

ATTACHMENT F

BEFORE THE OREGON WATER RESOURCES COMMISSION

In the Matter of Water Right Applications R 83820
and S 83821 in the Name of TDM Co.

Applicant

**DRAFT FINAL ORDER DISMISSING
PROTESTS AND APPROVING
APPLICATIONS**

C.C. Meisel Co., Inc.

Protestant

BACKGROUND

On April 30, 1998, TDM Co., Thomas C. & Donna J. Miller (Applicant or TDM) submitted an application to the Water Resources Department (OWRD or Department) for a reservoir permit. (Water Rights Application S 83820). On that same date, Applicant submitted an application for a surface water permit. (Water Rights Application S 83821). OWRD reviewed the applications and, on December 15, 1998, published Proposed Final Orders recommending that the permits be issued with conditions. On January 29, 1999, C.C. Meisel Co., Inc. (Protestant or Meisel) filed Protests in response to the December 15, 1998, Proposed Final Orders.

This matter was referred to the Office of Administrative Hearings and a prehearing conference was held on February 24, 2003 by Administrative Law Judge (ALJ) William D. Young. Pursuant to the agreement of the participants, a schedule was established for filing motions for legal rulings under OAR 137-003-0580. That schedule was modified pursuant to a motion filed by Protestant, to which no objection was stated.

On March 14, 2003, the Department provided OWRD's Exhibit 1, consisting of the Department's files for applications R 83820 and S 83821. On May 30, 2003, Applicant TDM filed a Motion for Summary Judgment, with supporting exhibits and affidavits. On June 2, 2003, Protestant Meisel filed a Motion for Legal Rulings, with supporting exhibits and affidavits. On June 27, 2003, TDM filed a Memorandum in Opposition to Meisel's Motion for Ruling on Legal Issues, with additional exhibits and an affidavit. OWRD and Meisel filed response memoranda on June 30, 2003. OWRD filed a Reply to Protestant Meisel's Response on June 9, 2003, and on July 14, 2003, Meisel filed its Reply in Support of Its Motion for Ruling on Legal Issues.¹

On July 24, 2003, the ALJ issued his Order Denying Motion for Legal Rulings, Granting Motion for Summary Judgment, and Proposed Order Dismissing Protests. This order was not properly served.

On July 28, 2003, the ALJ reissued the Order Denying Motion for Legal Rulings, Granting Motion for Summary Judgment, and Proposed Order Dismissing Protests. This order was properly served but did not contain appeal rights.

¹ Meisel's Reply included a motion to strike OWRD's reply to Meisel's Response. That motion is denied.

On July 29, 2003, the ALJ issued his Corrected Order Denying Motion for Legal Rulings, Granting Motion for Summary Judgment, and Proposed Order Dismissing Protests to correct the above deficiency.

On August 18, 2003, Protestant filed its Exceptions to Proposed Order, and on August 28, 2003, Applicant filed its Response to Protestant's Exceptions to Proposed Order.

On November 20, 2003, the Water Resources Commission heard oral argument on these exceptions and response to exceptions and now issues this final order.

LEGAL STANDARD

Motions and requests for legal rulings are governed by Oregon Administrative Rule (OAR) 137-003-0580, which states in part:

(6) The hearing officer shall grant the motion for a legal ruling if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The hearing officer shall consider all evidence in a manner most favorable to the non-moving party.

MOTIONS

On May 30, 2003, TDM filed a Motion for Summary Judgment in which it moved for summary dismissal of Meisel's protest on the grounds that the claims have been fully and finally litigated, and because Meisel cannot demonstrate any genuine issue of fact material to their protest. On June 2, 2003, Meisel filed a Motion for Ruling on Legal Issues urging the denial of TDM's permit applications because they contravene Meisel's rights as a property owner, and because TDM does not have the legal authority necessary to comply with OWRD regulations concerning dam safety.

FINDINGS OF FACT

There are no genuine issue of material fact regarding the following:

1) In August 1981, Meisel conveyed to Thomas Miller (now TDM), a Grant of Water Rights and Easement including "all of the water and water rights in, on, to or under, and that may be produced from" the subject property, "together with the full use of the premises, for the

purpose of * * * producing water therefrom, including the right to install, maintain, operate and remove pumps, pumping equipment, power and other transmission lines, tanks and basins, building pipelines and water ditches necessary to the production, storage, treatment, transportation and use of water." The conveyance also established "a right of way and easement over, under, through and across the [property] for the construction, operation and maintenance of flow lines and water lines necessary for the transportation of water by [TDM]." (TDM Exhibit 1; Meisel Exhibits A and B.)

