

CIRCUIT COURT  
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 BY \_\_\_\_\_ HMT

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

ORDER APPOINTING A SPECIAL MASTER

On April 12, 2011, this Court ordered that the Boulder Creek and Bear Creek Hideout water systems, currently owned by Defendants Rose Lodge Water Company, Inc. and Bette Carter, be sold under a special master to a responsible party as provided by ORS 448.250(2)(b).

IT IS HEREBY ORDERED THAT:

**Appointment of Special Master**

1. Robert M. Henry, P.E. is appointed as the Special Master to oversee the sale of the Boulder Creek and Bear Creek Hideout water systems (hereafter "the water systems"), currently owned by Defendants, based on over seventeen years of experience in the municipal engineering field and as principal of H.B.H. Consulting Engineers. Mr. Henry's qualifications include extensive experience and familiarity with the Oregon Health Authority Drinking Water Program and small surface water and groundwater water systems. Mr. Henry has engineered numerous water systems and provided technical assistance as a circuit rider under contract with the Drinking Water Program through the Oregon Safe Drinking Water Revolving Loan Fund.

1 During the term of this appointment, the Special Master and the parties shall notify this Court  
2 immediately if potential grounds arise that may disqualify Robert M. Henry, P.E. as Special  
3 Master.

#### 4 **Powers and Duties of Special Master**

5 2. The Special Master is tasked with overseeing the process for the sale of the water  
6 systems to a responsible party.

7 3. A responsible party is a person or entity that possesses the willingness and the  
8 financial, managerial and technical capacity to improve and operate the water systems in a  
9 manner that is in compliance with the Oregon Health Authority ("OHA") standards and  
10 requirements for drinking water systems, including the Oregon Drinking Water Quality Act,  
11 ORS 448.115 *et seq.* and OHA regulations promulgated to implement the Act. A responsible  
12 party shall be willing to enter into a Bilateral Compliance Agreement with the OHA to bring the  
13 water systems into compliance with the OHA standards and requirements, as set forth in Exhibit  
14 1 to this Order. In accordance with Oregon Revised Statute 757.480(5), the Public Utilities  
15 Commission ("PUC") must approve the sale of the water systems; therefore, a responsible party  
16 also is a person or entity that has gained approval of the sale from the PUC.

17 4. The Special Master, in consultation with the OHA and the staff of the PUC, shall  
18 determine the minimum standards of financial ability and stability, managerial ability, technical  
19 ability and relevant experience, reputation, and any other relevant considerations that would  
20 qualify a potential purchaser of the water system as a responsible party.

21 5. The water systems consist of:

22 a. all infrastructure used to pump, divert, transport, store, treat or deliver water,  
23 including but not limited to pipes, valves, pumps, wells, storage tanks, treatment facilities,

24 headgates, infiltration galleries, wet wells and water level control devices;

25 b. all water rights;

26 c. all necessary utility easements, including across Defendants' properties;

- 1 d. all lists of customers, addresses and phone numbers;
- 2 e. all maps showing the location of the water system infrastructure or customers'  
3 water meters;
- 4 f. any engineering drawings of the infrastructure;
- 5 g. monitoring equipment and equipment manuals;
- 6 h. any other appurtenances or property attached to or used in the water systems;
- 7 i. any other asset that in any way is produced by or used in connection with the  
8 water systems.
- 9 6. The Special Master shall collect the following information, at a minimum, to  
10 include in an information package for prospective purchasers on the sale of the water systems:
- 11 a. a description of the water systems, as defined in paragraph 5, including an  
12 inventory of the infrastructure of the water systems;
- 13 b. accounts receivable and accounts payable from April 2010 to present, if  
14 reasonably available;
- 15 c. the list of considerations to determine if the prospective bidder is a responsible  
16 party, as described in paragraph 4;
- 17 d. the Bilateral Compliance Agreement, as set forth in Exhibit 1 to this Order
- 18 e. the list of information that PUC will require, at a minimum, in an application for  
19 approval of the sale;
- 20 f. contact information for the OHA Drinking Water Program and the PUC staff.
- 21 7. To collect the information described in paragraph 6, the Special Master shall first  
22 obtain any information that the Defendants, the PUC or OHA may already have in their control.
- 23 8. Within two months of the date of this Order, the Special Master shall publish the  
24 availability of the information package for prospective purchasers, and set a deadline for  
25 prospective purchasers to submit a proposal to purchase the water systems that includes  
26 sufficient information to determine whether the prospective purchaser is a responsible party.

