

W 6 Q

AGENDA COVER MEMO

DATE: May 7, 2003
TO: Board of County Commissioners
DEPT.: Public Works/Parks Division
PRESENTED BY: Rich Fay, Parks Manager

AGENDA ITEM TITLE: Work Session/Terms of Agreement of Water Usage in a Utility Easement between Heceta Water District and Lane County.

I. MOTION

None required.

II. ISSUE OR PROBLEM

The County has previously signed an easement agreement with Heceta Water District that states they will provide Parks water service at "no fee"; however, the Heceta Water District is continuing to bill Lane County Parks for base meter charge fees. In a recent letter, Ted Condo, Chairman of the Heceta Water District Board asked the Board of County Commissioners to clarify their position with regard to the base meter charge fees. Please see Attachment A- Letter to the Lane County Commissioners from Ted Condo.

III. DISCUSSION

A. Background

The Board signed an easement agreement with the Heceta Water District on February 15, 2001, Order 00-8-30-13, granting an easement across County Property for the purposes of water transmission facilities. The terms of that agreement provided in Agreements: #6. Consideration:

"As consideration for this Utility Easement, Water District shall provide up to 1.5 million gallons per calendar year at no fee to the County's park facilities at Harbor Vista Park, Heceta Beach and the Munsel and Mercer Lake boat landings."

Please see Attachment B- Utility Easement.

B. Analysis

The Parks staff reviewed Heceta Water District billings in March of 2002 and realized the Water District was billing Lane County Parks for monthly water service. Parks staff contacted Mike Kendall of the Water District to clarify the billings. Mr. Kendall stated to Park's staff that only the water was at "no fee" and that Parks would still be required to pay a base meter charge fees. Parks staff asked County Counsel to aid in the clarification of this issue.

Mr. Paul Vaughn explained the Water District's position in a letter of July 15, 2002 on the matter to Stephen Vorhes, County Counsel. The Water District agreed to credit Lane County Parks for water usage; however, Mr. Vaughn stated that the base meter charge must be paid. Please see Attachment C- Letter to Stephen Vorhes from Paul Vaughn and Attachment D- Letter to Paul Vaughn from Stephen Vorhes. The fees for water used by Lane County Parks are much less than the base meter charge fees on a calendar year basis. Please see Attachment E – Heceta Water District fee schedule. In a recent letter from Ted Condo, Chairman of the Heceta Water District Board, Mr. Condo asked the Board of County Commissioners to clarify their position with regard to the base meter charge fees. Please see Attachment A- Letter to the Lane County Commissioners from Ted Condo.

C. Alternatives/Options

You have at least the following options with regard to this matter:

1. Direct staff to prepare a letter for the Board to sign to notify Heceta Water District of Lane County's intentions in the agreement that Parks facilities named in the agreement were to receive water at "no fee."
2. Direct staff to pay the meter base fees as billed.

D. Recommendation

Staff recommends option #1.

E. Timing

If directed, staff will proceed immediately to prepare a letter to the Heceta Water District for the Board to sign or staff will submit payments due.

IV. IMPLEMENTATION/FOLLOW-UP

Depends on direction.

V. ATTACHMENTS

- Attachment A – Letter to the Lane County Commissioners from Ted Condo
- Attachment B – Utility Easement
- Attachment C – Letter to Stephen Vorhes from Paul Vaughn
- Attachment D – Letter to Paul Vaughn from Stephen Vorhes
- Attachment E – Heceta Water District fee schedule

DEC 13 2002

Attachment A

HECETA WATER DISTRICT

87845 Highway 101
Florence, Oregon 97439
(541) 997-2446

December 11, 2002

Lane County Commissioners
125 East Eighth Street
Eugene, Oregon 97401

Re: County Parks Water Service

Dear Commissioners:

We have reviewed the agreement between Lane County and Heceta Water District regarding provision of water service to certain county parks. Water services fees are based on a monthly charge plus a usage charge. It appears that when drafting the agreement, the subject of the District's customary monthly charge was not addressed. Lane County has historically paid the monthly charge plus the volume usage charge. The monthly charge is a flat rate, and is used to pay for maintenance and repair costs for the lines and meters which service District customers, including the County.

It was our understanding that the provision for delivery of water up to one and one-half million gallons per year applied only to the volume usage, not to the monthly fee. The agreement states:

"As consideration for this Utility Easement, Water District shall provide up to 1.5 million gallons of water per calendar year at no fee to County's park facilities at Harbor Vista Park, Heceta Beach and the Munsel and Mercer lake boat landings."

It appears that the County Parks Department staff have interpreted the agreement to mean that the County is not required to pay the customary monthly charge, and have refused to pay the monthly bill.

This issue has reached an impasse at the staff level, and so we are requesting a response from the Commission. Our question: Is it the County's position that the County is not obliged to pay the monthly fee for water service?

