

CIRCUIT COURT
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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF LINCOLN

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

8 Plaintiff,

9 v.

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

12 Defendants.

Case No. 110025

COMPLAINT

13 The State of Oregon, by and through the Oregon Health Authority (OHA),¹ alleges:

14 1.

15 This is a case for permanent injunctive relief against a water supplier, Bette Carter and
16 Rose Lodge Water Company, Inc., to protect the public health, safety and welfare pursuant to
17 ORS 448.250. The State must ensure that "all Oregonians have safe drinking water." ORS
18 448.123(1)(a). Bette Carter and Rose Lodge Water Company, Inc. own and operate two
19 community public water systems in Lincoln County - Boulder Creek and Bear Creek Hideout
20 Water Systems. These water systems present or threaten to present a public health hazard
21 requiring immediate action. Bette Carter and Rose Lodge Water Company, Inc. use surface
22 water as a source and have failed to treat the surface water to remove or inactivate pathogenic

23 ¹ During the 2009 Legislative Session the Legislature passed 2009 Or. Laws Chapter 595
24 (House Bill 2009) that created the Oregon Health Authority (OHA). Certain programs that were
25 under the authority of the Department of Human Services (DHS) were transferred to OHA,
26 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. Rules adopted for the transition of program to the OHA can be found at
OAR 407, Division 43.

1 microorganisms (such as *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*
2 and *Cryptosporidium*) before delivering the water to customers. In addition, Bette Carter and
3 Rose Lodge Water Company, Inc. have failed to monitor and/or report nitrate levels and have
4 failed to monitor and/or report disinfecting byproducts. The customers of Bette Carter and Rose
5 Lodge Water Company, Inc. have been on notice to boil their water since December 15, 2009.
6 Despite the State's efforts to bring the water systems into compliance, Bette Carter and Rose
7 Lodge Water Company, Inc. have refused to comply with the standards and requirements for safe
8 drinking water. Cases filed under ORS 448.250 shall be given preference on the docket over all
9 other civil cases except those given an equal preference by statute. ORS 448.250(3).

10

2.

11 The OHA is the state agency charged with implementation of the Oregon Drinking Water
12 Quality Act, ORS 448.115 to 448.285. Accordingly, OHA has the statutory authority and the
13 duty to ensure that public water suppliers provide water that meets minimum state standards.
14 ORS 448.131. Included in this authority is the power to institute actions for a mandatory
15 injunction to remove the public health hazard or threat of public health hazard, including sale of
16 the water system under a special master to a responsible party. ORS 448.250. OHA has adopted
17 coinciding Oregon Administrative Rules to implement the Oregon Drinking Water Quality Act.
18 OAR 333-061-0005 to 333-061-0290.

19

3.

20 Defendant Bette Carter is an individual who, through Rose Lodge Water Company, Inc.,
21 owns and operates the Boulder Creek Water System and the Bear Creek Hideout Water System
22 for the provision of water for human consumption and as such is a "water supplier" pursuant to
23 ORS 448.115(12) and OAR 333-061-0020(211).

24

4.

25 Defendant Rose Lodge Water Co., Inc. is an Oregon Corporation of which Defendant
26 Bette Carter is the President, Secretary and Registered Agent. Defendant Rose Lodge Water Co.,

1 Inc. is located at 19 N Yodel Lane, Otis, OR 97368, owns and operates the Boulder Creek Water
2 System and the Bear Creek Hideout Water System and is a "water supplier" pursuant to ORS
3 448.115(12) and OAR 333-061-0020(211).

4 5.

5 It is the policy of the State of Oregon that each of its citizens be provided with safe
6 drinking water. ORS 448.123(1)(a). To that end, the Legislature passed the Oregon Drinking
7 Water Quality Act of 1981 which establishes that water suppliers must meet standards designed
8 specifically to provide for and protect the public health and safety. ORS 448.119. Further, water
9 suppliers are directly responsible for taking all reasonable precautions to assure that the water
10 delivered to Oregonians does not exceed acceptable contamination levels, to assure that public
11 water systems are free of public health hazards, and to assure that public water systems are
12 operated and maintained pursuant to OHA regulations. OAR 333-061-0025. Failure to so
13 maintain a public water system represents a potential public health hazard.