2) TDM used the water without objection for many years and, in 1991 the OWRD issued a certificated water right to Miller.² (TDM Exhibits 2 and 3.)

3) Miller lives within three miles of Muhs Quarry, the site of the property subject to the August 1981 agreement and easement. He visits the site frequently to monitor operation of the waterworks, which consists of a gravity-fed pipe running from the quarry to Michelbook Country Club. He has operated the waterworks since 1981. (Miller Affidavit.)

4) The only time that operation of the waterworks could reasonably have been seen as threatening to person or property was during the widespread flooding that occurred in the flood of February 1996 when the quarry filled with water and might have overflowed but for emergency pumping efforts. Since that time TDM has constructed an emergency spillway, which meets the OWRD's Dam Safety Requirements. (Miller Affidavit; Miller 2nd Affidavit; TDM Exhibits 7 and 8; OWRD Exhibit 1, pgs. 23 & 55.)

5) The entire quarry, spillway structure and a drainage ditch that extends approximately two hundred-fifty feet downstream from the spillway structure lie within the premises subject to the easement. (Miller 3rd Affidavit.)

6) On April 30, 1998, TDM filed with OWRD an Application for a Permit to Construct a Reservoir. On December 15, 1998, OWRD issued a Proposed Final Order proposing to grant the application, subject to a number of conditions, including a requirement that "[b]efore a permit may be issued under this application, proof of authorization/easement allowing access to lands not owned by you, namely the reservoir site owned by C.C. Meisel Co., Inc., must be submitted to the Department." (R-83820 OWRD Exhibit 1 pgs. 35-44 and 100-104.)

7) On January 29, 1999, Meisel filed with OWRD a Protest of Proposed Final Order on Water Rights Application No. R 83820 that stated, in part:

◆ **Description of Interest**

C.C. Meisel Co., Inc. owns Muhs Quarry, the site where the "Muhs Quarry Reservoir" is located. The Applicant's interest in the water and water rights in, on, to or under Muhs Quarry is in dispute. The Application is presumably based on an August 10, 1981 Agreement for Conveyance of Water Rights, and an August 13,

² Applicant's Motion for Summary Judgment mistakenly assumed that the administrative law judge assigned to this case and the Water Resources Director at that time are the same individual.

1981 Grant of Water Rights and Easement. C.C. Meisel Co., Inc. asserts that both the Agreement and the Grant have been terminated based on material breaches by the Applicant. This dispute is the subject of Yamhill County Circuit Court litigation, which is presently set for trial on April 3, 1999.

◆ **Detailed Description of How the Action Proposed in the Proposed Final Order Would Impair or be Detrimental to C.C. Meisel Co., Inc.'s Interest**

C.C. Meisel Co., Inc. believes that issuance of the permit sought by the Applicant would be in contravention of C.C. Meisel Co., Inc.'s legal rights, and possibly prejudicial to its legal position in the pending Yamhill County Circuit Court litigation. C.C. Meisel Co., Inc. also has legitimate concerns regarding the safety of Applicant's dam structure and reservoir management capabilities.

◆ **Detailed Description of How Proposed Final Order is in Error or Deficient, and How to Correct the Alleged Error or Deficiency.**

The Proposed Final Order is in error and or deficient in that it incorrectly presumes the Applicant's legal right to prosecute the Application and obtain the permit. Further, the Proposed Final Order appears to suggest that the Applicant may simply "submit" proof of authorization/easement allowing access to lands not owned by Applicant. C.C. Meisel Co., Inc. contends that a final judicial resolution, through the Yamhill County Circuit Court litigation, is necessary before any permit can issue.

◆ **Citation of Legal Authority**

ORS 537.139(1)³

(R-83820 OWRD Exhibit 1 pgs. 16-19.)

8) On April 30, 1998, TDM filed with OWRD an Application for a Permit to Use Surface Water. On December 15, 1998, OWRD issued a Proposed Final Order proposing to grant the application, subject to a number of conditions. (S-83821 OWRD Exhibit 1 pgs. 56-67.)

