

**WATER RESOURCES DEPARTMENT  
REIMBURSEMENT AUTHORITY ESTIMATE APPLICATION**

*House Bill 2551 (2003 Oregon Laws) authorizes the Oregon Water Resources Department to expedite or enhance regulatory processes voluntarily requested under the agreement. The voluntary agreement can be entered into with any person requesting services and agreeing to pay the Department's costs of providing the service.*

*The Department has established a pool of qualified contractors to perform expedited services for water right transfers, water right permits extensions, and water right certificates.*

The purpose of this application is to obtain an estimate from the next qualified contractor in the appropriate pool. There is a non-refundable application fee of \$125.00 per request. The contractor will provide an estimate of the cost and of the time required to process and develop a recommendation on the request of a: (check one):

<u>REQUEST</u>	<u>TYPE</u>	<u>FILE NUMBER</u>
<input type="checkbox"/>	Transfer Application	_____
<input type="checkbox"/>	Certificate Request	_____
<input checked="" type="checkbox"/>	Extension of Time Request	G-14857

<u>Applicant Information</u>		<u>Applicant's Representative/Contact</u>
Name: (Please Print)	Cline Butte Utility Co.	W & H Pacific
Address:	1230 Golden Pheasant	920 SW Emkay, Suite C-100
	Redmond, OR 97756	Bend, OR 97702
Phone:	541-504-2305	541-388-4255
Fax		541-388-4229
E-Mail Address:	alan@eagle-crest.com	twalker@whpacific.com

I understand the following:

- There is a non-refundable application fee of \$125.00 per request.
- That upon receipt of my non-refundable application fee in the amount of \$ 125.00, OWRD will assign my request to the next contractor in the pool of contractors performing expedited services.
- That this fee covers the copying, the mailing cost, as well as the cost for the contractor to evaluate and provide the estimate for processing of the request.
- That OWRD will provide all pertinent information to the assigned contractor within three (3) business days.
- That OWRD will, within fourteen (14) days, notify me in writing of the estimates of costs and time frame for the expedited service.
- That upon receiving the estimates I may agree or decline to enter into a formal contract to pay the estimated cost in advance to initiate the expedited service.
- An incomplete or inaccurate application may delay the process and increase the cost to process my request.
- Expedited processing does not guarantee a favorable review of my request.
- Send completed Application and payment to: **OWRD – Reimbursement Authority Program**  
725 Summer St. NE, Suite A  
Salem, OR 97301-1266.

I certify that I am the (check one)  Applicant  Applicant's Representative  Other (Please specify) \_\_\_\_\_

Signature: Todd Samples Name: Todd Samples

<u>OWRD USE ONLY</u>	
Contractor Assigned: <u>PWM</u>	Total Amount Paid: \$ <u>125</u>
OWRD Approval:	

*57 copies  
4/11/2007  
C.V.*

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Revised: 6/21/2004

APR 03 2007

WATER RESOURCES DEPT  
SALEM, OREGON

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE CREST INC.  
WILLIAM D. LYCHE  
PO BOX 1215  
REDMOND, OREGON 97756

The limits and conditions of the use are listed below.

SPECIFIC LIMITS AND CONDITIONS

APPLICATION FILE NUMBER: G-14857

SOURCE OF WATER: A WELL IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 3.34 CUBIC FEET PER SECOND, further limited to a maximum diversion of 252 acre-feet each year and shall result in consumption of no more than 115 acre-feet each year, once sewage contribution is subtracted from the amount diverted, unless the mitigation plan is modified and approved by the Department as described below.

If the reporting, as required below, demonstrates the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet, or the Department may approve an additional and equivalent water right to be leased to instream use, to maintain an acre-foot balance between the amount of water consumed to the amount of water provided to instream use. An equivalent water right must, at a minimum, be from a water right with a diversion point at or near the diversion authorized by the lease of certificate 74145.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 2, 1998

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 16, T15S, R12E, W.M.; 150 FEET SOUTH AND 150 FEET WEST FORM THE NE CORNER, SECTION 16, T15S, R12E, W.M.

Application G-14857 Water Resources Department

PERMIT G-13856

ASSIGNED. See Misc. Rec., Vol. 8 Page 516-917

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THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE QUARTER ALL  
NW QUARTER ALL  
SW QUARTER ALL  
SECTION 16  
TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director, at both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

*Also measures sewage discharge into ground*

This permit will expire in 2 years from permit issuance unless the 2 year lease of the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, filed as transfer application T 8519, or an equivalent water right as determined by the Department, to instream use.

*Permit Contingent on Permanent Transfer of Lease T 8519*

Within one year of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this timeline to complete the required Water Management Conservation Plan.

*Jan 2001 submitted*

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate

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the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

*Access port*

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

6

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

7 8  
Actual construction of the well shall begin by May , 2001. Complete application of the water to the use shall be made on or before October 1, 2005. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued October 17, 2000

*Paul R. Cleary*  
Paul R. Cleary, Director  
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

Application G-14857  
Basin 5  
AMH

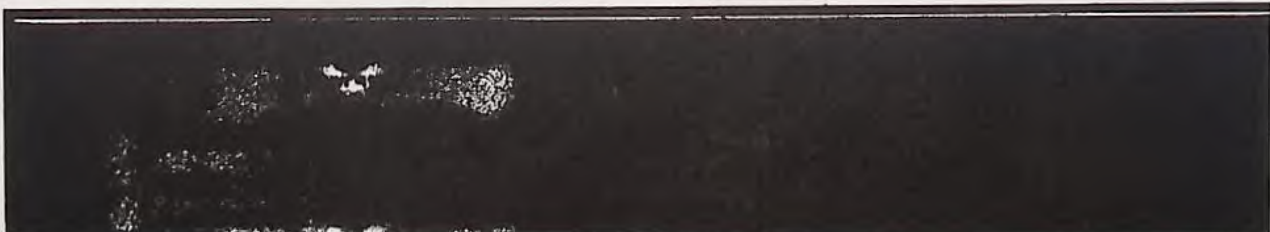
Water Resources Department  
Volume 1 DESCHUTES R & MISC  
MGMT.CODES 7BG 7BR 7CG 7CR

PERMIT G-13856  
District 11

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**Oregon Water Resources Department  
Water Rights Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time )  
for Permit G-13856, Water Right Application G-14857, ) PROPOSED FINAL ORDER  
in the name of Cline Butte Utility Company )

**Permit Information**

**Application File G-14857 / Permit G-13856**

Basin 5 – Deschutes Basin / Watermaster District 11

Date of Priority: November 2, 1998

**Authorized Use of Water**

Source of Water: A Well in the Deschutes River Basin

Purpose or Use: Quasi-municipal

Maximum Rate: 3.34 Cubic Feet per Second

**This Extension of Time request is being processed in accordance  
with Oregon Administrative Rule Chapter 690, Division 315.**

***Please read this Proposed Final Order in its entirety as it contains  
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit G-13856, water right Application G-14857. A copy of  
Permit G-13856 is enclosed as Attachment 1.

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**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- grant an extension of time to apply water to full beneficial use from October 1, 2005 to October 1, 2008; and
- make the extension of time subject to certain conditions as set forth below.

**ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources  
Utility Company – Cline Butte Utility Company  
ODFW – Oregon Department of Fish and Wildlife  
PFO – Proposed Final Order

Units of Measure

cfs – cubic feet per second  
gpm – gallons per minute  
mgd – million gallons per day

**AUTHORITY**

**Generally, see ORS 537.690 and OAR Chapter 690 Division 315.**

**ORS 537.630(2)** provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, shall order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

**ORS 539.010(5)** provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

(include OAR 690-315-0050(5) only if it applies in the case of added conditions; for example, Municipal Use Extension Condition)

**OAR 690-315-0050(5)** authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

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OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

(include OAR 690-315-0090(4-5) only if it applies a quasi-municipal that is exempt from a WMCP using these criteria

OAR 690-315-0090(4-5) provides in pertinent part that quasi-municipal water use permit holders that serve a population of less than 1000 and/or can reasonably demonstrate that fewer than five years is necessary to complete construction and apply the water to beneficial use are not subject to OAR 690-315-0090(3) unless on review of the certain criteria the Department determines that compliance is necessary.

## FINDINGS OF FACT

### Background

1. Permit G-13856 was granted by the Department on October 17, 2000. The permit authorizes the use of up to 3.34 cfs of water from one well (Well #9) within the Deschutes Basin, for quasi-municipal use. It specified that complete application of water was to be made on or before October 1, 2005.
2. On February 15, 2001 the Department approved an assignment of Permit G-11762 from Eagle Crest, Inc. to Cline Butte Utility Company. Cline Butte Development Company is a private water company at the Eagle Ridge Destination Resort and is a subsidiary of Eagle Crest, Inc.
3. No prior extensions have been granted for the permit. This is the first extension of time request for Permit G-13856.
4. Due to an ongoing permit extension rulemaking, the Department placed all pending applications for extension of time for municipal and quasi-municipal permits on hold and did not require municipal and quasi-municipal water use permit holders to submit applications for extension of time until the new rules were adopted.
5. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002, were amended, filed with the Secretary of State, and became effective on November 22, 2005.

6. The permit holder, the Cline Butte Utility Company, (Utility Company) submitted an "Application for Extension of Time" to the Department on April 3, 2007 requesting the time in which to apply water to full beneficial use under the terms of Permit G-13856 be extended from October 1, 2005 to October 1, 2008.
7. Notification of the Utility Company's application for extension of time for Permit G-13856 was published in the Department's Public Notice dated April 10, 2007. No public comments were received regarding the extension application.

**Review Criteria for Municipal and Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]**

*The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080. This determination shall consider the applicable requirements of ORS 537.230<sup>1</sup>, 537.248<sup>2</sup>, 537.630<sup>3</sup> and/or 539.010(5)<sup>4</sup>*

**Complete Extension of Time Application [OAR 690-315-0080(1)(a)]**

8. On April 3, 2007, the Department received a completed application for extension of time and the fee required by ORS 536.050 from the permit holder.

**Start of Construction [OAR 690-315-0080(1)(b)]**

9. Actual construction of the well began May 21, 2001, which was within the time specified in the permit.

**Duration of Extension [OAR 690-315-0080(1)(c)(d)]**

*Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.*

10. The remaining work to be accomplished under Permit G-13856 consists of: (1) applying for a permit amendment to clarify the area of use, and accommodate multiple points of appropriation for existing wells under multiple permits, thereby enhancing the overall management of water supplies and water rights at the Eagle Crest Resort; And (2) applying water to full beneficial use.
11. As of April 3, 2007 the permit holder has appropriated 3.34 cfs of the 3.34 cfs of water allowed under Permit G-13856 for quasi-municipal purposes.
12. In addition to the 3.34 cfs of water allowed under Permit G-13856 (Wells 9), the Utility Company holds the following rights:

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.248 applies to reservoir permits only.

<sup>3</sup> ORS 537.630 applies to ground water permits only.

<sup>4</sup> ORS 537.010(5) applies to surface water and ground water permits.

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- G-11762 for 3.0 cfs from 3 wells (Wells 6, 7 and 8) within the Deschutes River Basin.

The Utility Company's permits total 6.34 cfs of ground water.

13. The Utility Company currently utilizes a peak day demand total of 6.34 cfs of water for quasi-municipal purposes, being up to 2.7 cfs from Well 6 (Permit G-11762), up to 0.60 cfs from Well 7 (Permit G-11762), up to 3.0 cfs from well 8 (Permit G-11762) and 3.34 cfs from well 9 (Permit G-13856) to meet its present demand for water.
14. The current population served by the Utility Company is approximately 3400 persons during peak summertime occupancy and is expected to increase, at the completion of Phase III, to a population of 6175. (See the 2004 "The Highlands of Eagle Crest" Water Management and Conservation Plan, Deschutes County, Oregon, Table 3 page 7).
15. The Cline Butte Utility Company has requested withdrawal of its September, 2006 Claim of Beneficial Use (COBU) for permit G-13856 and its June 2004, COBU for permit G-11672 in order to submit permit amendments to allow interconnection of existing wells which will enhance the reliability and efficiency of the domestic water supply system and allow for better management of water rights.
16. Full development of Permit G-13856 is needed to address the present and future water demand of the Utility company.
17. Cline Butte Utility Company's request for an extension of time until October 1, 2008 to apply water to full beneficial use under the terms of Permit G-13856 is both reasonable and necessary, considering findings in this PFO, including:
  - the amount of development left to occur;
  - the projected demands for water;
  - the need for better reliability and efficiency of the water system
  - the demands of the other water rights from the source wells.

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**Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)and (4)]**

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).*

**Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a),(c) and (4)]**

*Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to,*

the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

18. Prior to the issuance of Permit G-13856 on October 17, 2000, the Utility Company installed a portion of 60,000 feet of 6 to 12 inch piping and provided engineering services.
19. During the original development time frame under Permit G-13856, being from May, 2001 to October 1, 2005, the following work was completed by the City:
  - construction of well number 9;
  - construction of well house;
  - installation of a 450 HP turbine pump, controls, piping and valves;
  - installation of remainder of 60,000 feet of 6-12 inch piping;
  - engineering services;
  - a meter was installed;
  - submitted updated Water Management and Conservation Plan
20. Since October 1, 2005, the Utility Company has accomplished the following:
  - Submitted a Claim of Beneficial Use for Permit G-13856 which has subsequently been withdrawn in order to submit a permit amendment;
21. As of April 3, 2007 the permit holder has invested \$2,390,000.00, which is 99.8 percent of the total projected cost for complete development of this project. An additional \$5,000 investment is anticipated for the completion of this project.
22. Since the issuance of Permit G-13856 on October 17, 2000, approximately 3.34 cfs of the 3.34 cfs allowed has been appropriated from Well #9 for beneficial quasi-municipal purposes under the terms of this permit.
23. (Wait for ground water review) The Department has considered the Utility Company's compliance with conditions, and did find that a condition listed in Permit G-13856 requires metering both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured. A meter is installed on the well, however, no evidence was submitted with the application that indicates sewage discharged to the ground is metered.

**Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose**  
**[OAR 690-315-0080(3)(b)]**

24. As of April 3, 2007 the Utility Company has invested an approximate total of \$2,390,000.00 into the project consisting of the following:

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- construction of a new well (#9);
- installation of water distribution lines;
- installation of a well pump;
- installation a meter;
- installation of valves and controls;
- construction of a well house;
- engineering;

An additional \$5,000 investment is anticipated for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]**

*For municipal or quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).*

25. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0080(5)(a-c)].
- a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-13856; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. Permit G-13856 is not located within a limited or critical ground water area. The point of appropriation for Permit G-13586 is located within the Deschutes River Basin. The Deschutes River is located within or above a state or federal scenic waterway, and is located within an area ranked high for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The Deschutes River is listed by the Department of Environmental Quality as a water quality limited stream. but was added to the list in 1998, which is prior to the issuance of Permit G-13856. Not sure what to put here as I don't know which section of the river to use.

26. Economic investment in the project to date [OAR 690-315-0080(5)(d)].
- a. As of **April 3, 2007** the permit holder has invested 99.8 percent of the total projected cost for complete development of this project. An approximate total of **\$2,390,000.00** has been invested into the project, consisting of the following:
- construction of a new well (#9);
  - installation of water distribution lines;
  - installation of a well pump;
  - installation a meter;
  - installation of valves and controls;
  - construction of a well house;
  - engineering;

An additional **\$5,000** investment is anticipated for the completion of this project.

27. Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

a. **Eagle Crest Resort.**

28. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

- a. As described in Findings **10 through 17** the Utility Company has indicated, and the Department finds that the Utility Company must rely on full development of all its current ground water rights within the Deschutes River Basin.
- b. The Utility Company projects a population increase, from 3400 to 6175 according to their December 2004 Water Management and Conservation Plan (Table 3, page 7), the
- c. Given the current water supply situation of the Utility Company, as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit G-**13856**.

**Fair Return Upon Investment [OAR 690-315-0080(3)(e)]**

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29. Use and income from the permitted water development project result in reasonable returns upon the investment made in the project to date.

**Other Governmental Requirements [OAR 690-315-0080(3)(f)]**

30. Delay in the development of this project was not caused by any other governmental requirements, However, the Utility Company, in discussions with the Oregon Water Resources Department, determined it is necessary to apply for a permit amendment to enhance efficiency reliability and provide for better management of water.

**Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]**

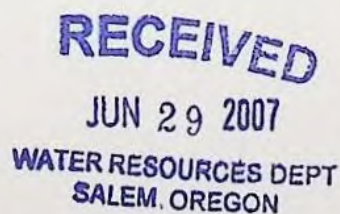
31. Delay of development under Permit G-13856 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years and for time necessary to submit a permit amendment.

**CONCLUSIONS OF LAW**

1. The Cline Butte Utility Company is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).
2. The Utility Company has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant demonstrated that actual construction on the project begin within the time specified in the permit, as required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2008<sup>5</sup> pursuant to OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the

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<sup>5</sup> Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.



requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the Utility Company has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

8. In accordance with OAR 690-315-0090(4-5), and as described in Finding 11 above, the Department has determined that the permit holder of G-13856 is not subject to OAR 690-315-0090(3). The Utility Company is not required to submit a WMCP consistent with OAR Chapter 690, Division 86.

### Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

extend the time to apply the water to beneficial use under Permit G-13856 from October 1, 2005 to October 1, 2008.

Subject to the following conditions:

#### CONDITIONS

wait for ground water review

1. The applicant shall submit evidence that a meter is installed to measure sewage discharged to the ground or a specify date certain that the meter will be installed.

DATED: \*\*\*\*\* 2007

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

---

Dwight French  
Administrator  
Water Rights and Adjudications Division

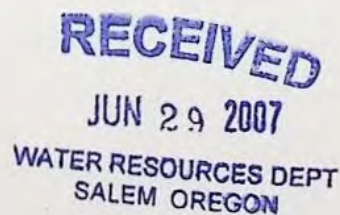
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1 JUN 29 2007

WATER RESOURCES DEPT  
SALEM, OREGON

### Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may protest and request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **September 15, 2006** being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.
2. A written request for contested case hearing shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
  - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
  - d. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
  - e. Any citation of legal authority supporting the petitioner, if known;
  - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
  - g. The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
  - a. Issue a final order on the extension request; or
  - b. Schedule a contested case hearing if a request for contested case hearing has been submitted, and:
    - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
    - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.



If you have any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0808.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Mike Reynolds at 503-986-0820.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to:      Water Rights and Adjudications Division  
725 Summer St NE, Suite A  
Fax: 503-986-0901                      Salem, OR 97301-1266

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## Mailing List for Extension PFO Copies

PFO Date: \*\*\*\*\*, 2007

**Permit G-13856**

**Application G-14857**

**Original mailed to Applicant:**

Cline Butte Utility Company  
Attn: Alan VanVliet  
1230 Golden Pheasant  
Redmond, OR 97756

**Copies Mailed**

**By:**

(SUPPORT STAFF)

**on:**

(DATE)

**Copies sent to:**

1. WRD - Appl. File G- 13856 / Permit G-14857
2. WRD - Watermaster District 11 – Jeremy Giffin, Bend
3. WRD – Support Staff  
(for hydraulically connected GW permits)
4. DEQ - Northwest Region and Western Region only  
(for hydraulically connected GW permits)
5. Thomas Walker, P.E., CWRE  
920 SW Emkay Drive, Suite C-100  
Bend, OR 97702

Proposed Final Order: Permit G-13856

Page 13 of 14

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**Fee paid as specified under ORS 536.050 to receive copy:**

5. None

**Receiving via e-mail (10 AM Tuesday of signature date)**

6. Static Water Level Decline Levels Triggered (or close to triggering)  YES  NO

If YES..... send an e-mail to the watermaster identifying the extent of static water level decline.

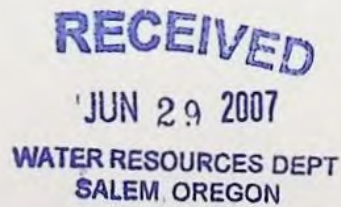
7. PFO: WRD – Watermaster District 16 – Mike McCord, Salem

Done by \_\_\_\_\_ Date \_\_\_\_\_

8. Notification only: WRD – Salem Opeifa and Gerry Clark (if Reimbursement Authority)

Done by \_\_\_\_\_ Date \_\_\_\_\_

CASEWORKER: ALR  
Document1



Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-13856

**Final Order**  
**Extension of Time for Permit Number G-13856**

**Appeal Rights**

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**Application History**

On April 3, 2007, Cline Butte Utility Company submitted an application to the Department for an extension of time for permit number G-13856. The Department issued permit number G-13856 on October 17, 2000. The permit called for complete application of water to the full beneficial use by October 1, 2005. In accordance with OAR 690-315-0050(2), on PFO DATE, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2008. The protest period closed PROTEST DATE, in accordance with OAR 690-315-0060(1). No protest was filed.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

The applicant shall submit evidence that a meter is installed to measure sewage discharged to the ground or a specify date certain that the meter will be installed.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0080(3).

**Order**

The extension of time for Application Number G-14857, Permit Number G-13856, therefore, is approved. The deadline for applying water to full beneficial use is extended to October 1, 2008.

DATED: \*\*\*\*\*, 2007

Phillip C. Ward, Director

If you have any questions about statements contained in this document, please contact **Kim French at (503) 986-0813.**

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900.

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**NOTE:** Include a copy of the "Important Notice" document along with the original copy of the Final Order being sent to the permit holder.

## Mailing List for Extension FO Copies

Application #G-14857

FO Date: \*\*\*\*\*,  
2007

Permit #G-13856

Original mailed to permit holder:

Cline Butte Utility Company  
Attn: Todd Samples  
1230 Golden Pheasant  
Redmond, OR 97756

**Copies Mailed**

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

For Extension FO's - Copies sent to:

1. WRD - Appl. File #G-14857 / Permit #G-13856
2. WRD - Watermaster District: 11, Jeremy Giffin
3. WRD - Kyle Gorman, Regional Manager  
*NOTE: Only send DENIAL FO's to NWR Manager (does not want to see approvals.)*
4. ODFW - Biologist District: # 7 Rod French  
(for SW or hydraulically connected GW permits)
5. DEQ - Eastern Regional Office: Dick Nichols  
(for SW or hydraulically connected GW permits)
6. WRD - Sarah Henderson. Technical Services (for Muni's and Quasi-Muni's requiring Division 86 WMCP Plan)
7. WRD - Support Staff, Salem...Permit record update

Other interested parties:

8. Thomas A. Walker, P.E., CWRE  
920 SW Emkay, Suite C100  
Bend, OR 97702-1041

CASEWORKER: LJJ

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SALEM, OREGON

Date, 2007

Cline Butte Utility Company  
Attn: Todd Samples  
1230 Golden Pheasant  
Redmond, OR 97756

REFERENCE: Application # G-14857 (Permit # 13856)

Dear Quasi-Municipal Water Right Permit Holder:

The Department is currently in the process of evaluating your request for an extension of time on the above referenced quasi-municipal water use permit under the Reimbursement Authority Process. This review revealed that your extension application does not provide sufficient detail necessary to fully evaluate your request. Therefore, in accordance with OAR 690-315-0080(1)(a), the following information and materials needing clarification are listed below and must be submitted to the Department before evaluation may continue:

1. Permit G-13856, page 2. Measurement, recording and reporting conditions, item "A.", requires installation of a meter, or other suitable measuring device as approved by the Director, at both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured. Your permit amendment application does not address the required measuring device where sewage is discharged to the ground. OAR 690-315-0070(3)(f), requires submission of evidence of compliance with conditions contained in the permit, or the reason why the condition was not satisfied.

*Copies of your pending extension application received April 3, 2007, and your original permit are enclosed for reference.*

Please submit this information by **August 1, 2007**. Failure to submit the requested information by this deadline may result in the proposed rejection of your extension request.

*If you need to request additional time to submit the information requested above, a written request must be received in the Salem office of the Department by the deadline above. The Department will evaluate timely requests and determine whether or not the request may be granted.*

If you should have any questions concerning your extension request or the required materials listed above, you may contact me at (503) 986-0819.

Sincerely,

Dwight French  
Administrator  
Water Rights and Adjudications Division

cc: Appl # G-14857 (Permit # G-13856)  
Jeremy Giffin, Watermaster District # 11

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W&H Pacific, Inc  
Attn: Thomas A Walker, P.E., CWRE

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WATER RESOURCES DEPT  
SALEM, OREGON

**Jerry Gainey**

---

**From:** Ken Lite  
**Sent:** Monday, December 22, 2008 2:40 PM  
**To:** Emily Bray-Nash  
**Cc:** Jerry Gainey  
**Subject:** FW: Well 9 Pump Test with the Cover Sheet signed  
**Attachments:** 20081222151243791.pdf

Emily,

I received this pump test (permit G-13856) the other day. I recommend we approve it. I have already informed the consultant of its minor discrepancies. Please enter the data into the database, and draft an approval letter to the file. Thanks.

Ken

---

**From:** Frost, Jim [mailto:JFrost@whpacific.com]  
**Sent:** Monday, December 22, 2008 2:17 PM  
**To:** Ken Lite  
**Subject:** RE: Well 9 Pump Test with the Cover Sheet signed

Ken,

Thanks for your review and comments. I signed the bottom of the cover sheet and attached it. Please call or reply if any additional information is needed.

Thanks,  
Frost

---

**From:** Frost, Jim  
**Sent:** Wednesday, December 17, 2008 3:10 PM  
**To:** 'liteke@wrd.state.or.us'  
**Cc:** 'Bob McDaniel'; Boggs, Niall  
**Subject:** FW:

Ken,

We have completed the pump test for well #9 at Eagle Crest. We followed the OWRD pump test guidelines, and used the OWRD Forms. Please call or reply with any questions or comments.

Thanks,  
Frost

December 17, 2008

Ken Lite  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1271

**Re: Eagle Crest Well #9  
Application G-14857 Permit G-13856  
Pump Test  
WHPacific File No.: 31250.1005**

Dear Ken:

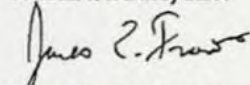
We have completed the required pump test for Eagle Crest well #9. This well was drilled 11/20/01, and a pump test was conducted at that time. The pump test did not follow the procedures required by Oregon Water Resources Department, so we conducted the second pump test in November 2008 following the Oregon Water Resources Department guidelines for pump test.

According to Cline Butte Utilities Company, well #9 had not been run within approximately one week of the time of the test. We reviewed construction records and spoke with the company that installed the pump in well #9. The distance from ground level to the bottom of the air line is 590 feet. We used an air compressor to blow all water out of the air line, and insure consistent readings during draw down and recovery. Please review the attached pump test form cover sheet and pump test data sheet, and feel free to contact me with any questions or comments.

The intent of this pump test is to satisfy the conditions of Oregon Water Resources Department for permit G-13856. These water rights are critical to Eagle Crest, and we understand that providing this pump test will satisfy requirements of the permit. Please let us know if any other items in addition to the annual reporting are required to meet the conditions of this permit.

Sincerely,

**W&H Pacific, Inc.**



James E. Frost, P.E.  
Project Manager

Encl. Pump Test Form Cover Sheet  
Pump Test Data Sheet

Oregon Water Resources Department  
**PUMP TEST FORM COVER SHEET**

**Well Owner:**

Name: Cline Butte Utility Company  
 Address: 1140 Nutcracker Rd.  
 County: Deschutes  
 City: Redmond State: OR Zip: \_\_\_\_\_  
 Original owner (from well log): Same

**Well Location:**

Township: 15 S Range: 12 E  
 Section: 16 NE 1/4 NE 1/4 NE  
 Well depth: 736.0 Date drilled: 11/20/2001  
 Owners well no. (if any): #9  
 POD ID: 54485

**Water Right Information:**

Application: G-14857 Permit: G-13856 Certificate: None  
 Is this well listed on more than one water right?  Yes If yes, list additional water rights below:  
 Application: \_\_\_\_\_ Permit: \_\_\_\_\_ Certificate: \_\_\_\_\_  
 Application: \_\_\_\_\_ Permit: \_\_\_\_\_ Certificate: \_\_\_\_\_

**Pump Test:**

Test Conducted by: James E. Frost, P.E. Well Owner?  Yes  
 Company: WHPacific  
 Address: 123 SW Columbia Street Date of Test: 11/20/2008  
 City: Bend State: OR Zip: \_\_\_\_\_  
 Daytime phone: 541-388-4255

Method of discharge measurement (see our brochure for more information): Flow meter  
 Method of water-level measurement (pick one or enter other method used): Choose or enter method  
 Length of air line (if used): 590.0

Pump type (pick one or enter other method used): Turbine  
 Was the pump test conducted during normal use of the well?  Yes Note: \_\_\_\_\_

Are you aware of any wells, other than domestic or stock wells, pumping within 1000 feet of the tested well during the test or within 24 hours prior to the test?  Yes Note: \_\_\_\_\_  
 If yes, give approximate distances to each and approximate pumping rate of each. If possible, indicate if they were turned on or off during the test: \_\_\_\_\_

Is there a lake, stream or other surface water body within 1/4 mile of the tested well?  Yes If yes, give approximate distance from the well and approximate elevation difference between the surface water and the well head. Approx. distance: \_\_\_\_\_ ft Approx. elevation difference: \_\_\_\_\_ ft

Well elevation is \_\_\_\_\_ surface water body.

Description of measuring point (e.g. top port of 1 inch port pipe, west side) airline WITH OIL  
FILLED GARAGE, 1 DIVISION PER 2 PSI, 0-100 PSI  
 Measuring point distance \_\_\_\_\_ land surface \_\_\_\_\_ feet.

**Static water level measurements:** (A minimum of three measurements are required in the hour before pumping begins at no less than 20 minutes apart):

Time	Depth to water below meas. point	Depth to water below land surface
<u>SEE ATTACHED</u>	_____	_____
_____	_____	_____
_____	_____	_____

**Discharge measurements:** (A discharge measurement is required at the start of pumping and at least once an hour during the test; additional measurements should be noted on the Pump Test Data Sheet):

Time	Discharge Rate	Discharge Units (e.g. gpm, cfs, etc)
<u>SEE ATTACHED</u>	_____	<u>gpm (gallons per minute)</u>
_____	_____	<u>gpm (gallons per minute)</u>
_____	_____	<u>gpm (gallons per minute)</u>
_____	_____	<u>gpm (gallons per minute)</u>
_____	_____	<u>gpm (gallons per minute)</u>

Time pump turned on: Date 11/20/2008 Time \_\_\_\_\_  
 Time pump turned off: Date 11/20/2008 Time \_\_\_\_\_  
 Total pumping time: 4 hours 0 minutes

**Note:** Well must be idle for at least 16 hours prior to the test.

Additional forms can be obtained from our web site at: <http://www.wrd.state.or.us>

OWRD 2/9/2000

Required Signature: \_\_\_\_\_

James E. Frost  
 JAMES E. FROST, PE  
 12/22/08



## Jerry Gainey

---

**From:** Ken Lite  
**Sent:** Monday, November 10, 2008 10:56 AM  
**To:** Saavedra, Pat  
**Cc:** Jerry Gainey; Doug Woodcock; Kyle Gorman  
**Subject:** Pump Test for Groundwater Permit G-13856

G-14857

Mr. James E. Frost  
Project Manager  
WH Pacific  
123 SW Columbia Street  
Bend, Or. 97702

Re: Pump Test for Groundwater Permit G-13856

Mr. Frost,

Thank you for adding additional information to the pump test data submitted in support of Groundwater Permit G-13856. The additional information proved particularly important in ascertaining the condition of the aquifer before the test began.

However, the additional information made it clear that, in addition to the lack of information submitted as required under the pump test rules (OAR 690-217), the pre-test aquifer conditions that existed (active well development) just prior to the test make the test results mostly unusable. Please review the requirements under the pump test rules and submit a test that meets those standards.

Links on our web site should give you all the information you need to complete an acceptable test. Please don't hesitate to contact me by phone at 541-317-3154 or by e-mail at Kenneth.E.Lite@wrd.state.or.us if you have any questions.

Administrative rules for pump test requirements (OAR 690-217) can be found on our web site at:

[http://arcweb.sos.state.or.us/rules/OARS\\_600/OAR\\_690/690\\_217.html](http://arcweb.sos.state.or.us/rules/OARS_600/OAR_690/690_217.html)

The following related materials can also be found on our web site:

A booklet explaining pump tests. [http://www1.wrd.state.or.us/pdfs/pump\\_test.pdf](http://www1.wrd.state.or.us/pdfs/pump_test.pdf)  
Pump Test Cover Sheet [http://www1.wrd.state.or.us/pdfs/pump\\_test\\_cover\\_.pdf](http://www1.wrd.state.or.us/pdfs/pump_test_cover_.pdf)  
Pump Test Data Sheet [http://www1.wrd.state.or.us/pdfs/pump\\_test\\_data.pdf](http://www1.wrd.state.or.us/pdfs/pump_test_data.pdf)

Ken Lite, R.G.  
Hydrogeologist  
Oregon Water Resources Department  
1128 N.W. Harriman Street  
Bend, Or 97701

541-317-3154 (OWRD)  
503-251-3216 (USGS)



# Oregon

Theodore R. Kulongoski, Governor

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**SEP 29 2008**

**WATER RESOURCES DEPT  
SALEM, OREGON**

**Water Resources Department**

SOUTH CENTRAL REGION  
Watermaster District 11  
1128 NW Harriman  
Bend, OR 97701  
Ph: (541) 388-6669  
Fax: (541) 388-5101  
[www.wrd.state.or.us](http://www.wrd.state.or.us)

**Date:** 26 September 2008

**To:** Cline Butte Utility Co.  
1140 Nutcracker Rd.  
Redmond, OR 97756

**Subject:** Pump Test Review Results Not Accepted (Rejected)

With regard to the pump test requirements for the following well and its associated water rights:

<u>Application</u>	<u>Permit</u>	<u>Certificate</u>	<u>Well Log ID</u>	<u>Date Tested</u>	<u>Test Status</u>
G-14857	G-13856	None	DESC 54485	9/6/1992?	not accepted

This letter is to inform you that your pump test has been rejected. The pump test is not approved (rejected) for not meeting many of the requirements under OAR 690-217. Most notably, no pre-test information was submitted, the discharge was not maintained at a constant rate (a common mistake), no measurement times were submitted for discharge measurements, no measurement methods were identified, and no start or end times were recorded.

Administrative rules for pump test requirements (OAR 690-217) can be found on our web site at:

[http://arcweb.sos.state.or.us/rules/OARS\\_600/OAR\\_690/690\\_217.html](http://arcweb.sos.state.or.us/rules/OARS_600/OAR_690/690_217.html)

The following related materials can also be found on our web site:

A booklet explaining pump tests. [http://www1.wrd.state.or.us/pdfs/pump\\_test.pdf](http://www1.wrd.state.or.us/pdfs/pump_test.pdf)  
Pump Test Cover Sheet [http://www1.wrd.state.or.us/pdfs/pump\\_test\\_cover.pdf](http://www1.wrd.state.or.us/pdfs/pump_test_cover.pdf)  
Pump Test Data Sheet [http://www1.wrd.state.or.us/pdfs/pump\\_test\\_data.pdf](http://www1.wrd.state.or.us/pdfs/pump_test_data.pdf)

Please contact me by phone at 541-317-3154 or by e-mail at [Kenneth.E.Lite@wrđ.state.or.us](mailto:Kenneth.E.Lite@wrđ.state.or.us) if you have any questions about the status of your test. Please call Jerry Gainey at 503-986-0812 if you have any questions about how this action may affect the status of your water right.

Sincerely,

Ken Lite  
Hydrogeologist  
541-317-3154

cc: Pump Test File  
Water Right File



920 SW Emkay, Suite C100  
Bend, Oregon 97702-1041  
541.388.4255  
Fax 541.388.4229

April 2, 2007

Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266

**Re: Cline Butte Utility Company  
Application No. G-14857  
Permit No. G-13856  
Application for Extension of Time  
WHP File No.: 31250.1005**

Gentlemen/Ladies:

On behalf of Cline Butte Utility Company, I have enclosed an application for an extension of time for the perfection of groundwater permit G13856. Your review and approval are respectfully requested.

Permit G13856 allows the development of groundwater for quasi-municipal use at the Eagle Crest destination resort in Central Oregon. Significant progress has been made in perfecting the permit. Cline Butte Utility Company prepared and submitted a Claim of Beneficial Use and site report for permit G13856 in September of 2006. Subsequently we worked collaboratively with the Oregon Water Resources Department (OWRD) on a program to better utilize and better manage the water rights at Eagle Crest.

Following consultation with Mr. Dwight French and Ms. Laura Snedaker, Cline Butte Utility Company respectfully withdraws the September 2006 Claim of Beneficial Use and submits this application for an extension of time. The extension of time would allow amendment of the permit in conformance with the recommendations of the OWRD. The overall objective of the withdrawal of Claim of Beneficial Use, the extension, and the subsequent permit amendment will be to enhance the reliability and efficiency of the Eagle Crest domestic water supply system and better manage water rights. The Applicant is appreciative of the direction and assistance provided by the Department in this matter.

The following documents are attached in support of an application for an extension of time:

- Extension of Time Application Form
- Check in the amount of \$250.00 for Fees
- Permit G13856
- Permit Assignment Confirmation
- Well Logs
- Statement in Support of an Application for Extension of Time
- Cline Butte Utility Company Correspondence Authorizing W&H Pacific to Act as an Agent
- Reimbursement Authority Estimate Application and Check in the Amount of \$125.00

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SALEM, OREGON

W&H Pacific, Inc.

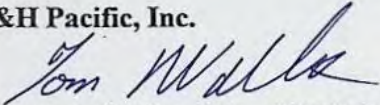
April 2, 2007

Page 2

Please consider the enclosed application for an extension of time, withdrawal of the previously submitted Claim of Beneficial Use, and the Applicant's objective to enhance overall water system operations and better manage existing water rights at the Eagle Crest Resort. Your review and consideration are appreciated and we look forward to your response.

Very truly yours,

**W&H Pacific, Inc.**



Thomas A. Walker, P.E., C.W.R.E.

Vice President

Cc: Alan VanVliet  
Todd Samples

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WATER RESOURCES DEPT  
Salem, OREGON



**CLINE BUTTE UTILITY COMPANY  
APPLICATION FOR EXTENSION OF TIME  
FOR WATER RIGHT PERMIT G-13856**

**FEBRUARY 2007**

**PREPARED FOR:**

**Cline Butte Utility Company  
1230 Golden Pheasant  
Redmond, Oregon 97756**

**PREPARED BY:**

**Thomas A. Walker, P.E., C.W.R.E.  
W&H Pacific, Inc.  
920 SW Emkay Drive, Suite C-100  
Bend, Oregon 97702**

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**APR 03 2007**

**WATER RESOURCES DEPT  
SALEM, OREGON**

**STATEMENT IN SUPPORT OF AN  
APPLICATION FOR AN EXTENSION OF TIME  
FOR PERMIT G-13856  
FEBRUARY 2007**

Cline Butte Utility Company (CBUC) is requesting an extension of time to apply water to full beneficial use under the terms and conditions of Permit G-13856. A time extension to October 1, 2008 is requested.