14 6.

15 ORS 448.131 provides that OHA shall adopt water quality standards necessary to protect
16 the public health through insuring safe drinking water within a water system and setting
17 standards necessary for the proper operation and maintenance of such water systems.

18 7.

19 OAR 333-061-0032 provides that any public water system with a surface water source or
20 a groundwater source under the direct influence of surface water must provide treatment of that
21 source water that complies with specific treatment technique requirements.

22 8.

23 The Boulder Creek Water System is a community public water system that provides
24 water to approximately 350 people and is subject to regulation under ORS 448.115 to 448.290
25 and OAR 333-061-005 to 333-061-290. The Boulder Creek Water System provides water from a
26

1 surface water source. Defendants are required to treat the water by filtration and disinfection.
2 OAR 333-061-0032(4),(5).

3 9.

4 Pursuant to its authority under ORS 448.150, OHA, Public Health Division, Office of
5 Environmental Public Health, Drinking Water Program, investigated the operation of the
6 Boulder Creek Water System. OHA found that in December, 2008, the Boulder Creek surface
7 water treatment system failed, and that Defendants were delivering water to customers that they
8 were not treating as required by OAR 333-061-0032. This violation represents a potential public
9 health hazard. Defendant Rose Lodge Water Co., Inc., sent a letter to the customers of Boulder
10 Creek Water System stating that the system's water filtration system was being temporarily
11 turned off. Defendants did not restore the filtration system, operated throughout calendar year
12 2009 without filtration treatment, and continues to operate the Boulder Creek Water System
13 without compliance with treatment requirements.

14 10.

15 On August 6, 2009, Defendant was notified that it had failed to monitor water quality and
16 submit water quality reports in September 2008, November 2008, and January through June of
17 2009; failed to submit volatile organic chemical sampling results for 2008; and failed to submit
18 disinfection byproduct sampling results for the first and second quarters of 2009. OHA set out a
19 compliance schedule. Defendant did not comply with the compliance actions that would have
20 returned them to compliance with the rules violated.

21 11.

22 On April 14, 2010, OHA issued a Notice of Violation and Administrative Order
23 (NOV/AO) notifying Defendants of ongoing violations, including operating the Boulder Creek
24 Water System without complying with the treatment requirements for water systems utilizing
25 surface water in violation of OAR 333-061-0032. The NOV/AO also notified Defendants of
26 violations related to failures to utilize a certified operator, to report results of monitoring for

1 turbidity and nitrates, to verify disinfectant contact time, and to have an effluent flowmeter in the
2 disinfection contact chamber at the Boulder Creek Water System.

3 12.

4 The April 14, 2010 NOV/AO required Defendants to submit construction plans by June
5 30, 2010 indicating how the raw water conveyance and surface water filtration system at the
6 Boulder Creek Water System would be improved to produce water of a quality sufficient to meet
7 state quality standards, and to complete construction of the improvements to the surface water
8 filtration system not later than October 31, 2010, in addition to other requirements related to
9 monitoring and reporting demonstrating that all system users receive drinking water that
10 consistently meets all applicable state and federal drinking water laws and rules no later than
11 December 10, 2010.

12 13.

13 Construction plans were submitted to OHA on July 1, 2010 but an engineering review
14 found the plans to be deficient in both scope and specificity.

15 14.

16 On June 29, 2010, finding ongoing violations, OHA issued to Defendants a Notice of
17 Intent to Impose Civil Penalties. OHA and the Defendant agreed to resolve the matter by a
18 Settlement Order entered on September 29, 2010. The settlement order contained specific
19 corrective and monitoring actions necessary for the proper operation of Defendants' public water
20 system, including reiteration of the requirement to submit construction plans to improve the
21 surface water treatment system to produce water of sufficient to meet drinking water quality
22 standards in OAR 333-061-0032 by October 31, 2010. The Settlement Order required that Rose
23 Lodge submit a complete Project Notification Intake Form to the Oregon Business Development
24 Department to obtain loans to construct the surface water treatment system by October 31, 2010.

