

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 25, 2008**

REGULAR  CONSENT  EFFECTIVE DATE \_\_\_\_\_

DATE: June 10, 2008

TO: Public Utility Commission

FROM: Kathy Miller

THROUGH: Lee Sparling, Marc Hellman, and Michael Dougherty

SUBJECT: WESTLAND ESTATES WATER SYSTEM INC: (Docket No. UP 244)  
Requests to terminate service to customers.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve Westland Estates Water System, Inc.'s request to terminate water service to its customers subject to the following conditions:

1. Westland should be required to provide bottled water to any pregnant or nursing women and to children under the age of six months who receive Westland water.
2. Westland should be required to provide water service until May 31, 2009, or earlier if customers have secured other sources of water.

**DISCUSSION:**

Westland Estates Water System, Inc. (Westland or Company), is a small rate-regulated water utility located outside of Hermiston's Urban Growth Boundary. The system was built in the early 1970s and provides water service to approximately 22 customers. Westland came under the Commission's rate regulation on August 20, 2000, by customer petition. The Company filed its first rate case in April 2001.

Westland is currently facing two major problems. The Company has no water right, and it has a history of high levels of nitrate in the water. I will discuss these issues in detail later.

UP 244 Application to Terminate Service

On March 12, 2008, Stephen Gass, owner and President of Westland, filed an application with the Commission, Docket No. UP 244, requesting to terminate service to its customers. In addition to the nitrate and water right problems, the Company states that it is not financially sound. Westland cites the ever increasing cost of operations relative to the small customer base as contributing to its "dire financial conditions." The application goes on to say that the "shoe string budget" does not cover adequate long-term repairs and maintenance. Recent pump failures have put the system "on the edge of bankruptcy."

Although the pumps have been repaired, there are no remaining funds to cover any future equipment failure. The Company acknowledges that a rate increase could put the Company back on sound financial footing. However, a rate case will not resolve the nitrate or the water right issues.

Termination of service or abandonment of system requires Commission approval pursuant to ORS 757.480 and OAR 860-036-0710(2)(b).

A chronology of the activities related to identifying and addressing Westland's water issues is provided in Attachment A. An example of how the Commission handled a previous utility's request to terminate service (Vista Dale) is provided in Attachment B.

Current Issues and Violations

Nitrate Issue<sup>1</sup>

On September 14, 2007, the Drinking Water Program issued a Notice of Violation and Administrative Order to Westland for exceeding the Nitrate Maximum Contaminant Level (MCL) of 10 milligrams per liter (10 mg/L)<sup>2</sup> on five separate occasions from June 15, 2006, through June 21, 2007. Westland was ordered to install an approved treatment system.<sup>3</sup>

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<sup>1</sup> Nitrate is a colorless, odorless, and tasteless, naturally occurring oxide of nitrogen. Possible contributors to nitrate contamination are irrigated agriculture; food processing water; confined animal feeding operations; and domestic sewage where septic systems occur in high densities.

<sup>2</sup> Maximum Contaminant Level (MCL) means the maximum allowable level of a contaminant in water delivered to the users of a public water system. See OAR 333-061-0020(99). The MCL for Nitrate is applicable to all water systems. See OAR 333-061-0030.

<sup>3</sup> Water suppliers are responsible for taking all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels. The water supplier must take immediate corrective action when the results of analyses or measurements indicate that the maximum contaminant levels have been exceeded. See OAR 333-061-0025.

Bill Goss, Drinking Water Program (DWP) Regional Engineer, summarizes the nitrate problem below:

Water samples collected June 15<sup>th</sup>, August 15<sup>th</sup>, December 18<sup>th</sup>, 2006, and January 17<sup>th</sup>, June 21<sup>st</sup>, October 15<sup>th</sup>, 2007 from Westland Estates Water System, PWS ID #4100376, have exceeded the Maximum Contaminant Level (MCL) of 10 mg/L for nitrate as defined in OAR 333-061-0030 (1). The number and frequency of nitrate MCL violations indicate an ongoing and persistent contamination problem in the water system. The Department considers this to be a potential health hazard.

Nitrate in drinking water is a serious health concern for infants less than six months old and pregnant or nursing women. Based on research and a demographic survey; at present, there are no homes being served that have infants less than six months of age or pregnant or nursing women. Even though Westland is not currently providing water to any at-risk person, the Company cannot legally continue to provide water that exceeds the MCL for nitrate.<sup>4</sup> Should an at-risk customer be identified, Westland should be required to provide bottled water.

#### Water Right Issue

Westland does not have a water right. It operates on a water right exemption.<sup>5</sup> Due to the restrictions of that exemption, Westland is pumping more water to serve its customers than is allowable under the law.