1           9.       The Special Master shall consult with the Drinking Water Program and PUC staff  
2 in developing his recommendation of a prospective purchaser that qualifies as a responsible  
3 party.

4           10.      The Special Master shall notify in writing the prospective purchaser who meets or  
5 substantially meets the qualifications of a responsible party that it must apply to the PUC for  
6 approval of the sale of the water systems as soon as possible but not longer than twenty days of  
7 receipt of the notice.

8           11.      After the prospective purchaser identified by the Special Master as set forth in  
9 paragraph 10 obtains approval of the sale of the water systems from the PUC, the Special Master  
10 shall submit to this Court and serve upon the parties his written recommendation of the  
11 responsible party to whom the system ought to be sold, including the reasons for the  
12 recommendation. The parties shall have seven days from the date of service in which they may  
13 submit to this Court and serve upon the parties and the Special Master a written objection to the  
14 Special Master's recommendation. If there is no written objection within such time limit, the  
15 Special Master shall proceed to affect the sale of the system to a responsible party as  
16 expeditiously as possible. If there is any objection, the parties shall have seven days from the  
17 date of service to respond to such objection. The Court shall consider any objections and  
18 responses and direct the Special Master how to proceed.

19           12.      The Special Master may seek further instructions from this Court as to any matter  
20 pertaining to the sale of the water systems to a responsible party.

21           13.      The Special Master may do all acts and take all steps necessary for the efficient  
22 and reasonable performance of duties under this Order.

23       **Communications with Special Master**

24           14.      All parties shall cooperate in good faith with the Special Master and shall be  
25 present and responsive to the Special Master when so requested by the Special Master.

26

1 15. The Special Master may initiate *ex parte* contacts with the parties or counsel  
2 which are informal in nature, by telephone or in person. All parties shall be copied on any  
3 written communications, including electronic mail, to or from the Special Master.

4 16. As requested by the Special Master, the parties shall provide to the Special Master  
5 any relevant books, records, documents or information necessary to affect the sale of the water  
6 system to a responsible party. The parties shall serve upon all other parties copies of any  
7 documentation provided to the Special Master.

#### 8 **Compensation**

9 17. The Special Master is entitled to compensation at a rate of \$125 per hour for  
10 services performed not to exceed a total of \$7,500.00 and is entitled to reimbursement for all  
11 costs and expenses reasonably incurred in performing services in this matter, except that any one  
12 expense may not exceed \$500 without further approval of this Court.

13 18. The Special Master shall keep accurate billing records of services performed and  
14 all expenditures. The Special Master's request for compensation and reimbursements shall be  
15 submitted to the PUC for payment on a monthly basis and paid from the Rose Lodge Water  
16 Company, Inc. customer receipts because Defendants' refusal to comply with the OHA standards  
17 and requirements have necessitated appointment of the Special Master. In the event the  
18 customer receipts are insufficient, the Special Master's compensation and reimbursements shall  
19 be paid out of the proceeds of the sale of the water systems.

#### 20 **Term of Appointment**

21 19. The appointment of Robert M. Henry shall extend from the date of this Order for  
22 six months, after which the reappointment of the Special Master shall be reviewed and the  
23 subject of a subsequent order of this Court.

#### 24 **IT IS FURTHER ORDERED THAT:**

25 20. Within twenty days of the date of this Order, Defendants, Better Carter and Rose  
26 Lodge Water Company, Inc., shall provide to the Special Master all business records concerning

1 the water systems from January 1, 2006 through January 21, 2011, including but not limited to  
 2 state and federal tax returns and information related to or referenced in paragraphs 5 and 6 of this  
 3 Order that are in Defendants' custody or control.

4 21. All persons and entities that become aware of the Court's order, including the  
 5 parties to this action, shall refrain from interfering with the Special Master in the exercise of his  
 6 duties.

7  
 8 DATED this 11<sup>th</sup> day of May, 2011.

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 11 HONORABLE SHERYL BACHART  
 12 Circuit Court Judge

13 Submitted by: Stephanie M. Parent  
 14 Senior Assistant Attorney General  
 15 Of Attorneys for Plaintiff  
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