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15.

Defendants complied with the terms of the Settlement Order. However Defendants have not made the necessary improvements to the Boulder Creek Water System, and Defendants remain in violation of the Safe Drinking Water Act and implementing rules by providing surface water to customers that has not been properly treated.

16.

On November 19, 2010, OHA sent a draft Amended Settlement Order concerning the continuing violations of the Boulder Creek Water System to Defendant Rose Lodge by emailing it to Chandler Brown, manager of the Boulder Creek Water System. The draft Amended Settlement Order required that Rose Lodge submit a completed General Application and Application Supplement for Safe Drinking Water Revolving Loan Fund, Drinking Water Project to the Oregon Business Development Department no later than December 31, 2010 to construct a surface water treatment system at the Boulder Creek Water System. The draft Amended Settlement Order also included timelines by which Rose Lodge must ensure construction and operation of the surface water treatment system so that all system users receive drinking water that consistently meets all applicable state and federal drinking water laws. OHA expected final agreement on the draft Amended Settlement Order by December 1, 2010. On December 2, 2010, OHA sent the draft Amended Settlement Order concerning the continuing violations of the Boulder Creek Water System to Defendant Rose Lodge by facsimile to Chandler Brown. OHA requested that defendants respond to the proposed Settlement Order by December 6, 2010. On December 14, 2010, Defendant Bette Carter signed the draft Amended Settlement Order and Chandler Brown faxed the document to OHA on December 15, 2010. OHA signed the Settlement Order on December 17, 2010.

17.

On January 3, 2011, a representative of OHA verified with the Oregon Business Development Department that Defendants did not submit a completed General Application and

1 Application Supplement for Safe Drinking water Revolving Loan Fund, Drinking Water Project
2 to the Oregon Business Development Department no later than December 31, 2010 to construct a
3 surface water treatment system a the Boulder Creek Water System.

4 18.

5 Since at least December 15, 2008, Defendants have regularly violated Oregon's drinking
6 water statues and regulations in operating the Boulder Creek Water System. Defendant has
7 operated and continues to operate a public drinking water facility without implementing the
8 required monitoring and treatment standards in violation of ORS chapter 448 and OAR 333-061-
9 032 and 333-061-034. Defendants' actions are a refusal to comply with the standards and
10 requirements of the OHA.

11 19.

12 The Bear Creek Hideout Water System is a community public water system that provides
13 water to approximately 101 to 300 people and is subject to regulation under ORS 448.115 to
14 448.290 and OAR 333-061-005 to 333-061-295. The Bear Creek Hideout Water System
15 provides water from a surface water source. Defendants are required to treat the water by
16 filtration and disinfection. OAR 333-061-0032(4),(5).

17 20.

18 Pursuant to its authority under ORS 448.150, OHA, Public Health Division, Office of
19 Environmental Public Health, Drinking Water Program, investigated the operation of the Bear
20 Creek Hideout Water System. OHA found that at some point prior to December, 2009,
21 Defendants began using unfiltered surface water to supplement the water produced by its
22 existing groundwater sources in supplying water to the customers of the Bear Creek Hideout
23 Water System. Defendants were delivering water to customers that they were not treating as
24 required by OAR 333-061-0032. This violation represents a potential public health hazard.

25

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1 21.

2 On April 29, 2010, OHA issued a Notice of Violation and Administrative Order
3 (NOV/AO) notifying Defendants of ongoing violations, including operating the Bear Creek
4 Hideout Water System without complying with the treatment requirements for water systems
5 utilizing surface water in violation of OAR 333-061-0032. The NOV/AO also notified
6 Defendants of violations related to failure to utilize a certified operator, to report results of
7 monitoring for nitrates, to verify disinfectant contact time, and to have an effluent flowmeter for
8 the disinfection contact chamber at the Bear Creek Hideout Water System.