Sincerely,



Ted Condo, Chairman

Heceta Water District Board

c: Paul Vaughan, District Counsel
Stephen L. Vorhes, Assistant County Counsel

After recording, return to:

Paul V. Vaughan
Hershner, Hunter
P. O. Box 1475
Eugene, OR 97440

Division of Chief Deputy Clerk
Lane County Deeds and Records

2001-008484



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To	Jake Risley	From	Bridget Otto		
Co./Dept.	Parks	Co.	Deeds & Records		
Phone #		Phone #			
Fax #		Fax #			

UTILITY EASEMENT

PARTIES:

LANE COUNTY, a political subdivision of the State of Oregon (County)

HECETA WATER DISTRICT, an Oregon domestic water supply district (Water District)

RECITALS:

A. County is the owner of the following described property located in Lane County, Oregon and conveyed to County by a Sheriff's Deed recorded September 12, 1955, in Reel 66-55D, at Recorder's Reception No. 65851, a Relinquishment of Title from the State of Oregon recorded October 16, 1970, in Reel 502-R, at Recorder's Reception No. 24588 and a Warranty Deed from the Cascade Title Company recorded August 16, 1971, in Reel 545-R, Recorder's Reception No. 59353, all in Lane County Official Records (the County Property):

Tax Lot 1 of Section 11; The Northeast Quarter of the Northeast Quarter of Section 11; and Lots 1 and 2 in Section 11; The Southeast Quarter of the Southeast Quarter of Section 2, all in Township 18, Range 12 West of the Willamette Meridian, Lane County, Oregon (Map #18-12-11-00-00100).

AND

A parcel of land lying in the South one-half of the Northwest one-quarter, and the Southwest one-quarter of the Northeast one-quarter of Section 11, Township 18 South, Range 12 West, Willamette Meridian, and being a portion of the strip of land of variable width on each side of the centerline of Taylor Road, said centerline being described as follows:

Beginning at Engineer's Centerline Station L² 0+01.38, said station being South 0°09'40" West 1502.00 feet from a point on the North line of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, which point is South 86°18'20" East 930.29 feet from the Northwest corner of said Section 11, said station also being Oregon Coast Highway Centerline Station 218+15.00 P.O.T.; thence South 82°50'20" East 304.61 feet; thence on a 1145.92 feet radius curve right (the long chord of which curve bears South 70°36'35" East 485.46 feet) a distance of 489.17 feet; thence South 58°22'50" East 25.85 feet to Station L²8+21.01 P.O.T. Bk = L 8+21.01 P.T. Ah; thence South 58°22'50" East 866.10 feet; thence on a 1432.39 feet radius curve left (the long chord of which curve bears South 70°36'35" East 606.82 feet) a distance of 611.46 feet to Engineers' Centerline Station L 22+98.57 P.T.; thence South 82° 50' 20" East a distance of 1034.43 feet, more or less, to the west line of the Southeast 1/4 of the Northeast 1/4 of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, excepting therefrom that portion which is accepted public road with an Easterly terminus at Engineer's Centerline Station L 20+50.00 P.O.C., in Lane County, Oregon (Map #18-12-11-00-00201).

B. County, as Grantor, and Water District, as Grantee, are parties to that certain Easement dated July 24, 1968 and recorded in the Lane County Official Records on July 26, 1968 in Reel 401-R, at Recorder's Reception No. 33112 (the 1968 Easement). Pursuant to the 1968 Easement, County granted to Water District easements for a pipeline and access road, a reservoir (the Reservoir), and a pump station as more particularly described therein.

C. Pursuant to Order No. 00-8-30-13 of the Lane County Board of Commissioners, County agreed to grant to Water District an additional easement across the County Property for a pipeline and access road between the Reservoir and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property, on the terms described below.

AGREEMENTS:

1. **GRANT.** County hereby grants and conveys to Water District, its successors and assigns, a perpetual non-exclusive easement and right-of-way 60 feet in width (upon, across, over and/or under the real property) extending between the "Easement No. 2 reservoir site" described in the 1968 Easement and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property (the Easement Strip), as more fully described in Paragraph 3. below. This easement is subject to the easements previously granted to Water District in the 1968 Easement and to the Central Lincoln People's Utility District described in the document recorded on July 26, 1968 in Reel 401-R, Reception No. 33113, Lane County Deed Records, Lane County, Oregon. The Easement Strip grant shall be subject to the following limitations and conditions in addition to the other terms provided below:

- a. After calendar year 2001, not more than one million (1,000,000) gallons of water may be withdrawn by Water District from Clear Lake in any given 24-hour period and during calendar year 2001 the maximum withdrawal shall be one million five hundred thousand (1,500,000) gallons per day; and
- b. Water District shall monitor withdrawal of water from Clear Lake and the daily rate of water withdrawal shall be recorded for a five-year period beginning on March 1, 2001; and
- c. Monthly reports showing all of the water withdrawn by Water District from Clear Lake shall be provided within 15 days of the end of each month by Water District to County Board of Commissioners during the entire five-year monitoring period. Thereafter, Water District shall provide to County an annual report showing water withdrawals from Clear Lake for each year following the initial five-year monitoring period for as long as this easement continues; and
- d. Withdrawal of water in excess of the per day limitation provided for in paragraph 1.a. above may only occur when emergency conditions require additional water for public health or safety as determined by County within five (5) calendar days following the emergency withdrawal. Water District shall notify County immediately of all emergency water withdrawals; and
- e. The terms and restrictions contained in this easement are intended to benefit and may be enforced by interested persons, which shall mean any person owning property or living within the Clear Lake Watershed as defined in Exhibit "B" attached and incorporated here by this reference, or any person served by the Water District. If any of the terms or conditions of the easement are violated by Water District, then County or other interested persons may enforce those requirements and take other appropriate actions that will protect the public interest only after providing to Water District notice and an opportunity to cure the alleged violation. The notice shall contain a statement or description of the alleged violation that can be readily understood and shall include the date, time, place and provision of the easement for each alleged violation. Any violation of the water withdrawal limitation provided for in paragraph 1.a. above shall be cured within three (3) calendar days of receipt of the notice. For violation of any other terms and conditions

of this easement, steps shall be taken by Water District to cure the alleged violation within 30 days of receipt of the notice. Any notice of alleged violation shall also be provided to County and failure of County to take steps indicating an intention to enforce the terms and conditions of this easement within 30 days of County receipt of the notice shall entitle any other interested person to proceed with appropriate enforcement action. An affirmative indication by the County Board of Commissioners declining to take enforcement steps in the face of an alleged violation at any time within the 30-day period for County action shall entitle any other interested person to proceed with appropriate enforcement action for that violation before expiration of the 30-day period. Enforcement shall not entitle any interested person other than County and Water District to an award of damages; provided, Water District may only seek damages from County and County may only seek damages from Water District. Enforcement by County, Water District or any interested person shall not entitle any award of costs or attorney fees; and

f. Notwithstanding any other provision of this easement, County reserves the exclusive right to terminate or modify the terms and conditions of this easement by agreement with Water District alone.

2. **PURPOSE.** Water District shall have the right to use the Easement Strip for access to the easement areas described in the 1968 Easement for the full and complete use, occupation and enjoyment of the easements and rights granted pursuant to the 1968 Easement, and in conjunction with such use, may construct, reconstruct, maintain and repair a road thereon. Water District shall also have the right to use the Easement Strip for (a) the construction, installation, operation, maintenance and repair of water transmission facilities (including pumping stations and distribution lines) and (b) the installation, operation, maintenance and repair of such electrical and communication lines (telephone, cable, fiber optic or similar technology) as the Water District deems necessary or appropriate for operating the water transmission facilities installed within the Easement Strip and for operating the facilities installed or constructed within the easement areas described in the 1968 Easement. Location and relocation of facilities installed within the Easement Strip shall be the sole responsibility of the Water District.

3. **LEGAL DESCRIPTION OF THE EASEMENT STRIP.** The approximate location of the centerline of the Easement Strip is described on the attached Exhibit A. The parties acknowledge that geologic conditions, wetlands, terrain and other natural and man-made features may affect the actual location of the Easement Strip between the "Easement No. 2 reservoir site" described in the 1968 Easement and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property. Water District shall determine a suitable location for the centerline of the Easement Strip for the purposes described in the above paragraph 2. and shall have a survey made by a licensed engineer and/or surveyor of that centerline. After that survey is filed with the county surveyor's office, Water District shall record an instrument referencing this Utility Easement and describing the surveyed centerline of the Easement Strip. Upon recording, such instrument shall serve to amend this Utility Easement to provide the correct legal description of the centerline of the Easement Strip, and such amendment of the description

shall be effective without the signature of County. Upon recording, a copy of the instrument showing the recording information shall be provided by Water District to County's administrator, with a copy to County's legal counsel.

4. **ABANDONMENT.** The Easement Strip shall be used by the Water District only for the described public purposes and if not used for those public purposes for a period of one year or more after the initial installation of the water transmission facilities, this Utility Easement shall terminate and use of the Easement Strip shall revert to County.

5. **COMPLIANCE WITH LAW.** Water District shall build, operate and maintain the transmission facilities authorized by this Utility Easement and installed within the Easement Strip in conformance with all applicable laws and regulations.

6. **CONSIDERATION.** As consideration for this Utility Easement, Water District shall provide up to 1.5 million gallons of water per calendar year at no fee to County's park facilities at Harbor Vista Park, Hegeta Beach and the Munsel and Mercer Lake boat landings.