Tony Justus, District 5 Watermaster, Oregon Water Resources Department, summarizes the water right issue below:

Westland Estates is currently serving 22 or 23 homes with water from a well. Information regarding the use indicates the use is exceeding the limits in statute regarding exempt uses from a well. The exempt limits that seem to apply in this instance, according to Oregon Revised Statute 537.545, allow the domestic use of up to 15,000 gallons per day, peak

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<sup>4</sup> The Department of Human Services will take immediate action to protect the public health, safety, and welfare when a water system presents or threatens to present a public health hazard. The action may petition for a mandatory injunction compelling the water supplier to cease and desist operation or to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof. See ORS 448.250.

<sup>5</sup> Exempt water use allows smaller uses to be exempt from the water right permitting requirements. Exempt uses include single or group domestic use of up to 15,000 gallons per day, noncommercial irrigation of up to ½ acre, stock watering, and commercial and industrial use up to 5,000 gallons per day. See ORS 537.545.

use, from a well. It also allows the irrigation of ½ acre of non-commercial lawn and garden. It appears both of these limits are being exceeded. When use exceeds the exempt limits allowed that means it is unlawful until and unless a water right is secured for those uses. A new water right can not be secured for this well because the area has been declared a Critical Ground Water Area.

There are two critical ground water area ordinances involved. One includes 175 sq. miles west of Hermiston. This overlaps with the second ordinance, which is 82 sq. miles in the Depot (army) area. The controlling order for both areas was issued in 1976 and prohibits the issuance of new ground water rights. The Company cannot drill another well because it does not have a water right and, due to the critical ground areas for the basalt and alluvial aquifers, no new water right will be issued. The customers can drill individual wells or shared wells (up to three homes) under the exempt use limits, as long as the well sites meet the setbacks for septic tanks (50 feet) and drain fields (100 feet).

Westland might have been able to install treatment to resolve the nitrate issue; however, the cost of treatment would be prohibitive without a Safe Drinking Water State Revolving Loan Fund's low interest loan and principal forgiveness. The Company is not eligible for the loan because it does not have a water right. And finally, even if treatment could resolve the nitrate issue, the Company cannot use the current well without a water right, which cannot be obtained in a critical ground area.

#### Actions/Activities Taken by Other Agencies and Organizations

In addition to Commission Staff, DWP, and OWRD, other state and local organizations (The Group) have been working together separately and collectively over the last six months to determine a feasible solution to address the problems Westland is facing. The Group consists of: PUC Staff; Bill Goss, Drinking Water Program (DWP); Tony Justus, Oregon Water Resources Department (WRD); Bev Kopperud and Vanessa Vissar, Umatilla County Soil & Water Conservation District (SWCD); Tamra Mabbot, Umatilla County Department of Resource Services and Development (UCDRSD); Geri Steward, Area Director for USDA Rural Development (USDA-RD); Pat Vernon, Department of Environmental Quality (DEQ); and Scott Fairley, Eastern Oregon Regional Coordinator, Governor's Office.

1. UCDRSD provided background information and a map of Westland lots with connected water users, adjacent Farm Zone, Light Industrial Zone, and Rural Residential 4 Acre Zone.

2. SWCD is working to help customers reduce groundwater contamination.
3. SWCD has obtained necessary information to apply for financial assistance to benefit the customers with drilling wells and failing septic systems replacement.
4. SWCD has partnered with the Greater Eastern Oregon Development Corporation (GEODC) to locate low interest loans to help the customers.
5. SWCD located a potential funding source "Household Water Well System Program" which provides low interest loans for up to \$8,000 per applicant for assistance.
6. DEQ and SWCD are working together to obtain low interest loans for septic system replacement through the Clean Water State Revolving Fund.
7. DEQ provided information to SWCD regarding the locations of customers' septic systems. This information was necessary to determine which Westland customers could meet the setback for drilling wells.
8. SWCD conducted a phone survey and distributed septic system location information.
9. SWCD is applying for two Oregon Watershed Enhancement Board (OWEB) grants. One grant is for the Westland Estates Clean Water Neighborhood, the other for the Clean Water Neighborhood recruitment and outreach program for the benefit of Westland customers.
10. SWCD included an article about Westland Estates and a notice of the Westland customer meeting on May 27, 2008, in its May 2008 issue of the Clean Water Neighborhood Newsletter.
11. USDA-RD sent flyers offering Westland customers funding and grant programs to help pay for the drilling of the wells.

Solution Alternatives for Future Water Service

1. Connecting to the City of Hermiston

On January 23, 2008, Staff received a letter from the City of Hermiston stating that the City does not provide water service outside its Urban Growth Boundary. The policy is established in Ordinance No. 1505, Policy 23, of the City's Comprehensive Plan.