9 22.

10 The April 29, 2010 NOV/AO required Defendants to submit construction plans indicating
11 how the raw water conveyance and surface water filtration system at the Bear Creek Hideout
12 Water System would be improved to produce water of a quality sufficient to meet state quality
13 standards by June 30, 2010 and complete construction of the improvements to the surface water
14 filtration system not later than December 31, 2010, in addition to other requirements related to
15 monitoring and reporting demonstrating that all system users receive drinking water that
16 consistently meets all applicable state and federal drinking water laws and rules no later than
17 March 31, 2011. Defendants did not appeal the April 29, 2010 NOV/AO.

18 23.

19 Defendants did not meet the deadlines in the April 29, 2010 NOV/AO.

20 24.

21 On November 19, 2011, OHA sent a draft Settlement Order concerning the continuing
22 violations of the Bear Creek Hideout Water System to Defendant Rose Lodge by emailing it to
23 Chandler Brown, manager of the Bear Creek Hideout Water System. The draft Settlement Order
24 required that Rose Lodge submit a completed General Application and Application Supplement
25 for Safe Drinking water Revolving Loan Fund, Drinking Water Project to the Oregon Business
26 Development Department no later than December 31, 2010 to construct a surface water treatment

1 system at the Bear Creek Hideout Water System. The draft Settlement Order also included
2 timelines by which Rose Lodge must ensure construction and operation of the surface water
3 treatment system so that all system users receive drinking water that consistently meets all
4 applicable state and federal drinking water laws. OHA expected final agreement on the draft
5 Settlement Order by December 1, 2010. On December 2, 2010, OHA sent draft Amended
6 Settlement Order concerning the continuing violations of the Boulder Creek Water System to
7 Defendant Rose Lodge by facsimile to Chandler Brown. OHA requested that defendants
8 respond to the proposed Settlement Order by December 6, 2010. On December 14, 2010,
9 Defendant Bette Carter signed the draft Settlement Order and Chandler Brown faxed the
10 document to OHA on December 15, 2010. OHA signed the Amended Settlement Order on
11 December 17, 2010.

12 25.

13 On January 3, 2011, a representative of OHA verified with the Oregon Business
14 Development Department that Defendants did not submit a completed General Application and
15 Application Supplement for Safe Drinking water Revolving Loan Fund, Drinking Water Project
16 to the Oregon Business Development Department no later than December 31, 2010 to construct a
17 surface water treatment system at the Boulder Creek Water System.

18 26.

19 Since at least December, 2009, Defendants have regularly violated Oregon's drinking
20 water statutes and regulations in operating the Bear Creek Hideout Water System. Defendant has
21 operated and continues to operate a public drinking water facility without implementing the
22 required monitoring and treatment standards in violation of ORS chapter 448 and OAR 333-061-
23 032 and 333-061-034. Defendants' actions are a refusal to comply with the standards and
24 requirements of the OHA.

25

26

1 27.

2 Defendant's violations of Oregon drinking water statutes and regulations and
3 administrative orders have created a potential threat to public health and safety. Defendant has
4 created this public health hazard through provision of surface water to the public that does not
5 and has not been treated or met drinking water quality standards.

6 28.