Permit G-13856 authorizes quasi-municipal use from an existing groundwater well, referred to as Well 9. Significant progress has been made in perfecting Permit G-13856, including construction of Well #9, installation of a 450 HP turbine well pump, installation of miles of underground water distribution piping to serve new development, and substantial completion of all the components and appurtenances of a domestic water supply system.

Permit G-13856 was originally issued to Eagle Crest, Inc. and subsequently assigned to Cline Butte Utility Company. The water right permit authorizes quasi-municipal use at the Eagle Crest destination resort in Deschutes County. Eagle Crest, Inc. remains the resort manager and operates the domestic water supply system through its subsidiary, Cline Butte Utility Company.

CBUC, working collaboratively with the Oregon Water Resources Department (OWRD), is requesting this time extension to allow a subsequent permit amendment. The permit amendment was recommended by OWRD staff in a recent work session and will improve the overall efficiency and reliability of the Eagle Crest water supply system by authorizing the interconnection of multiple existing wells and water distribution systems. This extension and the subsequent amendment will allow CBUC to better manage water rights at the resort.

The standard application form for an extension of time for a water right permit stipulates the following questions for the Applicant. In the following section, application questions are shown in bold text, with the Applicant's response or justification following in standard text.

**1. Submit the appropriate extension of time fee (\$250), as specified under ORS 536.050.**

A check in the amount of \$250.00 is attached for the extension of time application fee.

**2. For Quasi-Municipal water use permit holders, provide evidence of the actions taken to begin actual construction on the project if required under the applicable statute.**

Permit G-13856 stipulated initiation of actual construction by May 2001. The enclosed Well #9 log demonstrates initial construction began in May 2001, in conformance with the deadline stipulated on the permit. A copy of the well log is attached.

**4. Provide evidence of actions taken to develop the water right permit within the permitted time period and/or the time period of the previous extension.**

RECEIVED

APR 03 2007

WATER RESOURCES DEPT  
SALEM, OREGON

INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED DURING PERMITTED TIME PERIOD (after permit was issued and prior to permit "C-date") <i>List work/actions done during the permitted time period.</i>	COST
10-17-2000	The permit was signed -	
May 2001	The permit specified "Actual Construction Work" shall begin ("A-Date") -	
10/1/2005	The permit specified complete application of water to the use shall be made ("C-Date") -	
2001	Construct Well #9	±\$140,000
2003	Construct Wellhouse improvements, including 450 HP turbine pump, controls, piping, valves, etc.	±\$150,000
1994-2005	Install approximately 60,000 lineal feet of 6"-12" underground water distribution system piping	±\$1,800,000
1994-2005	Provide Engineering and Surveying Services (15%)	±\$300,000
	<b>Total Cost to Date</b>	±\$2,390,000

As noted in the above table, significant capital investments and construction have taken place in perfecting Permit G-13856. The water distribution system, including extension of service lines to individual parcels, is substantially complete throughout the Eagle Crest resort.

As noted in the cover letter, CBUC actually submitted a Claim of Beneficial Use for Permit G-13856, believing at the time submittal of the claim was appropriate and the best course of action. In a subsequent work session with OWRD staff, this time extension and a permit amendment were recommended. The proposed permit amendment will authorize interconnection of various wells and water distribution systems, covered by multiple permits, providing enhancement of the overall water supply system and the associated management of water rights for the resort.

CBUC demonstrated significant diligence in perfecting the water right. This time extension however provides the opportunity to further enhance the efficiency and overall operational characteristics of the extensive water distribution network throughout the resort.

**5. Provide evidence of compliance with conditions contained in the original permit, and any previous extension(s), or the reason the condition was not satisfied.**

Permit conditions require installation of a meter suitable measuring device. A meter was installed with well house improvements in 2003.

Special permit conditions stipulate a permanent transfer of water right certificate 74145 to an in-stream use under transfer application T-8519. A copy of the Final Order for the permanent transfer is attached, documenting compliance with the condition.

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Permit conditions require the permittee to submit a Water Management and Conservation Plan. A Final Order from OWRD, approving the Water Management and Conservation Plan is attached, again documenting compliance with the condition.

Standard conditions require well construction in conformance with the General Standard for the Construction and Maintenance of Water Wells in Oregon. The general standard was specified in the initial construction contract for Well #9 and a reputable driller was utilized. Information on the attached well log provides some evidence of compliance with the general standards. In addition, W&H Pacific provided periodic inspections during well construction to monitor and confirm compliance with specifications.

Well #9 was equipped with an access port and an air line for determining water level elevations. The air line was confirmed during multiple site inspections by W&H Pacific.

Conditions include the requirement for a pump test. A pump test was completed prior to design of the well pump and wellhouse improvements.

Standard conditions stipulate the land use associated with the water use must be in compliance with the State-wide land use goals. Deschutes County approved the land use form at the time of the water right application. The Eagle Crest destination resort is located on land authorized for destination resort development, complying with the land use standard.

Well #9 was designed and constructed with a capacity of 3.34 cubic feet per second or 1,500 gallons per minute (gpm). Measured pump capacity, utilizing the existing meter, was documented at 1,556 gallons per minute, conforming to the maximum rate identified in the permit.

Permit G-13856 stipulates a maximum diversion of 252 acre-feet each year. As noted in prior correspondence to the Department, the maximum diversion from Well #9 actually exceeded the annual maximum diversion volume. CBUC provided additional groundwater withdrawal mitigation to compensate. However, after careful consultation and collaboration with OWRD staff, it was determined the additional groundwater withdrawal mitigation should be withdrawn and water rights brought into compliance with conditions through multiple permit amendments. This time extension will provide the opportunity for permit amendments recommended by OWRD staff.

**6. Provide evidence of the maximum rate, or duty if applicable, of water diverted for beneficial use under the permit and/or prior extensions of time, if any, made to date.**

As noted above, Well #9 was designed and subsequently confirmed to operate at the maximum diversion rate of 1500 gallons per minute (gpm). Well #9 conveys water through the distribution system to storage, providing uniform flow and head characteristics. Therefore Well #9 operates consistently at 1500 gpm.

**7. Provide an estimate of the population served under this permit and a description of the methodology(ies) used to make the estimate.**

The overall domestic water supply system, supplied by multiple wells and multiple water right permits, serves an estimated current population at Eagle Crest of approximately 3,400 persons during the peak summertime occupancy. The current population is estimated from the number of constructed residential units at the resort. A more detailed estimate of population and long-term consumption needs of the system are included in the Water Conservation and Management Plan, approved by the Oregon Water Resources Department on February 1, 2005.

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**8. Provide a description of the financial expenditures made toward completion of the water development under this permit.**

The table in Item 4 above documents significant construction and capital expenditures on water supply and distribution system improvements under Permit G-13856. The estimated total cost, incurred in perfecting in the permit, is approximately \$2,390,000.

**9. Provide an estimate of the cost necessary to complete the water development.**

The estimated remaining cost to complete water development under Permit G-13856 is limited to the application and processing of a permit amendment, estimated to cost approximately \$5,000. As noted previously, a permit amendment is recommended by OWRD staff to enhance the reliability and efficiency of the overall Eagle Crest water distribution system. This time extension will allow the subsequent permit amendment and the overall improvement in efficiency and management of water rights. No significant construction remains to be completed in perfecting the permit.

**10. Provide a summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements (if any), relating to the project that have significantly delayed completion of construction or perfection of the right.**

As noted, this time extension is requested to accommodate a subsequent permit amendment, proposed in close collaboration with the Oregon Water Resources Department. Water rights and water management at the Eagle Crest resort are complex and deserving of significant review and scrutiny by CBUC and OWRD. Permit G-13856 was perfected under the timelines imposed by the permit. However, this time extension will ultimately allow more efficient use and a more reliable overall domestic water supply system for the Eagle Crest resort.

**11A. Provide an estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use.**

Please reference the Water Management and Conservation Plan, approved by OWRD on February 1, 2005.

**12. Provide a summary of the future plan and schedule to complete construction and/or perfect the water right.**

CBUC is requesting a time extension until October 1, 2008 for full beneficial use of the water right. No further construction is required to perfect the permit. Immediately upon authorization of time extension, CBUC will file a permit amendment to clarify the area of use under the permit and accommodate multiple points of diversion for existing wells under multiple permits. The proposed permit amendment will allow multiple wells to contribute to the system increasing the reliability and efficiencies, assure redundant water supplies in the case of breakdowns or repairs, and generally enhance the overall management of water supplies and water rights at the Eagle Crest resort.

**13. Justify the time requested to complete the project and/or apply the water to full beneficial use.**

CBUC is requesting approximately 20 months of time extension. The 20 month extension request is expected to be adequate to obtain the desired permit amendment and re-file a Claim of Beneficial Use

under the terms of the permit amendment. CBUC intends to solicit expedited review under the Receipts Authority Rule as a part of the permit amendment, to assure compliance with the short time extension.

**14. Provide any other information you wish OWRD to consider while evaluating the Application for Extension of Time.**

The Cline Butte Utility Company respectfully respects careful consideration of this time extension and its good faith effort and intentions demonstrated in water right development and management work. CBUC timely filed a Claim of Beneficial Use for Permit G-13856. Subsequent input from the Oregon Water Resources Department demonstrated the need for a permit amendment and this request for a time extension, to enhance the overall operation of the Eagle Crest water right system and water rights. This request therefore demonstrates a collaborative effort with the Oregon Water Resources Department to best utilize water resources at the resort.

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WATER RESOURCES DEPT  
SALEM, OREGON

OCT 2 : 2000

W & H PACIFIC, INC.

In the Matter of Water Right )  
Application G 14857 in the Name )  
of William D. Lyche, for Eagle Crest )  
Inc., )  
Applicant )

ORDER ON RECONSIDERATION

**Appeal Rights**

This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-001-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

**Background**

On May 26, 2000, the Oregon Water Resources Department ("Department") through its Director, Martha Pagel, issued its Final Order Approving Application and Denying Protest for Application G 14857.

On September 19, 2000, the Department on its own motion issued an Order Allowing Reconsideration of its May 26, 2000 order.

**Findings of Fact and Conclusions of Law**

Under ORS 390.835 the "highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses," and the "free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses." Accordingly, no new water diversion may be constructed or used unless permitted by the Water Resources Commission upon a finding that such diversion is necessary to uses designated in ORS 536.310(12) and in a manner consistent with the policies set to preserve the free-flowing character of scenic waterways in quantities necessary for recreation, fish and wildlife uses. ORS 390.805 to 390.925.

Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway must be conditioned to allow the regulation of the use if analysis of data available after the permit or

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WATER RESOURCES DEPT  
SALEM, OREGON

certificate is issued discloses that "the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced." ORS 390.835(9)(g).

The priority date for this permit is November 2, 1998, thus the permit for this use must contain the following condition:

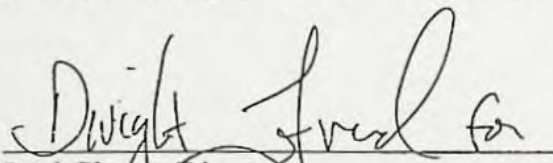
Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

The use as conditioned under the amended permit for this application is consistent with the policies set forth under ORS 390.805 to 390.925 to preserve the free-flowing character of scenic waterways in quantities necessary for recreation, fish and wildlife uses.

#### Order

The Final Order Approving Application and Denying Protest is amended by this order. Permit G 13819 is superseded by Permit G13856 issued herein.

DATED this 17 day of October, 2000

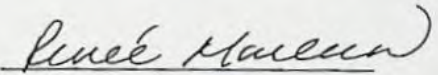
  
Paul Cleary, Director  
Oregon Water Resources Department

Service List

I certify that on October 19, 2000, a copy of this notice was served by first class mail, postage prepaid upon the persons listed below, by depositing same in the United States Post Office at Salem, Oregon.

W&H Pacific  
920 S.W. Emkay Dr., Suite C-100  
Bend, OR 97702

William D. Lyche  
Eagle Crest Inc.  
P.O. Box 1215  
Redmond, OR 97756

  
Renee Moulun

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WATER RESOURCES DEPT  
SALEM, OREGON

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE CREST INC.  
WILLIAM D. LYCHE  
PO BOX 1215  
REDMOND, OREGON 97756

The limits and conditions of the use are listed below.

SPECIFIC LIMITS AND CONDITIONS

APPLICATION FILE NUMBER: G-14857

SOURCE OF WATER: A WELL IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 3.34 CUBIC FEET PER SECOND, further limited to a maximum diversion of 252 acre-feet each year and shall result in consumption of no more than 115 acre-feet each year, once sewage contribution is subtracted from the amount diverted, unless the mitigation plan is modified and approved by the Department as described below.

If the reporting, as required below, demonstrates the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet, or the Department may approve an additional and equivalent water right to be leased to instream use, to maintain an acre-foot balance between the amount of water consumed to the amount of water provided to instream use. An equivalent water right must, at a minimum, be from a water right with a diversion point at or near the diversion authorized by the lease of certificate 74145.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 2, 1998

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 16, T15S, R12E, W.M.; 150 FEET SOUTH AND 150 FEET WEST FORM THE NE CORNER, SECTION 16, T15S, R12E, W.M.

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THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE QUARTER ALL  
NW QUARTER ALL  
SW QUARTER ALL  
SECTION 16

TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director, at both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

This permit will expire in 2 years from permit issuance unless the 2 year lease of the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, filed as transfer application T 8519, or an equivalent water right as determined by the Department, to instream use.

Within one year of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this timeline to complete the required Water Management Conservation Plan.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate

the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

#### STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.


By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin by May , 2001. Complete application of the water to the use shall be made on or before October 1, 2005. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued October 17, 2000

  
Paul R. Cleary, Director  
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.



920 SW Emkay, Suite C100  
Bend, Oregon 97702-1041  
541.388.4255  
Fax 541.388.4229

November 16, 2006

Ms. Laura Snedaker  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1271

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**WATER RESOURCES DEPT  
SALEM, OREGON**

**Re: Cline Butte Utility Company  
Permit G-13856  
Application G-14857  
WHP File No.: 31250.1005**

Dear Laura:

Thank you very much for your reviews and comments on groundwater permit G-13856, utilized by the Cline Butte Utility Company. The unique permit is critically important to the Eagle Crest Resort and we appreciate your help in assuring the permit is utilized and perfected as intended. As you suggested, I have researched years of files and compiled additional information on the existing water right and its associated groundwater withdrawal mitigation. Our prior discussions with you and our subsequent investigation have been very helpful in supporting our current use of groundwater and the associated mitigation program. Your review and confirmation of our current water use are respectfully requested.

I have also copied Mr. Dwight French on this submittal because of his extensive involvement in the original permit processing and the associated mitigation plan.

In your initial review of our supplemental mitigation program, you questioned if the original permit annual volume could be exceeded. Our investigation confirms original estimates on annual volume were intended to be monitored and supplemental mitigation added as necessary to assure proportional mitigation for the actual use. I have summarized our investigations to assist you in confirming the original intent of permit conditions and the subsequent actions by the Cline Butte Utility Company.

**PERMIT G-13856:**

Permit G-13856 is somewhat unique. The permit authorizes quasi-municipal use from a well in the Deschutes Basin, with a maximum rate of 3.34 cfs. The priority date is November 1998. Permit G-13856 was issued October 17, 2000.

The permit identifies an estimated maximum diversion of 252 acre-feet each year and a mitigation obligation, based upon the estimated consumptive use, of 115 acre-feet per year. The mitigation obligation was based upon a mitigation plan, prepared by the applicant and subsequently approved by the Department.

Permit G-13856 stipulates in-stream mitigation be in-place prior to permit issuance. 21 acres of a Swalley Irrigation District surface water right were transferred to an in-stream use under Application T-

8519. The transfer order was approved September 28, 2001, immediately prior to issuance of Permit G-13856.

**STATUS:**

Permit G-13856 was perfected, as stipulated in the permit, by October 2005. Cline Butte Utility Company filed a Claim of Beneficial use, again in conformance with the permit schedule, on September 14, 2006.

Permit G-13856 further stipulates measurement of groundwater use and annual confirmation that in-stream mitigation is adequate for the actual use. Cline Butte Utility Company's actual water use in 2005 exceeded the original estimate and additional mitigation was proposed. Our letter of May 16, 2006 solicited Department review of the proposed additional mitigation to assure compliance with the mitigation obligation. Cline Butte Utility Company received no response to their May 16<sup>th</sup> letter regarding additional mitigation and filed a Claim of Beneficial use, including the additional mitigation, prior to the deadline stipulated in the permit.

**WELLS NO. 8 AND NO. 9:**

The Eagle Crest resort water system, operated by the Cline Butte Utility Company, involves multiple groundwater permits and an extensive distribution system. Well No. 8 is being perfected under Permits G-11762 and G-11313. Well No. 8 discharges automatically into the irrigation system or into the domestic water distribution system, depending upon demand. Pre-set conditions are adjustable, allowing the Cline Butte Utility Company to set the priority for the domestic or the irrigation systems and for the various source wells. Well No. 8 naturally produces entrained air, which creates operational problems for the domestic water system. The air is not a concern in the irrigation system.

Permits for Well No. 8 were issued prior to mitigation obligations. The quasi-municipal permit authorizing Well No. 8 does not include an annual limitation on the total volume of water pumped from groundwater. Therefore groundwater withdrawals from Well No. 8 are not restricted and not mitigated.

Well No. 9, perfected under Permit G-13856, pumps directly into the domestic water distribution system. Well No. 9 has a capacity equal to the diversion rate on the permit and produces high-quality water without air or other issues. Well No. 9 has been a very reliable water supply.

As noted in prior correspondence to the Department, Cline Butte Utility Company prefers to pump from Well No. 9 for contributions to the domestic water system to avoid the entrained air issues presented by Well No. 8. Cline Butte Utility Company provided the stipulated mitigation required under the original permit, plus supplemented the mitigation to assure the actual annual volume of use coincides with the intended groundwater withdrawal mitigation. Therefore, use of Well No. 9, rather than Well No. 8, puts significant additional mitigation into the Deschutes River system, simply because Cline Butte Utility Company prefers to use Well No. 9.

**MITIGATION PLAN:**

Eagle Crest worked diligently with the Department on a mitigation plan for Application G-14857. Between July of 1999 and February of 2000, an acceptable mitigation plan was formulated through a cooperative effort between the Applicant and the Department. A number of draft mitigation plan edits and a number of phone conversations further clarify the intent of the mitigation program.

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SALEM, OREGON

The mitigation plan describes the estimated groundwater withdrawal from the proposed well, the historical basis for the calculation, and a description of Eagle Crest water and sewer operations. Consumptive use in the mitigation plan is described as the difference between the gross water volume pumped from the well and the offsetting sewage treatment volume.

The mitigation plan states water consumption at the destination resort will vary from year-to-year and from neighborhood-to-neighborhood. Calculations on water consumption are estimates only. The mitigation plan states that actual groundwater withdrawals can be measured accurately and adjustments made in the mitigation volume to assure "bucket-for-bucket" mitigation.

The mitigation plan, and particularly the series of edits and phone records on the mitigation plan demonstrate Eagle Crest and the Department intended to monitor and measure groundwater withdrawals and assure appropriate mitigation through supplemental in-stream flows as needed.

#### **PROPOSED FINAL ORDER:**

As noted, Permit G-13856 is unique in that it was issued prior to the Deschutes Basin mitigation rules. The Proposed Final Order, like the mitigation plan, was reviewed, edited, and refined by the Department and the Applicant as the permit application was processed. The Proposed Final Order again describes the intent that additional mitigation would be provided if the actual volume of groundwater withdrawal exceeded original estimates. The Proposed Final Order stipulates 21 acres of in-stream water rights be provided, "or more as described below".

The PFO continues and states "However, if the diversion amount from the well minus the return flows from sewage treatment indicate 115 acre-feet of mitigation is not sufficient, the permit holder may increase the mitigation component of the permit by transferring additional acres and acre-feet to in-stream."

The intent of the wording in the Proposed Final Order is most evident from our review of the edits and refinements that occurred in multiple drafts. In one draft, the Applicant asked for inclusion of the sentences allowing additional mitigation if original estimates on annual water volume were not adequate.

#### **FINAL ORDER:**

The Final Order for Permit G-13856 was issued in May of 2000. Findings in the Final Order further document the intent of the mitigation program for Eagle Crest Well No. 9. The Final Order states "It limits consumption to no more than 115 acre-feet each year, unless the mitigation plan is modified and approved by the Department to match acre-foot for acre-foot any increased usage" and "It provides that any change in consumptive use must be mitigated for acre-foot for acre-foot by in-stream water maintained with an equivalent water right with a diversion point at or near the diversion authorized by the lease or certificate 74145." The Final Order stipulates actual water use will be measured on a regular basis and recorded.

#### **HISTORICAL PRACTICES FOR QUASI-MUNICIPAL PERMITS:**

Historical practices for quasi-municipal groundwater permits are also applicable. Cline Butte Utility Company for example holds multiple quasi-municipal permits, issued prior to G-13856. Prior permits do not include an annual volume limitation. Rather, the quasi-municipal permits stipulate a maximum rate.

W&H Pacific, Inc.  
November 16, 2006  
Page 4

These prior permits demonstrate the Department's standard policy or practice for quasi-municipal permits. This standard practice further supports the Cline Butte Utility Company's position that annual volume was not an intended limit, but rather documentation of the estimate utilized in establishing the mitigation obligation. The annual volume in Permit G-13856 simply provides the measure to assure supplemental mitigation is adequate.

**SUMMARY:**

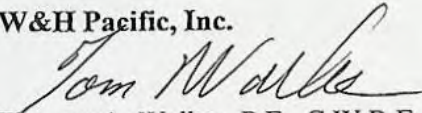
Cline Butte Utility Company has perfected Permit G-13856 as intended and filed a Claim of Beneficial Use. Cline Butte Utility Company and Eagle Crest, Inc. have worked cooperatively with the Department from the time of the initial application through the filing of the final Claim of Beneficial Use. Cline Butte Utility Company monitored and reported actual water volumes and provided additional mitigation to balance actual water use, as intended. All proposals and transactions were reported in writing to the Department and subsequently documented in the Claim of Beneficial Use filing.

Cline Butte Utility Company elected to provide additional mitigation and utilize Well No. 9, rather than utilize Well No. 8, which has no mitigation obligation. The Eagle Crest desire to utilize Well No. 9, in lieu of other wells, benefits the entire Deschutes Basin through implementation of additional in-stream mitigation.

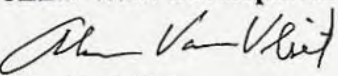
After significant review and scrutiny, Cline Butte Utility Company believes their action and position on Permit G-13856 is exactly as intended. Again, your review and confirmation are respectfully requested.

Very truly yours,

**W&H Pacific, Inc.**

  
Thomas A. Walker, P.E., C.W.R.E.  
Vice President

**JELD-WEN Development**

  
Alan VanVliet  
Vice President Construction and Development

Cc: Dwight French

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**WATER RESOURCES DEPT  
SALEM, OREGON**

**Permit G-10530**

**Well #3**

2006	G	9388700.0	905700.0	118900.0	0.0	2761600.0	0.0	345900.0	4841700.0	18256700.0	18860200.0	18557600.0	8493700.0
2005	G	6023400.0	206400.0	19900.0	0.0	0.0	203500.0	4600.0	711600.0	0.0	16677500.0	20546000.0	19390500.0
2004	G	81500.0	0.0	2000.0	0.0	0.0	10159000.0	7031000.0	0.0	26264.0	17932800.0	14321100.0	11891800.0

**Well #2**

2006	G	6250000.0	1899000.0	2326000.0	1801000.0	1730000.0	2417000.0	3900000.0	1092100.0	13678000.0	17928000.0	15460000.0	14869000.0
2005	G	9116000.0	1412000.0	2116000.0	2180000.0	1913000.0	2910000.0	6028000.0	9478000.0	14913000.0	18458000.0	17531000.0	14620000.0
2004	G	12062000.0	1642000.0	1203000.0	1912000.0	1641000.0	3540865.0	9233000.0	13565000.0	15062000.0	17404000.0	17016000.0	14658000.0

**Permit G-11762**

**Well #6**

2006	G	5361000.0	0.0	0.0	0.0	29000.0	2812000.0	9748000.0	15307000.0	17644000.0	27174000.0	18732000.0	16495000.0
2005	G	7821000.0	1339000.0	0.0	0.0	469000.0	6724000.0	8140000.0	8276000.0	17373000.0	22957000.0	19248000.0	12852000.0
2004	G	10013000.0	541000.0	172000.0	13000.0	0.0	6191000.0	13928000.0	12051000.0	19578000.0	25736000.0	15242000.0	9701000.0
2003	G	9539000.0	1636000.0	1166000.0	503000.0	624000.0	1972000.0	4855000.0	11209000.0	16314000.0	19702000.0	19582000.0	16727000.0
2002	G	10903140.0	3750230.0	0.0	1545000.0	1736000.0	992000.0	8518000.0	11623620.0	14491000.0	19569000.0	19696000.0	16933000.0
2001	G	12076200.0	4255200.0	2145500.0	2883750.0	2311200.0	6159910.0	11829730.0	12308235.0	24234165.0	12285065.0	13413600.0	11934205.0
2000	G	11545200.0	3704400.0	3623400.0	3492000.0	3268800.0	4069800.0	7947000.0	10848600.0	12807000.0	13395600.0	13395600.0	12130200.0

**Well #7**

2006	G	2346800.0	0.0	0.0	0.0	0.0	0.0	0.0	760000.0	486300.0	5618100.0	8070900.0	2657600.0
------	---	-----------	-----	-----	-----	-----	-----	-----	----------	----------	-----------	-----------	-----------

2005 G	0.0	0.0	0.0	0.0	295600.0	0.0	0.0	0.0	0.0	6361600.0	10080200.0	2961400.0
2004 G	0.0	100.0	0.0	345300.0	0.0	1730200.0	26900.0	11195000.0	1459200.0	2974800.0	3437200.0	0.0
2002 G				1743600.0	1735500.0	2817100.0	6806900.0	12869000.0	12340700.0	14395000.0	14380500.0	15321000.0
2001 G	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2000 G	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**Well #8**

2006 G	4696992.0	334647.0	321000.0	0.0	0.0	234167.0	4359447.0	9638332.0	9983429.0	16529121.0	13571750.0	9476257.0
2005 G	3949636.0	86121.0	0.0	0.0	0.0	2443968.0	3715173.0	4471392.0	8985829.0	15551842.0	12189793.0	13167716.0
2004 G	9663077.0	9024000.0	230219.0	0.0	0.0	2754697.0	4861010.0	7967389.0	10433143.0	14242601.0	12751664.0	6645197.0
2003 G	652000.0	0.0	0.0	2669500.0	661243.0	4451200.0	328000.0	4822900.0	12765600.0	21217100.0	13874700.0	14535600.0
2002 G	703375.0	110885.0	1841280.0	594000.0	0.0	5514900.0	182000.0	7749080.0	6692900.0	9199700.0	8318400.0	3899400.0
2001 G	457200.0	432000.0	0.0	0.0	0.0	3508600.0	1658310.0	2075370.0	3963725.0	4587300.0	5445000.0	3444055.0
2000 G	8213400.0	1800.0	1800.0	0.0	14400.0	3852000.0	2104200.0	3391200.0	6633000.0	24193800.0	13401000.0	6031800.0

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE CREST INC.  
WILLIAM D. LYCHE  
PO BOX 1215  
REDMOND, OREGON 97756

The limits and conditions of the use are listed below.

SPECIFIC LIMITS AND CONDITIONS

APPLICATION FILE NUMBER: G-14857

SOURCE OF WATER: A WELL IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 3.34 CUBIC FEET PER SECOND, further limited to a maximum diversion of 252 acre-feet each year and shall result in consumption of no more than 115 acre-feet each year, once sewage contribution is subtracted from the amount diverted, unless the mitigation plan is modified and approved by the Department as described below.

If the reporting, as required below, demonstrates the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet, or the Department may approve an additional and equivalent water right to be leased to instream use, to maintain an acre-foot balance between the amount of water consumed to the amount of water provided to instream use. An equivalent water right must, at a minimum, be from a water right with a diversion point at or near the diversion authorized by the lease of certificate 74145.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 2, 1998

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 16, T15S, R12E, W.M.; 150 FEET SOUTH AND 150 FEET WEST FORM THE NE CORNER, SECTION 16, T15S, R12E, W.M.

Application G-14857 Water Resources Department

PERMIT G-13856

ASSIGNED. See Misc. Rec., Vol. 8 Page 916-917

252 x 40% = 100.808

MO = 115AF

C 550



THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE QUARTER ALL  
NW QUARTER ALL  
SW QUARTER ALL  
SECTION 16  
TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director, *at both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured.* The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

This permit will expire in 2 years from permit issuance unless the 2 year lease of the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, filed as transfer application T 8519, or an equivalent water right as determined by the Department, to instream use.

Within one year of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this timeline to complete the required Water Management Conservation Plan.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate

Application G-14857 Water Resources Department

PERMIT G-13856



the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

#### STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

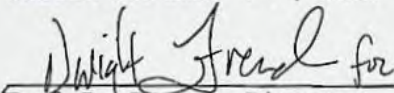
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin by May , 2001. Complete application of the water to the use shall be made on or before October 1, 2005. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued October 17, 2000

  
Paul R. Cleary, Director  
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

Application G-14857    Water Resources Department  
Basin 5                    Volume 1 DESCHUTES R & MISC  
AMH                         MGMT.CODES 7BG 7BR 7CG 7CR

PERMIT G-13856  
District 11



**SIGNED** FILE#: G 14857  
 EAGLE CREST INC.; LYCHE, WILLIAM D  
 PO BOX 1215  
 REDMOND, OR 97756

Application No. G14857  
 Permit No. G13819  
 Certificate No. 85472 913856

*Petition for Reconsideration  
 Issue New Permit*

FEES PAID		
Date	Amount	Receipt No.
11-2-98	\$450.00	25850
11-2-98	\$25.00	25851
3-2-01	25%	43400
4/3/07	125.00	86935
4/3/07	250.00 Cert. Fee	86932

Stream Index, Page No. \_\_\_\_\_

Date filed \_\_\_\_\_  
 Priority NOVEMBER 2, 1998  
 Action suspended until 11-2-04  
 Return to applicant \_\_\_\_\_  
 Date of approval \_\_\_\_\_

**ASSIGNMENTS**

Date	To Whom	Address	Volume	Page
2-15-01	Cline Butte Utility Co, 1140	nutcracker, Redmond, OR 97750	8	916-917

**REMARKS**

permit G13856 supersedes G13819 by order  
 T-10493

**CONSTRUCTION**

Date for beginning 5-26-01  
 Date for completion \_\_\_\_\_  
 Extended to \_\_\_\_\_  
 Date for application of water 10-1-04  
 Extended to 10-1-2008

**PROSECUTION OF WORK**

Form "A" filed \_\_\_\_\_  
 Form "B" filed \_\_\_\_\_  
 Form "C" filed \_\_\_\_\_

**FINAL PROOF**

Blank mailed \_\_\_\_\_  
 Proof received \_\_\_\_\_  
 Date certificate issued May 8, 2009

PUMP TEST  
 12/29/08  
 APPROVED

OWNERSHIP UPDATE

IMPORTANT MESSAGE

For FRY 20201 Date 3-17 Time 9:11 AM STICKER HERE

M TOM WALKER

Of CURE  RINGED

Phone # (541) - 388 - 4255 :  FAX  MOBILE PLEASE CALL

Message AM# G-14857 RETURNED YOUR CALL

W & H PACIFIC WILL CALL AGAIN

PROTEST MY RECORD CAME TO SEE YOU

Signed THIS IS CRICKET LOOK FOR FAX

FORM 4013

Work Copy

**THE HIGHLANDS OF EAGLE CREST  
Water Management and Conservation Plan  
Deschutes County  
Oregon**

**Prepared for:**

**Cline Butte Utility Company  
Post Office Box 1215  
Redmond, OR 97756**

**Prepared by:**

**W&H Pacific, Inc.  
920 SW Emkay, Suite C-100  
Bend, Oregon 97702  
(541) 388-4255**

**January 2001**

**Updated December 2004**

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## **EXECUTIVE SUMMARY**

The purpose of this plan is to analyze the water supply and water demand issues facing the Highlands of Eagle Crest (Eagle Crest III) Resort, to develop an agenda to respond to those issues, to provide guidelines for operation and expansion of the water system, and to meet the water right permit requirements with the State of Oregon Water Resources Department.

The Cline Butte Utility Company serves the Eagle Crest III Resort and relies upon groundwater for all of its supply. Although groundwater supplies appear to be adequate at this time and for proposed future development, careful observation of the groundwater level, water usage, and pumping levels is warranted. It appears that existing water rights and water supplies will be adequate to meet ultimate needs of the resort, as defined by land use approvals.

The current storage capacity of 300,000 gallons for domestic use and fire protection is anticipated to be adequate through build-out. However, observation and monitoring of storage conditions is recommended to verify additional storage facilities are not necessary.

### **Recommendations:**

The Cline Butte Utility Company should continue to carefully monitor production and metered sales figures, particularly during peak season demand. Documentation of such usage data will be an essential tool in the analysis of system capacities and needs.

Conservation measures identified in this plan should be implemented to the fullest extent possible, to maximize the value of capital infrastructure costs already incurred, and eliminate the need for additional infrastructure investment. New technologies for conservation methods should be reviewed for implementation and value to the Resort, as they become available.

In an emergency situation or long-term shortage in supply, behavioral changes are appropriate. The Cline Butte Utility Company should consider and adopt an emergency (curtailment) plan to implement in such an event. A curtailment plan is included for use at the Resort.

## INTRODUCTION

Located in Central Oregon's Deschutes Basin, the Highlands of Eagle Crest (Eagle Crest III) is a for-profit destination resort and residential community. The Eagle Crest III Resort is located four miles west of Redmond on a 480 acre property that lies along the north and west slopes of Cline Buttes. The Highlands of Eagle Crest (Eagle Crest III) offers an expansion of the very successful Eagle Crest Resort.

Development at Eagle Crest was initiated in 1985 adjacent to the Deschutes River. Eagle Crest was expanded to the west in the 1990s through the development of additional golf courses and resort facilities at The Ridge at Eagle Crest. Eagle Crest II, known as The Ridge at Eagle Crest, is substantially built-out. Eagle Crest III was proposed in 1999 as another major expansion of the respected Eagle Crest Resort.

This Water Management and Conservation Plan applies only to Eagle Crest III, and is prepared to meet the conditions of a groundwater appropriation permit (Permit G-13819) from the Oregon Water Resources Department. Ownership, operation, and management of water supplies at The Ridge at Eagle Crest and The Highlands of Eagle Crest are the responsibility of the Cline Butte Utility Company, a wholly owned subsidiary of the resort developer.

Development plans for Eagle Crest III include approximately 900 single family, multi-family, and townhouse units. Various recreational amenities and standard commercial facilities are also proposed at Eagle Crest III.

Development of the Eagle Crest III Resort will occur over an extended period of time, relative to market demand. The demand is expected to fluctuate, not only from year to year, but in the type of units or inventory as well. Land use approvals for the destination resort provide significant flexibility in both the timing and type of units to be constructed. For example, a relatively small number of lots and units will be provided, with additional inventory constructed based upon sales activity. Similarly, single family lots or multi-family units will be interchanged or developed, in conformance with the demand of buyers. Although the type of unit can change, the total maximum density of 900 equivalent dwelling units cannot be exceeded because of explicit land use approvals. Destination resort development is further restricted by state and local land use designations and approvals, which prohibit resort expansion outside of current boundaries without further reviews and approvals.

The developers of the Eagle Crest III Resort have extensive experience in the development of destination resorts and this experience is invaluable in planning and designing the project. Experience suggests build-out at the Eagle Crest III Resort will occur over the next ten to fifteen years, with sell out of the project accomplished in five to ten years.

Because of the long term development schedule and the changes that will occur in market demand, significant flexibility must be maintained at all times in the infrastructure systems serving the resort. This water management plan will repeatedly document the need for flexibility and the associated means to accomplish flexibility over the long term development schedule for the project.

## **SECTION 1 - WATER SYSTEM AND SUPPLY DESCRIPTION AND BACKGROUND**

### **1.1 General Information**

The Eagle Crest Master Association owns, operates and maintains a water system for the original Eagle Crest I Resort. The resort developer formed the Cline Butte Utility Company (CBUC) to be the water serving entity for The Ridge at Eagle Crest, and The Highlands of Eagle Crest (Eagle Crest III). The company has employed a staff of skilled professionals to manage and operate the Resort utility system.

The Cline Butte Utility Company operates the existing Eagle Crest II system at The Ridge at Eagle Crest, and has expanded and extended its system to serve the Eagle Crest III expansion. The water supply systems are interconnected for redundancy and reliability. Operation of the entire Cline Butte Utility Company system will enhance service, capacity, and reliability for The Ridge at Eagle Crest and Eagle Crest III.

The Eagle Crest Resort is remote in relation to municipalities and water purveyors. No logical municipal connection or extension is feasible and an on-site water supply system has been provided.

Eagle Crest site plan and water right maps are attached to describe the property and the area of service. A system schematic is also attached.

### **1.2 Water Rights**

Water supplies for both domestic and irrigation uses within the resort are derived from groundwater wells. The Deschutes Formation aquifer is penetrated by the wells. All wells lie within the resort boundaries. Groundwater in the supplying aquifer is replenished from snow melt and precipitation recharge on the east slope of the Cascade mountains.

Permit G-13819\* from the State Water Resources Department was issued to Eagle Crest, Inc. in May of 2000 for the resort development. The quasi-municipal permit allows for the construction of one well in the Deschutes River Basin, with a maximum rate of flow of 3.34 cubic feet per second. The permit allows year round use.

Water rights available at Eagle Crest II are also applicable to this Water Management Plan, because the distribution systems are interconnected and operated as a single system. The interconnection provides multiple source facilities, common storage, and an interconnected distribution system network. The interconnection improves reliability for all residents and guests at Eagle Crest.

\*Note: Records from the Oregon Water Resources Department refer to permits G-13819 and G-13856. Both permits reference application file number G-14857. The permits appear to describe the same water right. Permit G-13819 is used in this report for consistency.

Permit G-11762 was issued to Eagle Crest and allows up to three wells to serve Eagle Crest II. The permit allows a diversion of up to 3.0 cubic feet per second for quasimunicipal purposes.

Permit G-11313 was also issued to Eagle Crest to provide an irrigation supply and serve commercial uses at Eagle Crest II. The irrigation and commercial permit allows up to three wells and a cumulative diversion of up to 4.28 cubic feet per second.

Water rights serving The Ridge at Eagle Crest (Eagle Crest II) and The Highlands of Eagle Crest (Eagle Crest III) are summarized in the following table.

**TABLE 1**  
**WATER RIGHT SUMMARY**

Permit #	Application File #	Use	Priority	General Description of Water Right	Maximum Diversion	Applicant Name on Original Permit	Assignment Name and Date
G-13819	G-14857	QM	1998	Well #9	3.34 CFS	Eagle Crest, Inc.	5-08-01 Cline Butte Utility Co.
G-11762	G-12905	QM	1992	Wells 6, 7,8	3.00 CFS	Eagle Ridge Development Corp.	4-17-01 Cline Butte Utility Co.
G-11313	G-12429	Irr/ Comm	1991	Wells 6,7,8	4.28 CFS	Eagle Ridge Development Corp.	

