



## *Water Resources Department*

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-2982 or  
1-800-452-7813

February 19, 1981

Howard S. Gass  
Rt 3, Box 3056  
Hermiston, OR 97838

Dear Mr. Gass:

I am again returning the application you submitted on January 14, 1981 and the fees that accompanied it. This action is taken in accordance with the order determining the Ordinance alluvial aquifer critical ground water area dated April 2, 1976, of which you have a copy. The Ordinance alluvial aquifer has been regulated in accordance with this valid order since its entry. The matter has been discussed with Clarence Kruger, Assistant Attorney General, and he has advised me to proceed in this manner.

I haven't attempted to answer your long list of questions or statements since they do not address the issue in question and may be answered by reference to the order.

I withheld restriction of use of your well, pending the conclusion of the litigation and in consideration of the people you serve, those 17 users at the time of the court suit which you have now increased to 27.

I can no longer delay limiting the water in that critical ground water area. You are directed to restrict use of water from the two wells to the exempt purposes authorized by ORS 537.545, namely:

1. Stockwatering purposes.
2. Single or group domestic (use in the household) in an amount not exceeding 15,000 gallons per day.
3. Irrigation of not to exceed one-half acre in total of lawn or noncommercial garden.
4. Single industrial or commercial purpose not exceeding 5,000 gallons per day.

Howard S. Gass  
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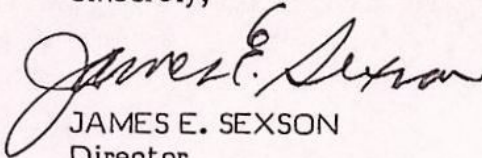
Please note that the quantities given are the maximum possible for that purpose and any amount not needed for one purpose cannot be used for another. For example, at any time that the single commercial use is not being made or is using less than 5,000 gallons per day, the total diversion from the well must be restricted accordingly.

By a copy of this letter, the Watermaster is instructed to take the necessary enforcement action to insure that no use is made in excess of the above limits.

I'm loath to take this action, but I have no choice under the law, particularly when the ground water reservoir is being overdrawn and other users are being denied. If you had pursued any of the options described to you, this action could have been avoided.

If you have any further questions about the options we suggested to serve your district's water users, I would be glad to respond.

Sincerely,



JAMES E. SEXSON  
Director

JES:wpc  
enclosure

cc's: Newt Perry, Administrator  
Steve Applegate, Watermaster  
Westland Water District Members

3948A



MEMBERS OF WESTLAND WATER DISTRICT

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January 9, 1981

RECEIVED

JAN 14 1981

WATER RESOURCES DEPT  
SALEM, OREGON

Ralph H. Jackson, Supervisor  
Application/Permit Section  
Water Resources Department  
555 13th Street N.E.  
Salem, Oregon 97310

Dear Mr. Jackson,

I am greatly confused by the return of my application for the use of ground water as indicated on the application. You indicate no problem with the application other than the fact that it is within the "Ordinance Critical Ground Water Area", this being the sole and only reason for its rejection.

As far as I am aware, there is no "Ordinance Critical Ground Water Area". I am aware of certain actions by the Director of the Water Resources Dept. to establish a "Ordinance Critical Ground Water Area", but I feel they are ineffective for the following reasons:

1. The hearing held Feb. 18, 1976, upon which the order of April 2, 1976 was predicated, was defective. This was acknowledged in the "notice of hearing" for a subsequent hearing on June 28, 1977. If the hearing of Feb. 18, 1976 was not defective, then there was no reason for a subsequent hearing on June 28, 1977. The notice of hearing for the June 28, 1977 hearing plainly states: "Following the hearing, the Director will issue his order of determination on the proposed critical ground water areas". As a matter of fact the order establishing the critical ground water area had already been issued.
2. The legal description incorporated in the "notice of hearing" for the Feb. 18, 1976 hearing was defective. The Water Resources Dept. had to be aware of this for the defect was corrected in the "notice of hearing" of June 28, 1977. Regardless of this defect the Water Resources Dept. declared the area to be a "critical ground water area".
3. If this area was to be declared a "critical ground water area", it would of necessity had to have been predicated on the June 28, 1977 hearing. There are two things which would preclude this. The inclusion of the record of the defective hearing of Feb. 18, 1976, and the fact that the "order" had already been issued on April 2, 1976.

