

TO: Division of Water Rights and State Water Resources Control Board

DATE: July 23, 2017

RE: Request for assistance regarding City of Weed/Roseburg Forest Products Water Rights Dispute at Beaughan Springs (Shasta River basin)

Dear DWR/SWRCB members,

On June 29, 2017 the City of Weed filed a complaint (COMP-#23422) to the Division of Water Rights and State Water Resources Control Board requesting assistance in addressing a dispute between the City of Weed and Roseburg Forest Products regarding the rights to 2.0 cfs of water from Beaughan Springs in the Shasta River basin. As an independent citizen group, Water for Citizens of Weed, California, we would like to file this complementary complaint in support of the City's complaint and to provide some additional background and information. The Parent Complaint Number is COMP-23422 submitted 6/29/17. The child Complaint Number is COMP-23423 for your reference.

We believe that a combination of historical errors and omissions by the State of California's Division of Water Rights has resulted in the lack of recognition of the City's legitimate rights to this water. The City joined a request by our citizen group to have the Scott Valley and Shasta Valley Watermaster District (SSWD) consider this issue. However, given that many of the apparent errors were made by DWR before the formation of the SSWD, the SSWD responded that it does not have the jurisdiction to rule on this dispute.

We would like to support the City of Weed's complaint by submitting to the DWR/SWRCB the following detailed chronology of the long history of events that have transpired in the chain of title to this water which show the City of Weed as the rightful owner of the 2.0 cfs of Beaughan Springs water currently in dispute:

1. In a 1909 agreement between Weed Lumber Co and the up and downstream users, recorded in April in Alameda County, 145.20 inches (2.9 cfs) of water was granted from "Beaughan Creek to the Town of Weed, and using the same at said Town of Weed, and also use the same in the business of Manufacturing lumber." (*Attachment A*).
2. The 1932 Superior Court Decree 7035 clearly states the water use from Beaughan Springs was to be used first for domestic and municipal purposes, secondly for lumber manufacturing and third to irrigate 178 acres. The Adjudication states: "2.90 cfs to Long Bell for domestic and municipal use in the town of Weed, for industrial purposes at the manufacturing plant." (*Attachment B*, 1932 Decree, page 117, section 23).
3. This water was supplied to the former company-owned homes and rental lands to private homes. This water supply was a requirement of International Paper Co Longbell Division Subdivision. A Certificate of Necessity Application No. 41651 before the California Public Utility Commission was filed November 12, 1959. The Certificate of Necessity was approved December 5, 1961, Decision No 62885. In this Certificate of Necessity, the Weed Water Company guaranteed provision of water, sewer and fire protection for the subdivision, which incorporated as the City of Weed in 1961. (*Attachment C*).

4. The Watermaster failed to update DWR records to document land sale (and the associated water right split) of four parcels for eventual subdivision (to 600 homes) by International Paper (Roseburg's predecessor in interest) in 1959. At that time, legal ownership of 2.0 cfs was also transferred by IP to Weed Water Company, a subsidiary of International Paper Co. Transfer of the water supply along with sewer and fire services was a legal requirement for the homes to be sold to the IP employees. (*Attachment D* 1959 Weed Press article).

5. In 1961 the Watermaster again failed to change water right records to reflect this new political subdivision (the Weed Water Company) and change in land ownership to 600 individual parcels. IP had the responsibility of providing the above infrastructure in order for them to legally spin off ownership of the company town. The former company town then became part of the City of Weed when it incorporated in 1961.

6. 1965 via a bond, the City of Weed purchased the supply, storage and water delivery systems from the Weed Water Company(IP). Weed Water and Sewer Company (City of Weed) registered with the California Public Utility Commission (CPUC) as a new entity responsible for providing water services and CPUC, recognizing that Weed Water & Sewer Company is a part of a municipality responsible for and capable of meeting water supply needs, relinquished its oversight responsibility. (*Attachment D*).

