

**BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGON**

**IN THE MATTER OF THE CUP (3-91)
APPEAL TO ESTABLISH A MUNICIPAL
WELL FOR THE CITY OF KLAMATH FALLS**

ORDER ON APPEAL

NATURE OF APPLICATION/APPEAL

A hearing on the City's appeal was held before the Board of Commissioners on January 27, and February 17, 1993. The applicant, the City of Klamath Falls, requested a Conditional Use Permit to establish a municipal well on a 3.97 acre parcel zoned R-5 (Rural Residential - 5 acre minimum). This application was reviewed pursuant to Article 44 of the Klamath County Land Development Code. The Planning Commission granted the CUP pursuant to an Order dated December 22, 1992. The city filed an appeal to the conditions imposed in that Order.

NAMES OF THOSE INVOLVED

The appellant, City of Klamath Falls, was represented by Jeffrey Ball. The Planning Department was represented by Carl Shuck, Planning Director. The recording secretary was Karen Burg, Administrative Secretary. The neighboring residents were represented by David Mannix.

EXHIBITS

Klamath County Exhibits A - ZZ continue as a part of the record.

LOCATION

The 3.97 acre parcel for the proposed municipal well is located in a portion of Section 7 of Township 38, Range 9, Tax Lot 1900.

RELEVANT FACTS

The factual findings of the County Planning Commission as set forth in its December 22nd Order are hereby adopted and incorporated.

CONCLUSION AND ORDER

The conclusions of the Planning Commission are adopted. In addition, the Board finds as follows:

1. The well can safely and most efficiently be pumped at the rate of 750 gpm as shown by the Nork test analysis.

2. The testing program proposed by the Planning Commission is unnecessarily large and unreasonably expensive and a four (4) month testing program of five (5) vicinity wells is sufficient to monitor impact of the proposed well; and
3. The Planning Commission's imposition of a strict liability standard on the City is unreasonable and should be amended to require that the City be responsible for those impacts which it actually causes.

Therefore, the Klamath County Board of Commissioners uphold the Planning Commission's approval of the Conditional Use Permit 63-91 for a municipal water well in the Wocus area with conditions amended as follows:

CONDITIONS

1. 750 gallons per minute will be the maximum pumping rate.
2. The City of Klamath Falls will conduct a testing program on five (5) neighboring wells, including those wells which showed significant changes in constituents sampled during the Nork well test. Static water level and quality tests (EPA Inorganic-Drinking Water and Oregon Secondary) shall be conducted on these five (5) wells thirty (30) days prior to placing the City well into operation, then once a month for three (3) months after the start of pumping, and then once every two (2) months thereafter for the balance of the year.
3. A copy of the test will be given to the well owners and the Klamath County Planning Director by the tenth (10th) of each month for the previous month's test.
4. If water quality decreases or if there is unacceptable drawdown of existing wells, the City of Klamath Falls will stop pumping immediately until a hearing is scheduled under condition #5.
5. If #4 condition happens, and it is determined by an arbitration conducted pursuant to ORS 36.300 et seq. to be the result of the City's pumping activity, the City will be responsible for the correction of the affected wells. If the City and the well owner cannot agree on an arbitrator within two (2) days selection shall be made by the presiding Klamath County Circuit Court Judge.
6. Any well owner that will not cooperate with the City of Klamath Falls for the testing will not be included in the City guarantee.

BOARD OF COUNTY COMMISSIONERS


Ed Kentner, Chair


Wes Sine, Commissioner


F. Jean Elzner, Commissioner

Date: March 31, 1993

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 2nd day
of April A.D., 19 93 at 2:49 o'clock P M., and duly recorded in Vol. M93
of Deeds on Page 6768

FEE none

Evelyn Biehn - County Clerk

By Douglas M. Henderson

Return: Commissioners Journal