7. **INDEMNITY.** Water District agrees to indemnify, defend and hold County, its Commissioners, officers, agents and employees acting in their capacity for the county harmless from any and all loss, liability or expense arising out of claims made by third parties against County as a result of County's execution of this Utility Easement. Water District also specifically agrees to defend and indemnify County, its Commissioners, officers, agents and employees acting in their capacity for the county from any claim, liability or damage resulting from the withdrawal, filtration, treatment and transmission of water from Clear Lake and use of the Easement Strip by Water District, including claims related to the water quality or level of the lake and effects on the adjacent property owners. Further, each of the parties hereto agree to indemnify and save the other harmless from any claim, liability or damage resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees in the performance of its responsibilities under this agreement. The obligations under this paragraph are subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act.

8. **RESERVATION OF RIGHTS.** County reserves the right and privilege to use the Easement Strip at any time and in any manner for any purpose not inconsistent with the full use and enjoyment of the rights and privileges herein granted to Water District. Location and relocation of facilities installed within the Easement Strip shall be the sole responsibility of the Water District.

9. **FUTURE ASSURANCES.** Each of the parties shall, upon request of the other party, execute and deliver such additional documents as may be necessary or convenient for the purpose of evidencing or perfecting any rights or interests arising under this Utility Easement.

10. **BINDING EFFECT.** All of the covenants, agreements, conditions and terms contained in this Utility Easement shall be binding upon, apply and inure to the benefit of the successors and assigns of the respective parties hereto.

11. PARTIAL INVALIDITY. If any provision of this Utility Easement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

12. CAPTIONS. The captions are inserted only for convenience and are not part of this Utility Easement nor a limitation on the scope of the particular paragraph to which each refers.

13. TERMINATION FOR REPEATED VIOLATIONS OF EASEMENT. If Water District commits "Repeated Violations" of this easement, County shall have the right, at its option, to terminate this easement. The right to terminate this easement as provided in this paragraph shall be a remedy available exclusively to County and shall not apply to any third-party enforcement of the easement as provided herein. As used in this paragraph, "Repeated Violations" of this easement shall be defined to have occurred when:

a. Except as permitted in subparagraph 1.d., the water withdrawal limitation described in Paragraph 1: is exceeded on more than three (3) days in any calendar month; provided, however, that notice and an opportunity to cure as provided in subparagraph 1.e. must first have been given to Water District during that calendar month and Water District shall have failed to cure the violation within the time provided in subparagraph 1.e.; or

b. During any calendar year, on more than two occasions, Water District is provided with notice of a violation of any provision of this easement in accordance with subparagraph 1.e., and Water District fails to cure the violation within the time provided in subparagraph 1.e.

DATED: January 24, 2001

LANE COUNTY

By BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

Anna Morrison, Commissioner
John Deen Sr., Commissioner
Cindy Weidreyer, Commissioner
Bill Winger, Commissioner
Pat Finn, Commissioner

APPROVED AS TO FORM
 Date 1/24/2001 Lane county
Stephen Z. Vokes
 OFFICE OF LEGAL COUNSEL

Water District accepts this Utility Easement and authorizes its recording.

HECETA WATER DISTRICT

By: Ted Condo
Ted Condo, Chair

STATE OF OREGON)
) ss.
COUNTY OF LANE)

This instrument was acknowledged before me on JAN 24, 2001, by Anna Morrison, Bobby Green, Cindy Weese, 1581 N. ..., and ..., County Commissioners of Lane County.



Melissa A. Zimmer
Notary Public for Oregon
My Commission Expires:

STATE OF OREGON)
) ss.
COUNTY OF LANE)

This instrument was acknowledged before me on 2-15, 2001, by Ted Condo, Chair of Heceta Water District.

Patricia A. Hughes
Notary Public for Oregon
My Commission Expires: 11-21-04



EXHIBIT A**DESCRIPTION OF CENTERLINE OF 60 FOOT EASEMENT**

Beginning at Engineer's Centerline Station L² 0+01.38, said station being South 0°09'40" West 1502.00 feet from a point on the North line of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, which point is South 86°18'20" East 930.29 feet from the Northwest corner of said Section 11, said station also being Oregon Coast Highway Centerline Station 218+15.00 P.O.T.; thence South 82°50'20" East 304.61 feet; thence on a 1145.92 feet radius curve right (the long chord of which curve bears South 70°36'35" East 485.46 feet) a distance of 489.17 feet; thence South 58°22'50" East 25.85 feet to Station L²8+21.01 P.O.T. Bk = L 8+21.01 P.T. Ah; thence South 58°22'50" East 866.10 feet; thence on a 1432.39 feet radius curve left (the chord of which curve bears South 65°38'18" East 361.92 feet) a distance of 362.89 feet to Engineers' Centerline Station L 20+50.00 P.O.C., and the TRUE POINT OF BEGINNING of this centerline description;