### 1.3 Water Consumption

#### A. Historical And Projected Domestic Consumption

Water consumption is the most critical component of water system design, and it must be carefully evaluated to assure adequate capacity in system components. All components must be designed to accommodate the ultimate peak project needs. The water system will be constructed in phases to comply with the market demand, and initial assumptions about the ultimate demand will determine the success of the system.

Domestic water consumption, or demand, will vary from month to month and with each hour of the day. The supply system must meet the peak instantaneous flow demand, which includes domestic use, irrigation, and fire protection.

The ultimate design criteria for the Eagle Crest water system is outlined in Table 2.

**TABLE 2**

**EAGLE CREST PHASES II AND III  
WATER SYSTEM DESIGN CRITERIA**

1. Source facilities must deliver the peak day consumption flow rate, plus the peak day irrigation requirement.
2. Storage and booster pumping facilities, in combination with source facilities, must provide the highest anticipated fire flow.
3. Storage and booster pump facilities, in combination with source facilities, must provide the capacity for peak instantaneous domestic consumption flow rates.
4. Peak instantaneous flow is equivalent to 2.5 times the peak day flow rate. The peak day flow rate is equivalent to 1.6 times the average maximum monthly flow rate.
5. Water consumed in commercial, retail and recreational facilities is assumed to be used by project residents, and will not significantly increase the proposed maximum usage.
6. The distribution system will be sized to convey the maximum anticipated fire flow and the peak day flow rate at a maximum velocity of ten feet per second.
7. All facilities will be sized for the following ultimate development:

Phase II development:

- A) 800 single-family homesites
- B) 150 multi-family, townhouse units
- C) 250 hotel rooms
- D) Miscellaneous uses including recreation facilities, administrative and sales offices, a pro shop and other relatively minor uses.

Phase III development:

- A) 900 single-family, multi-family, and townhouse units
- B) Miscellaneous uses

The projected domestic water consumption for Phase II and Phase III is based on consumption information developed for Phase I. The projected peak day rate used in the design of the domestic water system for Phase I was 1,250 gallons per equivalent dwelling unit (DU) day. This rate was used for all townhouse units and single family homesites. The actual usage for Phase I is in line with this projection, and this figure will also be used to estimate total Phase II and Phase III domestic

consumption. For consumption projections, 180 gallons per hotel room will be utilized, which is based on actual water consumption at the existing resort. Table 3 below lists all anticipated structures and the projected population. Table 4 summarizes the design assumptions and calculations for the domestic system.

Water, Right Conditions  
Tracking Slip

Groundwater/Hydrology Section

FILE ## G-14857

ROUTED TO: Water Rights

TOWNSHIP/

RANGE-SECTION: 15S/12E-16

CONDITIONS ATTACHED?  yes  no

REMARKS OR FURTHER INSTRUCTIONS:

Needs Deschlorination  
condition as well as 7B & 7J.

Reviewer: K. Lite

**TABLE 3**

**EAGLE CREST II AND III  
 ESTIMATED TOTAL PROJECT POPULATION AND DOMESTIC CONSUMPTION**

BUILDING/FACILITY	ESTIMATED EQUIVALENT DU	ESTIMATED PROJECT POPULATION
<b>PHASE II</b>		
800 Single Family Homesites*	800	2,400
150 Townhouse/Multi-Family Units*	150	450
250 Hotel Rooms*	35	625
<b>Estimated Phase II Total</b>	<b>985</b>	<b>3,475</b>
<b>PHASE III</b>		
900 Residential Units	900	2,700
<b>TOTALS:</b>	<b>1,885</b>	<b>6,175</b>

\*Note: Land use approvals provide flexibility on the type of units, but also establish a maximum number of residential units. For example, single family or multi-family units may be substituted for hotel rooms, but the total number of units may not be exceeded, without further approvals.

**TABLE 4**

**DOMESTIC WATER CONSUMPTION CALCULATION SUMMARY**

	PHASE II	PHASE III	TOTALS
Peak Day Consumption (GPD) (Total Equivalent Dwellings X 1,250 gallons/peak day)	1,231,250	1,125,000	2,356,250
Peak Day Source Requirement for Domestic Consumption (GPM) (GPD x (1 day/24 hours) x (1 hr/60 min.))	855	781	1,636

**B. Fire Protection Needs**

In addition to domestic consumption needs, an adequate water supply system must provide capacity for fire protection. Eagle Crest falls under the jurisdiction of the Deschutes County Rural Fire Protection District, and must meet the minimum requirements of this district.

The Redmond Fire Department has recommended a minimum fire protection flow rate of 1500 gpm. The Redmond Fire District recommendation of 1500 gpm was subsequently mandated in Deschutes County land use approvals for Eagle Crest III.

### C. Golf Course Irrigation

The irrigation requirements for Phase II include two 18-hole golf courses, open space areas, and landscaped areas adjacent to major amenities. No golf course is proposed for Phase III, but irrigation of approximately 20 acres of common area grounds is anticipated. Landscape irrigation water for the single family homes and townhouses will typically be delivered in the domestic system, and the associated water use is included in the Table 4 domestic consumption figures.

Approximately 335 acres of golf course and common area turf will ultimately be irrigated in Phases II and III. Based on the current water rights policies, a source capacity of 1890 gallons per minute will be used for irrigation. It is important to note the water right permit appropriation is based upon the standard rate of 1/80 cfs per acre. Historically, the Oregon Water Resources Department used a standard rate of 1/40 cfs per acre or twice the appropriation. This fifty percent reduction clearly demonstrates the desire and obligation to use water wisely and conserve water at each opportunity.

Irrigation is expected to occur 24 hours per day during peak consumptive use periods. The golf course will be irrigated at night to prevent conflicts with golfers, and the agricultural/open space areas are expected to be irrigated during daytime hours. Because the normal operation of a destination resort will restrict watering hours, the irrigation demand will vary from hour to hour. The lakes constructed as part of the golf course provide an irrigation water reservoir to meet peak period irrigation demand, with a steady source supply.

It is important to remember water supply systems are always designed for the highest expected flow requirement. Irrigation systems for example, are designed to provide water for the highest consumptive use period of the year. In reality this high consumptive use may only occur once every few years and then only for a few weeks out of the entire year.

The actual application of irrigation water at Eagle Crest will be regulated by electronic satellite controllers and computerized central control. This technology allows the golf course superintendent to adjust application rates for the various sun exposures, slopes, wind conditions, turf types, precipitation, temperatures, etc. The superintendent's responsibility is to maintain healthy turf, minimize pumping costs, and minimize fertilizer costs, or in other words, to assure the proper irrigation for each of the varied conditions within the course.

It is interesting to compare golf turf irrigation with agricultural practices. Turf irrigation equipment suppliers have completed studies to demonstrate the effectiveness of their systems, and documented typical water savings in excess of 50 percent, as compared to agricultural practices.

D. Water Consumption Summary

Consumption estimates are a critical component of a water system design. The design criteria outlined in Table 2 established necessary source capacity at the sum of peak day domestic consumption and the irrigation requirement. Fire protection flows and peak instantaneous demands will come from the combination of storage facilities and available source contribution.

Our tables and calculations have been based on the maximum or ultimate project demand. Table 5 summarizes the source requirement and consumption for Phases II and III of Eagle Crest.

**TABLE 5**  
 EAGLE CREST II AND III  
 ESTIMATED WATER CONSUMPTION AND SOURCE REQUIREMENT SUMMARY

WATER USE	ESTIMATED CONSUMPTION
<b>PHASE II</b>	
Domestic	855 gpm (peak day)
	2138 gpm (peak instantaneous)
Golf Course and Landscape Irrigation	1780 gpm
<b>PHASE III</b>	
Domestic	781 gpm (peak day)
	1953 gpm (peak instantaneous)
Landscape Irrigation (20 Acres)	110 gpm
<b>PHASES II AND III</b>	
Fire Protection	1500 gpm
Ultimate Domestic Requirement (Peak Day)	1636 gpm
Ultimate Irrigation Requirement	1890 gpm
Ultimate Source Requirement	3530 gpm

The total source requirement of 3530 gpm for the project is the combination of peak day domestic demand and the irrigation demand. The fire protection requirement will ultimately be met through the use of available source supply and stored water.

The ultimate source capacity of 3530 gpm will provide replenishment to the domestic water storage reservoir at the peak day flow rate and replenish the golf course lake(s) at a rate equivalent to the peak day irrigation use.

The ultimate source capacity is only required at full buildout of the resort and only on the peak consumption day of the year.

As noted previously, the water supply systems will be constructed in phases to meet demands as the project grows. Each component in each phase must have the capacity to meet ultimate needs. The ultimate source and pumping facilities will also be constructed in phases. This phasing program will be discussed in more detail in later portions of this report.

#### 1.4 Source Facilities

##### A. Design Criteria

The required water sources for the Phase II and Phase III water supply requirements must provide 3526 gpm at project build-out. Four wells have already been constructed within Eagle Crest II and Eagle Crest III, as summarized in Table 6.

##### B. Projected Ultimate Well Yield

Table 6 summarizes the water supply information for the existing wells at Eagle Crest II and III. Wells #6, #7, and #8 exist at Eagle Crest II, and contribute to the domestic and irrigation water distribution systems. Well #9 was constructed at Eagle Crest III. Domestic water needs are served as a first priority and irrigation needs as a second priority under existing pump control systems.

**TABLE 6**

**EAGLE CREST PHASES I AND II  
 DESCRIPTION OF EXISTING AND PROPOSED WELLS**

SOURCE	LOCATION	APPROXIMATE ELEVATION	DOMESTIC CAPACITY	IRRIGATION CAPACITY
Well #6	Phase II	3107	450 gpm	1400 gpm
Well #7	Phase II	3107	190 gpm	220 gpm
Well #8	Phase II	3040	1000 gpm	1500 gpm
Well #9	Phase III	3080	1500 gpm	-0- gpm
TOTAL SOURCE CAPACITY			3140 gpm	3120 gpm

Phase II well pumps discharge at a lower total head to irrigation lakes, which increases overall capacity to the irrigation system.

The Table 6 total capacity compares very well with our projected demand. The ultimate peak day domestic requirement of 1636 gpm is easily met with existing Wells #9 and #7. The irrigation capacity of Wells #6 and #8 exceed the ultimate irrigation demand. Existing and proposed wells should have ample capacity to meet the peak day demand at full buildout and offer a reasonable factor of safety for water supplies. We now must determine if the combination of source capacity and storage can meet peak instantaneous demand and fire protection needs.

## 1.5 Storage Facilities

### A. Design Criteria

As noted, storage facilities provide the capabilities to meet the hour to hour changing demand for a domestic water distribution system. The storage reservoir will allow the system to meet fire protection needs and provide emergency water during source maintenance and repair. The storage facilities drastically increase the reliability of a distribution system.

### B. Storage Sizing Calculations

The storage facilities are intended to balance the source contributions and the peak instantaneous demand. The combination of domestic consumption, fire protection, and in some cases irrigation establish the project demand. A 300,000 gallon concrete storage reservoir has been constructed to serve Phases I, II, and III of Eagle Crest. In determining the adequacy of the existing 300,000 storage reservoir, we must segregate the water system by phase.

The Phase I portion of Eagle Crest is served by existing Wells #2 and #3. The domestic water supply system serving Phase I is owned by the Eagle Crest Master Association. The capacity of existing Wells #2 and #3 exceeds the peak instantaneous domestic demand on the system. Similarly, the Swalley Irrigation District water right equals the Eagle Crest I irrigation demand. Eagle Crest Phase I therefore can meet all of the daily requirements for both domestic and irrigation consumption, directly from project wells and the Swalley Irrigation District water right pump. The existing domestic water reservoir is connected to Phase I, but the reservoir does not serve the Phase I project on a daily basis. The reservoir connection provides a great factor of reliability and provides an automatic connection in the case of an emergency or a fire.

The water supply system for Phases II and III of Eagle Crest is owned by the Cline Butte Utility Company. The Cline Butte Utility Company is a subsidiary of the developer. Phases II and III are interconnected, so that all Phase II and Phase III wells contribute to the same reservoir and the same water distribution system. It is prudent therefore to analyze the existing 300,000 gallon storage

capacity for adequacy to serve the combined needs of Phases II and III.

Table 7, below, summarizes the anticipated demand and source contributions, and calculates the total recommended storage capacity. In water system design, it is customary to assume that only one fire occurs within the project at any given time. The following calculations will analyze fire flow requirements. The Eagle Crest water delivery system can provide that fire flow at any location within Phases I, II, or III.

**TABLE 7**

**EAGLE CREST PHASES II AND III  
DOMESTIC WATER STORAGE REQUIREMENTS**

<b>DEMAND/CONTRIBUTION</b>	<b>FLOW RATE</b>
1. Well Contributions	3,140 gpm
2. Peak Day Domestic Flow Rate	-1,636 gpm
3. Balance to Offset Fire Flows	1,504 gpm

The design criteria in Table 2 indicates that water system piping must be sized to provide the largest fire protection flow rate in combination with peak day flows. Source facilities should be sized to deliver the peak day domestic and irrigation demands.

During a fire, all source wells will contribute to the domestic water supply system and all contributions to irrigation systems will cease. The higher priority for domestic systems is built into pump control systems. Fire protection flow rates will be met by excess source capacity and storage. Similarly, peak instantaneous demands are met from available source capacity and storage.

The Table 7 calculation demonstrates that existing wells can accommodate the peak day consumption, at full build-out, and refill the reservoir daily. The maximum fire protection flow rate of 1,500 gpm can be met primarily from source capacity, with the reservoir providing a redundant backup supply. The full reservoir capacity is available to meet the peak instantaneous flow rate.

The peak instantaneous flow rate at full build-out would normally occur for an hour or less in the morning. The existing storage is adequate to meet the peak instantaneous flow demand for approximately five hours. Table 7 demonstrates the existing storage capacity is adequate.

In municipal systems, emergency storage is typically a third component with storage requirements. Within the Eagle Crest system however, multiple source facilities (wells) will be utilized. Due to this redundancy and reliability, we assert it is unreasonable to anticipate that emergency storage will be necessary concurrent with fire protection and peak domestic flow rates. Therefore, we consider the total capacity of the storage facility as emergency storage, and assume the maximum fire and

peak instantaneous demand will not occur concurrently with an emergency. No additional volume is provided for domestic emergency storage.

The design of a water system must be constantly evaluated and confirmed as the resort service area matures. It is recommended that water consumption, well production rates, and peaking characteristics be monitored and confirmed on a regular basis.

#### C. Storage Evaluation Under Conditions of Restricted Supply

Eagle Crest wells and well pumps have consistently performed to design conditions and demonstrated strong reliability. Similarly, power outages have been minimal and of short duration over the history of Eagle Crest. In the prior analysis, the assumption that source facilities are available to meet emergency needs is warranted and reasonable. Regardless, the Oregon Water Resources Department requests an analysis of storage under conditions of restricted supply.

Table 5 documents the ultimate domestic peak day consumption for Eagle Crest II and III at 1,636 gallons per minute. If the highest capacity well (Well #9) were out of service for repairs or a power outage, the remaining domestic water source capacity would still exceed the peak day consumption rate at buildout, allowing the reservoir to refill daily. The peak instantaneous flow rate, during that peak consumption day, could be served from the existing reservoir.

If all four existing wells were off line, the existing reservoir would serve the needs of Eagle Crest II and III at full buildout, for approximately three hours, at the estimated peak day consumption rate.

This analysis of restricted supply further supports the conclusion that the Eagle Crest II and III water supply system has adequate capacity and ample reliability and redundancy to meet long term needs and emergency requirements.

### 1.6 Distribution System

#### A. Design Criteria

The CBUC water distribution system will include approximately 16 miles of PVC mainline piping, serving an ultimate population of nearly 6,200 people. Building elevations in Phases II and III will range from 2,860 to 3,450 feet. The water distribution system constructed for Phases II and III already includes a connection to the Phase I system. This connection provides multiple sources and a storage facility for all phases. The interconnected distribution system contains three pressure levels, and was designed to provide ample fire protection flow rates and high reliability.

The Phase II distribution system will ultimately include five internal loops to allow two way source flow, isolation of small sections of the service area during repairs, efficient hydraulic flow paths and high overall system capacity. The Phase III distribution system layout offers similar reliabilities.

The distribution system will be constructed in phases to coincide with service demand. The distribution system capacity will be restricted in the more remote sections of the project until development proceeds and system loops and components have been completed.

Table 8 lists the design criteria utilized in the sizing and layout of the water system for all phases of Eagle Crest.

**TABLE 8**

**EAGLE CREST PHASES I, II, AND II  
WATER DISTRIBUTION SYSTEM DESIGN CRITERIA**

1. Pressure: Under normal operating conditions, pressure within the distribution system will range from 50 psi to approximately 100 psi. (Pressure reducing valves will be provided for the relatively few units in lower portions of pressure levels to assure pressure conforms to plumbing code standards.) Under maximum fire flow conditions, pressure within the distribution system should not be drawn below 20 psi.
2. Velocity: Under normal conditions, system mainline velocities will range from 0 to 2.5 feet per second. Under maximum fire flow conditions, velocities will not exceed ten feet per second.
3. Fire hydrant spacing within the developed areas of the project will typically be 500 feet, depending upon specific fire protection needs.
4. Isolation Valves: Isolation valves will be installed at all major crosses or trees to allow minimal impact upon the service area, during system repairs. The maximum distribution line valve spacing will be 1,000 feet.
5. Air Release Valves: Air release valves will be installed at all system high points to prevent the collection of air within the distribution system, and the associated reduction in mainline flow capacity.
6. Service Connections: Single family home service lines will be sized to convey 15 gallons per minute over an average length of 150 lineal feet, with less than a 5 psi pressure loss. Typically, single family homes will be served by a one inch service line and fourplex condominium units will be served by a two inch service line.
7. Service Meters: Domestic water services will be metered and water charges will accommodate proportionate sharing of system operation and maintenance costs, providing a significant water conservation incentive.

B. Typical Main Size And Recommended Looping

A looping design has been constructed in Phases II and III. This looping design provides flexibility to the system, alternative delivery during emergencies, and maximum flow efficiency. The typical main size for the system is 8" to 10", depending on the location of the main.

C. Pressure Level Recommendations

The domestic services which must be provided for Eagle Crest Phases II and III range in elevation from 2,860 feet to 3,450 feet. Pressure level boundaries are affected primarily by the elevation of existing wells and the existing reservoir. The base of the existing reservoir is at elevation 3295, which sets pressure level boundaries at 3210 feet (37 psi) and 3070 feet (97 psi).

**TABLE 9**

EAGLE CREST PHASES II AND III  
RECOMMENDED PRESSURE LEVELS

PRESSURE LEVEL	DESIGN ELEVATION	PHASE/LOCATION
1	Greater than 3210 feet	Phase III (Served by a booster pump)
2	3070 feet to 3210 feet	Phase II and III (Served directly by wells and storage)
3	Less than 3070 feet	Phase II (Served through Pressure Reducing Valves)

**1.7 Long-Term Source Conditions**

Significant hydrogeologic data for the Deschutes aquifer, supplying the resort, is available. The U.S. Geological Survey, working in cooperation with the Oregon Water Resources Department has completed a significant groundwater evaluation and report on the upper Deschutes Basin. The multi-million dollar evaluation and report concludes the upper Deschutes Basin has a very efficient recharge from snow melt on the east slope of the Cascades, a highly developed regional groundwater system throughout the Basin, and a high quality and high capacity water supply is readily available. No groundwater decline has been observed and groundwater wells tapping the regional aquifer provide long-term reliability.

The U.S. Geological survey analysis also determined the upper Deschutes Basin groundwater system discharges to surface waters in the vicinity of Lake Billy Chinook. Because of in-stream rights in the lower Deschutes River, older priority needs are not met. The hydraulic connection between the surface water and the groundwater, coupled with the surface water appropriation in the lower Deschutes, limits the ability of the State to issue groundwater permits. CBUC however, successfully mitigated the withdrawal of groundwater under their Eagle Crest III permit (G-13819). Eagle Crest III therefore has a very reliable groundwater supply and a valid permit from the Oregon Water Resources Department to tap that supply.

The conclusions of the U.S. Geological survey are well supported by existing wells in the older portions of the Eagle Crest Resort. For example, the original wells serving Eagle Crest I were constructed for agricultural purposes in 1979. The well production, static water level, and water quality have all been

consistently high and stable since well construction. The U.S. Geological Survey study for the Deschutes Basin and the history of well production at the Eagle Crest Resort provide great confidence for a very reliable groundwater supply for the entire resort.

Regardless of the history, Eagle Crest is obligated to monitor and report groundwater withdraws and static water conditions on an annual basis. Groundwater well performance should be carefully monitored, regardless of the long-term historical reliability of the Deschutes Formation aquifer.

## **SECTION 2 - WATER CONSERVATION ELEMENT**

### **2.1 Measurement and Reporting Program**

The Cline Butte Utility Company measures flow rate and total flow daily via metering devices at resort wells. Total flow will also be measured and documented monthly, subject to weather related restrictions on meter reading, at all service meters. Customers will be billed monthly with invoices that indicate total monthly usage. In accordance with water permit requirements the company will be submitting a report to the State Water Resources Department annually, documenting complete water usage measurements.

### **2.2 Current Conservation Measures**

Water conservation measures are at the forefront of issues the Cline Butte Utility Company seeks to address in the operation and maintenance of the resort water system. Conservation measures that have been implemented thus far include:

- a. Full metering of all accounts.
- b. Implementation of conservation pricing to customers: The company currently applies constant unit rates or increasing block rates to water use pricing.
- c. Implementation of architectural guidelines/restrictions in the resort residential building approval process, that restrict developed landscape areas, thereby limiting water-use landscape.
- d. Incorporation of low water use plumbing fixtures (shower heads and toilets) in resort facilities, and the requirement for the same in residential building guidelines for the resort residential lots.
- e. Completion of an annual water audit of residential and commercial accounts.

The annual water audit at Eagle Crest III will be deferred until substantial completion of the distribution system. The Cline Butte Utility Company recognizes that water supplies will be consumed in the

construction and subsequent pressure testing of the water distribution system. A water audit is meaningless during this initial construction period. Initiation of the annual water audit is dependent upon construction schedules, but is generally planned for the year 2005. Even in 2005 and subsequent years, some allowance will likely need to be made for water losses associated with development construction and distribution system testing.

The annual water audit will compare the total water discharge from project wells into the distribution system, to that volume of water measured at individual services. In 2005, Cline Butte Utility Company should expect that 10 to 15 percent of total use will be unmetered consumption for construction, testing, and leakage. Construction for land development should slow considerably after 2005 and water use for construction should diminish.

### **2.3 Planned Conservation Measures**

In addition to the measures already enacted, the Cline Butte Utility Company plans to implement the following conservation measures, that are a required component of the water management plan.

- f. Meter testing and maintenance program: All meters within the resort are new and manufacturers typically predict a 20-year service free life. Unless water audits suggest a problem, a detailed meter testing and maintenance program will be developed in future plan updates.
- g. Leak Detection Program: On an annual basis the company will compare supply pumping records with metered service usage records to evaluate system losses. If losses greater than ten (10) percent are discovered, then an aggressive program of leak detection will be implemented for the transmission and distribution piping and valving systems. Random sampling and meter testing may also be necessary.
- h. Public Education Program on efficient water use: Implementation methods may include on going programs promoting water conservation and conservation related benefits, including speakers for community groups and the media; using paid and public service advertising; using bill inserts; providing information on customers bills showing use in gallons per day for the last billing period compared to the same period the year before; providing public information via the Cline Butte Utility Company newspaper to promote other water conservation practices; and coordinating with other governmental agencies, industry groups and public interest groups.
- i. Proposed Meter Testing Program: Cline Butte Utility Company will either acquire a meter testing bench or make arrangements to borrow meter testing facilities from other water purveyors in Central Oregon. Cline Butte Utility Company has consistently specified the use of Sensus meters, so meter testing equipment will be simple, without the need to accommodate various meter manufacturers. Beginning in the year 2010, Cline Butte Utility

Company will systematically remove and test 10 percent of the number of individual water service meters, serving occupied homes. If 10 percent of the tested meters demonstrate an error of 10 percent or greater, then meters will be repaired or replaced and the meter testing program will continue on an annual basis. If however, the meter testing program demonstrates that less than 10 percent of the tested meters are faulty, then the meter testing program will be deferred for five years and the testing program initiated again.

The proposed meter testing program recognizes the significant number of relatively new homes at Eagle Crest III, where the length of service is limited. Until 10 percent of the tested meters are found to be faulty, the meter testing program need not be implemented on an annual basis.

## 2.4 Conservation Measures Schedule

The proposed schedule for implementation and/or execution of the various conservation measures is as follows:

<u>Conservation Measure</u>	<u>Implementation Schedule*</u>
a. Metering Usage	2001 - On-going
b. Conservation Pricing	2001 - On-going
c. Low water-use landscape guidelines	2001 - On-going
d. Low water-use plumbing fixtures	2001 - On-going
e. Water Audit	Begin 2005 - Annually
f. Meter testing/maintenance program	Future
g. Leak Detection Program	Begin 2002 - Annually
h. Public Education Program	Begin 2002 - On-going

\*Note: Proposed conservation measures and the associated implementation schedule apply only to Eagle Crest III under Oregon Water Resources Department Permit No. G-13819

## 2.5 Wastewater Reuse

Sewage contributions from Eagle Crest II and III are treated in an on-site wastewater treatment plant. Treated sewage effluent is stored during the winter months and irrigated on agricultural lands at agronomic rates, during the summer growing season. Treated sewage effluent is not utilized for irrigation requirements on the resort golf courses or large turf areas. Effluent reuse on resort golf courses was considered carefully during the initial design and master planning for the resort, and was deemed not feasible.

The Deschutes County Destination Resort ordinance requires that golf courses and other recreational amenities be provided in the first year of development. During the early years of resort development, there is a very low project population and essentially no sewage contribution to serve any irrigation requirement. Therefore, a groundwater source for irrigation was required to meet the Phase I irrigation needs, regardless of long-term plans for effluent reuse.

Even in the year 2004, nearly 15 years after initiation of development of Eagle Crest II, the sewage effluent volume is minimal in comparison to irrigation needs. In the year 2004, 20.64 million gallons of sewage effluent were treated. The 2004 effluent volume represents 6.3 percent of the irrigation requirement for Eagle Crest II and III. The minimal benefit from sewage effluent irrigation on resort golf courses are offset with potential concerns from buyers about human contact with sewage. Required warning signs for sewage effluent reuse are also negative.

The irrigation system for the golf course is centralized, meaning that sewage effluent contributions would affect the entire golf course, even though a small percentage of the irrigation requirement is met from effluent. An analysis of Oregon Department of Environmental Quality reuse regulations and the volume of effluent available confirm the earlier Cline Butte Utility Company conclusion that effluent reuse for golf courses irrigation is not feasible.

### **SECTION 3 - LONG-RANGE WATER SUPPLY ELEMENT**

#### **3.1 Projected Service Area and Population**

At build-out the Eagle Crest III Resort is expected to include approximately 900 dwelling units and support facilities. Because of the destination nature of the resort, the population may fluctuate dramatically with the seasons, and from year to year. Based on the number of total permanent units, a peak population of approximately 2,700 may be anticipated after build-out, at full occupancy.

The population (dwelling units) for the resort is restricted to these maximum numbers by land use approvals and entitlements for the project. The number of dwelling units will never be increased or expanded, without further land use approvals.

#### **3.2 Projected Long-Range Water Demand**

To project the long-range water demand or demand at build-out of the resort, research of usage at other destination resort projects in Central Oregon was completed. Comparison of water consumption at those other resorts indicate peak day domestic consumption may vary from 500 gallons per equivalent dwelling unit, up to 1,700 gallons per dwelling unit. The highest consumption occurred where homesite lots measured from 1.5 to 2 acres and services were not metered. Substantially lower consumption was recorded for metered services, smaller lot sizes, and where low-flow irrigation landscaping was encouraged. All of the lots within Eagle Crest III are expected to be 1/2 acre or smaller, and all services will be metered.

Based on this research, a projected peak day consumption rate of 1,250 gallons per equivalent dwelling unit (edu) is recommended. This rate is considered conservative, and provides for some factor of safety throughout development of the resort. For this analysis, the condominium units as well as the single family units are included at a projected rate of 1,250 gal/edu, which additionally would be considered conservative.

Condominium units typically have much smaller, if any, irrigation use compared to single family home units.

The land use approvals applicable to the Eagle Crest III Resort allow conversion of one unit type to another. Therefore the conservative assumptions indicated, are recommended to assure flexibility throughout development of the project. Separate domestic consumption projections for the recreational and limited commercial facilities are not provided, as the consumption for those uses is considered built into the flow for each dwelling unit. The consumption is considered appropriate because the recreational facilities are provided for resort guests and owners, usage only.

The previous Table 4 provided a summary of projected peak water consumption at build-out of the Resort.

### **3.3 Projected Long-Range Water Supply Recommendations**

No additional water supply facilities will be needed to meet projected demand as the resort grows. Existing supply facilities are described in Section 1. As indicated in Section 2, several water conservation/demand management measures have already been implemented by the Cline Butte Utility Company, and the company plans to continue these efforts indefinitely for the resort.

The only other viable option for supply to the resort is piped water from the City of Redmond. There are significant issues however, which render this option not feasible. The City of Redmond has limited supplies to meet its own growth needs. Extension of a pipeline from the City to Eagle Crest is complicated by vertical relief and the associated pressure level boundaries. In addition, the piping of water is estimated to cost in excess of \$1 million. The cost is prohibitive for the project.

## **SECTION 4 - WATER CURTAILMENT PLAN**

### **4.1 History of Supply Deficiencies/Scenarios**

Because the Eagle Crest III resort is still under construction, no supply deficiency has occurred. Typically supply deficiencies are related to mechanical breakdowns at wells, power outages, or maintenance. During these periods, adequate supply should be available from the existing reservoir. There are several scenarios which could generate a loss of ability for the company to meet water demands. These scenarios include: flooding or any other disaster that could render the well(s) inoperable, damage to storage facilities, contamination of the groundwater supply, and power outages or electrical facilities destruction that diminish pumping capacity. Multiple source facilities and existing storage offset the risks of supply deficiencies. As noted in paragraph 1.5C, the Eagle Crest resort is very well served even under conditions of restricted supply

### **4.2 Capacity Limitations**

Based upon the best information available today, the Cline Butte Utility Company anticipates no capacity limitation for needed water supplies. Careful observation of the source aquifer in response to increased

pumping, (as the resort grows), should be performed. If groundwater levels drop substantially, drilling new wells deeper would be considered, provided appropriate geologic and hydraulic conditions exist. If long-term reliable yield becomes jeopardized, alternative sources will be further considered.

#### **4.3 Priority by Use**

In the event of any type of water shortage condition, the company should be ready to implement a plan of action. To do so, an evaluation of priorities for use of water in the event of a shortage is necessary. The following list of priorities for usage has been established for the Eagle Crest III Resort. In other words, in the case of water shortage, the Cline Butte Utility Company would start at the bottom of the list and restrict or prohibit uses as necessary to serve uses at the top of the list.

1. Minimum health and safety allocations for interior residential needs (including residential and multi-family), and the needs of hotel guests.
2. Minimum health and safety allocations for resort operations (employees and visitors).
3. Golf course greens and tees.
4. Golf course fairways.
5. Other landscaping.
6. Equestrian pasture.
7. Construction watering.
8. New customers, ie proposed projects or uses, without permits when a shortage is declared.

For the purpose of defining the health and safety allocation, research of community accepted estimates of interior residential use in the United States was reviewed. Based on that review the Cline Butte Utility Company has established a health and safety allotment of 68 gallons per person, per day. This quantity should be sufficient for customer's interior use, without requiring habit changes. If mandatory rationing were to become necessary, in a severe or prolonged shortage, a health and safety allotment of 50 gallons per person, per day would be applied.

#### **4.4 Water Shortage Stages/Action**

The following table has been created to provide the company with guidelines and trigger mechanisms (conditions) to identify and address supply shortages. Three stages of alert for potential or actual water shortages are created for immediate implementation, upon determination by the Utility Company Manager.

<b>TABLE 4.1 Water Shortage Stages/Actions</b>			
<b>Percent Reduction of Supply</b>	<b>Mild Alert Stage I</b>	<b>Serious Alert Stage II</b>	<b>Critical Alert Stage III</b>
<b>Condition</b>	Wells are producing at no more than 90% capacity	Wells are producing at no more than 75% capacity	Wells are producing less than 70% capacity
			and/or
			Emergency situation resulting in supply below 70% of normal
<b>Shortage Action</b>	Notice to the public of potential supply shortage (Stage I Condition) - request for voluntary non-essential reduction in use. Outside watering restricted to limited number of days/time of day. Property owners and guests will be requested to limit car washing, shower times and other ordinary uses.	Notify the public of (Stage II Condition) - impose restrictions on landscape irrigation and non-essential uses. All property owners will be required to comply with restricted outdoor watering schedules. No watering during daytime hours. Length of irrigation time sets on the golf course are to be reduced 20%.	Notify the public of severe shortage (Stage III Condition) - impose restrictions on usage to minimum health and safety allocations. Property owners are to be prohibited from all outside watering. Golf course fairway irrigation will be eliminated. Tee and greens areas irrigation reduced 30%.

**SECTION 5 - PLAN UPDATE SCHEDULE**

On an annual basis the Cline Butte Utility Company will monitor water use (production and metered sales) and compile a brief report of its findings. A copy of this report or audit will be provided the Oregon Water Resources Department (OWRD) as part of the State's annual water use reporting program (OAR 690-85).

We recommend the Cline Butte Utility Company review and possibly update this plan at least once every

five years, until build-out. By incorporating most commonly accepted conservation measures in the system operation from inception, there will be little to report to the state with regard to cost savings/water usage savings by implementation of those measures. For that reason, and because the Eagle Crest system is relatively small compared to typical municipalities, we feel submittal of an updated plan is unnecessary.

Since the Cline Butte Utility Company is privately owned, operated, and maintained, and since efficient operation of the water system is essential to the success of the resort, the company has adequate incentives to carefully manage and utilize the available water resources.

# Water Right Conditions Tracking Slip

Groundwater/Hydrology Section

FILE # # G-13856

ROUTED TO: Kim French

TOWNSHIP/

RANGE-SECTION: Eagle Crest

CONDITIONS ATTACHED?: ~~yes~~  no

REMARKS OR FURTHER INSTRUCTIONS:

See Memo 7-8-07

Reviewer: K. Lite

**Permit Extension Ground Water Review**

Date: 4/6, 2006  
 To: Doug Woodcock, Ground Water Section Manager  
 From: Kim FRENCH, Permit Extension Review  
 Subject: Ground Water Review for File G- 14857 / Permit G- 13856  
 (Date permit issued: 10/17/2000 (QUASI-MUNI))

The above referenced permit is currently being reviewed for an extension of time. Before I can determine whether or not an extension of time should be granted, a Ground Water review for this file is necessary. Special designations affecting this permit are as follows:

**NOTE:** Original Division 9 review completed by: KLEN LITE

- Located within a Ground Water Administrative Area (Critical, Limited, etc.)
- 5-Year Limited Permit
- Other:
- None (no special designations)

**For Ground Water / Hydrology Staff Use:**

*Please answer the following questions. If necessary, attach an additional sheet.*

1. Does the ground water source under this permit have the potential for substantial interference with surface water? N/A  
 [NOTE: Applies ONLY to Municipal permits issued before November 2, 1998 - see OAR 690-315-0080(1) & (2)]

2. Are there ground water supply concerns relevant to this extension of time that the Department should consider? Probably not

[NOTE: Does NOT apply to Quasi- Municipal or Municipal permits issued before November 2, 1998 - see OAR 690-315-0080(5)]

3. Should the Department establish a new reference level for water level declines due to the failure of permittee to submit annual measurements? ~~YES~~ NO N/A

4. Should any additional conditions be added to this permit? ~~Yes - Modified~~ ~~Groundwater Condition 7N: See Memo 7-9-07~~ **KEJ**

5. Other issues or concerns? Quality of water level measurements. See Memo 7-9-07; lack of interference evaluation at full rate of permit. See memo.

The Department requires the water user to measure and report annual static water levels for each well on the permit. Or, the water user can measure other wells in close proximity to the permitted wells, if the Department's Groundwater Staff determines that the substitute observation wells will provide adequate data to assess the impacts from the permitted wells. The static water level shall be measured in the month of March using manual measurement equipment such as an electric tape or steel tape. Reports shall be submitted to the Department within 30 days of measurement.

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8-21-2007

Doug,

This is what I propose for the G-13856 extension (Eagle Crest). Note, I had Woz review it.

-Ken

OK  
Doug

## Ken Lite

---

**From:** Doug Woodcock  
**Sent:** Thursday, July 26, 2007 2:44 PM  
**To:** Ken Lite  
**Subject:** Measurement condition for Eagle Crest

Ken-

Does this language work for the Eagle Crest extension review? If so, include in your review and forward to Kim French.

The Department requires the water user to measure and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March using manual measurement techniques such as electric tape or steel tape. Reports shall be submitted to the Department within 30 days of measurement.