9) On January 29, 1999, Meisel filed with OWRD a Protest of Proposed Final Order on Water Rights Application No. R-83821 identical to the Protest filed regarding S-8320. (S-8321 OWRD Exhibit 1 pgs. 49-51.)

10) By 1999 a dispute had arisen between Meisel and Miller regarding Meisel's refusal to pay Miller's retirement benefits. That dispute resulted in litigation between the parties. As part of that litigation, Meisel claimed that the water rights transferred in 1981 had been obtained by

³ "The failure of an applicant to obtain written authorization, obtain an easement or acquire ownership of land if required as a condition to issuance of a permit under ORS 537.211(2) shall be a ground for refusal to issue a permit."

fraud. Meisel's claim for rescission of the contract was rejected by Multnomah County Circuit Court Judge Redding⁴ as barred by the statutes of limitations. He granted Miller's motion for summary judgment dismissing Meisel's claims regarding transfer of the water rights. The court's opinion stated in part:

[Meisel's] third counterclaim alleges breach of the Muhs Quarry contracts by increasing the amount of water stored at the quarry and seeks damages for "increased exposure to potential liability", "potential costs of remedial action", and "expenses for professional consultants and advisers" and seeks damages. [Meisel's] fourth counterclaim alleges that the Muhs Quarry contracts were induced by fraudulent representations that [TDM] would control and reduce the accumulation of water in Muhs Quarry, while [TDM] had the secret intent to increase the amount of water stored, and seeks rescission of the Muhs Quarry contracts. * * *

* * * As a matter of law the statute of limitations has run on [Meisel's] third and fourth counterclaims.

(Miller affidavit; TDM Exhibit 4; Meisel Exhibit C).

11) Meisel appealed the judgment to the Oregon Court of Appeals, but did not appeal issues related to the "transfer" of the water rights. (TDM Exhibits 5 and 6.)

12) TDM has filed with OWRD all required plans, photographs and construction reports related to construction of the dam and spillway. OWRD has approved the dam and spillway as meeting dam safety requirements. (OWRD Exhibit 1 pg. 23.)

DISCUSSION

In its January 6, 2003, Notice of Prehearing Conference OWRD identified the proposed issues for this contested case as:

1. Whether the issuance of permits pursuant to applications R 83820 and S 83821 would be in contravention of C.C. Meisel, Inc.'s legal rights and prejudicial to its legal position in Circuit Court litigation; and
2. Whether there is a legitimate concern regarding the safety of Applicant's dam structure and reservoir management capabilities.

⁴ Meisel's Protest identified the proceeding as occurring in Yamhill County. Judge Redding's Order identified the court as Multnomah County. The parties do not contend and the evidence does not show that there was more than one proceeding regarding these parties.

Neither party identified any other issues or characterized OWRD's initial statement of the issues as inaccurate or incomplete. A review of the Protests filed against R 83820 and S 83821 show that these are the issues raised by Meisel in its protests against TDM's permits.⁵

A. Preclusion

TDM's Motion for Summary Judgment is based in part on its contention that Meisel has previously litigated issues raised in its protest in the case that culminated in *Miller v. C.C. Meisel Co.*, 183 Or App 148 (2002), that no genuine issue of fact material to its claims exists, and that dismissal of the protests is appropriate. Meisel contends that previous litigation between TDM and Meisel concerned only the employment relationship between the parties and the circuit court case should not be given preclusive effect. Although conceding that it raised counterclaims concerning the 1981 Agreement and Grant of Water Rights, it characterized the court's dismissal of its counterclaims as being based on "technical statute of limitations grounds."

TDM contends that doctrines of claim and issue preclusion bar Meisel from re litigating issues related to those which have been previously decided. *See Drews v. EBI Insurance Companies*, 310 Or 134, 140 (1990). Meisel concedes the court's ruling against it but contends that neither claim nor issue preclusion apply because the issues raised in its protest have not been litigated. Meisel asserts in its briefs that its protest is based on grounds that:

Applicant does not have an easement that allows Applicant to cause water to spill across C.C. Miesel's property in the manner and to the degree caused by Applicant's current operation of the reservoir and spillway. Because OWRD dam safety requirements require Applicant to maintain a spillway, Applicant does not have the authority to comply with OWRD regulations.