Obviously the hearing of June 28, 1977 was not in good faith, but a ploy to conceal mistakes in the Director's procedures. If the ultimate result and conclusions of the June 28, 1977 hearing had already been determined, then the holding of such a hearing was a farce. Such procedures to accomplish a pre-determined result offends all principles of good government.

The issue with which we are here concerned is a simple one, whether a community of approximately 27 individual residents are permitted to be served by a single central water system rather than an individual well for each residence.



These residences are and have been served by a community water system for some 10 years. The water is furnished by a dual system of two wells and two separate pressure systems to preclude disruption of service and fire protection. The water is pure, as attested by the monthly tests performed for this purpose. The cost has been a flat charge of \$10.00 per month. In an effort to further conserve water, we are in the process of installing an individual meter for each user. The charge then will be identical to the City of Hermiston.

All of our plans concerning the system, such as charges, meters, construction, and all other matter pertaining to the system have been and still are done with an intent to make an orderly transition to a City of Hermiston take-over, which all our plans and intent indicate. This system was designed to serve an immediate need, with provisions for integration into the adjacent community at some future date. This was not done from necessity, but because I believe and support coordinated planning.

Though the Water Resources Dept. says each of the 27 users have an exempt use of 21,465 gallons per day (see letter of 10-27-80 from Steve Applegate), equal to 579,555 gallons per day for 27 users, the only way which the Water Resources Dept. says this can be accomplished is for each user to drill their own well. This, in spite of the fact water usage under the central system has been metered at amounts from 25,000 to 240,000 gallons per day, an average saving of approximately 440,000 gallons per day. This, in spite of the fact that monitoring is required on 27 wells rather than on a central well for usage and purity. This, in spite of the fact that there is no restriction in the exempt section of ORS. which ordains where the exempt water shall come from. Only that the source shall be ground water.

A recent article (enclosed) indicates that bringing all Oregon water systems up to Federal drinking water standards would cost at least 525 million dollars. This estimate by your own department. My system would cost nothing in as much as it already conforms to those standards. It seems to me this is a case of insisting of "fixing" something that is not broken. What is broken is the use of tax revenues by any state agency or department for any such purposes. It is an attempt to deprive the citizens of the basic right to an economical and pure domestic water source.

Regardless of the opinions, the problem remains. And I have no alternative but to attempt to resolve it. In line with that reasoning I would appreciate an answer to the following questions:

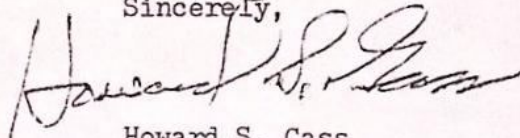
- A. Has the validity of the Water Resources Dept. position as to the existence of an "Ordinance Critical Ground Water Area" been determined by the Attorney General? If so, may I have a copy of that opinion.
- B. Does the Water Resources Dept. have a rule defining "group domestic" which has been used in the past?
- C. If each individual owner served by the system drilled their own well, would they be entitled to the 21,465 gallons per day indicated in the letter of 10-27-80?
- D. Is it your contention that stock watering (an exempt use) is limitable? In other words, would ten thousand head of cattle in a feed yard or pasture be limited to 3233 gallons per day (see letter of 10-27-80).



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- E. Is it your premise (letter of 10-27-80) that it does not matter where the commercial exemption originates, but does matter where the domestic exemption originates?
  - F. What authority did Mr. Applegate arbitrarily employ in restrictions on the use of water for lawns and gardens (an exempt use) in his letter of 10-7-80?
  - G. Would the user of the exempt commercial use be entitled also to a  $\frac{1}{2}$  acre lawn and garden exemption - also for stock watering?
  - H. Do you have an existing rule defining water use by a motel, hotel, trailer court, etc.? If so what is the water use category for these establishments.
  - I. Do you consider the letter of 10-7-80 from Steve Applegate addressed to: "Dear Westland Estates Users of Howard Cass Well" adequate notice upon which to enforce the terms set forth in the letter? Incidentally the letter was not sent by mail, but placed in each user's mailbox by hand.
  - J. Would an application to secure water from the basalt aquifer in my area be entertained?

I am enclosing the application which you returned to me, and I respectfully ask that you review all of your options for completing this matter. A solution is long overdue in the needlessly prolonged, non-productive operation.

Sincerely,



Howard S. Cass