DEW

Douglas Woodcock  
Manager, Ground Water Section  
Oregon Water Resources Department  
(503) 986-0847  
douglas.e.woodcock@state.or.us

Ken -  
See email re: Eagle Crest

Dang

**Memorandum**

July 9, 2007

TO: Kim French

FROM: *KL* Ken Lite, Hydrogeologist

SUBJECT Groundwater Review for G-13856 Extension

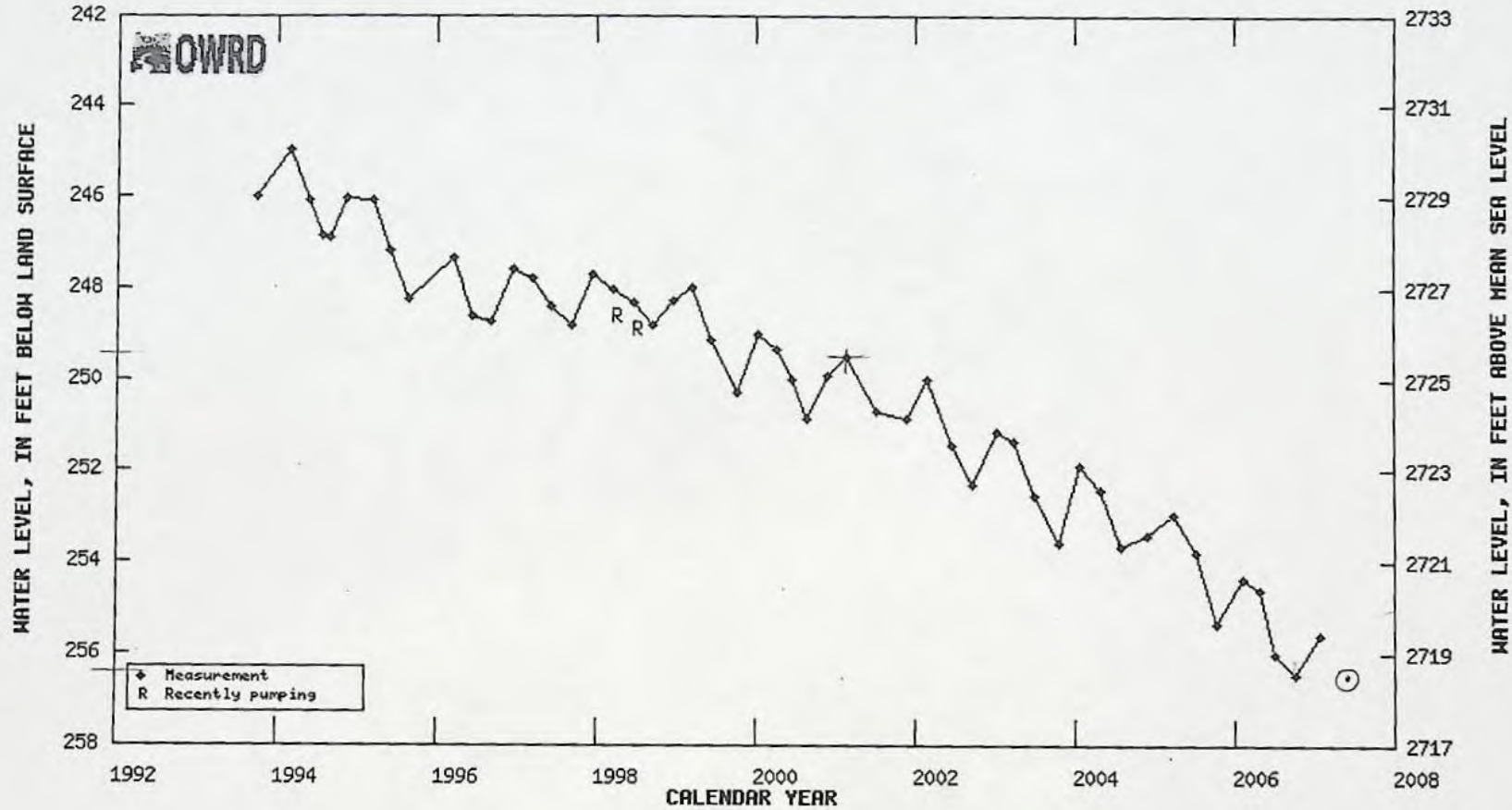
I offer two ground-water related observations for Groundwater Permit G-13856.

First, the rate on the permit is almost twice the rate that was evaluated during the application review process. Presumably the increased rate was approved for emergency fire flows (an exempt use under ORS 537.141). Regardless, no interference evaluation was done at the higher rate and thus no water level reporting and decline condition was recommended for the permit.

Second, the water-level data currently being collected at this well (not required under this permit) do not reflect the regional trend (over 10- feet of decline since 1994) that occurs at our State Observation Wells in the area (see attached graph). I suspect the cause is related to the method of data collection at the permitted well, specifically, the airline measurements.

I have been in contact with Tom Walker (the permittee's agent), in an effort to resolve the discrepancy. Mr. Walker has worked with Eagle Crest staff in reviewing their data collection procedures. However, the data discrepancy has not been resolved. Although no measurement condition was placed on this permit, I recommend that the applicant only use manual measurement techniques such as electric tape or steel tape for their water-level measurements at this well.

Well Location	15.00S12.00E14CDD
Oregon Water Resources Department Well Log ID	DESC 3581
Oregon Water Resources Department State Observation Well Number	1317
Well depth, in feet below land surface	303.00
Land surface elevation, in feet above mean sea level	2975
Primary use of well	DOMESTIC



4/30/07 meas. 256.45' 615

Table showing water-level data for State Well DESC 3581, State Observation Well # 1317



# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97301-4172  
(503) 378-3739  
FAX (503) 378-8130

May 8, 2001

Cline Butt Utility Company  
1140 Nutcracker  
Redmond, OR 97756

REFERENCE: File G-14857

The assignment of Permit G-13856 from Jerol Andres, President Of Eagle Crest, Inc to you has been recorded in the records of the Water Resources Department.

Our records have been changed accordingly and the original is enclosed. Receipt number 43400 covering the recording fee of \$25 you submitted has already been sent to you.

Sincerely,

DALLAS S. MILLER  
Water Rights Specialist

DSM:jh

Enclosure

cc: Watermaster # 11  
Data Center, OWRD  
Thomas Walker, CWRE  
Jerol Andres, President of Eagle Creek, PO Box 1215, Redmond, OR 97756

REQUEST FOR ASSIGNMENT

I, (permit holder, applicant) Jerol Andres, President of Eagle Crest, Inc.

P.O. Box 1215 Redmond, OR 97756 (541) 923-0807  
(mailing address) (city) (state) (zip) (phone)

CHECK ONE

- hereby assign all my interest in and to application/permit;

- hereby assign all my interest in and to a portion of application/permit  
(include a map showing portion of application assigned);

- hereby assign a portion of my interest in and to the entire application/permit;

Application # G-14857, Permit # G-13819 G 13856;

OR GR Statement # \_\_\_\_\_, GR Certificate of Registration # \_\_\_\_\_ as filed in the office of the Water Resources Director, TQ:

Cline Butte Utility Company (541) 504-2305  
(name of new owner) (phone #)

1140 Nutcracker Redmond, OR 97756  
(address) (city) (state) (zip)

(Note: If there are other owners of the property described in this Application, Permit or Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

I hereby certify that I have notified all other owners of the property described in this Application, Permit or Certificate of Registration of this request for assignment.

Witness my hand this 8<sup>th</sup> day of February, 2001.

applicant/permit holder Jerol Andres

applicant/permit holder \_\_\_\_\_

PLEASE DO NOT WRITE IN THIS BOX

STATE OF OREGON, } } ss County of Marion. }
I certify that the within was received by me on the <u>15</u> day of <u>Feb</u> , <u>2001</u> at <u>8</u> o'clock <u>A</u> m., and was recorded in the Miscellaneous Records, Vol. <u>8</u> Page <u>916</u> Water Resources Director

The completed assignment must be submitted to the Water Resources Department together with a recording fee of \$25. Additional pages will cost \$5 per page.

WATER RESOURCES DEPARTMENT  
158 12TH STREET NE  
SALEM, OREGON 97310-0210

m:\groups\wr\support\janet\forms\assignment request

RECEIVED

FEB 15 2001

WATER RESOURCES DEPARTMENT  
SALEM, OREGON

OK  
DSM

REQUEST FOR ASSIGNMENT

I, (permit holder, applicant) Jerol Andres, President of Eagle Crest, Inc.

P.O. Box 1215                      Redmond, OR      97756      (541) 923-0807  
(mailing address)                      (city)      (state)      (zip)                      (phone)

RECEIVED

FEB 15 2001

WATER RESOURCES D  
SALEM, OREGON

CHECK ONE

- hereby assign all my interest in and to application/permit;

- hereby assign all my interest in and to a portion of application/permit  
(include a map showing portion of application assigned);

- hereby assign a portion of my interest in and to the entire application/permit;

Application # G-14857 , Permit # G-13819 G-13856;

OR GR Statement # \_\_\_\_\_, GR Certificate of Registration # \_\_\_\_\_ as filed in the office of the Water Resources Director, TO:

Cline Butte Utility Company    (541) 504-2305  
(name of new owner)    (phone #)

1140 Nutcracker                      Redmond, OR                      97756  
(address)                                      (city)      (state)                      (zip)

(Note: If there are other owners of the property described in this Application, Permit of Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

I hereby certify that I have notified all other owners of the property described in this Application, Permit or Certificate of Registration of this request for assignment.

Witness my hand this 8<sup>th</sup> day of February, 2001.

*Jerol Andres*

STATE OF OREGON, COUNTY OF DESCHUTES) SS.

On this 8<sup>th</sup> day of February, 2001, before me, the undersigned a Notary Public in and for said County and State, personally appeared Jerol Andres personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument and acknowledged that she/he executed the foregoing instrument to the voluntary act and deed.

Subscribed and sworn to before me this 8<sup>th</sup> day of February, 2001.

*Linda De Avila*





# Oregon

John A. Kitzhaber, M.D., Governor

May 8, 2001

Water Resources Department

Commerce Building

158 12th Street NE

Salem, OR 97301-4172

(503) 378-3739

FAX (503) 378-8130

RECEIVED

MAY 14 2001

W & H PACIFIC, INC.

Cline Butt Utility Company  
1140 Nutcracker  
Redmond, OR 97756

REFERENCE: File G-14857

The assignment of Permit G-13856 from Jerol Andres, President Of Eagle Crest, Inc to you has been recorded in the records of the Water Resources Department.

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Sincerely,

DALLAS S. MILLER  
Water Rights Specialist

DSM:jh

Enclosure

cc: Watermaster # 11  
Data Center, OWRD  
Thomas Walker, CWRE  
Jerol Andres, President of Eagle Creek, PO Box 1215, Redmond, OR 97756

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APR 03 2007

WATER RESOURCES DEPT  
SALEM, OREGON



4-1-99

Dec 21, 1998

TO: Water Rights Section

FROM: Groundwater/Hydrology Section KSL K. Lite

Reviewer's Name

SUBJECT: Application G- 14857

GROUNDWATER/SURFACE WATER CONSIDERATIONS

- 1. PER THE \_\_\_\_\_ Basin rules, one or more of the proposed POA's is/is not within \_\_\_\_\_ feet/mile of a surface water source (\_\_\_\_\_) and taps a groundwater source hydraulically connected to the surface water.
- 2. BASED UPON OAR 690-09 currently in effect, I have determined that the proposed groundwater use
  - a.  will, or \_\_\_\_\_ have the potential for substantial interference with the nearest
  - b. \_\_\_\_\_ will not \_\_\_\_\_ surface water source, namely Desclutes; or
  - c.  will if properly conditioned, adequately protect the surface water from interference:
    - i. \_\_\_\_\_ The permit should contain condition #(s) \_\_\_\_\_;
    - ii.  The permit should contain special condition(s) as indicated in "Remarks" below;
    - iii. \_\_\_\_\_ The permit should be conditioned as indicated in item 4 below; or
  - d. \_\_\_\_\_ will, with well reconstruction, adequately protect the surface from substantial interference.

GROUNDWATER AVAILABILITY CONSIDERATIONS

- 3. BASED UPON available data, I have determined that groundwater for the proposed use
  - a. \_\_\_\_\_ will, or \_\_\_\_\_ likely be available in the amounts requested without injury to prior rights
  - b. \_\_\_\_\_ will not \_\_\_\_\_ and/or within the capacity of the resource; or
  - c.  will if properly conditioned, avoid injury to existing rights or to the groundwater resource:
    - i.  The permit should contain condition #(s) 7B;
    - ii. \_\_\_\_\_ The permit should contain special condition(s) as indicated in "Remarks" below;
    - iii. \_\_\_\_\_ The permit should be conditioned as indicated in item 4 below; or
- 4.
  - a. \_\_\_\_\_ THE PERMIT should allow groundwater production from no deeper than \_\_\_\_\_ ft. below land surface;
  - b. \_\_\_\_\_ The permit should allow groundwater production from no shallower than \_\_\_\_\_ ft. below land surface;
  - c. \_\_\_\_\_ The permit should allow groundwater production only from the \_\_\_\_\_ groundwater reservoir between approximately \_\_\_\_\_ ft. and \_\_\_\_\_ ft. below land surface;
  - d. \_\_\_\_\_ Well reconstruction is necessary to accomplish one or more of the above conditions.
  - e. \_\_\_\_\_ One or more POA's commingle 2 or more sources of water. The applicant must select one source of water per POA and specify the proportion of water to be produced from each source.

REMARKS: Desclutes Mitigation condition:

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(Well Construction Considerations on Reverse Side)

WELL CONSTRUCTION (If more than one well doesn't meet standards, attach an additional sheet.)

5. THE WELL which is the point of appropriation for this application does not meet current well construction standards based upon:
- a. \_\_\_ review of the well log;
  - b. \_\_\_ field inspection by \_\_\_\_\_;
  - c. \_\_\_ report of CWRE \_\_\_\_\_;
  - d. \_\_\_ other: (specify) \_\_\_\_\_
6. THE WELL construction deficiency:
- a. \_\_\_ constitutes a health threat under Division 200 rules;
  - b. \_\_\_ commingles water from more than one groundwater reservoir;
  - c. \_\_\_ permits the loss of artesian head;
  - d. \_\_\_ permits the de-watering of one or more groundwater reservoirs;
  - e. \_\_\_ other: (specify) \_\_\_\_\_
7. THE WELL construction deficiency is described as follows: \_\_\_\_\_
8. THE WELL
- a. \_\_\_ was, or constructed according to the standards in effect at the time of
  - b. \_\_\_ was not original construction or most recent modification.
  - c. \_\_\_ I don't know if it met standards at the time of construction.

**RECOMMENDATION:**

- A. \_\_\_ I recommend including the following condition in the permit:  
"No water may be appropriated under terms of this permit until the well(s) has been repaired to conform to current well construction standards and proof of such repair is filed with the Enforcement Section of the Water Resources Department."
- B. \_\_\_ I recommend withholding issuance of the permit until evidence of well reconstruction is filed with the Enforcement Section of the Water Resources Department.
- C. \_\_\_ REFER this review to Enforcement Section for concurrence.

**THIS SECTION TO BE COMPLETED BY ENFORCEMENT PERSONNEL**

I concur in G/H's recommendation A or B above relating to conditioning or withholding the permit

\_\_\_\_\_, 199\_\_\_\_  
(Signature)

I do not concur in G/H's recommendation A or B above relating to conditioning or withholding the permit for the following reasons: \_\_\_\_\_

\_\_\_\_\_, 199\_\_\_\_  
(Signature)

STATE OF OREGON  
WATER SUPPLY WELL REPORT

(as required by ORS 537.765)

(1) OWNER:

Well Number: #9

Name: Eagle Crest Resort  
Address: 920 SW Emkay DR Suite C-100  
City: Redmond State: OR Zip: 97702

(2) TYPE OF WORK: (repair/  
 New Well  Deepening  Alteration/recondition  Abandonment

(3) DRILL METHOD:  
 Rotary Air  Rotary Mud  Cable  Auger  
 Other: \_\_\_\_\_

(4) PROPOSED USE:  
 Domestic  Community  Industrial  Irrigation  
 Thermal  Injection  Livestock  Other \_\_\_\_\_

(5) BORE HOLE CONSTRUCTION:  
Special Construction approval  Yes  No  
Depth of Completed Well 735"  
Explosives Used  Yes  No Type: \_\_\_\_\_ Amount: \_\_\_\_\_

HOLE			SEAL			sacks or pounds
Diameter	From	To	Material	From	To	
23	0	20	Cement	0	20	34 Sacks
17	20	736	---	---	---	---

How was seal placed: Method  A  B  C  D  E  
 Other \_\_\_\_\_

Backfill placed from \_\_\_\_\_ to \_\_\_\_\_ Material \_\_\_\_\_  
from \_\_\_\_\_ to \_\_\_\_\_ Material \_\_\_\_\_  
Gravel placed from 635 to 736 Size of gravel #6-9 sand

(6) CASING/LINER:

CASING:							
Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
18"	+1	20	.375	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14"	20	630	.375	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

LINER:							
Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
8"	663	671		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8"	731	736	.250	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Final location of Shoe(s): \_\_\_\_\_

(7) PERFORATIONS/SCREENS:

Perforations Method: \_\_\_\_\_  
 Screen Type: \_\_\_\_\_ Material: SS  
Tc/c/p/pe  
Slot size

From	To	Size	No.	Diameter	size	Casing	Liner
628	663	.20		8"	P	<input type="checkbox"/>	<input checked="" type="checkbox"/>
671	731	.20		8"	P	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(8) WELL TESTS: Minimum testing time is 1 hour

Pump Yield gpm	Bailer Drawdown	Air Drill Stem at	Flowing Artesian Time
			1 hr.
500'		610	8

Temperature of water 51 Depth Artesian Flow Found: \_\_\_\_\_  
Was a water analysis done? \_\_\_\_\_ By whom: \_\_\_\_\_  
Did any strata contain water not suitable for intended use? (explain) \_\_\_\_\_  
Depth of Strata: \_\_\_\_\_

WELL ID # L 50204  
START CARD # 111252

(9) LOCATION OF WELL by legal description:

County: Deschutes Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_  
Township: 15 S Range: 12E  
Section: 16 NE 1/4 NE 1/4  
Tax Lot: 4800 Lot: N/A Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_  
Street Address of Well (or nearest address) \_\_\_\_\_  
Eagle Crest Dr

(10) STATIC WATER LEVEL:

508 Ft. below land surface Date 11/15/01  
Artesian pressure \_\_\_\_\_ lb. per sq. in. Date \_\_\_\_\_

(11) WATER BEARING ZONES:

Depth at which water was first found			
From	To	Est. Flow Rate	SWL
630	660	200+	508
671	730	500+	508

(12) WELL LOG:

Material	Ground Elevation:		SWL
	From	To	
Top Soil	0	2	
Basalt Gray Vic	2	8	
Basalt Gray	8	34	
Cinders Black	34	40	
Cinders Loose Cir	40	62	
Basalt Gray	62	78	
Basalt Multi Color Loose Circulation	78	136	
Basalt Gray	136	148	
Basalt Brown with Red & Black Soft	148	242	
Gray Pumi with Multi Color Soft	242	267	
Brownish Gray Rock some Gray	267		
Pumi Soft		302	
Gray Rock Soft Med	302	324	
Multi Color Rock Most Brown	324	380	
Brownish Red Rock w/Pumi Med Soft	380	435	
Basalt Black & Gray Hard	435	540	
Multi Color Rock Red & Brown Mostly	540	602	
SandStone	602	626	508
Basalt Med-Hard Gray	626	671	
Cinders Red Green	671	736	508

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FFR 25 2002

WATER RESOURCES DEPT.  
SALEM, OREGON

Date Started: 5/21/01 Completed: 11/15/01

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

Signed Dave Donly WWC Number 1487  
Date 11/20/01

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

Signed \_\_\_\_\_ WWC Number 723  
Date 11/20/01

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APR 03 2007

EX. 2

## STATE OF OREGON

## COUNTY OF DESCHUTES

## PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE CREST INC.  
WILLIAM D. LYCHE  
PO BOX 1215  
REDMOND, OREGON 97756

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-14857

SOURCE OF WATER: A WELL IN DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 3.34 CUBIC FOOT PER SECOND, further limited to a maximum diversion of 252 acre-feet each year and shall result in consumption of no more than 115 acre-feet each year, once sewage contribution is subtracted from the amount diverted, unless the mitigation plan is modified and approved by the department as described below.

If the reporting, as required below, demonstrates the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet, or the department may approve an additional and equivalent water right to be leased to instream use, to maintain an acre-foot for acre-foot balance between the amount of water consumed to the amount of water provided to instream use. An equivalent water right must, at a minimum, be from a water right with a diversion point at or near the diversion authorized by the lease of certificate 74145.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 2, 1998

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 16, T15S, R12E, W.M.; 150 FEET SOUTH AND 150 FEET WEST FROM THE NE CORNER SECTION 16  
THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4

NW 1/4

SW 1/4

SECTION 16

TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install meters, or other suitable measuring devices as approved by the Director, *at both the diversion from the well and at a point where sewage, that is actually discharged to the ground, may be measured*. The permittee shall maintain the meters or measuring devices in good working order, shall keep a complete record of the amount of water used and discharged each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the watermaster shall request access upon reasonable notice.

This permit will expire in 2 years from permit issuance unless the 2 year lease of the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, or an equivalent water right as determined by the Department, to instream use.

Within 1 year of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this timeline to complete the required Water Management Conservation Plan.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

#### STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not

PAGE 3

limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

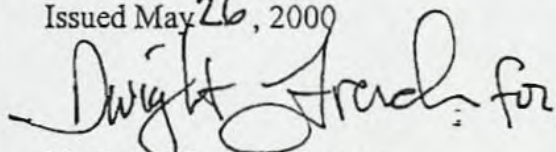
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin by May<sup>26</sup>, 2001. Complete application of the water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued May<sup>26</sup>, 2000



Martha O. Pagel, Director  
Water Resources Department

NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

Application G-14857  
Basin 5

Water Resources Department  
Volume 1 DESCHUTES R MISC  
MGMT. CODE 7BG 7BR 7JG 7JR

PERMIT G-13819  
District 11



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WATER RESOURCES DEPT.  
SALEM, OREGON

Via Hand Delivery

July 21, 2000

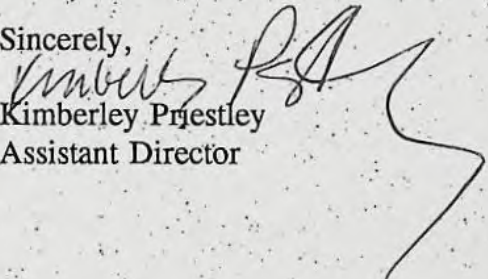
Paul Cleary, Director  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310

**Re: Petition for Reconsideration of Final Order Approving Application and Denying Protest and issuance of Permit**

Dear Director Cleary,

Enclosed in a Petition for Reconsideration of a final order and permit by the Department regarding Eagle Crest's water right application G-14857. The Petition is filed on behalf of WaterWatch, Oregon Trout and Trout Unlimited. The petition raises critical legal and policy issues relating to the Department's permitting of a water right in the Deschutes River basin that is contrary both to the Scenic Waterway Act and to initial agreements reached by the Deschutes Groundwater Working Group.

Please do not hesitate to call if you have any questions or wish to discuss the Petition:

Sincerely,  
  
Kimberley Priestley  
Assistant Director

c. Meg Reeves  
Dwight French  
Water Resources Commission Members

Pls. file in  
G14857  
Thanks

**BEFORE THE  
WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON**

In the Matter of Final Order	)	
Approving Application and Denying Protest	)	Petition for Reconsideration
of Water Right G-14857 in the Name of	)	
William D. Lyche, for Eagle Crest, Inc.	)	
and issuance of Permit G-13819	)	

---

WaterWatch, Oregon Trout and Trout Unlimited (hereinafter Petitioners) petition the Director to reconsider, pursuant to OAR 690-01-005, OAR 137-004-0080, ORS 183.484 and ORS 536.075, the Final Order Approving Application and Denying Protest of water right application G-14857, in the name of William D. Lyche, for Eagle Crest, Inc. (Exhibit 1) and Permit G-13819 that was issued pursuant to the Final Order (Exhibit 2).

The Deschutes River became a state Scenic Waterway in 1970 through a voter supported ballot initiative. Until 1995, the Scenic Waterway Act clearly prohibited the diversion of any water that would otherwise enter a scenic waterway if scenic waterway flows were not being met. Despite this mandate from the people of Oregon, the Department continued to allow new uses of water that was otherwise needed for state scenic waterways in the Deschutes. In 1995 the Oregon Legislature, at the request of the Department, changed the Act to allow a limited exception for new groundwater uses. The Governor signed this bill based upon assurances on the part of the Department that this would not jeopardize flow protection for established scenic waterways and that the law would in fact give the agency another tool to protect scenic waterways. *See Exhibit 8, Letter from Governor Kitzhaber to WaterWatch, 7/19/95.* Instead, the state has used this law as a tool to further undermine scenic waterway flows. In the past five years the Department issued over 165 new groundwater rights totaling over 200 cfs despite evidence groundwater withdrawals were affecting surface water flows in the basin. The completion of the US Geological Survey Study, which concluded that groundwater pumping in the upper basin diminishes streamflows in the lower Deschutes River system (which is consistent with earlier studies dating back to the 1920's), meant the Department could no longer ignore its responsibilities under the Scenic Waterway Act. That agency was forced to admit that groundwater users, including all post-1995 permittees, were now required to mitigate for their use. *See Exhibit 3, WRD Water Development Issues in*

*the Deschutes, 1998.* To quell the crisis created by its past actions the Department convened the Deschutes Groundwater Working Group, which is developing mitigation measures to attach to existing, pending, and future applications to protect scenic waterway flows. The Department's decision to issue this Final Order and Permit in a manner that totally ignores its responsibilities under the Scenic Waterway Act, and does not fully mitigate for the effect of this long term use, undermines the ongoing efforts of the Deschutes Basin Working Group and further undermines the free-flowing character of the Deschutes Scenic Waterway.

### **Request for Relief**

Petitioners ask that the Director reconsider the Final Order and Permit, rescind the Permit, and issue a new order (1) denying water right application G-14857 or (2) approving the application with the necessary public interest conditions requested in this petition. This is necessary because the Final Order and Permit (1) violate the requirements of Oregon's Scenic Waterway Act, (2) will cause injury to senior instream water rights, and (3) violates Department rules.

### **Petitioners' Interest in the Order**

Water, including groundwater, is a publicly owned resource. ORS 537.110. Petitioners have a long-standing interest in decisions that effect the Deschutes River system as a whole. Over the past decade, at least one of the petitioners, WaterWatch, has commented on nearly every groundwater application submitted in the basin. All three Petitioners filed a protest against groundwater application G--14857, which we incorporate by reference into this petition. *Exhibit 10.*

WaterWatch is a nonprofit membership organization dedicated to promoting water allocation decisions in Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation, biological diversity, ecological values, public health and a sound economy. Oregon Trout is a nonprofit organization dedicated to protecting and restoring wild native fish habitat in Oregon. Trout Unlimited is a national non-profit membership organization whose mission is to conserve, protect and restore North America's trout and salmon. All three groups have a long history of working towards the protection and restoration of the

Deschutes River and are currently involved in the Deschutes Basin Groundwater Working Group.<sup>1</sup>

### Statement of the Facts

**The Resource:** The Deschutes River system in Central Oregon is one of Oregon's most treasured rivers. People come from all over the nation to fish, raft, kayak and hike the river corridor of this spectacular river. Fed by underground springs, it flows due north through the rain shadow of the Cascades, cutting through the arid heart of Central Oregon.

Attesting to the important values of the Deschutes River is the fact that voters designated a majority of the river as a state scenic waterway by ballot initiative in 1970. The highest and best use of waters within a scenic waterway reach are recreation, fish and wildlife uses. ORS 390.835(1). The law directs the Department to manage these waters so that the free-flowing character of the waters are maintained in quantities necessary for recreation, fish and wildlife uses. *Id.* No water diversion can be constructed or used in a manner inconsistent with the Scenic Waterway Act. *Id.* In addition, the Oregon Supreme Court has interpreted the Act as requiring the state to protect the water flowing into and through scenic reaches in the amounts necessary to protect the purposes of the designated reaches. Diack v. City of Portland, 306 Or 287 (1988). Segments of the river are also designated as a federal Wild and Scenic River.

In addition to its high scenic and recreational values, the Deschutes is a nationally treasured trout fishery. The Deschutes supports a variety of trout including rainbow trout, cutthroat trout, brown trout, bull trout, and redband trout. Bull trout are a threatened species under the Endangered Species Act (ESA) and redband trout are a state sensitive species. The lower Deschutes also supports summer and winter steelhead and coho salmon. Winter steelhead and coho are both listed as threatened under the ESA. The Deschutes also contributes flows for listed threatened and endangered fish populations in the Columbia River. All said, the

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<sup>1</sup> Petitioners interests are articulated on page 2 of the Protest (Exhibit 2). In addition to representing the interests outlined in the protest, Petitioners represent an interest in ensuring that the agency adhere to commitments made in the Deschutes Groundwater Working Group.

Deschutes supports a major sports fishery in Oregon. The state adopted instream water rights to protect flows needed for these fish and other instream uses for the entire river. See ISWR #70087, 71194 for lower Deschutes.

The Deschutes River is indisputably of high public value. However, past water allocation decisions by the state have resulted in a depletion of streamflows below flows needed for fish and other public uses of water. Flow standards set to protect instream flows and Scenic Waterway flows (Diack flows) are not met 9 months of the year. *Exhibit 3, at 4*. As a result, the surface waters in the basin are overallocated and the state no longer issues surface water rights for the Deschutes mainstem and many of its tributaries. As growth has exploded in the basin, new water users have turned to groundwater as a source for new development. This trend exacerbates the existing overallocation of the Deschutes River because groundwater in the Deschutes River Basin is hydraulically connected to surface waters of the Deschutes. Preliminary conclusions of a U.S. Geological Survey (USGS) Study verify that consumptive groundwater use throughout the upper basin results in the diminishment of the surface water flows downstream in the lower Deschutes River. *Exhibit 3, at 2*. Based upon the USGS findings, the Department has acknowledged that groundwater pumping contributes to the lack of flows necessary to fulfill Scenic Waterway flows and *Id. at 1, 2*. The Department has also found that future consumptive ground water development will only exacerbate this problem. *Id. at 1*. On the basis of current information, the Department has found that they cannot approve applications for new ground water uses without adequate mitigation measures, and in fact, may soon face the obligation to curtail some existing ground water uses in order to protect scenic waterway flows and senior instream water rights. *Id. at 5*.

**The Deschutes Groundwater Mitigation Working Group:** In late 1998 the Department convened a diverse group of stakeholders, including federal and state agencies, municipalities, irrigation districts, agricultural interests, county governments, conservationists and the Warm Spring Tribes, to develop a mitigation plan that would fully mitigate the impact of existing and new groundwater uses on scenic waterway flows and instream water rights that protect streamflows in the Deschutes River. This group has set a deadline of September 2000 by which to develop a final mitigation plan and draft administrative rules.

At the time the Working Group was convened, there were a number of groundwater right applications totaling over 200 cfs pending before the Department. Applicants were offered the choice of putting their applications on hold pending the outcome of the Workgroup, or proceeding with their applications subject to existing statutes and rules.

The Deschutes Groundwater Working Group has not yet completed the planning process. However, agreement has been reached on a number of issues. Of note is the agreement among stakeholders that all applicants must provide for permanent mitigation of their full consumptive use before an application for a new groundwater use can be approved by the Department. The group summarily rejected the proposal to grant conditional permits to applicants who provided for only temporary mitigation in their applications. This, and other, agreed upon principles will be incorporated into rule, which will govern the processing of all pending and future applications.

**Eagle Crest Resort's application:** Eagle Crest Resort sits on the outskirts of Redmond. It is one of the over twenty-one "destination resorts" in this high desert area that offer golfing and other activities. Eagle Crest holds four water right permits which serve Eagle Crest I and Eagle Crest II. *See G-10530, G-10957, G-11313, G-11762.* All four of these permits are junior to existing instream water rights. Eagle Crest is not mitigating for the already existing effects use under these permits have on senior instream water rights and scenic waterway flows.

Application G-14857, filed on November 2, 1998, is for quasi-municipal use to support Eagle Crest Resort's expansion of the already existing Eagle Crest I and II Resort. The new development will encompass 480 acres that will support approximately 900 dwellings. This is a long term use of water.

Eagle Crest originally requested 780 gallons per minute, or 1.74 cfs. *See Application G-14857.* In their application they noted that in the future "flows may be increased to 1500 gpm for fire protection".<sup>2</sup> *Id.* Together the two uses, 1.74 cfs for quasi-municipal use and 1.6 cfs for fire protection total 3.34 cfs.

**WRD Review and "Final Order":** On May 21, 1999 the Department issued its Initial Review which found that the proposed use would not protect the public health, welfare and safety unless the applicant mitigated for the effects the proposed groundwater use would have on surface waters of the Deschutes River. Eagle Crest requested the application be put on hold until September 1, 2000. Then, in September 1999 Eagle Crest proposed a temporary mitigation plan to the Department and requested that the Department proceed with the application.

The Department issued a PFO in February of 2000. In its analysis of the application, the Department determined that the proposed groundwater use would impact streamflows. *See PFO for G-14857.* The Department also determined that unless the applicant provided for a mitigation plan to mitigate the proposed use's impacts to surface waters in the Deschutes the application would be denied. *Id.* According to the PFO and the Final Order, Eagle Crest has arranged a short term instream lease with Swalley Irrigation District for a two-year term. *See PFO for G-14857 and Exhibit 1.*

Petitioners timely submitted a protest to Eagle Crest's application on March 31, 2000. The protest raised, among other things, the inadequacy of the temporary mitigation to mitigate for the permanent use and the resultant injury to instream water rights and scenic waterway flows. On May 26, 2000 the Department issued a Final Order and a Permit for this use. In this order, the Director found that there were "no significant" disputes over the proposed use of water. The Final Order provides for only two-year mitigation. The Final Order fails to make a Scenic Waterway finding. The Department failed to include the required scenic

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<sup>2</sup> The Water Resources Department evaluation and processing of the application, up through the draft Proposed Final Order (PFO), was based upon 1.74 cfs, not 3.34 cfs as allowed in the Final Order and Permit. *See WRD's files: Initial Review Checklist, PFO checklist, Draft PFO (stamp dated 2/10/00 to T. Walker), WRD Public Notice 2/15/00.* Eagle Crest never amended their application to request 3.34 cfs for quasi-municipal use. The Permit should have been issued for 1.74 cfs, or at the very least granted 1.74 cfs for quasi-municipal use and limited the additional 1.6 cfs to "fire protection."

waterway condition in the Permit, as they had in the Proposed Final Order (PFO). The Permit is not conditioned with the mitigation requirements or specifics.

### ARGUMENT

The Final Order and Permit should be reconsidered because (1) the Final Order and Permit violate the requirements of Oregon's Scenic Waterway Act, (2) the use of water under the Final Order and Permit will cause injury to senior instream water rights, and (3) the Final Order and Permit violates Department rules.

#### **(1) The Final Order and the Permit violate the requirements of the Scenic Waterway Act**

The Oregon Scenic Waterway Act, adopted by ballot initiative in 1970, provides the highest level of protection for Oregon's Scenic Rivers. The Act declares that the "highest and best uses of the waters within a scenic waterway are recreation, fish and wildlife uses." ORS 390.835(1). The Act requires the State to maintain the "free flowing character of these waters in quantities necessary for recreation, fish and wildlife uses." *Id.* This language was interpreted by the courts to mean that "no diversion of water that otherwise would enter a scenic waterway may be permitted unless the requirements of ORS 390.835(1) are met." Diack v. City of Portland 306 Or 287,298 (1988)(court overturned permit to divert water that would otherwise flow through a scenic waterway). Until 1995 the mandate of the law was clear, any waters entering a scenic waterway, whether ground or surface water, must be protected from appropriations if needed to meet scenic waterway flows.

In 1995 the Oregon Legislature, at the request of the Department, passed a bill (SB 1033) that was intended to "provide a mechanism to authorizing reasonable and appropriate uses of groundwater, while not jeopardizing flow protection for established Scenic Waterways." *Exhibit 8, Governor's Letters at 1.* As amended, the Scenic Waterway Act now requires that the Department review every application for groundwater to determine whether to make the finding that the use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. ORS 390.835(9)(a),(b). A use measurably reduces a scenic waterway flow if it individually or cumulatively reduces surface water flows within the scenic waterway in excess of a combined

cumulative total of 1% of the average daily flow or 1 cfs, which ever is less.<sup>3</sup> ORS 390.835(12). The finding must be based upon a preponderance of evidence and must be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use. ORS 390.835(9)(b). If the finding is affirmative, the Director must issue an order denying the application unless either mitigation is required which ensures the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife or the applicant submits evidence to overcome the finding that the proposed use will measurably reduce scenic waterway flows. *Id.*, at (d) & (10). Moreover, the Act mandates that, regardless of the finding, every water right permit and certificate for appropriation of groundwater issued after July 19, 1995, for which a source is within or above a scenic waterway must be conditioned to allow the regulation under the Scenic Waterway Act. *Id.* at (g), *see also Exhibit 9, WRD Summary of Water Legislation*, at 22.

The Final Order and the Permit violate the requirements of the Scenic Waterway Act because (A) the Final Order fails to make the determination that the use will measurably reduce scenic waterway flows despite the evidence before them, (B) the Department failed to attach the required scenic waterway condition in the Permit, and (C) the mitigation does not meet the requirements of the Act.

**A. The preponderance of evidence before the Agency requires a determination that the proposed use will measurably reduce Scenic Waterway Flows.**

The Department, in the Final Order and the Permit, ignored the evidence before it when it failed to find that the proposed use will measurably reduce scenic waterway flows.

Scenic waterway flows are not met 9 months of the year. *Exhibit 3 at 4*. The Department has determined that Eagle Crest's proposed groundwater use is hydrologically connected to surface waters of the

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<sup>3</sup> The 1% or 1 cfs reduction as shown by generally accepted hydrogeologic methods is the standard. The adequacy of any particular gauge to measure actual reduction is not relevant to the meeting of the standard of review.

Deschutes. See *PFO at 1*.<sup>4</sup> The USGS Study has shown that groundwater pumping in the basin diminishes streamflows in the lower Deschutes River system. *Exhibit 3*. There is a one-to-one correlation between the amount of groundwater consumed and the amount that surface waters are decreased. See *Minutes of June 20, 2000 Deschutes Groundwater Working Group, testimony of Barry Norris*. The Department has already found that existing groundwater use exceeds the 1% or 1 cfs regulation point set by the Scenic Waterway Act. *Exhibit 3 at 5, Exhibit 4 at 2*.<sup>5</sup> Any further pumping will only add to the cumulative total.

The Department has the information it needs, including the USGS Study, to make this finding. The Department has already acknowledged this fact in other forums (i.e. Deschutes Groundwater Working Group). And the Director herself stated that there was "no doubt" that the scenic waterway threshold would be reached. *Exhibit 4 at 2*. Yet the Final Order is silent on this issue. The preponderance of the evidence in the record requires the finding that Eagle Crest's use will cumulatively reduce scenic waterway flows in excess of the statutory standard.

That the Department blatantly ignores the Scenic Waterway Act requirements<sup>6</sup> in this proceeding is contrary not only to the letter of the law, but to all the efforts and commitments the Department has made with regards to Scenic Waterway protection in the Deschutes Basin.

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<sup>4</sup> The Department did not, however, determine the exact amount of surface water depletion that would be caused by this proposed use. However, under the law, the Department does not need to make individual determinations to make the necessary findings under the Scenic Waterway Act. The law specifically directs the Department to look at the use in the context of other water right to see if individually or cumulatively reduces surface water flows within a scenic waterway. *ORS 390.835(12)*.

<sup>5</sup> The Department has determined that the amount of permitted groundwater rights in the Deschutes Basin totals 621 cfs. *Exhibit 5*. The Department has estimated that the consumptive use that needs to be mitigated for existing post 1995 rights is over 99 cfs. *Id.* Clearly this exceeds the 1% or 1 cfs standard as set forth in the Act.

<sup>6</sup> Instead of making the required Scenic Waterway finding, the Department instead asserts that mitigation is required because of the fact that water is not available for the proposed use unless the applicant proposes adequate mitigation per the Department's Division 400 rules. There is no mention of the Scenic Waterway Act or its mandates except in response to Petitioner's assertions.

**(B) The Department failed to attach the scenic waterway condition as required by law**

The Final Order and Permit is contrary to law because the Department omitted the statutorily required Scenic Waterway flow protection condition. ORS 390.835 requires that each water right permit and certificate for appropriation of groundwater issued after July 19, 1995 for which a source of appropriation is within or above a scenic waterway be conditioned to allow regulation under the Act. The Department, as the sponsor of the legislation that led to this law, described this provision as requiring "the Department to condition every new groundwater appropriation within or above a scenic waterway to allow regulation....." *Exhibit 9*.

