

Joan-Marie Michelsen
Attorney and Counselor at Law

August 18, 1999

All interested parties

Re: American Cash Equities, CUP #18-99

Dear parties:

I must apologize for the delay in getting this decision out, it has been a struggle for me because what I personally think is acceptable and what I, as the hearings officer, feel is legal are two different things. I will review the evidence and set forth my rational for my decision below.

The burden of proof statement is well done but not definitive and I do not accept all of the findings, however, this is not dispositive so I will not go into this in detail.

The fire concerns were addressed and adequately mitigated with the design approved by the Crescent Odell Lakes RFPD.

In the previous order it was stated that existing homeowners would be allowed to hook up at a reasonable rate, the rates charged do not appear to be reasonable. It was previously represented that the water would not be used for lawns and that it would be metered. This appears to not be the case and watering systems are in fact being installed in the front of the development. While these apparent discrepancy went to credibility they did not directly effect the decision.

The requested information on the long term maintenance of the system has not been adequate, however, this is not the determining factor in my decision. The only evidence submitted is an unsigned contract and general statements by the applicant that they will maintain it because that is better for their business. This is insufficient.

The residency at this development will probably be intermittent for the near future.

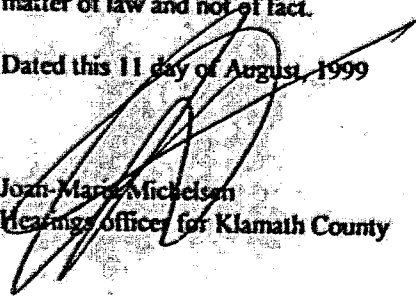
I do not find the affidavit of a retired geologist who may be interested or involved with this development to be neither persuasive nor particularly credible. Nor did it answer the basic question about the effects on the stream and whether or not water would, in effect, be drawn out of the stream. The recharge of a one square mile is irrelevant, we are talking about three, very closely spaced wells, not a disbursement of general water.

Several of the persons who testified discussed their concerns over the wetlands and stream as a result of this level of pumping. Those concerns were not addressed by the applicant.

The memorandum of history and law was well written and I believe the attorneys did the best they could with the information at hand. However, I find the letter from Dave Jarrett to be more on point regarding the issue of whether this applicant can have 3 wells.

The statute is clear that a person can only have one exemption. It is the finding of this hearings officer that at this time the applicant effectively has two exemptions, which is one too many. This conclusion is supported by the letter of Dave Jarrett of July 20, 1999 and the apparent concern by the water-master in his July 9, 1999 letter. Chopping a system up so that it appears to fall under the exemptions as this applicant has attempted to do does not change the fact that the applicant is required to get a water right. This does not seem to be an insurmountable obstacle. If, in fact, this level of pumping will not negatively impact the area and the water in the area I see no reason why the applicant can not proceed properly through the system and get the required permit. Once the applicant has a permit for the withdrawal of a nonexempt amount of water I see no further obstacles to the approval of this project. However, until that time, the application is denied as a matter of law and not of fact.

Dated this 11 day of August, 1999


Joan Marie Mickelson
Hearings officer for Klamath County

NOTICE

You are hereby notified that this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code together with the fee required within SEVEN (7) DAYS following the mailing date of this decision.

Return to Commissioner's Journal

State of Oregon, County of Klamath
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Linda Smith,
County Clerk Fee \$ 11.00 *HR*