and requirements to
8 implement the Drinking Water Quality Act. To be a responsible party, any prospective
9 purchaser must be willing to enter a Bilateral Compliance Agreement with OHA that would
10 include the steps and deadlines to bring the water systems into compliance with the OHA
11 standards and requirements. The Public Utilities Commission must approve the sale of the water
12 systems pursuant to ORS 757.480(5).

13 The Court has the power to issue injunctive relief when violations of health and safety
14 laws are threatened. *See Josephine County v. Garnier*, 163 Or. App. 333, 336-37 (1999). In
15 *Garnier*, defendants operated a hotel in a treehouse. The Court of Appeals affirmed a
16 preliminary injunction that barred further operations, focusing on the fact that health and safety
17 regulations were being violated.

18 Certainly proof of irreparable harm is a prerequisite of injunctive relief generally.
19 *See, e.g., Gildow v. Smith*, 153 Or App 648, 653, 957 P2d 199 (1998) (“An
20 injunction is an extraordinary remedy, to be granted only on clear and convincing
21 proof of irreparable harm when there is no adequate legal remedy.”). But that
22 does not mean that the law requires state or local governments to wait until harm
23 actually occurs before they may enjoin violations of health and safety regulations.
24 A probable or threatened harm suffices. *McCombs et al v. McClelland*, 223 Or
25 475, 485, 354 P2d 311 (1960).

26 163 Or. App. at 336-337. As the Court explained, when health and safety regulations are
27 threatened, an injunction should issue.

28 Violation of health and safety regulations, for example, justifies the entry of an
29 injunction to prevent harm from occurring; proof that actual, substantial, and
30 positive injury already has occurred is not required. *See, e.g., Oregon State Bar v.*
31 *Wright*, 280 Or 693, 700, 573 P2d 283 (1977) (enjoining unlawful practice of law
32 based on potential harm to public); *State ex rel Reed v. Kuzirian*, 228 Or 619, 626,
33 365 P2d 1046 (1961) (enjoining unlawful practice of optometry based on

1 potential harm to the public); *Tooker v. Feinstein*, 131 Or App 684, 690, 886 P2d
2 1051 (1994), *adhered to as modified* 133 Or App 107, 889 P2d 1356, *rev den* 321
3 Or 94 (1995) (“[w]e certainly have the authority to enjoin the construction of a
4 structure that violates a city ordinance”).

5 163 Or. App. at 337.

6 Laws governing safe drinking water are the most basic health and safety regulations. The
7 legislature has declared that the purpose of Drinking Water Quality Act is to: “Ensure that all
8 Oregonians have safe drinking water.” ORS 468.123(a). In administering this statute, OHA is
9 required to “protect the public health through insuring safe drinking water within a water
10 system.” ORS 468.1231(1). OHA cannot protect the public health and ensure that all
11 Oregonians have safe drinking water while Defendants are allowed to operate the Boulder Creek
12 and Bear Creek water systems. By providing untreated, untested, and unfiltered water to their
13 customers, Defendants have exposed their customers to potentially life-threatening pathogens
14 and chemicals, Cieslak Decl. ¶ 7; Farrer Decl. ¶¶ 5–9, presenting or threatening to present a
15 serious public health hazard.

16 In addition to presenting or threatening to present public health hazards, Defendants
17 provision of unfiltered surface water demonstrates a blatant refusal to comply with some of the
18 most basic provisions of OHA regulations. *See* ORS 448.331; OAR 333-061-0025; OAR 333-
19 061-0032. As discussed above, once OHA discovered Defendants’ refusal to comply with these
20 regulations, it sought to assist Defendants in complying, no avail. To date, Defendants are not in
21 compliance and demonstrate through their actions a refusal to comply with OHA standards and
22 requirements, including the administrative orders designed to achieve compliance. Carlson Decl.
23 ¶¶ 16–17, 25, 27, Exhibits 14–15, 23, 25.

24 To address Defendants’ violations of the Drinking Water Quality Act and OHA health
25 and safety regulations, violations that present an immediate public health hazard, and in response
26 to Defendants’ refusal to comply with OHA standards and requirements, Plaintiff asks this Court
to require the sale of Boulder Creek and Bear Creek water systems pursuant to ORS
448.250(2)(b).

1 Plaintiff suggests Rob Henry, P.E. of HBH Consulting Engineers to serve as a special
2 master to ensure the water systems are sold to a responsible party. The special master must be
3 paid from the proceeds of the sale.

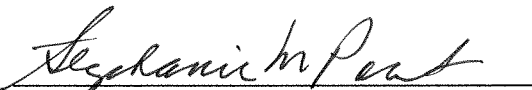
4 **IV. CONCLUSION**

5 In response to an immediate public health hazard, OHA sought to guide Defendants into
6 compliance with the Drinking Water Quality Act and applicable regulations. Despite OHA's
7 attempts, Defendants continually refuse to comply with these laws. As a result, Plaintiff asks this
8 Court to require the sale of Boulder Creek and Bear Creek water systems under a special master
9 to a responsible party pursuant to its authority under ORS 448.250(2)(b).

10 DATED this 14th day of February, 2011.

11 Respectfully submitted,

12 JOHN R. KROGER
13 Attorney General

14 
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21 Of Attorneys for Plaintiff
22
23
24
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26

CERTIFICATE OF SERVICE

I certify that on February 14th, 2011, I served the foregoing PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT 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

Courtesy Copy to:
Braulio Escobar
530 NW 3rd Ste F
PO Box 747
Newport OR 97365

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
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