thence on a 1432.39 feet radius curve left (the chord of which curve bears South 77°52'03" East 248.26 feet) a distance of 248.57 feet;

thence South 82° 50' 20" East a distance of 1034.43 feet, more or less, to the west line of the Southeast 1/4 of the Northeast 1/4 of Section 11, Township 18 South, Range 12 West of the Willamette Meridian;

thence South 82° 50' 20" East a distance of 667 feet to Engineers' Centerline Station L 40+00.00 P.O.T.;

thence leaving said Engineers' Centerline South 02°30'00" West a distance of 328.00 feet;

thence South 18°08'15" East a distance of 770.00 feet, more or less, to the existing water tank, the END POINT of this description.

The westerly boundary of the 60 foot wide easement strip shall be extended or shortened so as to terminate on the westerly line of the County Property described in this Utility Easement.

The bearings used herein are based upon the Oregon Coordinate System, South Zone.

All in Lane County, Oregon.

LEGAL DESCRIPTION OF CLEAR LAKE WATERSHED

Beginning at point known as Tank One, located in Section One, Township 18 South, Range 12 West, of the Willamette Meridian, Lane County Oregon;
 Run thence S. 67° 50' 51.5" E. 97.8 ft. to the True Point of Beginning;
 Run thence S. 05° 40' 43.0" W. 1960.62 ft. to a point,
 Run thence S. 04° 58' 45.4" E. 1301.91 ft. to a point,
 Run thence S. 52° 44' 01.0" W. 231.21 ft. to a point,
 Run thence S. 15° 20' 45.4" E. 774.62 ft. to a point,
 Run thence S. 31° 44' 14.0" W. 520.89 ft. to a point,
 Run thence S. 00° 24' 43.9" W. 834.02 ft. to a point,
 Run thence S. 07° 49' 01.8" W. 1191.07 ft. to a point,
 Run thence S. 50° 26' 06.3" W. 73 1.61 ft. to a point,
 Run thence S. 02° 51' 10.5" W. 301.37 ft. to a point,
 Run thence S. 36° 37' 58.2" W. 918.41 ft. to a point,
 Run thence S. 47° 12' 26.3" W. 1321.86 ft. to a point,
 Run thence S. 72° 58' 54.2" W. 498.84 ft. to a point,
 Run thence S. 85° 44' 21.3" W. 955.64 ft. to a point,

Which is N. 11° 39' 16.9" W. 5434.90 ft. from a point known as Green Two (located in section 13 in said Township and Range);

Run thence N. 58° 09' 44.1" W. 1630.28 ft. to a point,
 Run thence N. 25° 23' 10.1" W. 1978.00 ft. to a point,
 Run thence N. 16° 34' 21.0" W. 1731.95 ft. to a point,
 Run thence N. 06° 13' 18.0" W. 747.40 ft. to a point,
 Run thence N. 03° 50' 32.8" E. 671.51 ft. to a point,
 Run thence N. 59° 33' 18.9" E. 1117.02 ft. to a point,
 Run thence N. 59° 50' 06.0" E. 1894.56 ft. to a point,
 Run thence N. 48° 28' 40.0" E. 897.56 ft. to a point,
 Run thence N. 31° 29' 50.7" E. 920.64 ft. to a point,
 Run thence N. 19° 46' 39.6" E. 1524.95 ft. to a point,
 Run thence S. 76° 05' 37.1" E. 748.95 ft. to a point,
 Run thence S. 57° 33' 30.2" E. 445.53 ft. to a point,
 Run thence S. 78° 27' 44.9" E. 394.98 ft. to a point,
 Run thence S. 61° 55' 39.0" E. 323.00 ft. to a point,
 Run thence N. 89° 04' 46.8" E. 249.03 ft. to a point,
 Run thence S. 67° 43' 17.4" E. 245.31 ft. to a point,
 Run thence S. 79° 55' 09.8" E. 45.71 ft. to a point,
 Run thence S. 83° 59' 27.6" E. 95.52 ft. to a point,
 Run thence N. 42° 02' 57.2" E. 68.68 ft. to a point,
 Run thence S. 80° 41' 24.2" E. 61.81 ft. to a point,
 Run thence S. 10° 47' 03.5" E. 128.27 ft. to the True Point of Beginning.