7. In 1966 the City of Weed was forced to sign a 50-year lease due to failure of DWR to properly capture the changes documented in steps 4, 5 & 6, and the understandable inability of the Weed City Council to resist IP coercion. (Four of five city council members were IP employees and thus had conflicts of interest in signing that water, sewer and fire agreement). The City signed a lease with International Paper Co. for 2.0 cfs for 50 years at \$1.00 per year and in exchange Weed provided free sewerage and domestic water services to IP. IP also agreed to provide fire protection at no cost to the City.

8. In January 1982, International Paper Co. closed its doors.

9. While IP was the mill owner, in compliance with the above 50-year agreement with the City, the Fire Department consisted of four full-time IP employees aided by volunteer firemen. That changed in the early 1990s when RFP unilaterally broke the contract and ceased to provide employees for firefighting purposes. Thereafter there was only one city-paid full-time fire prevention employee, see records.

10. In a letter dated Aug 5, 1982, the Watermaster/DWR documented the change in ownership of 2.0 cfs of Beaughan Springs water from IP to City of Weed. This letter also states a reduction to a slaughterhouse and showed this allocation to be moved to the Weed Golf Course (as a new beneficial use). **How can a portion of the DWR action stand (water transferred to the golf course), and the remainder (water allocated to the City of Weed) be ignored?** (*Attachment E*).

IP also gifted park land ~with no exclusion of water rights ~to both the City of Weed and to the Parks & Recreation district.

11. In late December 1982, RFP purchased the IP plant. Demonstrating that RFP was no longer abiding by or acknowledging the 50-year lease, it ended the agreement to provide the City with fire protection as it had existed with IP. The City of Weed paid all Watermaster fees to DWR from 1983 through 1996 with rights listed as City of Weed. When the records were changed showing RFP as owner, with city leasing water in 1997, the city continued to pay all Watermaster fees until 2013.

12. 1997 saw a furtherance of 3rd tier (as per the 1932 Decree, #2 above) manufacturing use in the form of bottling; RFP signed a contract to sell water to Crystal Geysers, moving water outside the boundaries of the original place of use, off of RFP properties, outside of the decreed use area, and transferred water to a non-decreed manufacturing use. This happened over ten years after the DWR awarded the 2.0 cfs to the City of Weed as per the above 1982 letter.

13. In 1998-2002 a \$1.8 million upgrade to infrastructure/pipes was paid for by the City. With the original bond and improvements, in today's dollars the city has invested \$5.2 million in the water delivery system. (*Attachment F*)(*Attachment D*).

14. In 2010, meetings had begun between the City and RFP to renegotiate the water lease in the mistaken belief (since the 1982 letter could not be located) at the time that RFP still owned the water. The above details (items 3-7 and 10) were unknown to the parties at that time.

15. In 2010, questions began to surface at DWR regarding Beaugan Springs water rights. Shawn Pike e-mailed Bill Mendenhall@water.ca.gov stating "this could be the next water rights lawsuit/hassle/blow-up/court appearance/ subpoena/etc. on Shasta River, and its' just one more log to overwhelm us." DWR took no effective action to address the issues. In the same year, Shawn Pike e-mailed Joe Scott @water.ca.gov searching for a 1982 letter from Watermaster /Robert Steel to International Paper which was used as the basis for transference of ownership of 0.65 cfs from IP to the Weed Golf Course and subtraction of 0.50 cfs for abandoned slaughter house water, all noted in the Boles decree (Present ownership file), ***because it had direct bearing on how [the] City's water rights were determined by a Watermaster in the past.*** Shawn Pike could not find the letter. He asked, if maybe Roseburg had it? Since the letter could not be found, Pike stated, "we will just have to go with the (1932) decree." (*Attachment H*).

16. In 2011, the Watermaster sent an email to the City of Weed stating that in 1961 the Decrees were not changed when subdivision occurred and property changed ownership, and water rights will have to be determined by court. Importantly, during the years 2007-2012 transfer of authority from DWR to SSWD was in planning stages. Why was the City of Weed not provided a seat on the newly established board? (*Attachments I & J*).