The Oregon Supreme Court has explained claim preclusion as occurring in the following circumstances.

[A] plaintiff who has prosecuted one action against a defendant through to a final judgment . . . is barred [*i.e.*, precluded] . . . from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action.

Drews v. EBI Insurance Companies, 310 Or 134, 140 (1990), quoting *Rennie v. Freeway Transport*, 294 Or 319, 323 (1982).

Proceedings subject to claim preclusion must have certain characteristics before the determination is conclusive on the parties. "The opportunity to litigate is required, whether or not it is used. Finality is also required. Where there is an opportunity to litigate the question

⁵ Under ORS 537.170(1) the administrative law judge determines the issues to be considered in the contested case hearing.

along the road to the final determination of the action or proceeding, neither party may later litigate the subject or question." *Drews*, 310 Or at 140.

The Court has explained issue preclusion as occurring in the following circumstances. "If a claim is litigated to final judgment, the decision on a particular issue or determinative fact is conclusive in a later or different action between the same parties if the determination was essential to the judgment." *North Clackamas School Dist. v. White*, 305 Or 48, 53, *modified* 305 Or 468 (1988).

The doctrines of issue and claim preclusion are based on policies aimed at achieving finality in disputes and preventing parties from splitting disputes into separate controversies. *Drews* at 141. The *Drews* court held that the doctrines of issue and claim preclusion are applicable to administrative hearings. *Drews* at 142.

The facts in this case appear to model the circumstances discussed in *Drews*. Meisel and TDM were involved in a judicial proceeding in which Meisel contended, as it does here, that the August 1981 Agreement and Grant had "been terminated based on material breaches by the Applicant." The court found that the passage of time barred legal or equitable remedies and declined to rescind the contract under any theory raised by Meisel. The doctrine of claim preclusion applies to issues Meisel raised based on theories that the easement has been terminated because of TDM's breach of the agreement.

All issues related to the validity of the August 10, 1981 Agreement for Conveyance of Water Rights, and an August 13, 1981 Grant of Water Rights and Easement have been resolved and may not now be revisited. Claims in which a decision will have no practical effect on or concerning the rights of the parties must be dismissed as moot. *State v. Macey*, 320 Or 408, 412 (1994); *Brumnette v. PSRB*, 315 Or 402, 406 (1993). TDM's Motion to Dismiss must be granted regarding Meisel's assertions that the Agreement and the Grant have been terminated based on material breaches by the Applicant or that issuance of the permits would be in contravention of Meisel's legal rights or prejudicial in pending circuit court litigation.

In addition, there has been no showing that Meisel has or had a legal proceeding in Yamhill County Circuit Court, as claimed in the Protests. In the event that the Protests incorrectly identified the county in which the legal proceedings were filed, it appears that all issues regarding the alleged termination of the 1981 Agreement and Grant of Water Rights have been resolved in TDM's favor. On the undisputed facts of this case it appears that the final judicial resolution prayed for by Meisel has occurred and that Meisel's interest in the court's proceeding can no longer be prejudiced by any action taken by the OWRD.

Issues related to the applicant's present use of the property relative to the scope of the easement, as protestant now argues may not have been before the court.⁶ Meisel correctly contends that Judge Redding's opinion and order did not address whether TDM's easement allows TDM "to cause water to spill across C.C. Meisel's property in the manner and to the degree caused by Applicant's current operation of the reservoir and spillway." Meisel concedes

⁶ The parties dispute whether this issue was properly before the court. The WRC will not decide that issue.

that the scope of the easement was not an issue before the court and contends that its Protests are based upon TDM's current use of the spillway. In his Proposed Order, the ALJ concluded that even though this issue was not previously raised in the courts, he would not address them as he found this issue⁷ precluded by merit of ORS 537.170(5).

The Water Resources Commission now sees no need to determine whether the issues as raised by Meisel in its briefs are or are not precluded. Even assuming the issues are not precluded, TDM is entitled to a ruling in its favor. Based on the face of the easement, there is no doubt that TDM owns the required "right of way and easement over, under, through and across the [property] for the construction, operation and maintenance of flow lines and water lines necessary for the transportation of water by [TDM]." In addition, as noted below, Meisel's assertion that the operation of the spillway may result in water flowing outside the easement, is not a proper issue in this proceeding. A determination of whether water may occasionally flow over the spillway onto lands not covered by the easement is a civil dispute not material to determining whether applicant has provided the required easement.