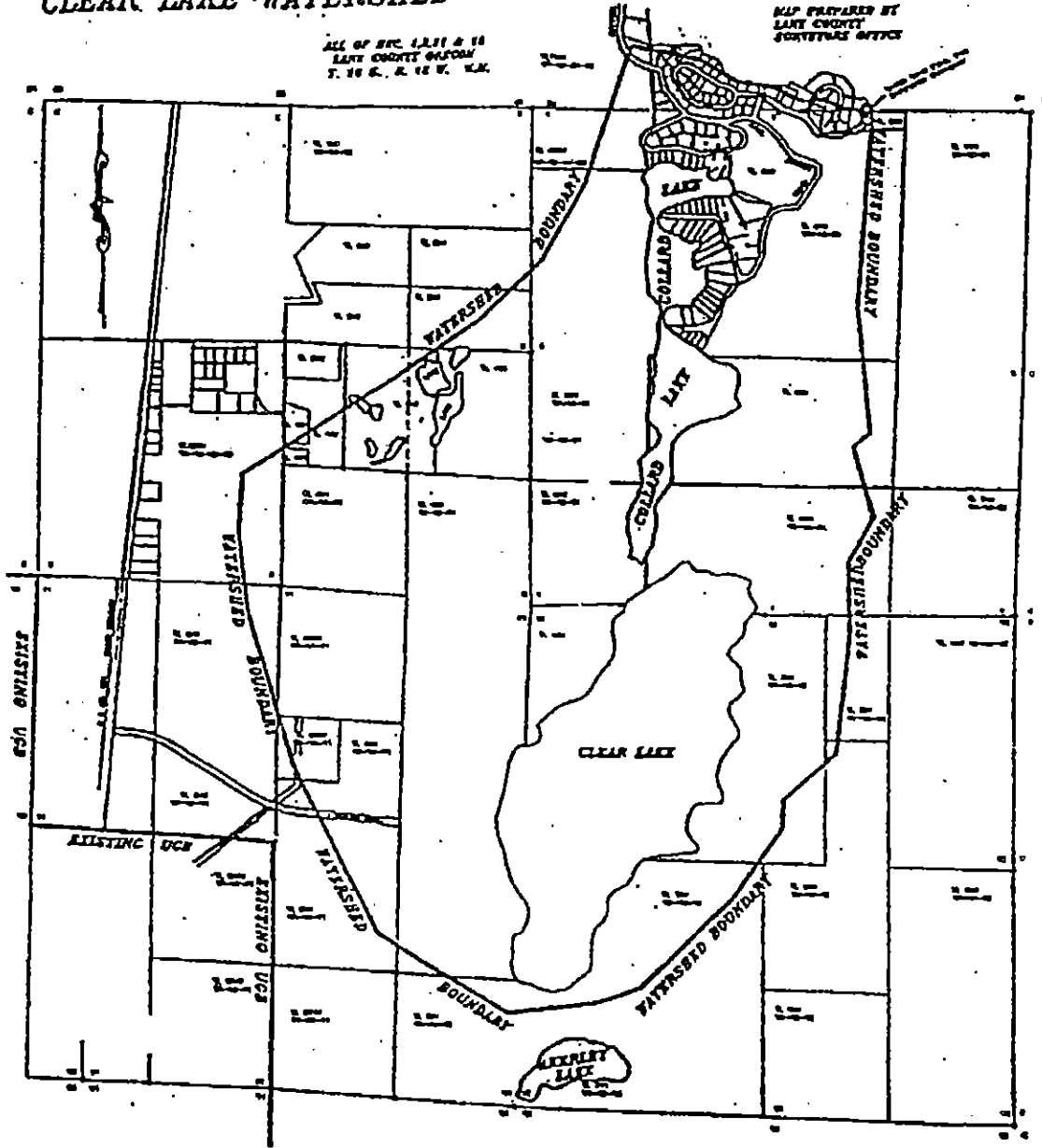
**APPENDIX "A" TO LANE CODE
CHAPTER 16 (LC 16.258(2))**

Exhibit "B" to
Utility Easement
Page 2 of 2

CLEAR LAKE WATERSHED

ALL OF SEC. 1, 11 & 18
LANE COUNTY OREGON
T. 16 S., R. 12 W., S. 1/4

MAP PREPARED BY
LANE COUNTY
SURVEYING OFFICE



APPENDIX "A" TO LANE CODE CHAPTER 16 (LC 16.258(2))

Page 2

6-98; 12.2.98

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WP Vco/00060/T

JUL 16 2002

HERSHNER, HUNTER, ANDREWS, NEILL & SMITH, LLP
LAW OFFICES

180 East 11th Avenue
P.O. Box 1475
Eugene, Oregon 97440
Telecopy (541) 344-2025
Telephone (541) 686-8511

Attachment C

PAUL V. VAUGHAN

July 15, 2002

Mr. Stephen L. Vorhes
Office of Legal Counsel
Lane County Courthouse
125 East 8th Avenue
Eugene, OR 97401

RE: Utility Easement
Water Charges to Lane County
Our File No. 20295-9801

Dear Steve:

The purpose of this letter is to explain and clarify the charges billed by Heceta Water District for water usage at Lane County's Harbor Vista Park and Lane County's park at North 1st Street. The water district did make an error in billing the county for water consumption after the parties entered into the Utility Easement.