2. Obtaining a new water source

Westland is located in critical ground water areas for the basalt and alluvial aquifers and cannot obtain a new water right to drill a well.

3. Installing treatment for nitrate removal

Treatment of the water supply was originally considered, but found to be cost prohibitive. A conservative cost estimate for treatment was \$100,000 to \$150,000. It was estimated that treatment would increase monthly rates by approximately \$53 to \$80 per customer. However, this is not a viable resolution because Westland does not have a water right to continue use of the well, it would still be exceeding its exempted water use, and it cannot apply for a low interest loan from the Safe Drinking Water State Revolving Loan Fund.

4. Find, purchase, and transfer an existing valid water right

While this is an option, according to the WRD, issues surrounding the ability to transfer a water right would require evaluation. Also, it is difficult to find a willing seller with a valid water right they no longer wish to use. No water right was identified that was readily available for purchase.

5. Disbanding the water system

Customers can drill individual or shared wells<sup>6</sup> (up to three homes) and stay within the exempt use allowed in statute (ORS 537.545). The statute allows up to 15,000 gallons per day for domestic or group domestic use. It also allows irrigation of up to ½ acre of noncommercial lawn and garden per well. If the customers drill individual or shared wells, the Company could be abandoned and service terminated.

Summary

Westland has requested the Commission's approval to terminate water service to its customers. Westland's water supply is contaminated with nitrate and is in violation of the DWP's and EPA's nitrate standards. The Company is also in violation of the WRD's exempt water use restrictions. Westland has no water right to drill a new well. A new

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<sup>6</sup> The cost to drill a well is estimated between \$5,000 to \$10,000 depending on the depth of the well.

well cannot be drilled because the system is located in a critical ground water area. The current water source is contaminated and cannot continue to serve its customers on an ongoing basis.

Customers were informed of the problems with the water system and given a chance to participate in resolution discussions on January 16 and March 5, 2008. Staff sent a letter, a draft of Staff's recommendation to the Commission, and a notice of the May 27, 2008, meeting by certified mail to all customers. All three meetings were held in Hermiston. The customers were given the PUC's Consumer Services telephone number to call if they had comments. Customers have had opportunities to participate and comment. Members of The Group have put forth considerable effort to assist the customers with information and financial resources.

Determining a resolution has been a collaborative effort by The Group, Westland, and customers. Based on the best available information, The Group believes that the most reasonable and economic solution for Westland's customers is to drill individual or shared wells or hook up to a neighboring well. The Group is unanimous in its decision that this resolution is the most reasonable option and believes it is in the public interest.

### Conclusions

1. Westland's existing water source is contaminated with nitrate.
2. The system is violating its exempt water use permit.
3. Drilling a new well is not an option because the Company does not have a water right and no additional water rights may be issued in that area.
4. Current water service is a health hazard to pregnant or nursing women and children under six months of age.
5. The Company is currently under DWP enforcement.
6. Customers have had ample time and opportunity to comment and ask questions.
  - a. A customer meeting was held in Hermiston on January 16, 2008, to discuss the problems and potential solutions with the customers. Representatives of The Group were available to answer the customers' questions.
  - b. A customer meeting was held in Hermiston on March 5, 2008, to discuss the problems and the potential solution with the customers.

Representatives of The Group were available to answer the customers' questions.

- c. The Group has sent letters, information flyers, and meeting notices to customers.
  - d. Staff sent a letter explaining the situation and resolution with a copy of its draft report recommending the Commission approve the termination of service to each customer by certified mail. One letter was returned to PUC unclaimed and one letter was returned because the home was vacant. The letter included notice of the May 27, 2008, meeting, and the Commission's Public Meeting where Staff is scheduled to present its recommendation. This again provides an opportunity for the customers to comment.
7. The Group has considered and exhausted alternative options.
  8. The Group has concluded that the most feasible and economic resolution to Westland issues is for the customers to drill individual or shared wells.
  9. Staff's draft report recommends a definitive date for cessation of water service.
  10. Staff's report recommends conditions to the order.

**PROPOSED COMMISSION MOTION:**

Pursuant to ORS 757.480 and OAR 860-036-0710(2)(b), the proposed application filed by Westland Estates Water System, Inc., to terminate water service to its customers be adopted with the following conditions:

1. Westland should be required to provide bottled water to any pregnant or nursing women and children under the age of six months who receive Westland water.
2. Westland should be required to provide water service until May 31, 2009, or earlier if all customers have secured other sources of water.