B. Legitimacy of Concerns Regarding the Safety of TDM's Dam Structure and Reservoir Management Capabilities

TDM contends that Meisel has no legitimate concerns regarding the safety of its dam structure or management capabilities. Generally, it notes that Miller (TDM) operated the Muhs Quarry to store and deliver water for nearly 20 years before Meisel challenged his operation, and then only after flooding in 1996, after which TDM constructed an emergency spillway. As noted above, OAR 137-003-0580(7) requires the ALJ to consider all evidence in a manner most favorable to the non-moving party.

Meisel presented the affidavit of Mr. Town in which he stated only that "During the winter and spring months, the Muhs Quarry spillway perpetually overflows its banks and flows onto [his] real property." TDM presented evidence by way of affidavits and exhibits showing that the reservoir and the spillway structure and drainage ditch lay entirely within premises subject to the 1981 easement. Although acknowledging the possibility that water might exit the spillway and make its way outside premises covered by the easement, TDM noted that the permit could be issued with a condition that the spillway structure be used only when the inflow exceeded the outflow capacity of the 10" pipe — a condition which has happened only once, during the February 1996 flooding.⁸

OWRD's response shows that application R 83820 has met OWRD's safety requirements and that OWRD may issue a final order approving the application without written authorization or easements permitting access to lands to be inundated. ORS 537.400 states that if a dam safety review is required for a reservoir application:

⁷ The issues discussed in Sections C and D below.

⁸ TDM suggests that if such an event occurred again, an easement by necessity would presumably arise.

the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued.

ORS 537.400(4).

The record shows that the preliminary plans and specifications for the reservoir were reviewed and approved by OWRD. (R 83820 OWRD Exhibit 1 pgs. 55-81.) The record also shows that OWRD has approved dam safety requirements for the reservoir. (R 83820 OWRD Exhibit 1 pg. 23.) Meisel presented no evidence of "legitimate" concerns regarding dam safety. TDM's Motion to Dismiss this claim is allowed.

C. ORS 537.211 and TDM's authority to operate "a perpetually overflowing spillway" over Meisel's property.

Meisel's Motion for Ruling on Legal Issues on this issue is based on its assertion that TDM's permit applications for storage and withdrawal of water from Muhs Quarry contravene Meisel's property rights in that the spillway was constructed without the required easement or other authorization. It characterizes winter and spring overflow as "a continuing trespass," thus violating Meisel's legal right to exclude others from its property. According to Meisel, ORS 537.211 prohibits issuance of TDM's permits because TDM does not have legal authority to operate a perpetually overflowing spillway over Meisel's property. Meisel asks that the permit applications be remanded to OWRD for further consideration.

TDM argues that the statute cited by Meisel only requires it to file a copy of the easement with the Department, which it has done. It also characterizes Meisel's argument as an attempt to show a breach of the easement resulting in a continuing trespass, and argued that OWRD does not have jurisdiction over the alleged trespass in this proceeding.

In its motion, Meisel relied upon ORS 537.211. That statute states in relevant part:

Except as provided in subsection (6)⁹ of this section, if an application under ORS 537.140 or 537.400 indicates that the applicant does not have written authorization or an easement permitting access to nonowned land *crossed by the proposed ditch, canal or other work*, the department may issue a final order approving the application if the approval includes a condition requiring the applicant to obtain such written authorization, or easement or ownership of such land and to provide the department with a copy of the written authorization, easement or evidence of ownership.

(ORS 537.211, emphasis added.)

⁹ Applicable to public corporations.

Issues of fact remain with regard to possible future trespass of water, including whether and the possible extent of inundation beyond premises subject to the easement — three feet deep and extending approximately 265 feet from the spillway, as stated in Mr. Town's affidavit; testimony contradicted by Mr. Miller in his 2nd affidavit and exhibits. Those facts are not, however, material to Meisel's motion, which is based on application of ORS 537.211.