The Utility Easement was approved by the Lane County Board of Commissioners on January 24, 2001. It was fully executed and recorded by February 15, 2001. For the purpose of reconciling the billings, the water district is willing to use January 1, 2001 as the start date for the agreement.

Enclosed for your information is a document that summarizes the water district's charges to the county and the county's payments, beginning January 24, 2001. For each of the parks, there is a "Will Credit" entry. For Harbor Vista, the amount shown is \$644. For North 1st Street, the amount is \$10. Those entries are somewhat confusing because, while they might be interpreted as a credit that is still owing as of May 22, 2002, the entries actually summarize the credit balance to the county as of December 31, 2001.

What the enclosed tables show are the following:

Harbor Vista: Harbor Vista has a two-inch meter. The base meter charge during 2001 was \$60 per month. The bimonthly charge is \$120. For the calendar year 2001, the county was billed

Mr. Stephen L. Vorhes
July 15, 2002
Page 2

\$720 for the base charge, which it paid. In addition, for the calendar year 2001, the county was billed \$644 for water consumption, which it paid. Pursuant to the Utility Easement, the county should not have been charged for the water. Accordingly, as of December 31, 2001, the county was owed a credit of \$644 for Harbor Vista.

During the calendar year 2002, the county has not been billed for any water used. The county was billed on January 22, March 25, and May 22, for the current base meter rate of \$62 per month. The total amount due as of May 22, 2002 was \$372. Of that amount, the county paid \$167.20, leaving a balance of \$204.80. Applying that amount to the 2001 year-end credit balance of \$644 leaves a credit balance of \$439.20 as of May 22, 2002 for Harbor View.

North 1st Street: The explanation for this park is similar to the explanation for Harbor Vista. During the calendar year 2001, the county was billed for and paid the base meter charge of \$7 per month (billed bimonthly), for a total payment of \$84. The county was also billed \$10 for water, which it paid. The county should not have been billed for that water, resulting in a credit balance of \$10 as of December 31, 2001.

For the calendar year 2002, the county has not been billed for any water, but was billed the base meter charge of \$9.50 per month, billed bimonthly. The total charge as of May 22, 2002 was \$57. Of that amount, the county paid \$20.20, leaving a balance due of \$36.80. Applying the credit balance to that amount results in a balance due for the North 1st Street park of \$26.80.

Applying that amount to the credit balance for Harbor Vista results in a net credit to the county for both parks of \$412.40, as of May 22, 2002.

On behalf of the water district, we would like to apologize for the confusion this has caused. The water district will continue to apply the county's credit balance to the base meter charges until the credit balance is exhausted. In accordance with the Utility Easement, there will be no charges for water unless the 1.5 million gallon annual threshold is exceeded.

Please let me know if you have any questions.

Yours truly,


PAUL V. VAUGHAN

PVV:ph
Enclosure

Lane County Parks
Harbor Vista

2" meter

Will Credit \$644.00

DATE	BASE RATE	COMSUMPTION
1-24-01	\$120.00	27,900
3-23-01	120.00	29,100
5-22-01	120.00	48,600
7-23-01	120.00	205,900
9-24-01	120.00	244,800
11-20-01	120.00	<u>85,500</u>
paid	\$720.00	641,800 paid \$644.00
1-22-02	\$124.00	25,000
3-25-02	\$124.00	61,000
5-22-02	<u>\$124.00</u>	<u>64,300</u>
paid	<u>\$372.00</u> <u>167.20</u>	151,200 no charge

Lane County Parks
North 1st Street

¾" meter

Will Credit \$10.00

1-24-01	\$14.00	270
3-23-01	14.00	490
5-20-01	14.00	430
7-23-01	14.00	1200
9-24-01	14.00	3070
11-20-01	<u>14.00</u>	<u>540</u>
paid	\$84.00	6000 paid \$10.00
1-22-02	\$19.00	200
3-25-02	19.00	1100
5-22-02	<u>19.00</u>	<u>1220</u>
paid	<u>\$57.00</u> 20.20	2520 no charge

Attention: August 1st

2" meter: Base rate \$64.00 per mo. Usage \$1.40 for first 8,000 gallons, \$2.80 over 8,000
¾" meter: Base rate \$12.00 per mo. Usage \$1.40 for first 8,000 gallons, \$2.80 over 8,000



LANE COUNTY OFFICE OF LEGAL COUNSEL

Attachment D

PUBLIC SERVICE BUILDING / 125 EAST 8TH AVENUE / EUGENE, OR 97401 / (541) 682-4442 / FAX (541) 682-3803

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October 16, 2002

~~Paul V. Vaughan
Hershner Hunter Andrews
Neill & Smith LLP
180 East 11th Avenue
P.O. Box 1475
Eugene, OR 97440~~

**Re: Utility Easement/Water Charges to County
Your File No. 20295-9801**

Dear Paul:

Thanks for your letter of July 15 and efforts to explain the charges Heceta Water District has billed for water at two existing Lane County parks in the Florence area. It did help to understand some of what the District is thinking in regards to the charges previously paid. I went over the information with Rich Fay and did some additional checking to determine a response to your letter and the District's position that Lane County should pay something for the provision of water service to those parks. Based on all that I have reviewed and all I have heard from county officials, please be advised Lane County has a hard time understanding and does not agree that any charges should have been paid, at least since the easement was signed and recorded and perhaps from before that time.