The Department included this condition in the draft permit attached to the PFO, but deleted it from the final Permit. This is a clear violation of statute and thus is contrary to law. *See ORS 390.835*.

**(C) The mitigation does not meet the requirements of the Act**

The proposed use will measurably reduce scenic waterway flows and must be properly mitigated in order to be approved. *See ORS 390.835(9)(d)(a)*.

The Water Resources Commission identified the flows necessary for recreation, fish and wildlife needs of the Deschutes Scenic Waterway in 1991. These flows are not being met 9 months of the year. *See Exhibit 3 at 4*. The Department has found that all new groundwater uses in the Deschutes Basin will have to provide mitigation because of impacts to scenic waterway flows. *Exhibit 3 at 5*. This proposed use falls within this group of applications. Any mitigation must fully compensate for the impact of the new use, both in terms of the amount and length of the proposed use. *See ORS 390.835(9)(a) & (10)*.

Before the application can be approved, Eagle Crest must provide mitigation that will meet the requirements of the Scenic Waterway Act. The mitigation provided for in the Final Order and Permit does not ensure the quantities necessary to maintain the free-flowing amounts necessary for recreation, fish and wildlife as required under the Act because it (a) only provides temporary mitigation for a permanent use, (b) is based on findings not supported by evidence in the record, (c) is not incorporated as a condition of use in the permit, (d) does not adequately restrict permit if mitigation proves to be ineffectual, (e) is impossible to enforce, and (f) allows changes in mitigation without public involvement.

*(a) The Final Order only provides temporary mitigation for a permanent use*

Eagle Crest's request for water for 900 homes is a permanent use of water. Only permanent mitigation will ensure the mitigation required by the Act. This edict has been agreed upon in the Deschutes Groundwater Working Group and is anticipated to be codified in future rules that are currently being developed to govern the processing of pending and future groundwater permits in the Deschutes Basin. Despite this, the Department issued a Final Order and Permit that only provides for two year mitigation.

*(b) The mitigation findings in the Final Order are not supported by evidence in the record*

Eagle Crest needs this water for a permanent use. However, at the time this Final Order and Permit were issued by the Department, Eagle Crest had only procured a short-term instream lease to mitigate for their use (the rate and schedule of which is outlined in the Final Order).<sup>7</sup> The Department issued the Final Order and Permit for Eagle Crest based upon the belief that this same water would become a permanent water right by virtue of the Department approved mitigation plan and a pending application for the permanent transfer of this same water instream.<sup>8</sup>

These findings of fact are not supported in the record. In fact, the application for Swalley's permanent transfer instream is not the same as the short-term lease. *Exhibit 6*. As noted in the Final Order, the short term transfer sets a schedule for mitigation that includes the total amount of mitigation as well as the rate of mitigation per throughout the mitigation period. *See footnote 7 and Exhibit 1*. The permanent transfer application, on the otherhand, simply states that they will permanently transfer instream the water rights to 21

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<sup>7</sup> According to a finding of fact in the Final Order (which was not a condition of in the permit):

On May 9, 2000, a two year instream lease for portions of Certificate 74145 was signed by the Department. The total water leased is 115.27 acre feet. The proposed reach of the instream right created under the lease will be in the Deschutes River from river mile 165 (North Canal Dam), downstream to river mile 120 (Lake Billy Chinook). The rate of the instream water right is 0.142 cfs suing season #1 (April 1 through May 1 and October 1 through November 1), 0.19 cfs during season #2 (May 1 through May 15 and September 15 through October 1) and .352 cfs during season #3 (May 15 to September 15).

<sup>8</sup> The Final Order makes two finding of facts that state:

◆ According to the Department-approved mitigation plan, this same water will be transferred on a permanent basis to an instream right.

◆ On May 16, 2000, the Department received an application from Eagle Crest for permanent transfer instream for the same portions of Certificate 74145.

*See Exhibit 1 at 3 (emphasis added).*

acres during the irrigation season. *Exhibit 6*. The "same" rate amounts and schedule are not included in this application. Thus, the Department's assertion that this "same" water will be provided on a permanent basis is in error is not supported by facts in the record. This renders the Department's finding that the mitigation will protect surface waters of the Deschutes invalid. Without a condition requiring permanent mitigation at the same rate and schedule as the short term lease, mitigation is not adequate to satisfy the mandates of the Act.

*(c) Mitigation is not incorporated as a condition of use in the Permit*

The Scenic Waterway Act specifically provides for the conditioning of permits or certificates with mitigation measures to ensure the maintenance of the free-flowing character of the scenic waterway in the quantities necessary for recreation, fish and wildlife. *ORS 390.835(10)*. The Final Order outlines the rate and timing of mitigation with regards to the short-term lease. *Exhibit 1*. It also states this same mitigation will become permanent. *Id.* However, the Permit (which is the binding document), on the otherhand, is devoid of this mitigation schedule, both for the short-term lease and for the permanent transfer. Without conditioning of the Permit, there is no assurance the mitigation will in fact take place and thus the Department cannot ensure that the mitigation meets the standards of the Scenic Waterway Act.

*(d) The Final Order and Permit do not adequately restrict use if mitigation proves to be ineffectual*

The Final Order states that consumptive use is limited to 115 acre feet. *Exhibit 1*. The Final Order and Permit then say that if "mitigation is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet." *Id.* The Department asserts that these conditions ensure that these elements of the mitigation plan protects surface flows. They do not. Read together these conditions state that if mitigation does not work, the applicant can still consume up to 115 acre feet, which was the limit in the first place. This conditioning not only makes no sense, it does not ensure scenic waterway flows will be protected, and in fact appears to exempt the applicant from mitigation if their stated mitigation fails to work.

*(e) The short-term mitigation condition provided in the permit is impossible to enforce*

The Final Order and the Permit only provide for two-year temporary mitigation. The Department conditioned the Permit so that "the permit will expire in 2 years from permit issuance unless the 2 year lease of

the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, or an equivalent water right as determined by the Department, to instream use."

*Exhibit 2.* While the Department's intent might be to curtail use of water if permanent mitigation is not found within two years, this permit condition does not state this. Rather, it only states that the permit will expire. There is no explicit language instructing the state to cut off water use. Without such language, the resource is at risk.

The Department cannot be relied upon to enforce these types of permit conditions. Grants Pass Irrigation District (GPID) provides a clear example. In that case, despite the fact that the Commission cancelled the permit and the fact that the permit has expired, the Department has taken the position that they will not shut GPID off. This does not meet the spirit, let alone, the letter of the law. Given the politics of the Deschutes Basin and the agency's historic failure to regulate uses to protect instream water rights and scenic waterway flows in the basin, there is good cause to fear the same type of agency inaction here.

*(f) The Permits allow changes in mitigation without public involvement*

The Permit allows for changes in the mitigation plan without any public involvement. Under the groundwater permitting statutes, public involvement opportunities are provided throughout the process. That the Department is proposing a condition that would allow for the alteration of a key condition of the permit without any public involvement is contrary to the commitments made by Department to include the public in permitting decisions. Public review of any changes to mitigation is necessary to ensure that new mitigation will satisfy the mandates of the Act.

**(2) the Final Order and Permit are not in the public interest because they will cause injury to existing instream water rights.**

The groundwater permitting statutes prohibit the Department from approving a water right that will injure a senior water right. *See, ORS 537.621(2)*. This includes senior instream water rights, which have the same legal status as any other right. *ORS 537.350*. Moreover, the Department's water allocation rules state that water shall not be allocated if the proposed use would injure the exercise of existing water rights or

permits. *OAR 690-410-070(f)*. Any diminution of flow that would otherwise be available to the instream water right constitutes "injury". *See e.g., OAR 690-15-050(1)*.

There are two senior instream water rights in the reach affected by this proposed use that are senior to Eagle Crest's application. *See ISWR # 70087, 71194*. These instream water rights are not being met 9 months of the year. *Exhibit 3 at 4*. The Department's Water Availability calculations for this application show that the surface waters are overappropriated 11 months of the year. *See Exhibit 7*. The Department has determined Eagle Crest's use will impact surface water of the Deschutes. *See PFO for Application G-14857*.

As noted, any diminishment of flows that would otherwise be available to the instream water right constitutes injury. *OAR 690-15-050(1)*. Given the fact that there is no water available for further appropriation, that instream water rights are not being met 9 months of the year, and the Department has determined that this use will diminish surface water flows, there is no doubt that Eagle Crest's use will diminish flows that would otherwise be available to the instream water rights.

Despite this clear fact, the Department failed to make the finding that the proposed use would injure instream water rights as part of their public interest presumption review. The Department's rules demand an assessment of whether the proposed use would result in injure to existing water rights. *OAR 690-310-150(2)(e)*. Yet no where in the Final Order or Permit is this addressed.<sup>9</sup>

Even if the Department had made the proper finding, the mitigation provided in the Final Order and Permit is insufficient to meet the no injury standard for existing rights. The existing mitigation provides for short-term mitigation for a permanent use. Moreover, there is no evidence that it will coincide with the time and place of impact to ensure there is no diminishment of flows. In addition, all the deficiencies outlined in Section (1)(c) of this Petition make the mitigation inadequate to prevent injury. Without these guarantees, the

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<sup>9</sup> Instead, the Department focuses on the water availability aspect of the proposed use. In doing this they find that, absent mitigation, no water is available. *See PFO for Application G-14857*. The Department then asserts that the two year mitigation provided by Eagle Crest is sufficient to prevent the public welfare, safety, and health from being impaired or adversely affected. *Id. at 4*. The Department never even gets to the injury standard which states that there can be no diminishment of flow whatsoever. *See OAR 690-15-050(1)*.

proposed use will injure existing instream water rights. This is not in the public interest and is contrary to law. The Final Order and Permit as issued must be overturned.

**(3) The Final Order and the Permit are contrary to Rule**

Waters of the state must be allocated within the capacity of the resource. OAR 690-41-070(1). Allocation within the capacity of the resource means that the withdrawal will not cause over-appropriation or otherwise significantly impair the function or character of the resource. OAR 690-400-000(4). The surface waters of the state shall be allocated to new out-of-stream uses only during the months of half-month periods when the allocations would not contribute to over-appropriation. OAR 690-410-070(2)(a).<sup>10</sup> However, when a stream is over-appropriated, some additional uses may be allowed where (1) public interest in those uses is high and (2) uses are conditioned to protect instream values. *Id.*

As noted, the Deschutes is overallocated 11 months of the year. *Exhibit 7.* Despite this, the water allocation rules would allow the use if and only if two standards are met: (1) public interest in Eagle Crest Resorts' use is high; and (2) the use is conditioned to protect instream values.

As to the first standard, Eagle's Crest application to expand their resort is not of high public use. Public interest as a standard of review means the greatest good for the people of the state. *See, OAR 690-400-000(12).* The Deschutes Basin already has over 21 destination resorts with golf courses. An expansion of a destination resort to serve an additional 900 people does not rise to the level of a high public interest use. The Scenic Waterway Act declares that the highest and best use of waters within scenic waterways are recreation, fish and wildlife. *ORS 390.835(1).* The state Instream Flow Protection Policy declares that "preservation of instream flows needed to support the purposes of the State Scenic Waterways is a high priority of the state." *OAR 690-400-030(2)(b).* Clearly, the highest public interest is in protecting scenic waterway flows and instream water rights. The desire for increased sprawl does not outweigh this, and does not constitute a use of high public value as required by rule.

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<sup>10</sup> Groundwater that is hydrologically connected to surface waters is considered surface water for the purposes of review.

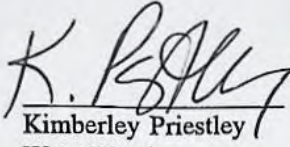
As to the second standard, as noted in earlier arguments, the Final Order and Permit do not provide conditions adequate to protect instream values. The mitigation provided in the permit does not ensure protection of instream water rights and scenic waterway flows. This, combined with the fact that Eagle Crests' use does not satisfy the "high public value" standard, renders the Final Order and the Permit contrary to rules governing overallocation and instream flow protection.

### CONCLUSION

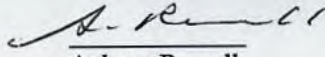
The Final Order and Permit (1) violate the requirements of Oregon's Scenic Waterway Act, (2) will cause injury to senior instream water rights, and (3) violates Department rules.

The Final Order should be rescinded and a new order should be drafted either (1) denying the water right, or (2) issue a new water right that includes additional findings and conditions, as outlined in the petition. Specifically, the Final Order should make a finding that the proposed use will measurably reduce scenic waterway flows. And, in addition to existing conditions on measurement and reporting, the Permit should be conditioned to include (1) the scenic waterway condition required by law, (2) permanent mitigation, (3) mitigation schedule of rate and timing, (4) public notice and opportunity to comment if mitigation changes for any reason, and (5) curtailment of use if mitigation is inadequate or ineffectual. Moreover, the use should be limited to 1.74 cfs as applied for, or else it should be clarified that of the 3.34 cfs, 1.74 is for quasi-municipal use and 1.6 is for fire protection. Without these changes the proposed use violates existing statute and rule as outlined above, and is contrary to the public interest in protecting the waters of the Deschutes for fish, wildlife and recreation.

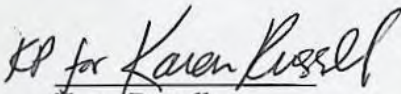
Respectfully Submitted this 21st day of July, 2000



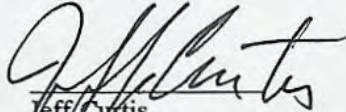
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213 SW Ash, Suite 205  
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### List of Exhibits

1. Final Order Approving Application and Denying Protest, Application G-14857
2. Permit G-13819
3. Exhibit 3, WRD Water Development Issues in the Deschutes, 1998
4. Memo from Martha Pagel to Jim Greer, Bob Meinen, 2/2/99
5. WRD calculations of groundwater rights, consumptive use for the Deschutes Basin
6. Swalley Irrigation District Application for Permanent Transfer Instream
7. WRD Water Availability for the Deschutes
8. Letter from Governor Kitzhaber to WaterWatch, 7/19/95
9. WRD Summary of 1995 Water Legislation, excerpt (page 22)
10. Petitioners' Protest of Application G-14857

EX. 1

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right	)	
Application G 14857 in the Name	)	FINAL ORDER APPROVING
of William D. Lyche, for Eagle Crest	)	APPLICATION AND DENYING
Inc.	)	PROTEST
<i>Applicant</i>	)	
	)	
WaterWatch of Oregon, Oregon Trout	)	
and Trout Unlimited.	)	
<i>Protestants</i>	)	

Appeal Rights

This is a final order other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

Background

On November 2, 1998, William D. Lyche, on behalf of Eagle Crest Inc., (Applicant) submitted an application to the Oregon Water Resources Department (Department) for 3.34 cubic feet per second (cfs) of water for quasi-municipal use. The water is to be taken from a well in the Deschutes River Basin and used year round in Deschutes County to support housing, amenities and fire protection for the Eagle Crest resort.

On May 21, 1999, the Department mailed the applicant its Initial Review providing that the proposed use would not protect the public health welfare and safety unless applicant mitigated for the effects the proposed ground water use would have on surface waters in the Deschutes River. On June 24, 1999, the Department gave public notice of the application in its weekly notice. The Department received one comment from William D. Lyche, requesting that the application be withheld from processing until September 1, 2000.

On September 13, 1999, Thomas A. Walker, certified water rights examiner for the applicant, proposed a mitigation plan to the Department and requested the Department to review the plan and proceed with the application.

On February 15, 2000, the Department issued its proposed final order (PFO) for Application G 14857, and on March 31, 2000, WaterWatch of Oregon, Oregon Trout and Trout Unlimited filed a protest. Protestants argue that the application should be denied because the proposed use fails to protect the public health, welfare and safety. Specifically, they argue that the mitigation plan does not protect fisheries or the State Scenic Waterway values of the Deschutes River. They also contend that the use is not beneficial because the permit is subject to cancellation should the mitigation fail to become permanent, and they argue that the use is not consistent with the Middle Deschutes River Basin Plan.

### **Findings of Fact and Conclusions of Law**

In its application, Eagle Crest requested up to 1500 gpm of water for resort use and for fire protection. (Exhibit A)

Under the provisions of ORS 537.621, the Department shall presume that a proposed ground water use will ensure the preservation of the public welfare, safety and health if: 1) the proposed use is allowed in the applicable basin program; 2) water is available; 3) the proposed use will not injure other water rights; and 4) the proposed use complies with the rules of the Commission. OAR 690-310-130. In its Initial Review, the Department concluded that all criteria for establishing the presumption were not satisfied because water was not available for the proposed use unless the applicant proposed a mitigation plan to satisfactorily address the impact of the proposed ground water use on surface water flows in the Deschutes River. (Exhibit B)

Pursuant to OAR 690-310-140(3), if the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health, and may:

Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions.

In its PFO, the Department determined that the proposed use will not impair or adversely affect the public welfare, safety and health if the applicant adheres to the specific elements outlined in a mitigation plan approved by the Department. Specific conditions implementing the mitigation plan proposed by Eagle Crest and approved by the Department are incorporated in the Draft Permit for Application G 14857. (Exhibit C)

Eagle Crest has demonstrated that according to historic resort water use, full build out of the proposed 900 residential units and recreational amenities, minus the amount offset by sewage contribution, would consume 115 acre-feet (AF) of water each year. (Exhibit D)

Eagle Crest's mitigation plan provides gallon for gallon replacement of the consumed water used by its resort by immediately leasing instream, for two years, 21.0 acres of an irrigation water right it holds under Certificate 74145 with a priority date of September 1, 1899. The total volume of water under this lease would be 115.27 AF. (Exhibit D)

On May 9, 2000, a two year instream lease for portions of Certificate 74145 was signed by the Department. The total water leased is 115.27 acre feet. The proposed reach of the instream right created under the lease will be in the Deschutes River from river mile 165 (North Canal Dam), downstream to river mile 120 (Lake Billy Chinook). The rate of the instream water right is 0.142 cfs during season #1 (April 1 through May 1 and October 1 through November 1), 0.190 cfs during season #2 (May 1 through May 15 and September 15 through October 1) and 0.352 cfs during season #3 (May 15 to September 15).

According to the Department-approved mitigation plan, this same water will be transferred on a permanent basis to an instream right.

On May 16, 2000, the Department received an application from Eagle Crest for permanent transfer instream for the same portions of Certificate 74145.

Protestants assert that the proposed use would harm fish and State Scenic Waterway flows in the Deschutes because the short term lease is insufficient to mitigate the permanent nature of the water use. They also argue that the mitigation plan is unenforceable because the plan per se is not a condition of the permit.

The Department has incorporated key elements of the mitigation plan in its permit, thus creating a permanent, enforceable water right that protects surface flows in the Deschutes River.

The permit assures that the mitigation plan replaces consumptive water use both as presently anticipated, and as it may actually occur in the future. The permit also assures that the proposed use will protect fisheries and State Scenic Waterway values in that:

1. It limits consumption to no more than 115 acre-feet each year, unless the mitigation plan is modified and approved by the department to match acre-foot for acre-foot any increased usage. (Exhibit C at 1.)
2. It provides that if measurement of water use demonstrates that the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, then the permittee will be restricted to 115 acre-feet per year. (Exhibit C at 1.)
3. It provides that any change in consumptive use must be mitigated for acre-foot for acre foot by instream water maintained with an equivalent water right with a diversion point at or near the diversion authorized by the lease of certificate 74145. (Exhibit C at 1.)

4. It requires Eagle Crest to submit a Water Management and Conservation Plan pursuant to OAR Chapter 690 Division 86 as efficient water use will help protect the public health, safety and welfare. (Exhibit C at 2.)

The permit assures that the mitigation plan is enforceable in that:

1. It provides that the actual consumptive use will be measured on a regular basis and that such measurements will be recorded and reported to the Department. (Exhibit C at 2, Condition (A).)
2. It provides standard conditions of watermaster access, well construction and measurement and reporting. (Exhibit C at 2 & 3.)
3. It provides that the permit will expire in 2 years from permit issuance if the 2-year lease of the water right authorized under Certificate 74145 to instream purposes is not replaced by a permanent transfer of water leased under Certificate 74145, or by an equivalent water right as determined by the Department. (Exhibit C at 1.)

The proposed use will provide a "net benefit" for native resident and anadromous fish recovery in the Deschutes River pursuant to OAR 690-33-140(b) because of the timing and place of the instream releases, and because the releases will exceed or equal Eagle Crest's consumptive use.

The proposed ground water use is consistent with the Middle Deschutes River Basin rules at OAR 690-505-002. The mitigation plan as it is expressed in the permit effectively mitigates for any impacts to surface water flows in this basin.

Because the permit effectively incorporates specific conditions that ensure implementation of an effective, permanent and enforceable mitigation plan that provides a net benefit to native fish species, the applicant can make beneficial use of this water right, and the proposed use will not adversely impair or affect the public welfare, safety and health.

Within 60 days after the close of the period for receiving protests, the Water Resources Director shall schedule a contested case hearing if a protest has been submitted and if: either the Director finds there are "significant disputes" related to the proposed use of water, or the applicant requests a hearing within 30 days of the close of the protest period. ORS 537.622. The Director finds that based on the evidence in the record, there are no "significant disputes" related to the Application G 14857, therefore, no contested case shall be scheduled.

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The presumption described in ORS 537.621(2) has not been established because without mitigation, water is not available. However, with the approved mitigation plan, the Department finds that even though the presumption is not established, the proposed use will not impair or adversely affect the public health, safety and welfare.

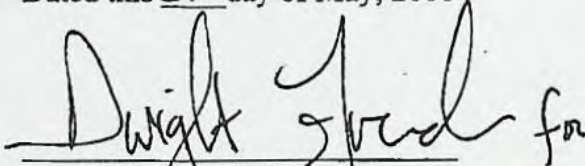
The approved mitigation plan as it is expressed in the permit conditions will prevent injury to existing instream and consumptive water rights.

The findings of fact and conclusions of law contained in the PFO are incorporated herein.

### Order

The protest filed by WaterWatch of Oregon, Oregon Trout and Trout Unlimited is denied. Application G 14857 is approved and the accompanying water use permit shall issue.

Dated this 26<sup>th</sup> day of May, 2000



Martha O. Pagel, Director  
Water Resources Department

Ex. 3 ~~EE~~

## WATER DEVELOPMENT ISSUES IN THE DESCHUTES BASIN

### Overview

Over the past few decades, the Deschutes Basin has experienced tremendous population growth and experts expect the growth trend to continue. Growth requires water. Surface water sources are already fully appropriated. This has resulted in an increasing reliance in the basin on ground water as a source of water for future growth. More information is becoming available regarding the connection between surface and ground water in the Deschutes Basin. Based on this information, the Water Resources Department (WRD) has found that existing consumptive ground water uses reduce surface water flows. This contributes to the lack of surface water availability in the lower reaches of the river, which have been designated as State Scenic Waterways. Furthermore, the Department finds that future consumptive ground water development will only exacerbate this problem.

The WRD hopes to help the community meet water supply needs in the basin while protecting the free flowing nature of the Deschutes River, instream water rights and existing consumptive water rights. Accomplishing this goal can only be achieved through the cooperative efforts of numerous affected interests. Accordingly, WRD proposes to work closely and actively with local interests to maintain surface water flows and provide water for growth in the Deschutes basin. This will be done by assembling technical and legal information, meeting with affected agencies, water users and other interested parties in a public forum and developing recommendations. Further discussion of the hydrology of the basin, scenic water way flows, instream water rights and water rights activity follows.

### HYDROLOGY OF THE UPPER DESCHUTES BASIN

#### Upper Deschutes Basin Ground Water Study

The U.S. Geological Survey initiated a ground water study in 1993, to provide much needed information on the ground water resources of the Upper Deschutes Basin. The study area is shown in Figure 1. The study was conducted in cooperation with the Water Resources Department; the cities of Bend, Redmond and Sisters; Deschutes and Jefferson counties; The Confederated Tribes of the Warm Springs Reservation of Oregon; the Bureau of Reclamation and the U.S. Environmental Protection Agency.

The objective of this two-phase study is to provide a quantitative understanding of the ground water hydrology in the Upper Deschutes Basin in order to provide resource managers, planners, and the general public the best information available with which to make decisions.

Preliminary conclusions from the study have shown that ground water originating in or flowing through the Upper Deschutes Basin discharges into relatively short reaches

of the Deschutes, Metolius and Crooked Rivers above and within Lake Billy Chinook. Those conclusions are consistent with previous studies by Stearns (1931) and Sceva (1968). Little, if any, ground water leaves the upper part of the basin as ground water. Instead, virtually all ground water discharges to these rivers to become surface water.

On the basis of data provided by current and previous studies, WRD staff have concluded that consumptive ground water use above Lake Billy Chinook diminishes the surface water flows downstream. However, the precise timing of that diminishment is not yet known. Issues of concern to WRD are impacts to scenic waterway flows and senior water right holders, including instream water rights, and supplying needed water to the Basin.

### OREGON SCENIC WATERWAYS

#### Requirements of the Scenic Waterways Act

The Scenic Waterways Act was voted into law in November, 1970 to protect the free-flowing character of designated rivers for fish, wildlife and recreation and protect and enhance scenic, aesthetic, natural, recreation, scientific and fish and wildlife qualities along scenic waterways. Under this law, the portion of the Deschutes River below the Pelton Reregulation Dam to the Columbia River (figure 2) is classified as a Recreational River Area under the Scenic Waterway Act (OAR 736-040-0070).

The Water Resources Commission has the authority, delegated by statute [ORS 390.835 (1)], to determine the level of stream flow necessary to support recreation, fish and wildlife uses with scenic waterway flows. In accordance with a 1988 Supreme Court Decision (Diack vs. City of Portland) the Water Resources Commission must find that scenic waterway flows will not be impaired before issuing new water rights.

#### Scenic Waterway Flow Values

Various types of data were used to determine values associated with current uses in scenic waterways. Flows for recreation, fish and wildlife were integrated. Generally, the recommended flow is the flow necessary to support the current range of scenic waterway uses and values.

Boating and rafting are major recreational activities on this reach of the river. Based on an assessment of flow related and flow dependent uses, the flow range for recreation is 3000-8000 cfs. The Oregon Department of Fish and Wildlife established a flow range of 3000-4500 cfs for fish and wildlife habitat. Scenic waterway flows on the Deschutes River from the Pelton Reregulation Dam to the mouth were determined after public hearing by the Commission in 1991. Scenic waterway flows are presented in Table 1.

#### Ground Water Appropriation and Scenic Waterway Management

As originally enacted, the Oregon Scenic Waterway Act prohibited new allocation of water from scenic waterways unless the Water Resources Commission determined the use was consistent with the scenic waterway law. In 1995, the Legislature enacted Senate Bill 1033 which amended Oregon's Scenic Waterway Act (ORS 390.805-390.865).

to clarify how the Department is to address the impacts of ground water appropriations on Scenic Waterways. The Water Resources Commission administers and enforces the ground water provisions of the statute [ORS 390.835 (9-13)].

The statute makes it clear that the amendments do not apply to applications for ground water rights unless the Department makes a finding "that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife." The Department reviews every ground water application to determine if the use will measurably reduce surface water flows. If there are impacts, the application will be denied unless mitigation is provided. Each ground water permit or certificate issued, whose source of appropriation is within or above a scenic waterway, is conditioned. The condition allows the regulation of the use if data available after the permit or certificate is issued shows that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of the scenic waterway. Since the amendments were adopted, ground water permits amounting to approximately 207 cfs have been issued in or above the Deschutes scenic waterway.

## INSTREAM WATER RIGHTS

### Provisions of Instream Water Right Statutes

The ability to issue water rights for instream purposes was created by the Oregon Legislature in 1987. Instream water rights may be established to benefit fish and aquatic life, to provide water for pollution abatement or to provide water for recreation purposes. Water rights for these purposes may be applied for by Oregon Department of Fish and Wildlife, Department of Environmental Quality or Parks and Recreation Department, respectively. Each instream water right certificate issued specifies the reach of river to which the right applies and the rate of flow necessary to satisfy the right. The Oregon Water Resources Department holds and protects the instream water right for the benefit of the State.

Two separate instream water rights have been issued to protect surface water flows in the Lower Deschutes River from Pelton Reregulation Dam to the mouth at the Columbia River. The most recent right has a priority date of January 16, 1991, and is the larger of the two. It was issued for fish migration, spawning, egg incubation, fry emergence and juvenile rearing. Instream flow values are presented in Table 1.

### Significance of Instream Water Right Flows

Instream water rights have the same status and effect as all other water rights. The right has a priority date and can be regulated to serve senior water rights holders. The existence of an instream right, along with all other previously-issued water rights, is considered in determining whether water is available for new appropriations. New rights, other than instream flow rights, can be issued only if surface water is available.

ALLOCATION POLICY

Since adoption of the Water Resource Commission's "Allocation Policy" in 1992 (OAR 690-410-070), water availability determinations have been based on an 80% "exceedance" standard. Only when water is available greater than 80% of the time can additional water rights be issued. If ground water development impacts surface water supply, the issuance of ground water rights is also subject to surface water availability.

TABLE 1

This represents the amounts of water required to satisfy the instream water rights and scenic waterway flows.

FLOW NEEDS ON THE DESCHUTES RIVER AT THE MADRAS GAGE \*

Month	Instream** Water Right	Scenic Water- way	Natural Flow	CU+ Storage	Madras Gage	Net Available
Jan	4500	4500	4310	595	4310	-785
Feb	4500	4500	4540	661	4290	-621
Mar	4500	4500	5040	875	4380	-335
Apr	4000	4000	5280	649	3990	631
May	4000	4000	5170	443	3880	727
Jun	4000	4000	4850	479	3880	371
Jul	4000	4000	4090	489	3780	-399
Aug	3500	3500	3880	429	3770	-49
Sep	3800	3800	3980	359	3770	-179
Oct	3800	3800	4070	593	3830	-323
Nov	3800	3800	4130	793	4260	-463
Dec	4500	4500	4230	713	4330	-983

Flows  
NOT  
BEING  
MET

\* Water Availability, Natural Flow and Madras Gage based on 80% exceedance calculations. Units are cubic feet per second (cfs) rounded to the nearest whole cfs.  
 \*\* Priority date: 1/16/91. Extends from Pelton Reregulation Dam to mouth. Instream Water Rights do not have priority over human and livestock consumption.  
 CU = Consumptive Use

Several conclusions are apparent from the table. No water is available for further diversion from the river below Pelton Reregulation Dam during nine months of the year. This is the direct result of subtracting established uses (Consumptive Use + Storage) from the natural flow. When that difference is less than the established scenic waterway flow, no water is available. The last column in the table indicates by how much the scenic waterway flow and instream water right fail to be met.

Table 1 also allows easy comparison of actual flow past the Madras gage with established scenic waterway flows and instream water rights. Only in the months of August, October and November do actual flows exceed scenic waterway flows and

instream water rights more than 80% of the time.

WATER RIGHTS ACTIVITY

Since adoption of the 1995 amendments to the Scenic Waterway Act, 165 new ground water rights have been issued in the Upper Deschutes Basin, within the Deschutes Ground Water Study Area, appropriating just under 207 cfs. Of those, 177 cfs are for primary and 29.9 cfs are for supplemental uses. Rights for these uses are conditioned to be regulated if and when data and analysis show that they measurably reduce flows necessary to maintain the free flowing character of the scenic waterway.

Three hundred thirty-nine ground water rights had been issued in the study area prior to amendment of the Scenic Waterway Act. Those rights amount to a total of 201.8 cfs - 147.3 cfs for primary and 54.5 cfs for supplemental use. These rights are not conditioned to allow regulation to benefit the scenic waterway.

Altogether, permits totaling 408 cfs have been issued within the study area. Applications for significant additional ground water appropriations are currently before the Department.

CONCLUSIONS

Economic growth in the Deschutes basin is robust. That growth demands water. Surface water sources in the Deschutes Basin are already fully appropriated and not available for new development. This means current and future growth will depend heavily on ground water. Yet, on the basis of current information, WRD would not be able to approve applications for new ground water uses without adequate mitigation measures, and in fact, may soon face the obligation to curtail some existing ground water uses in order to protect scenic waterway flows, and senior water rights, including instream water rights.

Examination of the results of the nearly completed ground water study, state water management statutes and Water Resources Commission policies, along with an awareness of current development trends in the Deschutes basin leads to the following conclusions:

inst. flows →

- ▶ Continued economic growth in the basin will require additional water supplies.
- ▶ Ground water in the upper basin is tributary to surface water.
- ▶ Consumptive ground water use in the upper basin reduces surface water availability in the lower river.
- ▶ Under the Department's allocation policy, water is not available in the Deschutes

River below Pelton Reregulation Dam for new consumptive uses nine months of the year.

- ▶ Surface water resources within the basin are currently allocated to consumptive rights, instream water rights and scenic waterway flows. Because of the interconnection of ground water and surface water, ground water use places further demands on surface water resources. If it is necessary to mitigate those demands on the surface water resources, additional supplies of water will be necessary to accomplish the mitigation. It is unlikely that sufficient water exists in the Deschutes Basin to satisfy all these needs.
- ▶ Ground water rights issued since the 1995 amendments to the Scenic Waterway Act are subject to regulation to the benefit of the scenic waterway.
- ▶ Ground water rights issued since January 16, 1991, are subject to regulation to the benefit of the instream water rights below Pelton Reregulation Dam.
- ▶ Mitigation or creative water management planning may help to allow continued exercise of issued rights or issuance of new rights.
- ▶ The Water Resources Department is committed to finding ways to supply water necessary to accommodate growth while protecting instream values represented by scenic waterway flows and instream water rights.

#### DISCUSSION TOPICS

The following topics are intended to stimulate discussion with basin water users and decision makers and lead to a complete list of options for resolving the current water supply issues.

- ▶ Mitigation opportunities and impacts.
- ▶ Administrative tools available to the Water Resources Department
  - ▶ Basin Plan Classification
  - ▶ Basin Plan Withdrawal
  - ▶ Critical Ground Water Area declaration
  - ▶ Regulation for ground water / surface water interference
  - ▶ Regulation under permit conditions
- ▶ Potential surface storage options.
- ▶ Potential artificial ground water recharge opportunities.
- ▶ Alternative surface water management scenarios.

*2 SWMP # assigned under statute*

*2 purchasing of WFL*

# THE DESCHUTES BASIN IN JEFFERSON, DESCHUTES, AND CROOK COUNTIES

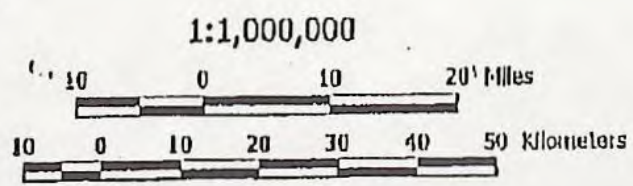
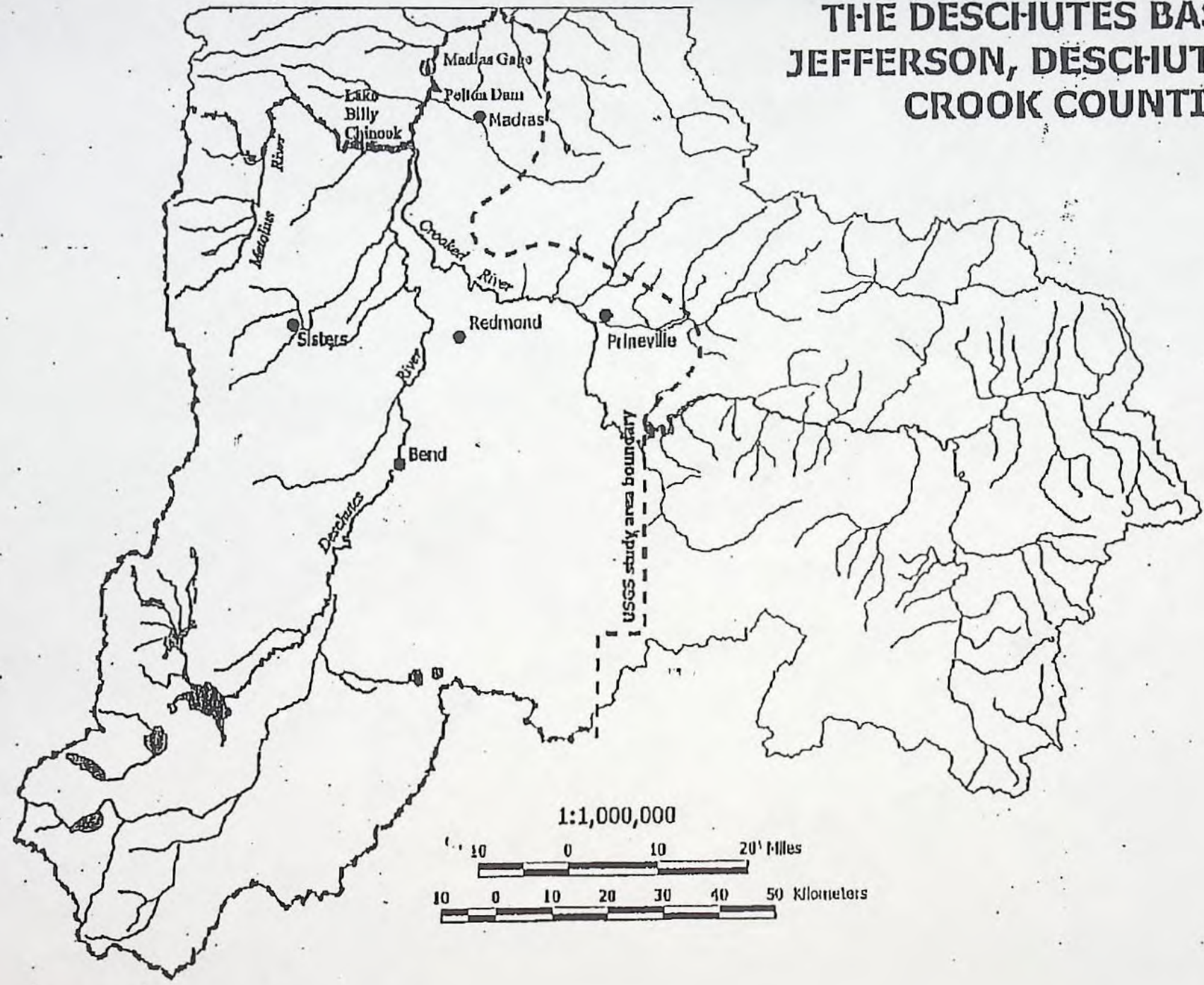


Figure 1





# Oregon

John A. Kitzhaber, M.D., Governor

Ex. 4

Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

February 2, 1999

TO: Jim Greer, Bob Meinca  
FROM: Martha Pagel *mp*  
SUBJECT: Deschutes Meeting Summary — Next Steps

Thank you for meeting with me and WRD staff last week to discuss our mutual concerns about ground water/surface water management in the Deschutes Basin. I was pleased with the progress we made in developing a proposal to share with the local work group.