## CHRONOLOGY

- September 14, 2007 DWP issued a Notice of Violation and Administrative Order for violation of the nitrate standard.
- October 31, 2007 Westland's main pump failed and the system lost pressure.
- November 1, 2007 The backup well was placed into service. DWP tested the system for chlorine residual, collected a coliform sample, and distributed boil water notices to 12 homes (notices were in English and Spanish).
- January 16, 2008 The Group met in Hermiston to review the issues and discuss resolution options, followed by a meeting with Westland customers. Five customers attended the meeting.
- January 16, 2008 The Group met with Westland customers to provide information about the contamination and water right issues, describe the pending regulatory obligations, and discuss possible solutions. Nine customers attended. Several possible solutions were discussed at the meeting:
1. Connecting to the City of Hermiston  
On January 23, 2008, Staff received a letter from the City of Hermiston stating it is an unvaried policy and practice that the city does not provide water service outside its Urban Growth Boundary. (Ordinance No. 1505, Policy 23 of the City of Hermiston Comprehensive Plan)
  2. Obtaining a new water source  
Westland is located in critical ground water areas for the basalt and alluvial aquifers and cannot obtain a new water right to drill a well.
  3. Installing treatment for nitrate removal  
Treatment of the water supply was originally considered, but found to be cost prohibitive. A conservative cost estimate for treatment is between \$100,000 to \$150,000. It would increase monthly rates by approximately \$53 to \$80 per customer. Because Westland does not have a water right, it cannot apply for a low interest loan from the Safe Drinking Water State Revolving Loan Fund. However, even if

Westland was eligible for a low interest loan and the customers could afford a treatment system, the Company would still be exceeding its exempted water use.

4. Find, purchase, and transfer an existing valid water right  
While this was an option, issues surrounding the ability to transfer a water right required evaluation. Also, it was difficult to find a willing seller with a valid water right they no longer wished to use. No water right was identified that was readily available for purchase.
5. Disbanding the water system  
Customers could drill individual or shared wells (up to three homes) and stay within the exempt use allowed in statute (ORS 537.545). The statute allows up to 15,000 gallons per day for domestic or group domestic use. It also allows irrigation of up to ½ acre of noncommercial lawn and garden per well.

January 31, 2008	The Commission received Stephen F. Gass' letter stating his intention to file an application to terminate service to his customers with the Commission.
January 31, 2008	Staff received information from Tamra Mabbott of UCDRSD regarding Westland background and a map of the area.
February 1, 2008	Staff received flyer from USDA-RD regarding its 504 Rural Housing Loans and Grants program. Grant funds are available to homeowners 62 and over who cannot repay a loan. Staff included the flyer in its February 7, 2008, letter and meeting notice to Westland customers.
February 7, 2008	Staff sent a letter to the customers explaining the nitrate and water right issues and The Group's resolution. The letter also included notice of the March 5, 2008, meeting.
February 19, 2008	Staff sent an additional notice of the March 5, 2008, meeting to all customers.
March 5, 2008	The Group met with Westland customers explaining the problems and discussing resolutions. The Group informed the customers

that the best option is for the customers to drill individual wells, shared wells, or hook up to a neighboring well.

April 10, 2008

The Group held a conference call. It was determined:

1. Twelve months was sufficient time for customers to arrange for alternate water.
2. Westland should provide bottled water to homes with infants under six months and pregnant or nursing women.
3. The Group will hold another meeting with the customers because The Group was not confident that all customers are aware of the problems and the resolution.
4. Staff will write its draft recommendation to the Commission and send a copy along with a notice of the May 27, 2008, meeting to all customers by certified mail.

May 19, 2008

Staff sent a copy of its draft recommendation along with a notice of the May 27 meeting by certified mail to all Westland customers.

May 27, 2008

Staff and members of The Group met with customers to answer questions about the issues and resolution. Customers were encouraged to comment to the Commission. Approximately 16 customers attended the meeting.

### **UP 183 TERMINATION OF VISTA DALE WATER**

In the most recent water service termination case, Vista Dale Water, UP 183, the Commission approved the termination in Order No. 02-044. The Commission required Vista Dale Water to meet the obligation and requirements as a public utility and provide water service from January 2002 (the date the order was issued) to September 2003, to allow the customers time to obtain alternative water service. The following is a summary of the particulars of that docket:

1. Several public meetings were sponsored to discuss the customers' future long-term water service.
2. The customers were given ample time and opportunity to comment.
3. The system was currently under enforcement action.
4. The existing well was contaminated.
5. Drilling a new well could produce the same contaminated water.
6. The estimated cost to upgrade the system was \$136,000 or \$5,037 per household.
7. Junction City would not annex the area without consent of property owners (customers).
8. The customers were not willing to pay \$2,000 per lot annexation fee.
9. Current water service was unsafe to drink. It was not a future option.
10. Alternative options were considered.
11. Staff concluded that the connection to Junction City was the only viable choice and in the public interest. City annexation included sidewalks, sewer, and water at \$20,000 per customer.