17. Fresh Beaugan Creek water is reportedly being used for log watering and this may be a violation of the Clean Water Act. We respectfully request that the responsible agencies investigate this by an onsite visit to RFP to determine what water is being used, Boles Springs and/or Beaugan Creek water sources.

18. In September 15, 2014, the Boles Fire ravaged the community of Weed, destroying 159 buildings including 154 homes, a community center, and two churches. Fire Chief Darin Quigley relied upon Boles Creek and Beaugan Springs gravity fed water to fight the fire as the power outages made water usually available from South part of town to storage tanks unavailable. The 107-year use of the Beaugan Springs water was a matter of life and death for the community of Weed, demonstrating its high-priority beneficial use. Without the City's water-purveying infrastructure in place, Roseburg Forest Products and the City would also have sustained far more serious damage. (*Attachment K*).

19. February 2016, the City of Weed declared a potential State of Emergency regarding possible loss of the Beaugan Springs water as the 1966 contract neared termination. On the heels of that declaration, RFP offered the City a 10-year lease, price now at \$97,500 per year with expenses and responsibility for storm runoff water and industrial waste water to be paid by the City. The City must forgo all access to Beaugan Springs water by the end of the lease term, in violation of

the decree's statement “for domestic and municipal use.” In addition, the City must show evidence of alternative water sources within two years of signing the lease, or RFP will not continue supplying water. Under duress and in fear of having no water after July 1, 2016, the City accepted the lease. (*Attachment L*)(*Attachment G*).

20. In late 2016, the original August 5, 1982 letter (item 10 above) from Robert Steel was found in a box of IP papers in the garage of the 1982 IP Resource Director (who in 1983 became the Head Engineer for RFP), clipped to a copy of the 1966 city/IP water lease agreement. (*Attachment E*).

21. On March 29, 2017, the SSWD Board received a letter requesting correction from Water for Citizens of Weed, CA group and was informed by Mayor Ken Palfini that the City was supportive of the request. In addition, a copy of the 1982 letter from Robert Steel was presented to the SSWD Board in the March 2017 meeting. (*Attachment M*).

In Conclusion:

In following this complicated case, it is important to recognize Weed’s roots as a company town and the complex legacy this has left. Weed continues to be a disadvantaged community, struggling to rebuild following a devastating fire and now finding itself facing an unfair and expensive battle to regain what is rightfully our citizens’ water. Further complicating the resolution to this issue is the unfortunate fact that the Scott Valley and Shasta Valley Watermaster District, the appropriate local entity to resolve these questions, has neither the staff nor the financial resources to properly address this question.

Recognizing further that actions of the California Department of Water Resources Watermaster Service are inextricably linked to the history of this dispute, we request that the Department of Water Rights and State Water Resources Control Board formally investigate this complaint and assist our City in our efforts to correct the past errors that have endangered our water supply. We wish to avoid a long and expensive legal battle and believe this can be done if the appropriate agencies properly carry out their duties.

Thank you for your consideration of this matter.

Yours sincerely,

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List of Attached Documents:

- A. 1909 Agreement
- B. 1932 Decree
- C. 1959-62 CPUC Certificate of Necessity

- D. 1962 Grant Deed; 1966 Weed Water & Sewer Company Bond/ Indenture Document; 1967 Facility Lease Agreement; IP Subdivision article Weed Press 1959
- E. 1982 Watermaster/IP letter and Affidavit by Neill's son explaining paper clipped documents.
- F. List/Invoice/Budget of infrastructure paid by the city for delivery system/ water infrastructure in 1990s.
- G. Transcripts of City of Weed Water Lease Agreement hearings held from Feb 24, 2017 through May 3, 2017.
- H. All emails referenced above including email stating it means millions in water for sale to CGR (Pike)
- I. AB 1580.
- J. Dec 2011 Masunaga Court Order re: SSWD 7035.
- K. Transcribed testimony of Darin Quigley in 2/24/16 WLA hearing on importance of water for fire-fighting.
- L. Emergency Declaration.
- M. Articles: New York Times, Siskiyou Daily News covering town hall meeting and the SSWD Board hearing in March; Sierra Club article.