Attached for your review is a draft background paper which attempts to capture our proposal and the underlying thinking. I did not intend to use this as a public handout, but rather as an internal discussion guide for us. The draft is based on the print-out of our whiteboard notes, with further explanation of some points. In particular, please note item #3, under the Suggested Guiding Principles. This seems to be the most serious policy issue we face — whether canal lining which increases streamflow in the Middle Deschutes, but necessarily results in diminished flows in the Lower Deschutes, is a desirable and acceptable objective. Although the reduced flows in the Lower Deschutes would be small, and within the margin of error on our surface flow gages, the model tells us there would be some calculable level of reduction. The policy question to be answered — primarily by ODFW — is whether the instream benefits in the Middle Deschutes are worth the relative trade-off in the Lower Deschutes. If so, we can work together to make it happen. If not, we need to let the local work group know that they should look for other means of mitigating the ground water impacts. If the answer is unknown, we need to advise the local group of the policy concerns and what information is needed before a decision can be reached. I hope we can take a few minutes to discuss this further after our Cabinet meetings on Wednesday. If not, let's try to talk on the phone before we gather in Bend next week.

Please let me know if you have additions or corrections to the background paper. Also, please let me know if you think we should prepare a revised version for use as a handout at the Bend meeting. That meeting has been confirmed for 10:00 a.m., on February 10, at the City Council Chambers, Bend City Hall.

Thank you again for your assistance.

m:2035  
c: Rick Kruger, ODFW

## DRAFT

### Mitigation for Ground Water Impacts on Surface Water Flows in the Deschutes Basin

Goal: Ensure appropriate and adequate mitigation for impacts of ground water use on surface water flows within the Deschutes Basin.

#### Background:

1) The State Scenic Waterway Act prohibits issuance of new ground water rights if the new use will "measurably reduce" flows necessary to maintain the character of the scenic waterway. The term "measurably reduce" is defined as a cumulative reduction of one per cent of the average natural streamflow or 1 cubic foot per second, whichever is less. A recently developed ground water model shows new ground water uses will, within a period of years, reduce the amount of ground water that would ordinarily discharge at the surface into the river. There is no question that the 1 cfs amount will be reached. The Scenic Water Act allows mitigation to be considered in determining whether a measurable reduction will occur. In addition, the Act allows the Directors of five agencies (ODFW, Parks & Recreation, DEQ, DSL and WRD) to agree to exceed the statutory definition of "measurably reduce" upon a finding that such action will not "significantly impair the free-flowing character of the scenic waterway."

2) Instream Water Rights are in place in both the Middle and Lower reaches of the Deschutes River. The instream rights are set at levels which meet or exceed average natural stream flows (at 50% exceedance). WRD's water availability policy allows issuance of new water rights only when water is "available." Water availability for new out of stream rights is calculated at 80% exceedance. When ground water is shown to be in hydraulic connection with surface water, the determination of water availability is tied to surface water availability. (If surface water is not available for new uses, then the new ground water use is not allowed.) Therefore, as a general conclusion, new ground water rights cannot be issued in the Deschutes Basin because the surface water is fully appropriated, and virtually all ground water has been shown to be hydraulically connected to the surface water. Mitigation can be allowed to offset the impact, and thereby allow issuance of the new rights.

#### Agency Head Proposal:

The Directors of ODFW, Parks and Recreation and WRD would exercise their authority under the Scenic Waterways Act (with Directors of DEQ and DSL) to unanimously approve a change in the definition of "measurably reduce" for the Deschutes Basin, upon approval of a watershed-based mitigation plan which ensures adequate protection of instream water rights and flows necessary to maintain the character of the scenic waterway. Such a mitigation plan would be developed through a consensus-based, collaborative process involving all affected interests. The process would be facilitated and include development of Specific Objectives and Guiding Principles.

## Suggested Guiding Principles:

1) Do no harm to existing instream water rights and Scenic Waterway (Diack) flows. By this we mean that we would not want to see any erosion of existing law relating to instream rights and scenic waterway protection and no reduction in the currently measured flow levels due to ground water interference. This means instream water rights would not be injured by new uses, and Scenic Waterway flows would be protected under the law. Mitigation would be the mechanism for ensuring flows are protected. The ground water model would assist in identifying when and where ground water impacts occur for planning and permitting purposes, but gaged flow levels would be used for determining whether regulation is required.

2) Use a "watershed" or cumulative approach to mitigation.

3) Promote conservation and efficiency. Note: This leads to the complicated issue of whether to promote canal lining as a mitigation strategy. Certainly, there is a strong public interest in encouraging measures which will improve efficiency and reduce surface water diversions, thus assisting with surface flow restoration efforts. However, the ground water model in the Deschutes Basin tells us that even if all saved water is dedicated to instream flow restoration, the effort will only in maintain the status quo with respect to downstream impacts. This raises the specific question of whether canal lining in the middle reaches can be viewed as a means of providing mitigation for the downstream impacts. To do so will require a deliberate choice to accept a small diminution in flow in the lower Deschutes (possibly 1 to 3 per cent) in exchange for a substantial increase in flow in the Middle Deschutes. Both reaches have instream water rights that are not fully met during summer months, but flows in the Middle Deschutes fall far below the instream water right. In the Lower Deschutes, average flows are only slightly below the level of the instream water rights. Many members of the local work group are enthusiastic about restoring middle reaches, but will have little motivation to do so if the effort cannot be recognized as part of a mitigation plan. ODFW's assessment will be critical here to determine if a diminution in the Lower Deschutes flows is an acceptable trade-off for increased flows in the Middle Deschutes. The expected reduction in the Lower Deschutes would not be measurable at the gage.

4) Consider and try to address the expected impacts of exempt ground water uses. Although these uses do not require a water right, and thus are not affected by the State Scenic Waterway Act, we know the cumulative impact of numerous new exempt uses could, in fact, result in interference with surface water flows. The mitigation plan work group should be encouraged to try to estimate and mitigate these impacts as much as possible.

5) Identify and quantify the amount and timing of expected impacts. This process should identify impacts attributed to existing water rights issued since the effective date of SB 1033; new pending water right applications; future needs of the basin; and future exempt use within the basin.

6) The Mitigation Plan should be phased to ensure the mitigation measures are in place by the time the impacts are felt.

7) The Work Group should address needs associated with Endangered Species Listings and should develop a plan which is also consistent with the objectives of Governor's Executive Order.

8) The Work Group should consider the extent to which this plan and process may set a precedent, and help serve as a guideline for similar efforts in other basins.

9) The Work Group should develop recommendations/guidelines for the Water Resource Department to consider in evaluating new water right applications during the period of time until a mitigation plan is in place. Any new rights issued must include appropriate conditions to identify the potential future impact and ensure adequate mitigation. The option of "administrative hold" should be encouraged to delay processing of pending applications, at the request of the applicant, until a mitigation plan can be developed. Where applicants are unwilling or unable to request the administrative hold, conditions must be included to fully mitigate the expected impact, or allow for a re-opener to add specific mitigation conditions once the watershed-based mitigation plan is approved.

m:2034

## TOTALS BY USE, Groundwater Rights

- ▶ Non-Canceled rights only
  - ▶ Primary diversions only
  - ▶ Groundwater rights included
- ▶ Surface water rights not included
  - ▶ Reservoir rights not included

	Irrigation	Fish/Wild	Agriculture	Industrial	Municipal	Domestic	Recreational	Misc.	Total
--	------------	-----------	-------------	------------	-----------	----------	--------------	-------	-------

### 1. Amount of Permitted Water, Divided by Permits issued CFS or Permits in AF

cfs	390.8	0.7	0.02	18.3	176.5	23.5	5.60	5.9	621.3
AF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.23	2.23

### 2. Combined Rights

cfs	390.8	.7	.02	18.3	176.5	23.5	5.6	5.9	621.3
AF	282,927.5	506.8	14.5	13,248.7	127,780.7	17,013.3	4,054.2	4,273.7	449,804.8

### 3. Total Consumed (see summary table on page 1 for consumptive use coefficients)\*\*

cfs	67.44	0	.01	1.83	87.9	4.7	0	?	161.88
AF	48,826.33	0	7.25	1,324.9	63,637.0	3,402.7	0	?	117,198.18

### 4. Water rights subject to scenic waterway condition, permitted and consumptive use

<i>Permitted CFS</i>	25.03	0	.02	9.85	62.64	1.79	0	0	99.32
AF	18,118	0	16	7,129	45,349	1,296	0	0	71,908
<i>Consumptive CFS</i>	14.48	0	.01	1.00	13.58	.36	0	0	29.43
AF	10,486	0	8	726	9,827	259	0	0	21,306

Total acres irrigated (PRIMARY) : 27,277.28 (calculations for consumptive use based just on primary)

Total acres irrigated (SUPPLEMENTAL): 15177.42

**\*\*Note: Consumptive use estimates include all groundwater rights. However, the water availability estimates do not include groundwater rights until after July, 1995, when any water rights that were issued contained a permit condition that requires regulation in case of interference with senior water rights.**

EX. 5

Modified  
 2/14/00  
 by 1



State of Oregon  
**Water Resources Department**  
 158 12th Street NE, Salem, OR 97310  
 (503)378-8455 • (800)624-3199  
 www.wrd.state.or.us

Application for Water Right

Ex. 6

T-8519

# Transfer

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

**RECEIVED**

MAY 16 2000

WATER RESOURCES DEPT.  
 SALEM, OREGON

**APPLICATION FOR:**

Please check one

Water Right Transfer       Temporary Transfer       Permit Amendment

Historic Point of Diversion Change       Government Action Point of Diversion

**1. APPLICANT INFORMATION**

Name: Deschutes Reclamation & Irrigation Company (Swalley Irrigation District)  
First Last

Address: P.O. Box 5126  
Bend ; OR 97708-5126  
City State Zip

Phone: N/A 541-388-0658 N/A  
Home Work Other

\*Fax: 541-389-0778 <sup>0432</sup> \*E-Mail address: \_\_\_\_\_

\*Optional information

**2. TYPE OF CHANGE**

Use       Place of Use       Point of Diversion       Point of Appropriation

Reason for change: A transfer to an instream use is proposed as mitigation for a groundwater appropriation under application number G-14857.

Is the land within an irrigation or other water district?  Yes     No

If yes, include district name: Swalley Irrigation District

For Department Use

App. No. \_\_\_\_\_ Permit No. \_\_\_\_\_ Date \_\_\_\_\_

T-8519

### 3. CURRENT WATER RIGHT INFORMATION

Name on Permit, Certificate, or Decree: Swalley Irrigation District

Decree: Deschutes Consolidated Decree

Not applicable]

Permit Number: \_\_\_\_\_ Certificate Number: 74145

Not applicable]

Not applicable]

Priority Date: September 1, 1899 Authorized Use: Irrigation

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Source of Water: Deschutes River County: Deschutes

MAY 16 2000

Are there other sources listed on the water right?  Yes  No

WATER RESOURCES DEPT.  
SALEM, OREGON

#### Location of Authorized Point of Diversion or Point of Appropriation:

Coordinates (from recognized survey corner)	1/4 1/4 Section	Section	Township	Range
1719.36' North & 732.22' East from the South 1/4 Corner of Section 14, T15S, R12E	NW SE	14	15S	12E

#### Location of Authorized Place of Use:

Township	Range	Section	Government Lot or DIC	1/4 1/4 Section	Tax Lot Number	Acres (if appropriate)
(PLEASE REFERENCE THE ATTACHED SHEET)						

Are there other lands described in the water right?  Yes  No

Are there other water rights or permits associated with this land?  Yes  No  
If yes, include a copy of all rights or permits.

Description of general delivery system (ditch measurements, pump size, number of sprinklers, etc.):  
Eagle Crest currently directs water out of the Deschutes River (200 HP Pumping Unit) approximately 18 river miles south of Bend. Water is pumped to a storage pond and repumped (+/-175 HP pumping station) to a permanent underground irrigation system, standard wheel roll sprinklers, and large gun sprinklers.

System capacity (in cfs): 3.24 cfs

T-8519

PAGE 2:

SWALLEY IRRIGATION DISTRICT/EAGLE CREST  
APPLICATION FOR WATER RIGHT TRANSFER

LOCATION OF AUTHORIZED PLACE OF USE:

Township	Range	Section	Government Lot or DIC	$\frac{1}{4}$ $\frac{1}{4}$ Section	Tax lot Number	Acres
15S	12E	14	N/A	SE/SE	151214-DO-01000	0.1
15S	12E	14	N/A	SE/SE	151214-DO-01300	14.8
15S	12E	14	N/A	SE/SE	151223-AO-00134	0.7
15S	12E	14	N/A	SW/SE	151214-DO-01000	0.1
15S	12E	23	N/A	NE/NE	151214-DO-01000	0.7
15S	12E	23	N/A	NE/NE	151214-DO-01300	0.9
15S	12E	23	N/A	NE/NE	151223-AO-00134	3.7
					TOTAL	21.00

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SALEM, OREGON

T-8519

### 4. PROPOSED CHANGES TO THE WATER RIGHT

**Change in Use:**

Proposed use: Permanent Deschutes River In-Stream Use

**Change in Point of Diversion or Point of Appropriation:** *N/A*

Change

Old point of diversion or point of appropriation will not be used for this portion of the water right.

Additional

Both old and new points of diversion or points of appropriation will be used for this portion of the water right.

#### Location of Proposed Point of Diversion or Point of Appropriation

Coordinates (from recognized survey corner)	1/4 1/4 Section	Section	Township	Range

**Change in Place of Use:** *N/A*

#### Location of Proposed Place of Use

Township	Range	Section	Government Lot or DIC	1/4 1/4 Section	Tax Lot Number	Acres (if appropriate)

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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WATER RESOURCES DEPT.  
SALEM, OREGON

5. LAND OWNERSHIP

T-8519

Use/Place of Use

Answer only if for change in Use or Place of Use.

Are the lands free of encumbrances?  Yes  No

If no, name of encumbrance holder: \_\_\_\_\_

If no, application must include written permission for the transfer from the encumbrance holder.

Landowners

Answer only if applicant is not the landowner.

This section does not apply to water delivery entities authorized to act on behalf of their members, making permit amendment requests, or requests for changes in point of diversion or point of appropriation only.

Landowners: Eagle Crest Master Association  
(List all landowners shown on deed.)

Address(es): c/o Eagle Crest, Inc. P.O. Box 1215  
Redmond OR 97756  
City State Zip

Application must include notarized statements from all landowners shown on deed giving permission for the transfer. Use an extra sheet if necessary.

Receiving Landowner

Answer only if the receiving landowner is not the original landowner or the applicant.

Name: Not Applicable

Address: \_\_\_\_\_

\_\_\_\_\_ City State Zip

- The Department's records should be changed to show this landowner is responsible for completion of the changes. All notices and correspondence should be sent to this landowner.
- Applicant will remain responsible for completion of changes. Notices and correspondence should continue to be sent to applicant.

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SALEM, OREGON

T-8519

6. EXHIBITS

Application may be rejected if all appropriate exhibits are not enclosed.

Land Use Information Form:

- Enclosed
- Not needed: (must meet the following four requirements)
  - ① In EFU zone or irrigation district.
  - ② Change in place of use only.
  - ③ No structural changes needed, including diversion works, delivery facilities, other structures.
  - ④ Irrigation only.

- List all affected governments (city, county, state, tribal, federal):

Deschutes County, Oregon Water Resources Department

Map:

- Water Right Transfer: *Must be prepared by a Certified Water Right Examiner.*
- All others: *Need not be prepared by a Certified Water Right Examiner.*

Deed:

- Must accompany all applications, except permit amendment requests.

Evidence of use within last five years, or not subject to forfeiture:

- Best evidence is an affidavit from a knowledgeable person describing the water use. Statements saying water was delivered or assessments/fees were paid are insufficient. Evidence must show actual use of the water for the authorized purpose, in the authorized place of use.

Water Well Reports:

- If application is for a change in point of appropriation or change from surface water to ground water, attach copies of all water well reports. If reports are not available, describe construction details including well depth, static water level, and information necessary to establish the ground water body developed or proposed to be developed.

Fees:

- Amount enclosed \$ 200.
- See instruction book for fee schedule.*

7. SIGNATURE

I (we) swear that I (we) have read the above application and the statements made are true and accurate.

Todd A. Griffith, Manager 05/15/00  
name (print) Swalley Irrigation District

applicant signature name (print) date

Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included the necessary exhibits.
- Included a check payable to the Oregon Water Resources Department for the appropriate amount.

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MAY 16 2000

WATER RESOURCES DEPT.  
SALEM, OREGON

EX. 7

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R ab SHITIKE CR @ PELTON DAM  
 Water Availability Subbasin: 0103400000000000  
 Time: 07:59

Exceedance Level: 80

ID Number: 30530643  
 Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4310.00	620.00	3690.00	41.80	3648.00	4500.00	-852.00
2	4540.00	679.00	3860.00	43.10	3817.00	4500.00	-683.00
3	5040.00	933.00	4110.00	64.40	4046.00	4500.00	-454.00
4	5280.00	958.00	4320.00	68.00	4252.00	4000.00	<del>252.00</del>
5	5170.00	1140.00	4030.00	39.80	3990.17	4000.00	-9.83
6	4850.00	1200.00	3650.00	82.50	3568.00	4000.00	-432.00
7	4090.00	996.00	3090.00	82.60	3007.00	4000.00	-993.00
8	3880.00	865.00	3010.00	82.40	2928.00	3500.00	-572.00
9	3980.00	727.00	3250.00	82.20	3168.00	3800.00	-632.00
10	4070.00	755.00	3320.00	39.30	3281.00	3800.00	-519.00
11	4130.00	815.00	3310.00	39.30	3271.00	3800.00	-529.00
12	4230.00	737.00	3490.00	39.30	3451.00	4500.00	-1049.00
Stor	3590000	624000	2970000	42200	2930000	2930000	155000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R ab SHITIKE CR @ PELTON DAM  
 Water Availability Subbasin: 0103400000000000  
 Time: 07:59

Date: 04/29/1999

-----ISWRs-----							
APP #	-90506C	0	0	0	0	RESULTANT	
STATUS	Scenic WW						
1	4500.00	.00	.00	.00	.00	4500.00X	
2	4500.00	.00	.00	.00	.00	4500.00X	
3	4500.00	.00	.00	.00	.00	4500.00X	
4	4000.00	.00	.00	.00	.00	4000.00X	
5	4000.00	.00	.00	.00	.00	4000.00X	
6	4000.00	.00	.00	.00	.00	4000.00X	
7	4000.00	.00	.00	.00	.00	4000.00X	
8	3500.00	.00	.00	.00	.00	3500.00X	
9	3800.00	.00	.00	.00	.00	3800.00X	
10	3800.00	.00	.00	.00	.00	3800.00X	
11	3800.00	.00	.00	.00	.00	3800.00X	
12	4500.00	.00	.00	.00	.00	4500.00X	

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R ab EAGLE CR  
 Water Availability Subbasin: 0103000000000000  
 Time: 07:59

Exceedance Level: (80)

ID Number: 30530627

Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4700.00	625.00	4070.00	41.80	4028.00	4500.00	-472.00
2	5070.00	686.00	4380.00	43.10	4337.00	4500.00	-163.00
3	5640.00	931.00	4710.00	64.40	4646.00	4500.00	146.00
4	5920.00	884.00	5040.00	68.10	4972.00	4000.00	972.00
5	5710.00	1010.00	4700.00	39.90	4660.00	4000.00	660.00
6	5260.00	1050.00	4210.00	82.50	4127.00	4000.00	127.00
7	4420.00	822.00	3600.00	82.70	3517.00	4000.00	-483.00
8	4160.00	745.00	3410.00	82.50	3327.00	3500.00	-173.00
9	4260.00	638.00	3620.00	82.20	3538.00	3800.00	-262.00
10	4370.00	714.00	3660.00	39.40	3621.00	3800.00	-179.00
11	4460.00	814.00	3650.00	39.30	3611.00	3800.00	-189.00
12	4600.00	739.00	3860.00	39.30	3821.00	4500.00	-679.00
Stor	4030000	579000	3450000	42200	3410000	2930000	487000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R ab EAGLE CR  
 Water Availability Subbasin: 0103000000000000  
 Time: 07:59

Date: 04/29/1999

-----ISWRs-----						
APP #	-90506B	70087B	71194B	0	0	RESULTANT
STATUS	Scenic WW	Cert.	Cert.			
1	4500.00	3000.00	4500.00	.00	.00	4500.00X
2	4500.00	3000.00	4500.00	.00	.00	4500.00X
3	4500.00	3500.00	4500.00	.00	.00	4500.00X
4	4000.00	3500.00	4000.00	.00	.00	4000.00X
5	4000.00	3500.00	4000.00	.00	.00	4000.00X
6	4000.00	3500.00	4000.00	.00	.00	4000.00X
7	4000.00	3500.00	4000.00	.00	.00	4000.00X
8	3500.00	3500.00	3500.00	.00	.00	3500.00X
9	3800.00	3500.00	3800.00	.00	.00	3800.00X
10	3800.00	3000.00	3800.00	.00	.00	3800.00X
11	3800.00	3000.00	3800.00	.00	.00	3800.00X
12	4500.00	3000.00	4500.00	.00	.00	4500.00X

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R @ mouth  
 Water Availability Subbasin: 0100000000000000  
 Time: 07:59

Exceedance Level: (80)  
 ID Number: 14103000  
 Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4970.00	640.00	4330.00	43.30	4287.00	4500.00	-213.00
2	5530.00	700.00	4830.00	45.00	4785.00	4500.00	285.00
3	6140.00	960.00	5180.00	66.00	5114.00	4500.00	614.00
4	6470.00	930.00	5540.00	69.90	5470.00	4000.00	1470.00
5	6220.00	1120.00	5100.00	39.90	5060.00	4000.00	1060.00
6	5560.00	1170.00	4390.00	82.60	4307.00	4000.00	307.00
7	4610.00	910.00	3700.00	82.80	3617.00	4000.00	-383.00
8	4320.00	820.00	3500.00	82.60	3417.40	3500.00	-82.60
9	4410.00	700.00	3710.00	82.30	3628.00	3800.00	-172.00
10	4520.00	760.00	3760.00	39.60	3720.40	3800.00	-79.60
11	4610.00	820.00	3790.00	39.80	3750.20	3800.00	-49.80
12	4820.00	750.00	4070.00	40.20	4030.00	4500.00	-470.00
Stor	4360000	616000	3740000	42800	3700000	2930000	769000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R @ mouth  
 Water Availability Subbasin: 0100000000000000  
 Time: 07:59

Date: 04/29/1999

ISWRs						
APP #	-90506A	70087A	71194A	0	0	RESULTANT
STATUS	Scenic WW	Cert.	Cert.			
1	4500.00	3000.00	4500.00	.00	.00	4500.00X
2	4500.00	3000.00	4500.00	.00	.00	4500.00X
3	4500.00	3500.00	4500.00	.00	.00	4500.00X
4	4000.00	3500.00	4000.00	.00	.00	4000.00X
5	4000.00	3500.00	4000.00	.00	.00	4000.00X
6	4000.00	3500.00	4000.00	.00	.00	4000.00X
7	4000.00	3500.00	4000.00	.00	.00	4000.00X
8	3500.00	3500.00	3500.00	.00	.00	3500.00X
9	3800.00	3500.00	3800.00	.00	.00	3800.00X
10	3800.00	3000.00	3800.00	.00	.00	3800.00X
11	3800.00	3000.00	3800.00	.00	.00	3800.00X
12	4500.00	3000.00	4500.00	.00	.00	4500.00X

WATER AVAILABILITY TABLE

Basin: DESCHUTES Exceedance Level: 80  
 Water Availability Subbasin: 0103400000000000 (and Nested Subbasins)  
 Time: 07:59 Date: 04/29/1999

Item #	W.A. Subbasin	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	0100000000000000	NO	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES
2	0103000000000000	NO	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES
3	0103400000000000	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES

STREAM NAMES

Basin: DESCHUTES  
 Water Availability Subbasin: 0103400000000000 (and Nested Subbasins)  
 Time: 07:59 Date: 04/29/1999

WAB #	Stream Name	Tributary to
0100000000000000	DESCHUTES R @ mouth	COLUMBIA R
0103000000000000	DESCHUTES R ab EAGLE CR	COLUMBIA R
0103400000000000	DESCHUTES R ab SHITIKE CR @	PECOLUMBIA R

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 0103400000000000  
 Basin: DESCHUTES Exceedance Level: 80  
 Time: 07:59 Date: 04/29/1999

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-852.0
2	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-683.0
3	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-454.0
4	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	YES	252.0
5	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-9.8
6	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-432.0
7	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-993.0
8	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-572.0
9	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-632.0
10	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-519.0
11	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-529.0
12	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-1049.0
Stor	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	YES	155000.0

JOHN A. KITZHABER  
GOVERNOR



Ex. 8

July 19, 1995

Karen Russell, Assistant Director  
WaterWatch of Oregon  
213 SW Ash Street, Suite 208  
Portland, OR 97204

Re: SB 1033

Dear Ms. Russell:

Thank you for contacting my office regarding SB 1033. I know that WaterWatch, and other interest groups, were deeply involved with this measure, and that you have serious concerns about the bill. Because of that, I wanted to provide this explanation of why I have decided to sign the measure, and why I feel confident that it not limit the state's ability to protect and preserve flows in Scenic Waterways.

As you may know, the Water Resources Department identified this bill as a priority in order to clarify the process for evaluating new ground water use applications within and above scenic waterways. Their goal, with which I concurred, was to provide a mechanism for authorizing reasonable and appropriate uses of ground water, while not jeopardizing flow protection for established scenic waterways. We believe this goal has been met with SB 1033.

Under the measure, a new ground water use may not be approved if it will result in a measurable reduction of flows necessary to maintain the scenic waterway. However, where such measurable reduction will not occur, or cannot be determined on the basis of available scientific information, the department may approve the use subject to important limitations and conditions. The measure includes a "safety net" that will allow future curtailment of the ground water use if it can be shown that the use is causing a measurable reduction in the flows necessary to maintain the scenic waterway. This will, for the first time, allow for regulation of uses in order to meet *Diack* flow levels.

Ms. Karen Russell  
July 19, 1995  
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Clearly, the bill does not require the department to have comprehensive ground water studies completed before acting on a new ground water application. However, this is consistent with the Water Resources Commission's current policy directives concerning the processing of ground water applications. This policy choice is strengthened in the bill by the requirement to condition any new water right to allow for future regulation as a result of additional data or improved technologies in the future.

In your letter of June 30, 1995, to Roger Wood, you offered several specific suggestions as to how SB 1033 could be implemented to better ensure protection of the scenic waterway resources. Let me respond to those suggestions:

First, you wanted clarification that every new ground water application will be reviewed by the department to determine its potential impacts. This is consistent with testimony provided by Director Martha Pagel during hearings on the bill, and will be my expectation for implementation.

You also suggest that the term "field data," as used in the bill, should be interpreted to include any relevant information from the area surrounding a proposed new use, rather than being limited to the specific well site. Again, this suggestion is fully consistent with Martha's testimony before the Conference Committee which adopted the final bill language. I understand that Senator Neil Bryant, in his floor testimony on the Conference Committee recommendations, also clarified this point. Accordingly, I am confident that the department will interpret the term in this manner.

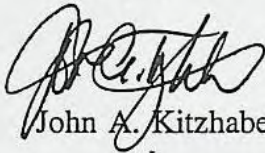
Your letter expressed some concerns about the manner in which subsection 8(c) might be interpreted by the department. Specifically, you feared that this language may be used "to allow the agency to ignore the impacts of a proposed use if it will reduce surface flows over a period of time." Please be assured that the department has no intention of ignoring the impacts of ground water uses on surface water flows. To the contrary, I have asked the department to maintain a careful watch on the potential cumulative effects of ground water uses. I am confident that the language in 8(c) will not be used as an excuse to avoid regulation. Rather, it will be used as it was intended: to provide reasonable assurance of a cause and effect relationship between a specific ground water use and any measurable reduction in surface water flows. If such a connection cannot be shown, then it would be inappropriate to regulate a specific well. However, the department will also be on watch for cumulative effects which cannot be attributed to any particular well, but which do show cause for concern about continued ground water uses. In such instances, the designation of a "critical ground water area" would be a more effective tool for protecting surface water flows.

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Your suggestion that applicants be required to conduct studies and submit the field information necessary to "do a complete review of the application" does not appear to be fully consistent with the policies and strategies reflected in the bill. However, this does not mean that the department will be forced to make uninformed decisions. The measure requires the department to examine all available information. Where detailed studies have not been completed for an area, it would not be appropriate to place the burden of a multi-million-dollar review on any single applicant. However, as indicated above, the bill does allow for limitations on uses of ground water if future studies show a causal connection between the use and surface flow reductions.

Again, I want to thank you for your constructive suggestions regarding implementation of the measure. I urge you to continue working with Martha, department staff and the Commission toward a shared goal of long-term protection for our scenic waterway flows.

Sincerely,



John A. Kitzhaber

JAK:sm.wrd

Ex. 9.

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**Summary  
of  
1995 Water Legislation**



**Oregon Water Resources Commission and  
Water Resources Department**

**June 1995**

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## SB 1033

**Status:** Awaiting Governor's Action

Sponsored by Senator Bryant and Representatives Norris and Markham et al (at the request of the Oregon Groundwater Association)

*Establishes criteria for issuance of new groundwater rights in or above state scenic waterways to maintain the free-flowing character of a waterway in quantities necessary for recreation, fish and wildlife.*

**Background:** The Oregon Scenic Waterways System was established by a ballot initiative in 1970. The system initially included 496 free-flowing miles of six rivers — segments of the Deschutes, Illinois, John Day, Owyhee and Rogue and all of the Minam. In 1972, a 12 mile segment of the Sandy River was added by governor's designation. The Legislature designated a 12 mile stretch of the Clackamas River in 1975, the North Fork of the Middle Fork of the Willamette River in 1983, Waldo Lake in 1983 and a seven mile segment of the Little Fork of the North Santiam in 1985. In 1988, Oregon voters passed a ballot measure that added 573 miles river miles to the system. The Scenic Waterways Program is primarily administered by the Parks and Recreation Department. Under current law, the Water Resources Commission is involved in the program on issues related to the issuance of water rights, dam construction and placer mining on scenic waterways.

During the last year, legal questions have arisen concerning whether and to what extent the Scenic Waterways Act applies to applications for new groundwater rights.

**What the bill does:** SB 1033 would require the Water Resources Department to review every application for the use of groundwater to find whether the use will measurably reduce the surface flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. If the Department finds that the proposed use will measurably reduce surface flows, the Department must deny the application unless mitigation is provided or the applicant submits information to overcome the finding.

The bill would require the Department to condition every new groundwater appropriation within or above a scenic waterway to allow regulation of the use if analysis of data available after the issuance of a permit or certificate discloses that the appropriation will measurably reduce surface flows necessary to maintain the free-flowing character of the scenic waterway.

Senate Water and Land Use Committee  
House Water Policy Committee  
Conference Committee on SB 1033

Delivered via Messenger

March 31, 2000

Dwight French  
Water Rights Section  
158 12th Street NE  
Salem, OR 97310

**RE: Protest, G-14857 Eagle Crest Development Corp, Deschutes River Basin**

Dear Dwight,

Pursuant to ORS 537.621(7) and OAR 690-310-160, WaterWatch, Trout Unlimited and Oregon Trout file this protest along with the protest fee of \$200 for application G-14857 in the Deschutes River Basin.

**Protest Elements as required by ORS 537.621(7)**

**a. Name, address, telephone number of protestant**

WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
(503) 295-4039  
contact: Kimberley Priestley, Karen Russell

Aubrey Russell, Water Policy Advocate  
Oregon Trout  
111 SW First Ave.  
Portland, OR 97204  
(503) 222-9091

Jeff Curtis, Western Consv. Dir.  
Trout Unlimited  
213 SW Ash, Suite 211  
Portland, OR 97204  
(503) 827-5700

**b. Protestant interest/public interest statement**

Water is a publicly owned resource. ORS 537.110. WaterWatch, Oregon Trout and Trout Unlimited have a long standing interest in decisions that effect this resource. WaterWatch is a nonprofit membership organization dedicated to promoting water allocation

decisions in Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation, biological diversity, ecological values, public health and a sound economy. Oregon Trout is a nonprofit organization dedicated to protecting and restoring wild native fish habitat in Oregon. Trout Unlimited is a national non-profit membership organization whose mission is to conserve, protect and restore North America's trout and salmon. All groups have a long history of working towards the protection and restoration of the Deschutes River and are currently involved in the Deschutes Basin Groundwater Working Group.

Protestants are representing the general public interest in the water resources of this state, as well as the specific interest of Protestants' members and the organizations themselves. Protestants have members throughout the Pacific Northwest, including the Deschutes River Basin. Moreover, Protestants' members, board members and staff benefit from knowing that such a resource exists even if they have not visited the watershed. In addition, each of these groups have direct and real interests that will be adversely affected by this decision. The interests represented by Protestants and their members is multifaceted and includes, but is not limited to (1) the interest of protecting the quantity and quality of streamflows in the Deschutes River system for public instream uses of water which include fish (including federally protected steelhead and bull trout), wildlife, the habitat necessary for fish and wildlife survival, and recreational use of the area (2) the interest in instream water rights and scenic waterway flows are not injured and/or harmed; (3) the interest of ensuring that the agency not overallocate the resource; (4) the interest in ensuring that out-of-stream uses are efficient and not wasteful or uneconomical and the permits are not allowed for more water than is necessary for their beneficial use; 5) the interest in ensuring that the agency has the tools and mechanisms in place to regulate water use in the basin; and (6) the interest in ensuring that the agency implements water laws and policies in a manner that manages and allocates the water resource so as to maintain the ecological integrity of the Deschutes Basin. If the agency grants the requested use, all of these interests will be harmed.

### Summary of Facts

#### 1. The Deschutes River Basin:

a. Hydrology of the Basin: Groundwater in the Deschutes River Basin is hydraulically connected to surface waters of the Deschutes River. See Agenda Item J-3, July 17, 1992, page 2, 1955 Water Resources Committee Report to Oregon Legislature, pg. 18, USGS Report 84-4095, pg. 13-15.

In 1993, in response to concerns about the effects continued groundwater development in the Deschutes Basin would have on the Deschutes River, the Water Resources Department and the U.S. Geological Survey (USGS) initiated a ground water study to further evaluate this connection. The USGS study was completed in 1998. The USGS study corroborated earlier studies by Stearns (1931) and Scava (1968), which found that little, if any, groundwater leaves the upper part of the basin as ground water. See

*Attachment 1, WRD Water Development Issues in the Deschutes Basin, 1998.* Instead, virtually all ground water discharges to these rivers to become surface water. *Id.* The study also found that consumptive groundwater use throughout the upper basin results diminishes the surface water flows downstream in the lower Deschutes River. *Id. at 2.*

b. Instream Water Rights: The lower Deschutes is protected by two instream water rights, one with a 1989 priority date and another larger one with a 1991 priority date. *See Attachment 2, ISWR #70087, 71194.* The Oregon Department of Fish and Wildlife requested these instream water rights to provide adequate flows to maintain a significant salmon, steelhead and trout fishery. *Id. at ISWR 70087.* The flows were also to provide for recreational fishing, drift, and power boating, and aesthetics in a state and federal scenic waterway. *Id.*

The instream flow in the right is the quantity of water necessary to support the public use identified in the certificate. ORS 537.332(2). The "no injury" standard applies to protecting existing water rights from new water rights. ORS 537.621(2). Since the instream flows are the flows necessary to support the beneficial instream use, injury will occur if flows drop below the flows identified in the instream right.

The instream water rights on the lower Deschutes are not met nine months of the year. *See Attachment 1, at 4.* Instream water rights have the same status and effect as all other water rights. *Id. at 3.* The Department cannot issue any new water rights, surface or groundwater, that will injure existing instream water rights. Junior rights must be regulated to ensure that the protected flows are met.

c. Scenic Waterway Flows: Several segments of the Deschutes River have received state scenic waterway designation, including the river section that would be affected by the proposed groundwater use. *See ORS 390.826(5).*<sup>1</sup> The Water Resources Commission set state Scenic WaterWay flows in 1991 in the same flow amounts as the instream water rights. *See Agenda Item K, Water Resources Commission, April 25, 1991.* As with the instream water rights, the Scenic Waterway flows are not met nine months of the year. *See Attachment 1, at 4.*

In addition, several segments of the Deschutes River, including the section from Oden Falls to Lake Billy Chinook, have been designated as scenic under Federal Wild and Scenic

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<sup>1</sup> The state Scenic Waterway segments include: "...the segments of the Deschutes River from Little Lava Lake downstream to Crane Prairie Reservoir, from the gaging station immediately below Wickiup Dam downstream to General Patch Bridge, from Harper Bridge downstream to the Central Oregon Irrigation District's diversion structure (near river mile 171), from Rover Sawyer Park downstream to Tumalo State Park, from Deschutes Market Road Bridle downstream to lake Billy Chinook Reservoir(excluding Cline Falls hydroelectric facility near river mile 145), and from immediately below the exiting Pelton reregulating dam downstream to the confluence of the Deschutes River with the Columbia River, excluding the city of Maupin as its boundaries are constituted on October 4, 1977."

Rivers Act, 16 USC §§ 1271-1287, but to date scenic flows have not been quantified.

The State Scenic Waterway Act states that the highest and best use of waters within its reaches are recreation, fish and wildlife uses. ORS 390.835(1). Agencies are charged with managing these waters so that the free-flowing character of the waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. *Id.* No water diversion can be constructed or used in a manner inconsistent with the Scenic Waterway Act. *Id.* Oregon courts have interpreted the Scenic Waterway Act as requiring the Water Resources Department to protect flows throughout the scenic waterway reach. In cases of hydraulically connected groundwater, 1995 legislative amendments to the Act allowed issuance of new ground water permits unless the agency finds by a preponderance of the evidence that the use will "measurably reduce" scenic waterway flows. ORS 390.835(9)(a). "Measurably reduce" is defined as us that will "individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less..." ORS 390.835(12). According to Department calculations, well over 1 cfs of groundwater is consumptively used in the Deschutes Basin. *See Attachment 4, WRD Tables of Permitted and Consumptive Use for the Deschutes Basin, 2/15/00.*

d. Fish: The Deschutes River system supports a variety of fish life including rainbow trout, cutthroat trout, bull trout, redband trout, summer and winter steelhead, brown trout, kokanee, and coho. Bull trout and steelhead are listed as threatened under the federal ESA. Redband Trout are state sensitive species and have been petitioned for listing under the Federal ESA. Moreover, the Deschutes also contributes flows for listed threatened and endangered fish populations in the Columbia River. The Deschutes supports a major sports fishery in Oregon.

Streamflows are critical to fish in the basin and are a limiting factor for fish. Low flows during summer months impair fish survival by among other things raising water temperatures, decreasing aquatic habitat and trout rearing areas and promoting excessive growth of algae.

