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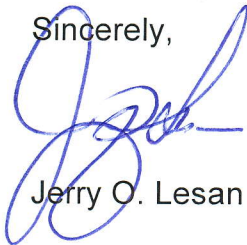
March 14, 2011

Public Utility Commission  
Water Program  
550 Capitol Street, NE, Suite 215  
PO Box 2148  
Salem, Oregon 97308-2148

Re: In the Matter of the Application of Pelican Bay Heights Water Company for Approval of Rates  
Docket No. UW 143

I have enclosed Company's Response to Intervenor Burns' & Buscho's Opening Briefs for filing in the above matter. I have e-mailed all parties on this date as well as e-mail a copy to the Public Utility Commission.

Sincerely,



Jerry O. Lesan

JOL:dm  
Enclosures

cc: Pelican Bay Heights Water Company  
Lisa Buscho  
Barry & Linda Gunderson  
Ulysses Burns  
Ronald and Cheryl Bodman  
Bill and Norma Bowles  
John and Barb Cary  
Steve and Cheryl McMahon  
Jason W. Jones, Assistant Attorney General  
Michael Dougherty, Public Utility Commission

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**COMPANY'S RESPONSE TO INTERVENOR  
BURNS & BUSCHO'S OPENING BRIEFS**

**March 14, 2011**

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

In the Matter of the Application of	)	Docket No. UW 143
Pelican Bay Heights Water Company	)	
For Approval of Rates	)	COMPANY'S RESPONSE TO
	)	INTERVENOR BURNS' & BUSCHO'S
	)	OPENING BRIEFS
	)	
	)	
	)	

Intervenors contend that "OAR 330-061-0050(6)(h)" (a rule of the State Health Department) requires that the Company must do whatever it takes to furnish sufficient fire flow. The problem with the argument is that they quote the sub-subsection without reviewing it in context. The actual rule reads as follows:

"333-061-0050

Construction Standards,

(6) Finished Water Storage:

(a) Distribution Reservoirs and Treatment Plant Storage Facilities for finished water shall be constructed to meet the following requirements:

(H) The finished water storage capacity shall be increased to accommodate fire flows when fire hydrants are provided;"

It is clear from the context of the rule that it applies only where the water system contains a distribution reservoir or treatment plant storage facility. This system has never had reservoirs installed. The water is pumped directly from a main line owned by Harbor Rural Water District. The pertinent provision of the rule cited by Intervenors is found at subsection (7) entitled "Pumping Facilities" and, in particular, sub-subsection

(b) which references pumps taking suction directly from distribution mains. The evidence in the record shows that the pressure cutoff switch mentioned in that rule was installed as part of the upgrade of the pumping system in 1991. (See Company Exhibit 4, pages 63 - 66)

The initial plan contemplated two 6,500 gallon reservoirs that would be temporary. The temporary reservoirs were not approved and in 1991 a pumping system was approved to supply water pressure for the domestic water while additional reservoir designs were being considered. At that time all parties involved including the County Planning Department, the Harbor Rural Water District, and the State Health Department Drinking Water Program were aware that no fire flow was being provided with the pumping system. Reservoir designs were considered with the last one being in 1993 when a 20,000 gallon reservoir was being reviewed which everyone was aware would not provide fire flow. (See Company's Exhibit 10 which is the Charbonneau deposition and, in particular, testimony contained at page 92, lines 19 - 25; pages 93 - 94; and, page 95, lines 1 - 11). The testimony deals with a letter written in December 1993 reviewing a proposal for a 20,000 gallon tank and noting in particular that it is assumed by the Health Department that it will not be providing fire protection. That letter also shows that copies were sent to the county Health Department and the Planning Department as well as the Harbor Rural Water District.

By 1995 the idea of providing a reservoir in the system to make certain sufficient pressure would be available for fire flow as abandoned. In 2009 an upgrading of the pumping system was reviewed and approved by the Drinking Water Program and the County Health Department and that design submitted by the engineering firm of



EGR specifically noted there was no reservoirs in the system. (Exhibit 4, p. 00029, paragraph 3). That approved design was later implemented and finally approved by the State Health Department Drinking Water Program in the fall of 2010. (Exhibit 4, p. 00025; Exhibit 9 internal Exhibit R).

The rule relied upon by Intervenor only applies where reservoirs are part of the approved system. As Tom Charbonneau, engineer with the Health Department Drinking Water Program, has testified, a private water system such as this could either supply its pressure for domestic water by reservoirs placed in an elevated location to provide pressure by gravity or by a pumping system. (Exhibit 10, Depo p. 73, 74) It makes no difference to the Health Department. Mr. Charbonneau has also testified that his department does not require fire protection but if a water system developer wants to provide it he may so long as he provides adequate fire flow pressure. (Exhibit 10, Depo p. 65) Mr. Charbonneau has also testified that the private water system may be changed to eliminate any fire flow requirement if the water system owner chooses to do so. (Exhibit 10, Depo p. 65 & 68) All the Health Department is concerned about is to insure that there is adequate flow for domestic water purposes of at least 20 psi.

The fire hydrants are not in service. Physically removing them at this time is an unnecessary cost.

This system has been approved by the county's Health Department, the Harbor Rural Water District, and the state's Health Department Drinking Water Program, and none have required fire flow as part of the system. Mr. Charbonneau has testified that he has no knowledge of any governmental unit requiring fire flow in this system. (Exhibit 10, Depo. P. 68).

Prospective purchasers were advised in 1991 through the State Real Estate Division filing that fire protection was not provided for the subdivision. The subdivision was annexed into the Harbor Rural Fire Protection District in 2004 and there was no requirement by either the fire district or the county board of commissioners that authorized the annexation that fire flow requirements needed to be complied with.

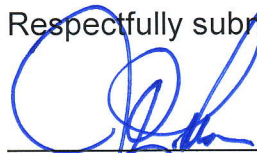
All of the above is documented in the brief and ten exhibits filed by the Company.

### CONCLUSION

Company submits that the only way to get a thorough understanding of the facts in this case is to review Exhibit 9, Hank Westbrook's deposition, and all of the exhibits referred to therein as well as Exhibit 10, Tom Charbonneau's deposition. There are exhibits attached to Charbonneau's deposition which are taken from Charbonneau's file. That file is also included in its entirety as Exhibit 4 to Company's Opening Brief. References in the Charbonneau's deposition to page numbers of his file can be cross referenced to Exhibit 4 by looking at the page numbers of that exhibit.

Dated: March 14, 2011.

Respectfully submitted,



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Attorney for Company

CERTIFICATE

I certify that I served a copy of the foregoing Company's Response to Intervenor Burns' and Busch's Opening Briefs to each of the individuals on the service list below by utilizing the electronic service list on the Commission's website and by mailing a copy, postage prepaid, to the following addresses dated this 14<sup>th</sup> day of March, 2011.

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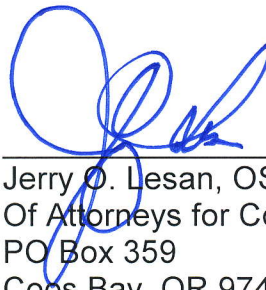
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DATED: March 14, 2011



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