As we have discussed previously, the recollection of all the county officials involved in this issue uniformly has been that water was to be provided to the named parks at no cost or charge to Lane County. No one I have talked to recalls any mention by the District or anyone else of any distinction between the base meter charge and charges for water consumption. The Intergovernmental Agreement fully executed on May 3, 1999, between Lane County, Heceta Water District and the City of Florence included the provision of "water at no fee to County park facilities at Harbor Vista Park, Heceta Beach and the Munsel and Mercer Lake boat landings in perpetuity." One could argue there should be no charges to Lane County for water service provided since execution of that IGA.

Regardless, there was no limitation on charges or on the amount of water to be provided under that agreement or in subsequent draft easement documents. The limitation of 1.5 million gallons per calendar year was introduced in the draft of a Utility Easement you provided at a meeting held at the District offices on May 4, 2000. I do not recall any discussion at that meeting of excluding the base meter charge from the "no fee" provision of

Paul V. Vaughan
Re: Utility Easement/Water Charges to County
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the draft easement that ultimately the parties ended up signing. My impression of the 1.5 million gallon limitation was that it was designed to put an upper limit on how much water was to be provided and did not affect the concept that water service was not going to cost Lane County anything until that limit was met. If you have any information to the contrary, please let me know and provide me with copies of any documents developed during negotiations that would evidence the intent of the District to continue charging Lane County anything to provide water service to the listed park sites.

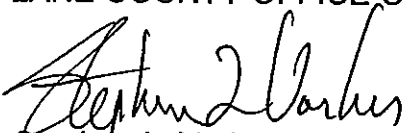
Finally, I would be interested in the breakdown and further explanation of charges from the District so I can understand the distinction between what you call the "base meter charge" and charges for water consumption. It would seem at some level, the label of the fee or charge makes little difference to the fact that Lane County is paying for water service. That seems to conflict with the easement and agreement provisions that contemplated the provision of water "at no fee" to the listed park facilities.

Please call if you have questions and let me know if we need to meet to discuss this further. I hope that we can resolve this amicably and that Lane County will not face the loss of water service while we are doing so.

Thank you for all of your consideration and efforts in this matter.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL



Stephen L. Vorhes
(541) 682-3739

cc: Rich Fay

**OF
HECETA WATER DISTRICT**
(Adopted 14 September 1999)

The following fees and rates are set by the Board of Commissioners, and may be revised from time to time.

Fees:

Application For Service	15.00
Meter (5/8 x 3/4)*	535.00
Valve and Gate Inspection	15.00
System Development Charge	<u>2,500.00</u>
	\$3,070.00
Service Turn-on Fee	\$15.00
Delinquent Fee	20.00
Late Charge Fee	2.50

*Fee for larger meter available upon request

Bulk Rates:

Per Gallon Rate:	\$5 per 1,000 gallons
Service Charge:	\$7.00 per day
After Hours Service Charge:	25.00

Billing:

Billing shall be on a monthly or bi-monthly basis, and payment is due before the 25th of each month for the previous period. Delinquent payments may be cause for termination of water service.

If a meter fails to register the amount of water used for any period, the charge for that period will be calculated from the average quantity of water used in the previous bill period. Any water user may request a meter check if the water usage records appear unreasonable. If the readings appear unreasonable to the Superintendent, the Superintendent will assist in determining the cause for the reading.

Water Service Rates:

Water service is provided on the basis of a monthly rate plus a per gallon usage rate

Monthly Rates:	Existing	2002-03	2003-04
Residential - 3/4"	\$9.50	\$12.00	\$15.00
Residential - 1"	16.00	20.00	25.00
Residential - 2"	62.00	64.00	80.00
Commercial - 3/4"	14.00	18.00	23.00
Commercial - 1"	32.00	40.00	50.00
Comm/Res - 2"	62.00	64.00	80.00
Outside District			
Residential - 3/4"	14.25	18.00	22.50
Residential - 1"	32.00	40.00	50.00
Commercial - 1"	48.00	60.00	75.00
Commercial - 4"	285.00	300.00	375.00
Res / Comm - 2"	93.00	96.00	120.00

Volumetric Rate Per 1,000 gallons

Up to 8,000 Gallons	\$1.20	\$1.40	\$1.50
above 8,000 Gallons	2.40	2.80	3.00