**2. Deschutes Groundwater Mitigation Planning Group:** The USGS Study has concluded that groundwater pumping throughout the Deschutes Basin impacts streamflows of the lower Deschutes River and the Crooked River. Based upon the USGS findings, the Department has acknowledged that groundwater pumping contributes to the lack of flows necessary to fulfill Scenic Waterway flows. *See Attachment at 1.* The Department has also found that future consumptive ground water development will only exacerbate this problem. *Id.* On the basis of current information, the Department has found that they cannot approve applications for new ground water uses without adequate mitigation measures, and in fact, may soon face the obligation to curtail some existing ground water uses in order to protect scenic waterway flows and senior instream water rights. *Id. at 5.*

In response to the findings of the USGS study, the Department has convened a diverse group of stakeholders, including federal and state agencies, municipalities, irrigation districts, conservationists and the Warm Spring Tribes, to develop a mitigation plan that would fully mitigate the impact of existing and new groundwater uses on scenic waterway

flows and instream water rights. The Department has been very clear that no new water rights can be issued without adequate mitigation. This group has set a deadline of September 2000 by which to come up with a mitigation plan.

The Deschutes Groundwater Working Group has not yet completed the planning process. Until the mitigation plan is developed, approved and implemented, if an applicant wishes to proceed with a water right application, they must submit an individual mitigation plan that is in strict adherence with the requirements of the Scenic Waterway Act and will not injure senior instream water rights. In order to "ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife" as required by the Scenic Waterway Act, any mitigation must necessarily be full bucket-for-bucket mitigation at the point and time of impact for the full period of the proposed use. "No injury" to a senior water right means that there would be no reduction in the amount of water previously available to another water right for the full period of the proposed use. *See OAR 690-15-050(2)(a).*

### 3. The proposed use

Eagle Crest Development Corporation is requesting a quasi-municipal water right to support Eagle Crest Resort's new development, which is an expansion of the already existing Eagle Crest I and II Resort. The new development will encompass 480 acres that will support approximately 900 dwellings.

Eagle Crest originally requested 780 gallons per minute, or 1.74 cfs. *See Application G-14857.* They did note in their application that "flows may be increased to 1500 gpm for fire protection". *Id.* However, Eagle Crest never submitted an amendment to increase the amount applied for. The Water Resources Department evaluation and processing of the application, up through the draft Proposed Final Order (PFO), was based upon 1.74 cfs, not 3.34 cfs. *See WRD's files: Initial Review Checklist, PFO checklist, Draft PFO (stamp dated 2/10/00 to T. Walker), WRD Public Notice 2/15/00.*

Eagle Crest holds four water right permits which serve Eagle Crest I and Eagle Crest II. *See G-10530, G-10957, G-11313, G-11762.* All four of these permits are junior to existing instream water rights. Eagle Crest is not mitigating for the already existing injury these permits are causing to senior instream water rights.

Eagle Crest has stated that the proposed water supply system will be linked to Eagle Crest I and II for continuity and redundancy to enhance emergency fire flows. *See Form M, Application G-14857.* Eagle Crest estimates spending \$3 million to develop this water permit.  
*Id.*

Because of the impact this proposed groundwater use will have on streamflows, the Department has determined that the applicant must mitigate for its impacts to streamflows in the Deschutes. *See PFO for G-14857.* To satisfy this requirement, Eagle Crest is proposing to lease water instream from Swalley Irrigation District. *Id.* According to the PFO, Swalley

Irrigation District has agreed to a two-year temporary instream lease. *Id.* Because this is not permanent mitigation, the Department has attached a condition of use that states if permanent mitigation is not in place at the end of the two year period, the permit will expire. *Id.*

**c. How the action proposed in the PFO will impair or be detrimental to Protestants' interest and will not ensure the preservation of the public welfare, safety and health.**

**1. The action proposed in the PFO will impair or be detrimental to Protestants' interest and will not ensure the preservation of the public welfare because the applicant cannot make beneficial use of the water.**

Beneficial use without waste in the "basis, measure and extent of the right" to appropriate surface and groundwater in Oregon. ORS 540.610(1), ORS 537.525(3). The Department cannot issue a water right for which the user cannot make beneficial use.

In the case at hand, the beneficial use applied for is a destination resort. This is a permanent beneficial use. However, despite the permanent nature of Eagle Crest's request, the Department is proposing to issue what is essentially a "conditional" two year permit. There is no evidence in the file that a "two year" conditional permit will satisfy their needs. Eagle Crest is not contemplating a "two year" resort. Rather, it is very clear that Eagle Crest is applying for a permanent beneficial use.

Unless the Department can grant them a permanent water right for this permanent use, the applicant cannot make beneficial use of this water, as required by Oregon law. This is not in the public interest and will impair protestants' interests in ensuring that the agency implements water laws and policies in a manner that manages and allocates the water resource so as to maintain the ecological integrity of the Deschutes Basin.

**2. The action proposed in the PFO will impair or be detrimental to Protestants' interest and will fail to ensure the preservation of the public welfare because there is no water available for use.**

As with all applications, the Department performed a water availability analysis of Eagle Crest's proposed use. The Department performs this analysis to "determine if water is available to support the proposed use." OAR 690-300-58. Here, the proposed use is a long-term resort.

Under the Division 300 rules, water is available if the requested source is already over-appropriated for any portion of the period of use proposed in the application if the applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated; the applicant has obtained authorization to use water from an alternate source to provide water needed during any period of use in which the source is over appropriated; or if the applicant has shown they can obtain authorization to use water from an alternate source during any period of use in which the source is overappropriated and if the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water

from the alternate source. OAR 690-300-010(57).

The Department's water availability tables show that the resource is overappropriated from May 1 through March 31. See *Attachment 5, Water Availability Tables*. In the PFO the Department states that "without mitigation", water is not available.

Eagle Crest's proposed use is a long term use. Eagle Crest has only provided mitigation for a two year period. The applicant has not shown that the proposed use only requires water during this two year period. Nor has the applicant obtained authorization to use water from an alternate source during the proposed period of use (which is much longer than two years). The state's rules are clear, the Department cannot issue the water right unless mitigation is found for the full proposed use (i.e. the long term resort) before they begin diverting, unless the applicant can show that the Resort requires water only during the two year period for which mitigation is provided. See *OAR 690-300-57(B)*. The applicant has not shown this, thus the Department was in error for finding "water available." The Department cannot issue a water right for which there is not water available. The proposal to do so is not only contrary to law, but impairs protestants interests in ensuring that the agency manages and allocates the water resource so as to maintain the ecological integrity of the Deschutes Basin and to protect scenic waterway flows and instream water rights.

3. The action proposed in the PFO will impair or be detrimental to Protestants' interest and will not ensure the preservation of the public welfare because the proposed "short-term" mitigation violates the Scenic Waterway Act.

Eagle Crest Development Corporation is requesting a permanent water right to service their proposed expansion of the existing Eagle Crest Resort, known as Eagle Crest III. Eagle Crest III will encompass approximately 480 acres with approximately 900 dwelling units and other recreational amenities. The resort is a long-term use.

The Scenic Waterway Act is very clear. Agencies are charged with managing these waters so that the free-flowing character of the waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. *ORS 390.835(1)*. No water diversion can be constructed or used in a manner inconsistent with the Scenic Waterway Act. *Id.* In cases of hydraulically connected groundwater, 1995 legislative amendments to the Act allowed issuance of new ground water permits unless the agency finds by a preponderance of the evidence that the use will "measurably reduce" scenic waterway flows. *ORS 390.835(9)(a)*. "Measurably reduce" is defined as a use that will "individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less..." *ORS 390.835(12)*. If the measurably reduce standard is reached, the Department must deny the application unless the applicant can fully mitigate for their impact. *ORS 390.835(9)(d)(A)*.

The Department has determined that in the Deschutes Basin groundwater withdrawals account for approximately 161.88 cfs of consumptive use.<sup>2</sup> *See Attachment 4, WRD's calculations of permitted and consumptive groundwater use for the Deschutes Basin, handed out at Deschutes groundwater Work Group Meeting, 2/15/00.* Consumptive use numbers for groundwater rights issued since the 1995 Scenic Waterway Act amendment total over 29 cfs. *Id.* These numbers far exceed the 1 cfs "measurably reduce" standard. Given this, the Scenic Waterway Act only allows the issuance of new groundwater permits if the proposed use is fully mitigated. ORS 390.835(9)(d)(A).

Eagle Crest's proposed use is a permanent resort. Despite this, Eagle Crest has not developed a permanent mitigation plan. Rather, they have applied for a temporary two-year instream lease to provide mitigation.<sup>3</sup> This is in violation of the Scenic Waterway Act. To satisfy the Act, Eagle Crest must provide full, permanent mitigation for its proposed use.

Rather than deny the permit based on insufficient mitigation, the Department has instead proposed conditioning the permit to expire if permanent mitigation is not in place at the end of this two year period.<sup>4</sup> The conditioning does not fix the defect. At issue here is the fact that the resort is a permanent use that requires a permanent water right. Without submitting a proposal for a permanent mitigation plan, this permanent water right should not even be considered, let alone approved.

In addition to violating the Scenic Waterway Act, the Department's proposal to grant Eagle Crest what is essentially a "conditional" permit to start development before they have come up with a permanent mitigation plan will lead to false expectations on the part of the applicant. Eagle Crest anticipates spending three million dollars in developing this permit. They are most certainly counting on a permanent water right. By setting up such a situation, the Department is inviting economic brinkmanship. In other words, regardless of the inadequacy or non-existence of any future mitigation plan, the investment made under this groundwater permit (if issued) might be held out by Eagle Crest as a "potential loss of investment". This could be used as leverage with the Department and/or state legislators to come up with some sort of "fix" for the applicant to ensure they can get a permanent water right, regardless of mitigation. This is of concern as the Department has historically lacked the political will to shut off water use when permit conditions are not met.

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<sup>2</sup> Groundwater rights of record exceed 621.3 cfs.

<sup>3</sup> There is no evidence in the file that this instream water right lease has been approved. Until the instream lease application is approved and in place, this cannot be considered mitigation.

<sup>4</sup> Because the applicant failed to find permanent mitigation, the Department has proposed conditioning this permit to expire in two years if permanent mitigation is not in place. This permit condition is unenforceable.

The Department should not process any applications for new uses of groundwater in the Deschutes basin that do not provide for full and permanent mitigation of their proposed uses. It not only undercuts the current groundwater mitigation planning process, the integrity of instream water rights and the tenets of the Scenic Waterway Act, but it gives Eagle Crest Development Corporation false expectations about its water supply for its resort. This would impair protestants interests in ensuring that scenic waterway flows are met in perpetuity.

4. The action proposed in the PFO will impair or be detrimental to Protestants' interest and will not ensure the preservation of the public welfare because the proposed "short-term" mitigation will result in injury to senior instream water rights.

Oregon law prohibits the Department from approving a water right that will injure a senior water right. *ORS 537.621(2)*. This includes senior instream water rights. Any diminution of flow that would otherwise be available to the instream water right constitutes injury. *See e.g., OAR 690-15-050(1)*. There are two instream water rights in the reach affected by this proposed use that are senior to Eagle Crest's application. *See Attachment 2*.

The Department's Water Availability calculations for this application show that the surface waters are overappropriated 11 months of the year. *See Attachment 5, WRD Water Availability*. The Department has determined that the proposed source of groundwater is hydraulically connected to surface water. To allow issuance of this permit under these circumstances, the Department must ensure that there will be no impact whatsoever on senior instream water rights.<sup>5</sup> This means that water must be in the stream at the time and place of impact for the life of the proposed use.

The mitigation proposed by Eagle Crest does not ensure this. Eagle Crest is applying for a long term right but is only proposing short term mitigation. To ensure that the proposed permit will not diminish flows, full mitigation must be provided for the full period of the proposed use. The Department should not even consider, let alone approve, any groundwater applications that do not provide for full mitigation for the full period of the proposed use. To do such is contrary to the permitting statutes and is not in accordance with the Department's trust duty to protect instream water rights. Such action will impair protestants interests in ensuring that instream water rights are met in perpetuity.

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<sup>5</sup> Eagle Crest holds four water right permits which serve Eagle Crest I and Eagle Crest II. *See G-10530, G-10957, G-11313, G-11762*. All four of these permits are junior to existing instream water rights. Eagle Crest is not mitigating for the effect the injury these permits are causing to senior instream water rights. The Department must either require mitigation of these permits or regulate Eagle Crests' water use.

5. The proposed action impairs protestants' interests because it is contrary to the Departments Sensitive Stock Rules (Division 33).

The agency's Division 33 rules prohibit the granting of permits for new uses of groundwater that tap groundwater that has the potential for substantial interference with surface waters during the time period of April 15 to September 30. *OAR 690-33-120(2)*. The upper Columbia rules do not provide for mitigation to offset appropriation, they simply prohibit withdrawal. Under the rules, the proposed right cannot be granted.

The Department's proposal to approve this use is contrary to rule. It will impair protestants' interest in ensuring that the Department follow the law and that scenic waterway flows and instream water rights are protected.

6. The draft permit and the action proposed in the PFO will impair or be detrimental to Protestants' interest and will not ensure the preservation of the public welfare because the two-year expiration condition is unenforceable.

The Department has determined that the applicant must mitigate for its impacts to streamflows in the Deschutes. *See PFO for G-14857*. In order to mitigate for effects on the instream water rights and scenic waterways, the applicant is proposing to lease water to put instream from Swalley Irrigation District. *Id.* According to the PFO, Swalley Irrigation District has agreed to a two-year temporary instream lease. *Id.* Swalley Irrigation district has not agreed to a permanent transfer.

Because the District could only obtain a two-year instream lease to offset their consumptive use, the Department has conditioned the permit so that:

the "permit will expire in 2 years from permit issuance unless the 2 year lease of the water right authorized under certificate 74145 to instream purposes is replaced by a permanent transfer of water right certificate 74145, or an equivalent water right as determined by the Department, to instream use." <sup>6</sup>

*See draft permit for G-14857*. While the Department's intent might be to curtail use of water if permanent mitigation is not found within two years, this permit condition does not state this. Rather, it only states that the permit will expire. There is no explicit language instructing the state to cut off water use. Without such language, the resource is at risk.

The Department cannot be relied upon to enforce these types of permit conditions. Grants Pass Irrigation District (GPID) provides a clear example. In that case, despite the fact that the Commission cancelled the permit and the fact that the permit has expired, the Department has taken the position that they will not shut GPID off. This does not meet the

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<sup>6</sup> This condition provides for no public review and comment period of any proposed long-term mitigation. As written it leaves entirely too much discretion to the Department which could result in harm to the resource. If the Department goes forward with this permit, a clear public process should be included.

spirit, let alone, the letter of the law. Given the politics of the Deschutes Basin and the agency's historic failure to regulate uses to protect instream water rights and scenic waterway flows in the basin, there is good cause to fear the same type of agency inaction here.

The Department's proposal to issue what is essentially a "conditional" permit for a permanent use sets bad policy. The condition proposed by the Department does not cure the problems associated with such a permit. For, even as conditioned, without explicit language that states that if at the two-year expiration of the instream water right Eagle Crest has not obtained a permanent instream water right to offset their use not only will the permit expire but that the WRD will shut off the water use, there is no guarantee that the permittee will be shut off if they are not mitigating. This is not in the public interest and harms protestants interest in ensuring that scenic waterway flows and instream water rights are not harmed by this use.

7. The proposed permit is not conditioned to require mitigation. This impairs protestants' interest in ensuring that the permittee in fact mitigates the effect its groundwater pumping has on scenic waterway flows and instream water rights.

As noted, the USGS study shows that groundwater pumping in the Deschutes Basin depletes surface water flows. Since instream water rights and scenic waterway flows are not currently being met, no new water right can be issued without full and permanent mitigation. Without full mitigation the Scenic WaterWay Act mandates denial. ORS 390.805(10). Moreover, the groundwater permitting statutes prohibit approval of a water right when no water is available and/or when the proposed use will injure other water right holders. ORS 537.621. The use without mitigation is in clear violation of the law.

The proposed final order states that Eagle Crest proposes to mitigate, gallon-for-gallon for their consumptive use. However, Eagle Crest's proposed mitigation is not a condition of the permit. Without clear conditions in the permit mandating mitigation that will put the permit in compliance with the law, the permit itself is not lawful.

Also critical to any mitigation is measuring, reporting and accounting requirements of the mitigation that occurs. The permit should also provide for periodic review of the effectiveness of mitigation. The permits should further prohibit use if mitigation measures do not fully mitigate until they can be adjusted to ensure full mitigation. And finally, as Eagle Crest is proposing mitigation above the point of impact, the permit must include mechanisms to ensure that the mitigation water is protected instream to the point of impact.

The permit is the binding document. It is imperative that the permit is conditioned to require the specific mitigation to be performed by Eagle Crest.<sup>7</sup> It must also be conditioned in the manner stated above, to ensure that the mitigation actually is put and remains instream. Unless these are conditions of the permit, the mitigation will not enforceable. Without enforceable permit conditions, the proposed use cannot be found to be in the public interest. This would harm protestants' interest in ensuring instream water rights and scenic waterway flows will be protected.

8. The proposed use is will impair protestants' interest and will not ensure protection of the public interest because the proposed permit allows diversion of more water than applied for.

Eagle Crest originally requested 780 gallons per minute, or 1.74 cfs. *See Application G-14857.* They did note in their application that "flows may be increased to 1500 gpm for fire protection". *Id.* However, they never submitted any official amendment to increase the amount applied for. The Water Resources Department evaluation and processing of the application, up through the draft Proposed Final Order (PFO), was based upon 1.74 cfs, not 3.34 cfs. *See WRD files: Initial Review Checklist, PFO checklist, Draft PFO (stamp dated 2/10 to T. Walker), Public Notice 2/15/00.*

The proposed permit is for 3.34 cfs. This would allow diversion of more than applied for. The Department's rules specifically prohibit issuance of permits that would enlarge the proposed use of water in any way from that use originally applied for. OAR 690-310-240(3). The Department's proposal violates this rule. This is not in the public interest and it impairs protestants' interest in ensuring the rules of the Department are carried out.

9. The proposed use will impair protestants' interests and will not ensure the protection of the public welfare because the proposed permit is contrary to the Department's basin planning rules and ORS 536.340.

ORS 536.340(1)(a) states that basin classifications have the effect of restricting the use and quantities thereof to the uses and quantities specified in the classification...and no

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<sup>7</sup> Note, Eagle Crest has represented that their mitigation package will provide the following instream flow amounts during the following months:

April 1 to April 30 and October 1 to November 1: .012 cfs/acre  
May 1 to May 14 and September 15 to September 30: .016 cfs/acre  
May 15 to September 14: .30 cfs/acre

*See Attachment 3, Eagle Crest memo to WRD, 7/2/99, revised 2/9/00 at 3.* However, neither the PFO nor the permit outline this schedule. Moreover, even the instream water right lease application is not so specific. The instream lease application merely states that the rate will be .012 to .03 cfs/acre from April through November 1. *See Attachment 6, Draft Instream Lease Agreement.* This is not specific enough. The specific schedule as proposed by Eagle Crest needs to be clearly stated in the **Permit**. Without this, the mitigation will be unenforceable.

other uses. the application at issue here does not meet any of the exemptions to this statutory provision.

The Water Resources Commission recognized the importance of stream flows in the Deschutes basin by restrictively classifying the "waters" of the Deschutes. The "waters" include both ground and surface water. OAR 690-505-002 classifies the waters of the Middle Deschutes basin for domestic and livestock uses only. OAR 690-505-002(1)(a)(D). The rules further require that applications

"for the use of the waters of the Middle Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest..."

OAR 690-505-002(1)(b).

The proposed use would allow appropriation of waters within the Deschutes for a use prohibited by the basin plan. This is not in the public interest and will impair protestants' interest in ensuring that the Department abide by their own rules.

**d. How the PFO is in error or deficient and how to correct the alleged error or deficiency**

**1. How the PFO is in error or deficient**

**a. The PFO is in error because the WRD scenic waterway finding is contrary to evidence before the Department.**

As noted, the USGS has completed a groundwater study in the Deschutes Basin that has found that groundwater pumping throughout the basin has an effect on flows in the Lower Deschutes. *See Attachment 1.* Based upon USGS's findings, the Department has acknowledged that groundwater pumping contributes to the lack of flows necessary to fulfill Scenic Waterway flows. *Id.* Because of this, the Department has found that they cannot approve applications for new ground water uses without adequate mitigation measures, and in fact, may soon face the obligation to curtail some existing ground water uses in order to protect scenic waterway flows and senior instream water rights. *Id. at 5.*

Despite the results of the USGS study, and despite the WRD's written and oral acknowledgment that groundwater pumping in the basin is depleting scenic waterway flows to the point that there is a measurable reduction that requires mitigation, the Department made the finding in the Eagle Crest Proposed Final Order that:

The Groundwater Section finds, per OAR 390.835(9), there is **not** a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

See PFO for G-14857 at 2. That the Department could make such a finding in light of the facts in front of it is astounding.

Facts before the agency mandate a finding that the cumulative, if not individual, effects of groundwater pumping in the basin have surpassed the "measurably reduced" standard as outlined in the statute. Specifically,

\*The USGS has found that groundwater pumping reduces surface water flows in the Deschutes. *See Attachment 1.*

\* Per these findings, the WRD has found that existing consumptive groundwater use reduce surface water flows, which contributes to lack of flows to fulfill Scenic WaterWay Flows. *See Attachment 1.*

\*The WRD has compiled information that shows consumptive use approximations for groundwater rights in the basin to be 161.88 cfs. Consumptive use estimates for the post 1995 permits alone are approximately 29.43 cfs. *See Attachment 4.*

\*Measurably reduce, under the Scenic Waterway Act means that the groundwater uses authorized under the Act "will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, which ever is less." ORS 390.835(12).

Read together, it is clear that the cumulative consumptive groundwater uses in the basin far surpass "one cubic foot per second." This water right will only add to the cumulative total that already surpasses the measurably reduce standard. There is no doubt of this fact. The Department must make the finding that a preponderance of the evidence shows that this use will measurably reduce scenic waterway flows and mitigation is therefore required. The Department was in error for not making this finding in the PFO.

b. The PFO is in error because the findings were based upon an evaluation of a proposed rate of 1.74 cfs not 3.34 cfs as proposed.

Eagle Crest originally requested 780 gallons per minute, or 1.74 cfs. *See Application G-14857.*<sup>8</sup> The Water Resources Department evaluation and processing of the application, up through the draft PFO, was based upon 1.74 cfs, not 3.34 cfs as outlined in the final PFO and draft permit. *See WRD Files: Initial Review Checklist, PFO checklist, Draft PFO (stamp*

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<sup>8</sup> Eagle Crest did note in their application that "flows may be increased to 1500 gpm for fire protection." *See Application G-14857.* However, this was not the amount applied for nor did Eagle Crest ever submit a request for an amendment to their application. Moreover, Eagle Crest has stated that they plan to interconnect their Eagle Crest I, II and III systems to provide adequate flows for fire. Given this, there is a real question if Eagle Crest needs this larger amount.

dated 2/10 to T. Walker), 2/15/00 Public Notice. In order for the Department's evaluation of this permit to be thorough, complete and defensible, Department staff needs to evaluate the impacts based upon the amount proposed in the PFO. Or the Department needs to limit Eagle Crest's use to 1.74 cfs as outlined in the application, and as evaluated by the Department. The findings in the PFO that were based upon the lower number are in error.

d. The PFO is in error because the Department unduly limits its findings with regard to the public interest presumption.

Under Oregon water permitting statutes, a water right is presumed to be in the public interest if (1) water is available, (2) the proposed use will not injure other water rights, (3) the proposed use complies with rules of the WRC, and (4) the proposed use complies with basin plans. ORS 537.621(2).

In the PFO the Department finds that the proposed use is not presumed to be in the public interest because, without mitigation, water is not available. *See PFO for G-14857, at 5.* While the Department is correct in making the finding that there is not water available for further appropriation, the Department is in error for not making the further findings that the proposed use, without mitigation, will injure senior instream water rights, is not in compliance with the rules of the Commission and is not allowed by the basin plan.

Again, as a result of the findings of the USGS study, the WRD has acknowledged that groundwater pumping will deplete surface waters in the lower Deschutes, which in turn will injure instream water rights and harm scenic waterway flows. Even without the Department's many acknowledgements of this fact, simple logic gets you to the same conclusion. The WRD has made the finding that surface water and groundwater in the Deschutes Basin are hydraulically connected, or in other words, groundwater pumping affects flows in the Deschutes. *See PFO for G-14857 at 2.* The Department has also acknowledged that there is no water available for appropriation 11 months of the year. *See Attachment 5.* The Department has also found that scenic waterway flows and instream water rights are not being met at least 9 months of the year. *See Attachment 1 at 4-5.* Based upon these facts, if the applicant pumps groundwater that is connected to surface waters that are already too low to support instream water rights and scenic waterway flows, this pumping clearly will injure existing rights and flows. This means that instream water rights are injured and the rules of the Commission are not met. Moreover, as noted, the waters of the Deschutes are closed to further appropriation, except for limited uses, under the basin plan.

The PFO is in error. In order to correct this error, the WRD must make the findings that the proposed use is not presumed to be in the public interest because (1) water is not available, (2) senior water rights will be injured, and (3) the proposed use is not in compliance with the rules of the Commission.

4. The PFO is in error because the amount of mitigation to be put instream is not clearly stated.

Eagle Crest has represented that their mitigation package will provide the following instream flow amounts during the following months:

April 1 to April 30 and October 1 to November 1: .012 cfs/acre  
May 1 to May 14 and September 15 to September 30: .016 cfs/acre  
May 15 to September 14: .30 cfs/acre

*See Attachment 3.* However, neither the PFO nor the permit outline this schedule. Moreover, even the instream water right lease application is not so specific. The instream lease application merely states that the rate will be .012 to .03 cfs/acre from April through November 1. *See Attachment 6.* This is not specific enough. The specific schedule as proposed by Eagle Crest needs to be clearly stated in the PFO and the **Permit**. Without this, the mitigation will be unenforceable. Thus, the PFO and permit are in error.

**2. How to correct the PFO's errors/deficiencies**

To correct the errors and deficiencies of the PFO for this application, the application should be denied or, in the alternative, sent to contested case.

**e. Any citation of legal authority supporting the protest, if known**

All known legal authority is cited within in the protest.

**f. A \$200 protest fee, as required by statute, has been submitted with this protest.**

**g. Conclusion**

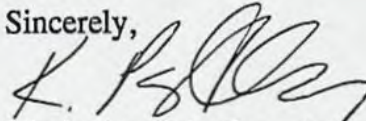
The Department's proposal to approve this application comes at a time when the basin is struggling to address important issues relating to future development and resource protection. This application addresses many issues that are currently being discussed and evaluated within the Deschutes Ground Water Working Group. Until a mitigation plan is developed and approved, the Department should not be considering, much less approving any new groundwater rights. Moreover, the Department should not be relying on decisions being made within the work group. There is no agreement among participants on any issue until the plan is complete.

The Department is proposing to approve an application that fails to provide full mitigation for Eagle Crest's proposed beneficial use. This action harkens back to the Department's historic practice in the Deschutes basin of issuing water rights despite clear evidence that it will cause harm to the resource. This is contrary to law and sets bad policy. moreover, given that there are limited mitigation opportunities in the basin, this may disadvantage participants in the Deschutes Groundwater Working Group who might otherwise have access to the mitigation water Swalley is leasing to Eagle Crest.

Eagle Crest's proposed long term use without corresponding long term mitigation violates the mandates of the Scenic Waterway Act, the Division 33 rules, the permitting statutes, and other rules/statutes noted above. The short-term nature of Eagle Crest's proposed mitigation does not ensure that scenic waterway flows and instream water rights will not be harmed by the long-term project. Eagle Crest will be using this water to begin development of a permanent resort which will need a permanent water supply. The Department should not grant Eagle Crest a water right until they can prove mitigation for the life of the resort, that addresses crucial details such as place and time of impact.

This application should be denied.

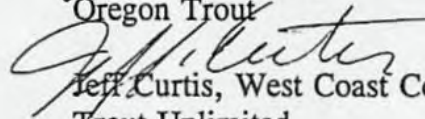
Sincerely,



Kimberley Priestley, Asst. Dir  
WaterWatch, Assistant Director

*KP for Aubrey Russell*  
Aubrey Russell, Water Policy Advocate

Oregon Trout



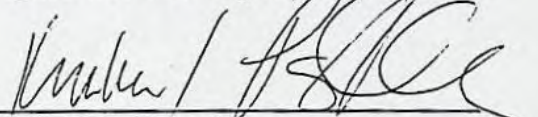
Jeff Curtis, West Coast Conserv. Dir.  
Trout Unlimited

Certificate of Service

I certify that on this 31st day of March, 2000 a copy of the Protest of Application G-14857 was served on each of the following by first class mail, postage paid, in the United States Mail from Portland, Oregon, enclosed in a sealed envelope and addressed as follows:

Eagle Crest Development Corporation  
William D. Lyche  
PO Box 1215  
Redmond, OR 97756

Signed this 31st day of March, 2000

  
\_\_\_\_\_  
Kimberley Priestley

## **Attachments**

- 1. WRD Water Development Issues in the Deschutes Basin**
- 2. Instream Water Rights, #70087, 71194**
- 3. Eagle Crest Memo to WRD, 7/2/99, Revised 2/9/00**
- 4. WRD Tables of Permitted and Consumptive Groundwater Use for the Deschutes Basin**
- 5. Water Availability Tables**
- 7. Draft Instream Lease Agreement between Swalley Irrigation District and Eagle Crest**

## WATER DEVELOPMENT ISSUES IN THE DESCHUTES BASIN

### Overview

Over the past few decades, the Deschutes Basin has experienced tremendous population growth and experts expect the growth trend to continue. Growth requires water. Surface water sources are already fully appropriated. This has resulted in an increasing reliance in the basin on ground water as a source of water for future growth. More information is becoming available regarding the connection between surface and ground water in the Deschutes Basin. Based on this information, the Water Resources Department (WRD) has found that existing consumptive ground water uses reduce surface water flows. This contributes to the lack of surface water availability in the lower reaches of the river, which have been designated as State Scenic Waterways. Furthermore, the Department finds that future consumptive ground water development will only exacerbate this problem.

The WRD hopes to help the community meet water supply needs in the basin while protecting the free flowing nature of the Deschutes River, instream water rights and existing consumptive water rights. Accomplishing this goal can only be achieved through the cooperative efforts of numerous affected interests. Accordingly, WRD proposes to work closely and actively with local interests to maintain surface water flows and provide water for growth in the Deschutes basin. This will be done by assembling technical and legal information, meeting with affected agencies, water users and other interested parties in a public forum and developing recommendations. Further discussion of the hydrology of the basin, scenic water way flows, instream water rights and water rights activity follows.

### HYDROLOGY OF THE UPPER DESCHUTES BASIN\*

#### Upper Deschutes Basin Ground Water Study

The U.S. Geological Survey initiated a ground water study in 1993, to provide much needed information on the ground water resources of the Upper Deschutes Basin. The study area is shown in Figure 1. The study was conducted in cooperation with the Water Resources Department; the cities of Bend, Redmond and Sisters; Deschutes and Jefferson counties; The Confederated Tribes of the Warm Springs Reservation of Oregon; the Bureau of Reclamation and the U.S. Environmental Protection Agency.

The objective of this two-phase study is to provide a quantitative understanding of the ground water hydrology in the Upper Deschutes Basin in order to provide resource managers, planners, and the general public the best information available with which to make decisions.

Preliminary conclusions from the study have shown that ground water originating in or flowing through the Upper Deschutes Basin discharges into relatively short reaches

\* Upper Deschutes - Above Pelton Reregulation Dam; Lower Deschutes - Below Pelton Reregulation Dam to Mouth

of the Deschutes, Metolius and Crooked Rivers above and within Lake Billy Chinook. Those conclusions are consistent with previous studies by Stearns (1931) and Sceva (1968). Little, if any, ground water leaves the upper part of the basin as ground water. Instead, virtually all ground water discharges to these rivers to become surface water.

On the basis of data provided by current and previous studies, WRD staff have concluded that consumptive ground water use above Lake Billy Chinook diminishes the surface water flows downstream. However, the precise timing of that diminishment is not yet known. Issues of concern to WRD are impacts to scenic waterway flows and senior water right holders, including instream water rights, and supplying needed water to the Basin.

## OREGON SCENIC WATERWAYS

### Requirements of the Scenic Waterways Act

The Scenic Waterways Act was voted into law in November, 1970 to protect the free-flowing character of designated rivers for fish, wildlife and recreation and protect and enhance scenic, aesthetic, natural, recreation, scientific and fish and wildlife qualities along scenic waterways. Under this law, the portion of the Deschutes River below the Pelton Reregulation Dam to the Columbia River (figure 2) is classified as a Recreational River Area under the Scenic Waterway Act (OAR 736-040-0070).

The Water Resources Commission has the authority, delegated by statute [ORS 390.835 (1)], to determine the level of stream flow necessary to support recreation, fish and wildlife uses with scenic waterway flows. In accordance with a 1988 Supreme Court Decision (Diack vs. City of Portland) the Water Resources Commission must find that scenic waterway flows will not be impaired before issuing new water rights.

### Scenic Waterway Flow Values

Various types of data were used to determine values associated with current uses in scenic waterways. Flows for recreation, fish and wildlife were integrated. Generally, the recommended flow is the flow necessary to support the current range of scenic waterway uses and values.

Boating and rafting are major recreational activities on this reach of the river. Based on an assessment of flow related and flow dependent uses, the flow range for recreation is 3000-8000 cfs. The Oregon Department of Fish and Wildlife established a flow range of 3000-4500 cfs for fish and wildlife habitat. Scenic waterway flows on the Deschutes River from the Pelton Reregulation Dam to the mouth were determined after public hearing by the Commission in 1991. Scenic waterway flows are presented in Table 1.

### Ground Water Appropriation and Scenic Waterway Management

As originally enacted, the Oregon Scenic Waterway Act prohibited new allocation of water from scenic waterways unless the Water Resources Commission determined the use was consistent with the scenic waterway law. In 1995, the Legislature enacted Senate Bill 1033 which amended Oregon's Scenic Waterway Act (ORS 390.805-390.865).

to clarify how the Department is to address the impacts of ground water appropriations on Scenic Waterways. The Water Resources Commission administers and enforces the ground water provisions of the statute [ORS 390.835 (9-13)].

The statute makes it clear that the amendments do not apply to applications for ground water rights unless the Department makes a finding "that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife." The Department reviews every ground water application to determine if the use will measurably reduce surface water flows. If there are impacts, the application will be denied unless mitigation is provided. Each ground water permit or certificate issued, whose source of appropriation is within or above a scenic waterway, is conditioned. The condition allows the regulation of the use if data available after the permit or certificate is issued shows that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of the scenic waterway. Since the amendments were adopted, ground water permits amounting to approximately 207 cfs have been issued in or above the Deschutes scenic waterway.

### INSTREAM WATER RIGHTS

#### Provisions of Instream Water Right Statutes

The ability to issue water rights for instream purposes was created by the Oregon Legislature in 1987. Instream water rights may be established to benefit fish and aquatic life, to provide water for pollution abatement or to provide water for recreation purposes. Water rights for these purposes may be applied for by Oregon Department of Fish and Wildlife, Department of Environmental Quality or Parks and Recreation Department, respectively. Each instream water right certificate issued specifies the reach of river to which the right applies and the rate of flow necessary to satisfy the right. The Oregon Water Resources Department holds and protects the instream water right for the benefit of the State.

Two separate instream water rights have been issued to protect surface water flows in the Lower Deschutes River from Pelton Reregulation Dam to the mouth at the Columbia River. The most recent right has a priority date of January 16, 1991, and is the larger of the two. It was issued for fish migration, spawning, egg incubation, fry emergence and juvenile rearing. Instream flow values are presented in Table 1.

#### Significance of Instream Water Right Flows

Instream water rights have the same status and effect as all other water rights. The right has a priority date and can be regulated to serve senior water rights holders. The existence of an instream right, along with all other previously-issued water rights, is considered in determining whether water is available for new appropriations. New rights, other than instream flow rights, can be issued only if surface water is available.

ALLOCATION POLICY

Since adoption of the Water Resource Commission's "Allocation Policy" in 1992 (OAR 690-410-070), water availability determinations have been based on an 80% "exceedance" standard. Only when water is available greater than 80% of the time can additional water rights be issued. If ground water development impacts surface water supply, the issuance of ground water rights is also subject to surface water availability.

TABLE 1

This represents the amounts of water required to satisfy the instream water rights and scenic waterway flows.

FLOW NEEDS ON THE DESCHUTES RIVER AT THE MADRAS GAGE \*

<u>Month</u>	<u>Instream** Water Right</u>	<u>Scenic Water- way Flow</u>	<u>Natural Flow</u>	<u>CU+ Storage</u>	<u>Madras Gage</u>	<u>Net Available</u>
Jan	4500	4500	4310	595	4310	- 785
Feb	4500	4500	4540	661	4290	- 621
Mar	4500	4500	5040	875	4380	- 335
Apr	4000	4000	5280	649	3990	631
May	4000	4000	5170	443	3880	727
Jun	4000	4000	4850	479	3880	371
Jul	4000	4000	4090	489	3780	- 399
Aug	3500	3500	3880	429	3770	- 49
Sep	3800	3800	3980	359	3770	- 179
Oct	3800	3800	4070	593	3830	- 323
Nov	3800	3800	4130	793	4260	- 463
Dec	4500	4500	4230	713	4330	- 983

Flows  
NOT  
BEING  
MET

\* Water Availability, Natural Flow and Madras Gage based on 80% exceedance calculations. Units are cubic feet per second (cfs) rounded to the nearest whole cfs.  
 \*\* Priority date: 1/16/91. Extends from Pelton Reregulation Dam to mouth. Instream Water Rights do not have priority over human and livestock consumption.  
 CU = Consumptive Use

Several conclusions are apparent from the table. No water is available for further diversion from the river below Pelton Reregulation Dam during nine months of the year. This is the direct result of subtracting established uses (Consumptive Use + Storage) from the natural flow. When that difference is less than the established scenic waterway flow, no water is available. The last column in the table indicates by how much the scenic waterway flow and instream water right fail to be met.

Table 1 also allows easy comparison of actual flow past the Madras gage with established scenic waterway flows and instream water rights. Only in the months of August, October and November do actual flows exceed scenic waterway flows and

instream water rights more than 80% of the time.

### WATER RIGHTS ACTIVITY

Since adoption of the 1995 amendments to the Scenic Waterway Act, 165 new ground water rights have been issued in the Upper Deschutes Basin, within the Deschutes Ground Water Study Area, appropriating just under 207 cfs. Of those, 177 cfs are for primary and 29.9 cfs are for supplemental uses. Rights for these uses are conditioned to be regulated if and when data and analysis show that they measurably reduce flows necessary to maintain the free flowing character of the scenic waterway.

Three hundred thirty-nine ground water rights had been issued in the study area prior to amendment of the Scenic Waterway Act. Those rights amount to a total of 201.8 cfs - 147.3 cfs for primary and 54.5 cfs for supplemental use. These rights are not conditioned to allow regulation to benefit the scenic waterway.

Altogether, permits totaling 408 cfs have been issued within the study area. Applications for significant additional ground water appropriations are currently before the Department.

### CONCLUSIONS

Economic growth in the Deschutes basin is robust. That growth demands water. Surface water sources in the Deschutes Basin are already fully appropriated and not available for new development. This means current and future growth will depend heavily on ground water. Yet, on the basis of current information, WRD would not be able to approve applications for new ground water uses without adequate mitigation measures, and in fact, may soon face the obligation to curtail some existing ground water uses in order to protect scenic waterway flows, and senior water rights, including instream water rights.