The Proposed Final Order for application R 83820 includes a requirement that TDM present the Department with proof of authorization or an easement allowing access to the reservoir site before a permit may issue. Both parties provided copies of an easement allowing TDM "full use of the premises * * * including the right to install, maintain, [and] operate * * * water ditches necessary to the production, storage, treatment, transportation and use of water." Mr. Miller's third affidavit clarifies that the reservoir, spillway, and ditching all lie within the premises subject to the easement. This record clearly shows that TDM has an easement "permitting access to nonowned land crossed by the proposed ditch, canal or other work."

There are no genuine issues of material facts regarding the existence of an easement in favor of TDM regarding the location of the reservoir, or the existence of TDM's easement permitting access to water ditches and works necessary for TDM's production, storage, transportation and use of water. Whether "perpetual overflow" occurs beyond premises subject to the easement or not, ORS 537.211 does not prohibit issuance of the requested permits on the basis claimed in the motion.

D. ORS 537.211 and TDM's storage of water in quantities allegedly greater than contemplated by the parties in their water rights agreement.

Meisel also contends that TDM has increased water levels within the dam, thereby contravening the 1981 Grant and Agreement. In its reply Meisel argued that this contention raises an issue of whether TDM lacks the easement required under ORS 537.211 to operate the spillway in the manner that it is being operated.

Under this theory, issues of fact remain regarding current operation of the spillway, with one party contending that water flows into areas not included in the easement, and the other party contending the contrary. These issues are not material to the protest based on the lack of an easement. ORS 537.211 requires only that TDM have an agreement or easement for the "ditch canal or other works." As noted above, TDM has such an easement. Even if these issues were material to the protest, the WRC would not be able to enter an order in Meisel's favor on this issue because they are disputed. OAR 137-003-0580(6). These issues are not material because OWRD is not required to determine the extent of the easement granted except by looking at the four corners of the document. The easement granted TDM (Miller) "all of the water and water rights in, on, to or under, and that may be produced from" the subject property, "together with the full use of the premises, for the purpose of * * * producing water therefrom, including the right to install, maintain, operate and remove pumps, pumping equipment, power and other transmission lines, tanks and basins, building pipelines and water ditches necessary to the production, storage, treatment, transportation and use of water." (Meisel Exhibit B.) Whether or not TDM has, or may in the future, trespass outside of its current easement is not material to

whether TDM has such an easement. Other issues regarding whether water is or is not flowing beyond the scope of the easement are for the parties to resolve in more appropriate forums.

ORDER

Applicant TDM Co.'s Motion for Summary Judgment is **GRANTED**:

1. Assertions that the Agreement and the Grant have been terminated based on material breaches by the Applicant or that issuance of the permits would be in contravention of Meisel's legal rights or prejudicial in pending circuit court litigation are dismissed as moot.
2. Issues regarding alleged trespass are not material to the Department's determination that applicant has provided the required easement for the purposes of ORS 537.211.
3. Meisel has presented no evidence of "legitimate" concerns regarding dam safety or the safety of applicant's reservoir management capabilities.

Protestant C.C. Meisel Co. Inc.'s Motions for Legal Rulings are **DENIED**:

1. ORS 537.211 does not prohibit issuance of Applicant TDM's proposed permits.
2. Even assuming the truth and materiality of Meisel's factual assertions regarding flooding outside of the easement, those assertions do not demonstrate that the required easement has not been provided nor do these assertion warrant denial of the permit.

The Protests to R 83820 and S 83821 are **DISMISSED**.

1. Because an easement exists for Muhs Quarry and for operation of the emergency spillway, the proposed use will not impair or be detrimental to the public interest and application R 83820 is approved as provided in the draft permit with the addition of the following condition:

The permittee shall not use the emergency spillway on this reservoir unless water inflow into the reservoir exceeds the outflow capacity of the 10" water transmission pipe that serves as an outflow for this reservoir.

2. Upon payment of outstanding fees, permits may issue for applications R 83820 and S 83821.

Applications R 83820 and S 83821 are **APPROVED**.

DATED this ___ day of November, 2003.

Dan Thorndike, Chair
Oregon Water Resources Commission

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. The date of service is the date on which the order is delivered or mailed. Judicial review, pursuant to the provisions of ORS 536.075, is to the Court of Appeals.