7 Untreated, unfiltered drinking water presents or threatens to present a public health
8 hazard because such water is likely to contain germs that are shed from humans or animals
9 through their feces that then are ingested by mouth by another person. *Giardia lamblia* is a
10 microorganism that can be found in untreated surface water and is one of the main causes of
11 waterborne disease in Oregon. Untreated drinking water has led to outbreaks of disease
12 including an outbreak of Enterotoxigenic *E. coli* infection at Crater Lake in 1975; the 1993
13 outbreak of cryptosporidiosis in Milwaukee, Wisconsin, that sickened an estimated 400,000
14 persons; and the ongoing cholera epidemic in Haiti. While not an exclusive list, the following
15 germs have been known to cause outbreaks spread by drinking water: *Campylobacter*,
16 *Cryptosporidium*, *Enterotoxigenic E. coli*, *E. coli* O157, norovirus, *Salmonella*, *Shigella*, *Vibrio*
17 *cholerae*. Boiling water will kill the germs listed above and customers of Boulder Creek and
18 Bear Creek are on a boil water notice. However, washing dishes, bathing, showering, and even
19 watering the lawn are all uses of unboiled water that could result in people ingesting the
20 untreated surface water and any germs the water contains. In addition, customers have been on a
21 boil water notice for over a year and it is likely they will become complacent or have become
22 complacent regarding boiling water or boiling it for the proper duration.

23 29.

24 ORS 448.250 provides OHA the authority, whenever a water system presents or threatens
25 to present a public health hazard, to petition for a mandatory injunction compelling the water
26 supplier to cease and desist operation or to make such improvements and corrections as are

1 necessary to remove the public health hazard or threat thereof. If the water supplier refuses to
2 comply with the drinking water quality standards and requirements, the court may require sale of
3 a water system under a special master to a responsible party. ORS 448.250(2)(b).

4
5 **FIRST CLAIM FOR RELIEF**

6 **Operation of a Public Water Supply System Without Implementation of**
7 **Adequate Treatment Techniques in Violation of OAR 333-061-0032**

8 30.

9 Plaintiff realleges paragraphs 1 through 29.

10 31.

11 Defendants have and continue to operate two public water supply systems — Boulder
12 Creek and Bear Creek Hideout — without applying the necessary treatment techniques to ensure
13 safe drinking water. This constitutes a violation of OAR 333-061-0032.

14 32.

15 The State of Oregon is entitled to the relief set forth in the prayer below.

16 **SECOND CLAIM FOR RELIEF**

17 **Operation of Public Water System Without Reporting**
18 **Nitrate Levels in Violation of OAR 333-061-0036(2)(d)**

19 33.

20 Plaintiff realleges paragraphs 1 through 32.

21 34.

22 Defendants have and continue to operate two public water supply systems — Boulder
23 Creek and Bear Creek Hideout — without reporting the levels of nitrate to OHA. This constitutes
24 a violation of OAR 333-061-0036(2)(d).

25 35.

26 The State of Oregon is entitled to the relief set forth in the prayer below.

1 **THIRD CLAIM FOR RELIEF**

2 **Operation of Public Water System Without Reporting**

3 **Disinfecting Byproducts in Violation of OAR 333-061-0036(4)(c)**

4 36.

5 Plaintiff realleges paragraphs 1 through 35.

6 37.

7 Defendants have and continue to operate two public water supply systems — Boulder
8 Creek and Bear Creek Hideout — without reporting the levels of disinfecting byproducts. This
9 constitutes a violation of OAR 333-061-0036(4)(c).

10 38.

11 The State of Oregon is entitled to the relief set forth in the prayer below.

12
13 WHEREFORE, the State of Oregon is entitled to the following relief:

- 14 A. A permanent injunction ordering the sale of the Boulder Creek and Bear Creek
15 Hideout Water Systems under a special master to a responsible party;
- 16 B. In the alternative, a permanent injunction requiring each Defendant, jointly and
17 severally, to make such improvements and corrections as are necessary to remove
18 the public health hazard or threat thereof by a date certain, no later than March 31,
19 2011;
- 20 C. A permanent injunction requiring each Defendant, jointly and severally take any
21 other reasonable measure that OHA asserts are necessary to prevent future
22 violations and to protect public health, safety and welfare;
- 23 D. The State of Oregon's costs and attorney fees for pursuing the interest of the
24 public good in this matter; and
- 25
26

1 E. Such further relief as the Court deems appropriate.

2 DATED this 4th day of January, 2011.

3 Respectfully submitted,

4 JOHN R. KROGER
5 Attorney General

6 

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