Examination of the results of the nearly completed ground water study, state water management statutes and Water Resources Commission policies, along with an awareness of current development trends in the Deschutes basin leads to the following conclusions:

- ▶ Continued economic growth in the basin will require additional water supplies.
- ▶ Ground water in the upper basin is tributary to surface water.
- ▶ Consumptive ground water use in the upper basin reduces surface water availability in the lower river.
- ▶ Under the Department's allocation policy, water is not available in the Deschutes

River below Pelton Reregulation Dam for new consumptive uses nine months of the year.

- ▶ Surface water resources within the basin are currently allocated to consumptive rights, instream water rights and scenic waterway flows. Because of the interconnection of ground water and surface water, ground water use places further demands on surface water resources. If it is necessary to mitigate those demands on the surface water resources, additional supplies of water will be necessary to accomplish the mitigation. It is unlikely that sufficient water exists in the Deschutes Basin to satisfy all these needs.
- ▶ Ground water rights issued since the 1995 amendments to the Scenic Waterway Act are subject to regulation to the benefit of the scenic waterway.
- ▶ Ground water rights issued since January 16, 1991, are subject to regulation to the benefit of the instream water rights below Pelton Reregulation Dam.
- ▶ Mitigation or creative water management planning may help to allow continued exercise of issued rights or issuance of new rights.
- ▶ The Water Resources Department is committed to finding ways to supply water necessary to accommodate growth while protecting instream values represented by scenic waterway flows and instream water rights.

DISCUSSION TOPICS

The following topics are intended to stimulate discussion with basin water users and decision makers and lead to a complete list of options for resolving the current water supply issues.

- ▶ Mitigation opportunities and impacts.
- ▶ Administrative tools available to the Water Resources Department
  - ▶ Basin Plan Classification
  - ▶ Basin Plan Withdrawal
  - ▶ Critical Ground Water Area declaration
  - ▶ Regulation for ground water / surface water interference
  - ▶ Regulation under permit conditions
- ▶ Potential surface storage options. *2. SUMP* *\* considered under state* *7. protection of WLE*
- ▶ Potential artificial ground water recharge opportunities.
- ▶ Alternative surface water management scenarios.

# THE DESCHUTES BASIN IN JEFFERSON, DESCHUTES, AND CROOK COUNTIES

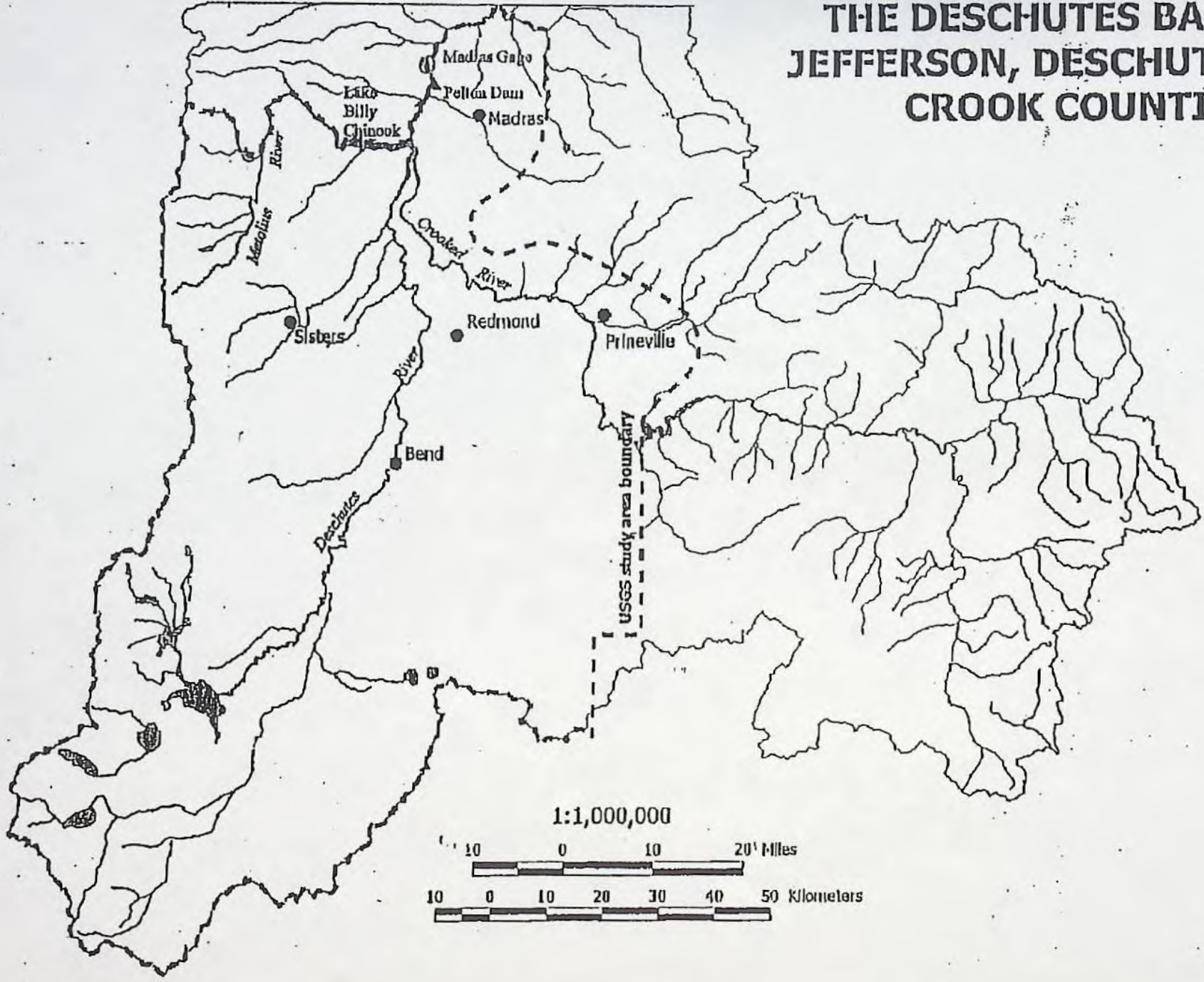


Figure 1



# DESCHUTES BASIN STATE SCENIC WATERWAYS



Figure 2



20

STATE OF OREGON  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department  
158 12th Street NE  
Salem, Oregon 97310

The specific limits for the use are listed below along with conditions of use.

Source: DESCHUTES RIVER TRIBUTARY TO COLUMBIA RIVER

County ~~DESCHUTES~~ JEFFERSON

Purpose: Provide adequate flows to maintain a significant salmon, steelhead and trout fishery. These flows will also provide for recreational fishing, drift, and power boating, and aesthetics in a state and federal scenic waterway

To be maintained in:

DESCHUTES RIVER AT PELTON REGULATION DAM AT RIVER MILE 100.1 (SESW, SECTION 1, T10S, R12E, WM) TO THE CONFLUENCE WITH THE COLUMBIA RIVER (SWSW, SECTION 24, T2N, R15E, WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 10/2/89.

The following conditions apply to the use of water under this certificate:

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

Anadromous and resident fish passage and spawning:

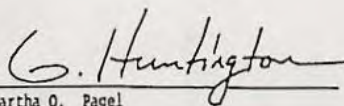
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3000	3000	3500	3500	3500	3500	3000	3000	3000	3000	3000	3000

Recreational fishing/boating:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3000	3000	3500	3500	3500	3500	3000	3000	3000	3000	3000	3000

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director,  
affixed OCTOBER 21, 1996.

  
Martha O. Pagel

STATE OF OREGON  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department  
158 12th Street NE  
Salem, Oregon 97310

The specific limits for the use are listed below along with conditions of use.

Source: DESCHUTES R TRIB COLUMBIA R

County: Jefferson/Wasco

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

DESCHUTES RIVER FROM PELTON REGULATION DAM, RIVER MILE 100.1 (SESW, SECTION 1, T10S, R12E) JEFFERSON COUNTY; TO THE MOUTH, RIVER MILE 0.0 (SWSW, SECTION 23, T2N, R15E) WASCO COUNTY

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 1/16/91.

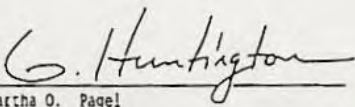
The following conditions apply to the use of water under this certificate:

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4500	4500	4500	4000	4000	4000	4000	3500	3500	3800	3800	3800
4500	4500	4000	4000	4000	4000	3500	3500	3800	3800	3800	4500

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director,  
affixed OCTOBER 21, 1996.

  
Martha O. Page

Recorded in State Record of Water Right Certificate number 73237.

IS 71194

July 2, 1999

*Revised February 9, 2000*

Mr. Dwight French  
Oregon Water Resources Department  
158 12th Street NE  
Salem, OR 97310

**RE: Eagle Crest III  
OWRD File No. G-14857  
Deschutes Basin Groundwater Withdrawal  
Mitigation Plan  
WHP File No. 526-0107**

Dear Dwight:

Thank you for your continuing assistance on the pending groundwater appropriation application for Eagle Crest, Inc. in the Deschutes River Basin. We received an initial review which described the potential for a groundwater connection to Deschutes River surface water flows. I have compiled the following mitigation plan, intended to offset any impacts to surface water from our proposed groundwater withdrawal. Your review and approval are respectfully requested.

**Eagle Crest III Introduction**

Eagle Crest III is a proposed expansion of the existing Eagle Crest Resort, located approximately four miles west of Redmond, Oregon. Eagle Crest III will encompass approximately 480 acres, approximately 900 resort dwelling units, and appropriate recreational amenities. No golf course, nor significant irrigation requirements are expected. Eagle Crest III will be operated and managed as an integral part of the existing resort.

The domestic water supply requirements for Eagle Crest III will be provided by a new groundwater well and a connection to the existing domestic water distribution system. The connection to the existing system will provide a redundant backup supply for the entire resort, sharing reservoirs and distribution piping, and improving the overall efficiency of the water supply system.

**Water Right Summary**

Eagle Crest, Inc. has filed an application for a quasimunicipal groundwater appropriation to serve the Eagle Crest expansion. The pending water right application seeks a maximum diversion of 3.34 cfs.

Water consumption at a destination resort is very different from the domestic consumption at a municipality. The occupancy at a destination resort will typically be high during the summer season, relatively high during the winter weekends or holidays, and very low the rest of the time. Water use varies significantly between weekends and weekdays, between the seasons of the year, and even during the hours of the day.

Groundwater wells at Eagle Crest will pump directly into the water distribution system whenever the project reservoirs are drawn down. The well pump will operate for a very short duration during the slack season of the resort, and will operate many more hours per day during the busy season. **The maximum diversion requested in the water right application will only be required a few days of the year and only after full buildout of the resort.**

### Consumptive Use of Water at Eagle Crest

We can estimate the water consumption for the proposed expansion of Eagle Crest by utilizing historical consumption from the existing resort development. We utilized water meter records from the existing resort wells to determine the average total water consumption for each dwelling unit, on an annual basis. We used this actual average water consumption and applied it to the proposed 900 units at Eagle Crest III, to determine the total volume of water required on an annual basis, at Eagle Crest III.

Sewage at Eagle Crest is collected in a community sewer system, treated, and discharged in a subsurface drainfield. The sewage drainfield represents a recharge to the groundwater system. In the Deschutes Basin Groundwater Study, the recharge from sewage drainfields was considered to offset the consumptive use of groundwater. We have again utilized the existing resort units to estimate the average annual volume of sewage.

Our historical records at Eagle Crest demonstrate that a typical residential unit at Eagle Crest will require 0.28 acre feet of water from the domestic water supply system each year. This consumption is offset by a sewage contribution of 0.15 cubic feet. The net consumptive use is 0.13 acre feet per year.

At Eagle Crest III, the 900 proposed residential units are expected to result in a total consumptive use, at full buildout, of 115 acre feet per year. This net consumptive use of the groundwater withdrawal should be mitigated, proportionally to buildout of the resort expansion, to prevent impacts on surface water flows in the Deschutes basin.

We recognize that water consumption will vary from year to year and from neighborhood to neighborhood. Our calculations provide an estimate only. Actual consumption at Eagle Crest III can be measured accurately and adjustments made as the resort develops.

### Groundwater Mitigation Concept

The Oregon Water Resources Department has determined from an extended groundwater study in the Deschutes basin that significant groundwater is available. Groundwater in the Deschutes basin typically discharges to the Deschutes River in the general vicinity of Lake Billy Chinook. Because of this connection between the groundwater and the surface water, and because all surface water rights are not met in the lower Deschutes River, groundwater withdrawals require some mitigation.

The Oregon Water Resources Department established a Deschutes Basin Task Force to evaluate water supplies, establish a reliable source of water for users in the basin, and to develop a mitigation plan to accommodate groundwater withdrawals in the Deschutes Basin. A task force has been formed and is currently operating effectively. While the Deschutes Basin Task Force develops its findings and recommendations on a long-term water supply for the basin, water right permit applications have been placed on administrative hold. Once the work of the Task Force is completed, then regional-wide mitigation should be made available to users throughout the Deschutes Basin, and pending or new appropriation applications can be processed. The on-going work of the Task Force has provided significant guidance to Eagle Crest in establishing an appropriate mitigation plan.

February 9, 2000

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Eagle Crest proposes mitigation for the total consumptive use of groundwater at the proposed resort expansion project. Eagle Crest proposes to mitigate the proposed groundwater withdrawal with the dedication of irrigation rights to an instream use. This proposal assures an immediate and effective mitigation to cover the immediate water needs of Eagle Crest.

The middle reach of the Deschutes River immediately below Bend, may very well have the greatest need for surface water mitigation. Eagle Crest proposes to dedicate surface water to an instream use, below the City of Bend, as mitigation for a groundwater withdrawal. This proposed mitigation should have the greatest beneficial effect on the Deschutes River because it adds water in the lowest flow section of the river and adds water that can subsequently be stored at Lake Billy Chinook.

Eagle Crest will not consume any appreciable volume of water over the next few years, because of the land use approval schedule and initial construction. Water consumption of Eagle Crest will grow slowly as residences are built and homes occupied. Based upon our experiences at the existing resort, we would expect 10 to 20 years to approach full buildout of the resort. For the purposes of this mitigation, we have assumed residential building construction would start in the year 2000 and we have assumed the expansion project would approach full buildout 10 years later. We propose that the dedication of surface water to an instream use be implemented within two years after OWRD issuance of the groundwater permit, to assure gallon for gallon mitigation for the near-term development of the resort. Likely, the mitigation will exceed the actual consumption based upon this schedule. **The Eagle Crest groundwater appropriation will be limited to the amount mitigated.** As the Deschutes Basin Task Force completes their work, Eagle Crest will have the right to choose the regional Task Force mitigation or to dedicate in-stream rights.

#### Water Right Transfer To An Instream Lease

Eagle Crest, Inc. owns a Swalley Irrigation District water right under Certificates No. 29054 and 29056. The water right is currently utilized to irrigate a golf course and grounds on a portion of the existing resort. Eagle Crest proposes to transfer the appropriate acreage of the existing Swalley Irrigation water right to offset the consumptive use of water on the expansion project, on a gallon for gallon basis. As noted, Eagle Crest may also elect to choose the regional Task Force mitigation, but appropriate mitigation must be in place before groundwater withdrawals may occur.

The following diversion rates and schedules are specified in the referenced Swalley Irrigation District permit:

- |   |               |
|---|---------------|
| ➤ April 1 to April 30 and October 1 to November 1:  | .012 CFS/ACRE |
| ➤ May 1 to May 14 and September 15 to September 30: | .016 CFS/ACRE |
| ➤ May 15 to September 14:                           | .030 CFS/ACRE |

These diversion rates include a 43% canal transmission loss. Excluding the canal transmission loss reduces the proposed mitigation to 57% of the rates shown. The OWRD special order for the Swalley Irrigation District rights further describes a maximum diversion of 9.56 acre-feet for each acre irrigated, again including the canal conveyance loss. The total diversion is equivalent to 5.46 acre-feet for each acre irrigated, excluding the canal conveyance loss.

Eagle Crest, Inc. proposes to dedicate 21 acres of the Swalley Irrigation District right to an instream use to mitigate approximately the estimated total consumptive use of water at Eagle Crest III. Eagle Crest is proposing to dry 21 acres of grounds that are currently irrigated, and transfer those water rights to an instream use for mitigation.

February 9, 2000

Page 4

The regional mitigation strategy for the Deschutes Basin, currently being developed by the Deschutes Basin Task Force, may provide an alternative for Eagle Crest to mitigate consumptive use. Eagle Crest reserves the right to either participate in the regional mitigation or deliver the 21 acres of the Swalley Irrigation District right, to provide the needed mitigation. Regardless of the selected mitigation, the actual consumptive use of water at Eagle Crest III will be metered and groundwater withdrawals will be limited to the amount mitigated.

### Summary

In summary, Eagle Crest is proposing a 480 acre destination resort development. A new groundwater well is required to serve that proposed development. Because groundwater and surface water are connected in the Deschutes basin and surface water rights are not met, then mitigation is required to offset potential surface water impacts. Eagle Crest has calculated the estimated total consumptive use of groundwater at the proposed development project and is prepared to mitigate the withdrawal by dedicating surface water irrigation rights to an instream use and/or participating in the regional mitigation solution being developed by the Deschutes Basin Task Force.

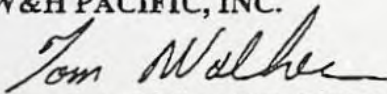
The Swalley Irrigation water rights will remain in the Deschutes River, rather than being withdrawn at the City of Bend. This mitigation will provide a significant benefit to the middle reach of the Deschutes River, which has historically experienced low summer time flows. Mitigation in the middle reach of the Deschutes River has been identified by the Deschutes Basin Taskforce as a very desirable outcome of the mitigation program.

Your review and approval of this mitigation plan are respectfully requested. Upon approval, we would expect that the pending Eagle Crest permit processing would proceed. Subject to the outcome of that standard water right application process, a water right permit will be issued.

Please consider my comments and recommendations and never hesitate to contact me if you have questions or need additional information.

Very Truly Yours,

W&H PACIFIC, INC.



Thomas A. Walker, P.E., C.W.R.E.

Vice President

Cc: Alan VanVliet

DI020900.doc

## TOTALS BY USE, Groundwater Rights

- ▶ Non-Canceled rights only
- ▶ Primary diversions only
- ▶ Groundwater rights included
- ▶ Surface water rights not included
- ▶ Reservoir rights not included

	Irrigation	Fish/Wild	Agriculture	Industrial	Municipal	Domestic	Recreational	Misc.	Total
<b>1. Amount of Permitted Water, Divided by Permits issued CFS or Permits in AF</b>									
cfs	390.8	0.7	0.02	18.3	176.5	23.5	5.60	5.9	621.3
AF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.23	2.23

### 2. Combined Rights

cfs	390.8	.7	.02	18.3	176.5	23.5	5.6	5.9	621.3
AF	282,927.5	506.8	14.5	13,248.7	127,780.7	17,013.3	4,054.2	4,273.7	449,804.8

### 3. Total Consumed (see summary table on page 1 for consumptive use coefficients)\*\*

cfs	67.44	0	.01	1.83	87.9	4.7	0	?	161.88
AF	48,826.33	0	7.25	1,324.9	63,637.0	3,402.7	0	?	117,198.18

### 4. Water rights subject to scenic waterway condition, permitted and consumptive use

<i>Permitted CFS</i>	25.03	0	.02	9.85	62.64	1.79	0	0	99.32
AF	18,118	0	16	7,129	45,349	1,296	0	0	71,908
<i>Consumptive CFS</i>	14.48	0	.01	1.00	13.58	.36	0	0	29.43
AF	10,486	0	8	726	9,827	259	0	0	21,306

Total acres irrigated (PRIMARY) : 27,277.28 (calculations for consumptive use based just on primary)  
 Total acres irrigated (SUPPLEMENTAL): 15177.42

**\*\*Note: Consumptive use estimates include all groundwater rights. However, the water availability estimates do not include groundwater rights until after July, 1995, when any water rights that were issued contained a permit condition that requires regulation in case of interference with senior water rights.**

CSM  
 Modified  
 11/12/09  
 149

5

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R ab SHITIKE CR @ PELTON DAM  
 Water Availability Subbasin: 0103400000000000  
 Time: 07:59

Exceedance Level: 80

ID Number: 30530643  
 Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4310.00	620.00	3690.00	41.80	3648.00	4500.00	-852.00
2	4540.00	679.00	3860.00	43.10	3817.00	4500.00	-683.00
3	5040.00	933.00	4110.00	64.40	4046.00	4500.00	-454.00
4	5280.00	958.00	4320.00	68.00	4252.00	4000.00	252.00
5	5170.00	1140.00	4030.00	39.80	3990.17	4000.00	-9.83
6	4850.00	1200.00	3650.00	82.50	3568.00	4000.00	-432.00
7	4090.00	996.00	3090.00	82.60	3007.00	4000.00	-993.00
8	3880.00	865.00	3010.00	82.40	2928.00	3500.00	-572.00
9	3980.00	727.00	3250.00	82.20	3168.00	3800.00	-632.00
10	4070.00	755.00	3320.00	39.30	3281.00	3800.00	-519.00
11	4130.00	815.00	3310.00	39.30	3271.00	3800.00	-529.00
12	4230.00	737.00	3490.00	39.30	3451.00	4500.00	-1049.00
Stor	3590000	624000	2970000	42200	2930000	2930000	155000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R ab SHITIKE CR @ PELTON DAM  
 Water Availability Subbasin: 0103400000000000  
 Time: 07:59

Date: 04/29/1999

-----ISWRs-----							
APP #	-90506C	0	0	0	0	RESULTANT	
STATUS	Scenic WW						
1	4500.00	.00	.00	.00	.00	4500.00X	
2	4500.00	.00	.00	.00	.00	4500.00X	
3	4500.00	.00	.00	.00	.00	4500.00X	
4	4000.00	.00	.00	.00	.00	4000.00X	
5	4000.00	.00	.00	.00	.00	4000.00X	
6	4000.00	.00	.00	.00	.00	4000.00X	
7	4000.00	.00	.00	.00	.00	4000.00X	
8	3500.00	.00	.00	.00	.00	3500.00X	
9	3800.00	.00	.00	.00	.00	3800.00X	
10	3800.00	.00	.00	.00	.00	3800.00X	
11	3800.00	.00	.00	.00	.00	3800.00X	
12	4500.00	.00	.00	.00	.00	4500.00X	

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R ab EAGLE CR  
 Water Availability Subbasin: 0103000000000000  
 Time: 07:59

Exceedance Level: (80)  
 ID Number: 30530627  
 Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4700.00	625.00	4070.00	41.80	4028.00	4500.00	-472.00
2	5070.00	686.00	4380.00	43.10	4337.00	4500.00	-163.00
3	5640.00	931.00	4710.00	64.40	4646.00	4500.00	146.00
4	5920.00	884.00	5040.00	68.10	4972.00	4000.00	972.00
5	5710.00	1010.00	4700.00	39.90	4660.00	4000.00	660.00
6	5260.00	1050.00	4210.00	82.50	4127.00	4000.00	127.00
7	4420.00	822.00	3600.00	82.70	3517.00	4000.00	-483.00
8	4160.00	745.00	3410.00	82.50	3327.00	3500.00	-173.00
9	4260.00	638.00	3620.00	82.20	3538.00	3800.00	-262.00
10	4370.00	714.00	3660.00	39.40	3621.00	3800.00	-179.00
11	4460.00	814.00	3650.00	39.30	3611.00	3800.00	-189.00
12	4600.00	739.00	3860.00	39.30	3821.00	4500.00	-679.00
Stor	4030000	579000	3450000	42200	3410000	2930000	487000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R ab EAGLE CR  
 Water Availability Subbasin: 0103000000000000  
 Time: 07:59

Date: 04/29/1999

-----ISWRs-----						
APP #	-90506B	70087B	71194B	0	0	RESULTANT
STATUS	Scenic WW	Cert.	Cert.			
1	4500.00	3000.00	4500.00	.00	.00	4500.00X
2	4500.00	3000.00	4500.00	.00	.00	4500.00X
3	4500.00	3500.00	4500.00	.00	.00	4500.00X
4	4000.00	3500.00	4000.00	.00	.00	4000.00X
5	4000.00	3500.00	4000.00	.00	.00	4000.00X
6	4000.00	3500.00	4000.00	.00	.00	4000.00X
7	4000.00	3500.00	4000.00	.00	.00	4000.00X
8	3500.00	3500.00	3500.00	.00	.00	3500.00X
9	3800.00	3500.00	3800.00	.00	.00	3800.00X
10	3800.00	3000.00	3800.00	.00	.00	3800.00X
11	3800.00	3000.00	3800.00	.00	.00	3800.00X
12	4500.00	3000.00	4500.00	.00	.00	4500.00X

DETAILED REPORT ON WATER AVAILABILITY

Basin: DESCHUTES  
 Stream: DESCHUTES R @ mouth  
 Water Availability Subbasin: 0100000000000000  
 Time: 07:59

Exceedance Level: (80)  
 ID Number: 14103000  
 Date: 04/29/1999

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Net Min. Flow 1/1/93	CU + Stor After 1/1/93	Net Min. Flow Now	Instream Water Rights	Net Water Available
1	4970.00	640.00	4330.00	43.30	4287.00	4500.00	-213.00
2	5530.00	700.00	4830.00	45.00	4785.00	4500.00	285.00
3	6140.00	960.00	5180.00	66.00	5114.00	4500.00	614.00
4	6470.00	930.00	5540.00	69.90	5470.00	4000.00	1470.00
5	6220.00	1120.00	5100.00	39.90	5060.00	4000.00	1060.00
6	5560.00	1170.00	4390.00	82.60	4307.00	4000.00	307.00
7	4610.00	910.00	3700.00	82.80	3617.00	4000.00	-383.00
8	4320.00	820.00	3500.00	82.60	3417.40	3500.00	-82.60
9	4410.00	700.00	3710.00	82.30	3628.00	3800.00	-172.00
10	4520.00	760.00	3760.00	39.60	3720.40	3800.00	-79.60
11	4610.00	820.00	3790.00	39.80	3750.20	3800.00	-49.80
12	4820.00	750.00	4070.00	40.20	4030.00	4500.00	-470.00
Stor	4360000	616000	3740000	42800	3700000	2930000	769000

DETAILED REPORT OF ISWRs

Basin: DESCHUTES  
 Stream: DESCHUTES R @ mouth  
 Water Availability Subbasin: 0100000000000000  
 Time: 07:59

Date: 04/29/1999

-----ISWRs-----						
APP #	-90506A	70087A	71194A	0	0	RESULTANT
STATUS	Scenic WW	Cert.	Cert.			
1	4500.00	3000.00	4500.00	.00	.00	4500.00X
2	4500.00	3000.00	4500.00	.00	.00	4500.00X
3	4500.00	3500.00	4500.00	.00	.00	4500.00X
4	4000.00	3500.00	4000.00	.00	.00	4000.00X
5	4000.00	3500.00	4000.00	.00	.00	4000.00X
6	4000.00	3500.00	4000.00	.00	.00	4000.00X
7	4000.00	3500.00	4000.00	.00	.00	4000.00X
8	3500.00	3500.00	3500.00	.00	.00	3500.00X
9	3800.00	3500.00	3800.00	.00	.00	3800.00X
10	3800.00	3000.00	3800.00	.00	.00	3800.00X
11	3800.00	3000.00	3800.00	.00	.00	3800.00X
12	4500.00	3000.00	4500.00	.00	.00	4500.00X

WATER AVAILABILITY TABLE

Basin: DESCHUTES Exceedance Level: 80  
 Water Availability Subbasin: 0103400000000000 (and Nested Subbasins)  
 Time: 07:59 Date: 04/29/1999

Item #	W.A. Subbasin	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	0100000000000000	NO	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES
2	0103000000000000	NO	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES
3	0103400000000000	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES

STREAM NAMES

Basin: DESCHUTES  
 Water Availability Subbasin: 0103400000000000 (and Nested Subbasins)  
 Time: 07:59 Date: 04/29/1999

WAB #	Stream Name	Tributary to
0100000000000000	DESCHUTES R @ mouth	COLUMBIA R
0103000000000000	DESCHUTES R ab EAGLE CR	COLUMBIA R
0103400000000000	DESCHUTES R ab SHITIKE CR @	PECOLUMBIA R

LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 0103400000000000  
 Basin: DESCHUTES Exceedance Level: 80  
 Time: 07:59 Date: 04/29/1999

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-852.0
2	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-683.0
3	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-454.0
4	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	YES	252.0
5	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-9.8
6	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-432.0
7	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-993.0
8	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-572.0
9	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-632.0
10	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-519.0
11	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-529.0
12	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	NO	-1049.0
Stor	0103400000000000	DESCHUTES R ab SHITIKE CR @ PE	YES	155000.0



State of Oregon  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310  
(503)378-8455

# Short Term Water Right Lease Agreement

(e)

## For Leases of Existing Water Rights for Instream Use

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." If you need additional space to answer any of the questions, attach a separate sheet of writing paper and reference the section number and question.

### 1. APPLICANT INFORMATION

# DRAFT

This Lease Agreement is between:

**Lessor #1:**

(Name, address and telephone number)

Eagle Crest Partners, Limited

P.O. Box 1215 Redmond, OR 97756

(541) 923-0807

**Lessor #2,3, etc.:**

(Name, address and telephone number)

Swalley Irrigation District

64697 Cook Ave. Tumalo, OR

(541) 388-0658

The water right to be leased is located in Deschutes (County)

**Lessee:**

(Name, address and telephone number)

**Trustee:**

Oregon Water Resources Department

158 12th Street. NE

Salem OR 97310

(503)378-8455

### SECTION I

1.1 Lessor #1 is the owner, or authorized agent for owner (Exhibit A), of property highlighted in Exhibit B.

1.2 Lessor #2 is the (Check one) [If Agreement includes multiple lessors, complete same for each additional party.]:

- Official representative of the Swalley Irrigation District, the irrigation district which conveys water to the subject water rights.
- Owner, or authorized agent for owner, of the storage facility which is the source of the subject water rights.
- Another party with an interest in the subject water rights representing

1.3 Exhibit C contains copies of all certificated, decreed or permitted rights attached to the property in Exhibit B. Those rights are listed below as follows [Use additional sheet, if necessary]:

Certificate No. 29054 Permit No. \_\_\_\_\_  
 Certificate No. 29056 Permit No. \_\_\_\_\_  
 Page No. 158 & 395 Decree Vol. 16 Order Record Water Resources Director  
 Page No. \_\_\_\_\_ Decree \_\_\_\_\_

1.4 Subject Water Rights. Lessor proposes to lease all/a portion of the water rights listed in 1.3, above.

The right(s) to be leased are further described as follows:

Certificate / ~~Permit No.~~ 29054 and 29056  
 Priority date: 09-01-1899 Type of use: Irrigation, Municipal Domestic and Industrial  
 Place of use: Reference the attached exhibit  
 (If original use is irrigation, include map of irrigated lands in Exhibit D.)  
 Number of acres, if for irrigation 21  
 Acre feet of storage: N/A  
 Rate: .012 to .030 <sup>cfs</sup>/<sub>ac</sub> Duty: 9.56 Ac-Ft/Ac-Year Including a 43% transmission loss.  
 Season of Use: April 1 thru November 1  
 Point(s) of Diversion (POD): SE1/4 NE1/4 Sec29 T17S R12E  
 Conditions or other limitations, if any: Reference the attached order approving an additional point of diversion.

1.5 Validity of Rights. Lessor #1 attests that the subject water rights are legally valid by having been beneficially used according to the terms of the right or permit. If the right is for irrigation, beneficial must have occurred in the last five years on all lands indicated in Exhibit D.

1.6 Lease. All Lessors agree to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-77-0077.

1.7 Suspension of original use. During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights.

1.8 Water use reporting. The Trustee agrees to fulfill legal obligations related to water use reporting.

SECTION II

2.1 Public Use. The public use served by the amount, timing and location of the instream use provided for under this lease is (Select one):

- Mitigation of a deficiency in the water supply for an existing instream water right or minimum streamflow located \_\_\_\_\_.

- Mitigation of a deficiency in water supply identified in an application for an instream water right or Diack flow located \_\_\_\_\_.
- A specific use or need identified by DEQ, Parks or ODFW and further described in Exhibit E.
- Provided by evidence contained in Exhibit E, such as a signed statement by Lessee, or other party, explaining how the lease would benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public uses.

**2.2 Instream use created by lease.** The instream use to be created is described as follows:

Deschutes River/Creek  
 Tributary to Columbia in the Deschutes Basin.  
 Location Deschutes River - between the City of Bend and the mouth  
 [Identify applicable points or reaches of instream use by river mile, description or map.]  
 Priority date: September 1, 1899  
 Use: Described in Section 2.1, above  
 Total volume: +/-115 Ac-Ft  
 Rate in cfs: .012 to .030 cfs/ac  
 Period of use: April 1 thru November 1  
 Conditions to prevent or mitigate injury, if any: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**2.3 Term of lease.** This Lease shall commence on \_\_\_\_\_ (not before execution by the parties) and continue through the following two years.

**2.4 Compensation.** The Lessor has agreed to lease subject water right for the sum of \$1.00, other valuable considerations and for the benefit of the state of Oregon.

**2.5 Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see Section 2.2). No party is required to continuously measure the flow of the waterway described in Section 2.2.

**Optional Provisions**

**2.6 Additional monitoring.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: (Describe plans)

\_\_\_\_\_  
 \_\_\_\_\_

**2.7 Modification or termination provisions.** (Describe any such provisions)

\_\_\_\_\_  
 \_\_\_\_\_

**Certificate of Service**

I certify that on July 21st, 2000 I filed this Petition for Reconsideration by messenger delivery to the Water Resources Department at the address set forth below. I further certify that I served a copy of the said Petition for Reconsideration to persons listed below by mailing said copies to the addresses set forth below, first-class mail, postage pre-paid, in the United States mail from Portland, Oregon on July 21, 2000.

Paul Cleary, Director  
Water Resources Department  
158 12th Street NE  
Salem, OR 97310

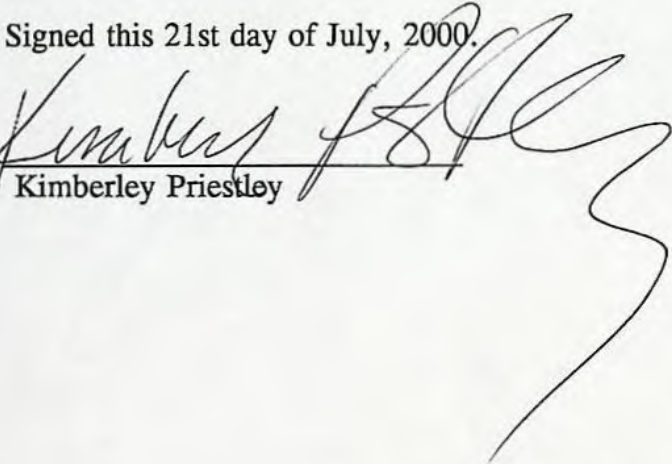
**RECEIVED**

**JUL 21 2000**

**WATER RESOURCES DEPT.  
SALEM, OREGON**

William D. Lyche  
Eagle Crest, Inc.  
P.O. Box 1215  
Redmond, OR 97756

Signed this 21st day of July, 2000.



Handwritten signature of Kimberley Priestley in cursive script, extending downwards and to the right.

Kimberley Priestley

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right )  
Application G 14857 in the Name )  
of William D. Lyche, for Eagle Crest ) ORDER ON RECONSIDERATION  
Inc., )  
*Applicant* )

**Appeal Rights**

This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-001-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

**Background**

On May 26, 2000, the Oregon Water Resources Department ("Department") through its Director, Martha Pagel, issued its Final Order Approving Application and Denying Protest for Application G 14857.

On September 19, 2000, the Department on its own motion issued an Order Allowing Reconsideration of its May 26, 2000 order.

**Findings of Fact and Conclusions of Law**

Under ORS 390.835 the "highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses," and the "free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses." Accordingly, no new water diversion may be constructed or used unless permitted by the Water Resources Commission upon a finding that such diversion is necessary to uses designated in ORS 536.310(12) and in a manner consistent with the policies set to preserve the free-flowing character of scenic waterways in quantities necessary for recreation, fish and wildlife uses. ORS 390.805 to 390.925.

Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway must be conditioned to allow the regulation of the use if analysis of data available after the permit or

certificate is issued discloses that "the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced." ORS 390.835(9)(g).

The priority date for this permit is November 2, 1998, thus the permit for this use must contain the following condition:

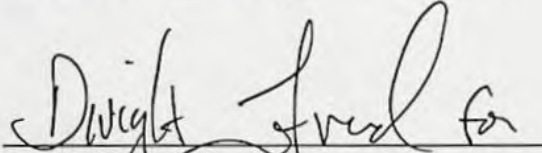
Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

The use as conditioned under the amended permit for this application is consistent with the policies set forth under ORS 390.805 to 390.925 to preserve the free-flowing character of scenic waterways in quantities necessary for recreation, fish and wildlife uses.

#### Order

The Final Order Approving Application and Denying Protest is amended by this order. Permit G 13819 is superceded by Permit G13856 issued herein.

DATED this 17 day of October, 2000

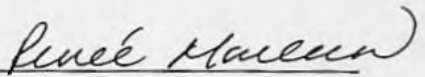
  
Paul Cleary, Director  
Oregon Water Resources Department

**Service List**

I certify that on October 19, 2000, a copy of this notice was served by first class mail, postage prepaid upon the persons listed below, by depositing same in the United States Post Office at Salem, Oregon.

W&H Pacific  
920 S.W. Emkay Dr., Suite C-100  
Bend, OR 97702

William D. Lyche  
Eagle Crest Inc.  
P.O. Box 1215  
Redmond, OR 97756

  
Renee Moulun

STATE OF OREGON

COUNTY OF DESCHUTES

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EAGLE CREST INC.  
WILLIAM D. LYCHE  
PO BOX 1215  
REDMOND, OREGON 97756

The limits and conditions of the use are listed below.

**SPECIFIC LIMITS AND CONDITIONS**

APPLICATION FILE NUMBER: G-14857

SOURCE OF WATER: A WELL IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 3.34 CUBIC FEET PER SECOND, further limited to a maximum diversion of 252 acre-feet each year and shall result in consumption of no more than 115 acre-feet each year, once sewage contribution is subtracted from the amount diverted, unless the mitigation plan is modified and approved by the Department as described below.

If the reporting, as required below, demonstrates the mitigation plan is not sufficient to mitigate for the amount of water actually consumed, the use will be further restricted to limit the total consumed water to 115 acre-feet, or the Department may approve an additional and equivalent water right to be leased to instream use, to maintain an acre-foot balance between the amount of water consumed to the amount of water provided to instream use. An equivalent water right must, at a minimum, be from a water right with a diversion point at or near the diversion authorized by the lease of certificate 74145.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: NOVEMBER 2, 1998

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 16, T15S, R12E, W.M.; 150 FEET SOUTH AND 150 FEET WEST FORM THE NE CORNER, SECTION 16, T15S, R12E, W.M.