

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16385

**Final Order Incorporating Settlement Agreement**

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the proposed final order listed below may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of this order must be filed within the 60 day time period specified by ORS 183.484(2).

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

*Application History*

On February 9, 2005, THORNBURGH UTILITY GROUP, LLC. submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on July 25, 2006. The protest period closed September 8, 2006.

As required by OAR 690-505-06165, the applicant must submit proposed mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, a permit shall not be issued until the applicant provides documentary evidence that mitigation water, in an amount satisfying the mitigation obligation, is legally protected instream.

The applicant submitted a mitigation proposal to provide 1197.0 acre feet of mitigation water in the General Zone of Impact on an incremental basis.

On September 8, 2006, WaterWatch of Oregon, Inc., ("WaterWatch") submitted a protest against the Proposed Final Order.

As of March 22, 2007, WaterWatch, the applicant, and OWRD entered

into a Settlement Agreement under which the issues raised in the protest were fully resolved with regard to this application. A copy of the Settlement Agreement is attached hereto and by this reference incorporated herein.

On March 22, 2007, the applicant, through its agent Martha O. Pagel, of Schwabe, Williamson and Wyatt, submitted a revised incremental mitigation plan reflecting the terms of the Settlement Agreement.

Pursuant to the terms of the Settlement Agreement, a water right permit may be issued for up to 2,129 acre-feet per year of water for quasi-municipal use, as follows:

**TABLE I**

**Estimated Full Build-out Water Needs for Preliminary Planning**

Water Use	Peak Flow		
	Rate CFS	Annual Volume	Mitigation Obligation
Golf Courses (3)	5.82	717 af	645 af
Standard Irrigation	1.20	195 af	117 af
Reservoir Maintenance	0.80	246 af	206 af
Other Quasi-Municipal	2.15	971 af	388 af
<b>TOTALS</b>	<b>9.97</b>	<b>2,129 af</b>	<b>1356 af</b>

Pursuant to the Settlement Agreement, consumptive use, and the related mitigation obligation for each component of the quasi-municipal use is calculated as follows:

**Golf Course Irrigation:** During the first year of irrigation for each of the three proposed golf courses, applicant may use up to 3.0 acre-feet per acre so long as the total volume of water applied in any given year does not exceed the maximum volume authorized under the permit or the applicable approved phase of development under an incremental development plan. After the first year of irrigation, the permanent annual duty for golf course irrigation shall be reduced to 2.24 acre-feet per acre. Consumptive use and the mitigation obligation shall be calculated at the rate of 90% of the maximum permanent duty.

**Standard Irrigation:** The duty for standard irrigation shall be 3.0 acre-feet per acre. The consumptive use and mitigation obligation shall be calculated at a rate of 60% of the maximum permanent duty.

**Reservoir Maintenance:** The consumptive use and mitigation obligation for reservoir maintenance shall be calculated at the rate of 100% of the annual evaporation rate which is established

at 2.66 acre-feet per year.

Other Quasi-Municipal: The consumptive use and mitigation obligation for all other quasi-municipal use under the permit shall be calculated at the rate of 40% of the maximum annual volume authorized under the permit.

At any time prior to issuance of the permit, applicant shall have the option to modify the total annual volume of water authorized for any component of the quasi-municipal use by submitting a revised Incremental Development Plan, provided that the modification does not increase the total annual volume of water authorized under the Final Order. If Applicant exercises this option, the water right permit and the mitigation obligation shall be revised to reflect the modified volumes of water, based on the consumptive use rates described above, as applicable.

The permit shall include a condition requiring measurement and reporting of water use, including a break-down for golf course irrigation, along with all other terms and conditions described in the Final Order.

The mitigation conditions, along with other conditions in the attached draft permit, shall be contained in the permit, when issued, for Application G-16385.

Mitigation Obligation: 1,356.0 acre-feet in the General Zone of Impact (Anywhere in Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

Mitigation water must be legally protected instream for instream use within the General River Zone of Impact and committed for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s), will occur if the required mitigation is not maintained.

The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the terms and

conditions of a valid contract, or a satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department prior to use of water.

Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

The following shall also apply to the irrigation component of of this application:

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year. The permanent duty of water use for golf course irrigation under this right is further limited to a diversion of 2.24 acre-feet for each acre irrigated during the irrigation season of each year, as provided herein.

#### Order

Application G-16385 therefore is approved with the above modifications to the Proposed Final Order, and as conditioned, will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence demonstrating that the appropriate amount of mitigation water (credits or mitigation project), or an alternate amount of mitigation in conjunction with a modified incremental mitigation development plan, meeting the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact, has been obtained and satisfy the first stage of incremental development.

This final order is issued approving application G-16385 contingent upon the required first increment of mitigation being provided before a permit may be issued. This final order shall expire 5 years after issuance unless the required first increment of mitigation is provided. OAR 690-505-0620(2).

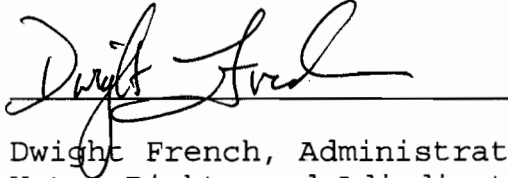
Application G-16385 is therefore approved as provided herein. Upon payment of outstanding fees in the amount of \$250.00, and upon submission of land use approval for the proposed use, a permit shall be issued authorizing the

proposed water use.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

DATED March 22, 2007

A handwritten signature in black ink, appearing to read "Dwight French", is written over a horizontal line.

Dwight French, Administrator  
Water Rights and Adjudications Division  
for  
Phillip C. Ward, Director  
Oregon Water Resources Department

# Mailing List for Final Order Copies

Application #G-16385

Final Order Date: March 22, 2007

## **Original mailed to:**

**THORNBURGH UTILITY GROUP, LLC., KAMERON DELASHMUTT,  
MANAGING MEMBER, 2447 NW CANYON DR., REDMOND, OR 97756**

## **Copies Mailed**

**By:** \_\_\_\_\_

(SUPPORT STAFF)

**on:** \_\_\_\_\_

(DATE)

## **Copies sent to:**

1. WRD - File # G-16385
2. Water Availability: Ken Stahr
3. WRD - Laura Snedaker
4. DRC - BRUCE ALYWARD

## **PFO and Map Copies sent to:**

5. WRD - Watermaster # 11
6. ODFW: Steve Marx & Clair Kunkel (Bend) (one copy only)
7. ODFW - Rick Kepler
8. Columbia River Intertribal Fish Commission
9. US Fish & Wildlife
10. NW Power Planning Council
11. DEQ — Eastern Region
12. DOA (Salem): Jim Johnson & Paul Measeles (one copy per office)
13. Oregon State Parks Department (Jan Houck and Dave Wright) (one copy per office)
14. Division of State Lands (Nancy Pustis)

**Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)**

DAVID NEWTON, CWRE #419

MARTHA PAGEL

WATERWATCH OF OREGON

MARIANNE FELLNER, 65044 HIGHLAND RD, BEND, OR 97701

**"\$10 LETTER" sent to Interested Persons who have not protested or paid for  
copies:**

PAUL DEWEY, 1539 NW VICKSBURG, BEND, OR 97701

CASEWORKER : *huffmaam- WEEK 574*