

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application G-16385)	
in the name of Kameron Delashmutt on behalf of)	
Thornburgh Utility Group LLC,)	SETTLEMENT
<i>Applicants,</i>)	AGREEMENT
)	
WaterWatch of Oregon, Inc.,)	
<i>Protestants</i>)	
)	
_____)	

The Oregon Water Resources Department (“OWRD”), Kameron Delashmutt on behalf of Thornburgh Utility Group LLC (“Applicant”), and WaterWatch of Oregon (“Protestant”), referred to collectively as “the Parties” and each individually a “Party,” do hereby stipulate and agree in this “Settlement Agreement” as follows:

Stipulations

- I. On February 9, 2005, Kameron Delashmutt on behalf of Thornburgh Utility Group LLC, submitted an application to OWRD for a water use permit.
- II. OWRD issued a Proposed Final Order (PFO) on July 25, 2006. The protest period closed September 8, 2006.
- III. On September 8, 2006, WaterWatch of Oregon, Inc., submitted a protest against the PFO on application G-16385.
- IV. The Parties agree that all issues raised in Protestant’s protest to the PFO on Application G-16385 are resolved solely on the following terms with regard to this application.

General Terms of Agreement

- 1. Regarding water right Application G-16385, Applicant and Protestant hereby expressly waive all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Order or Permit, in addition to waiving any right and opportunity to challenge this Settlement Agreement, including the attached Draft Final Order and Draft Permit.
- 2. After Applicant and Protestant sign this Settlement Agreement, they will mail the signed original back to the Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
- 3. Within 30 days after OWRD receives the original Settlement Agreement signed by all Parties, OWRD will issue a Final Order that is consistent with the Draft Final Order attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.

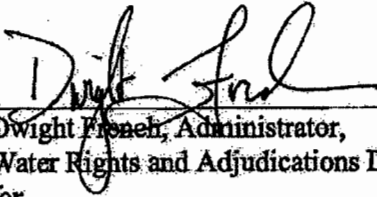
4. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
5. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord. Each Party to this Settlement Agreement also certifies that it has read the entire Settlement Agreement which incorporates the attached Draft Final Order and Draft Permit, and understands and fully agrees with the contents thereof.
6. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement.

Specific Terms of Agreement

1. The total quantity of water (2,129 acre-feet) approved for quasi-municipal use shall be broken down into component quantities as follows: 717 acre-feet for golf-course irrigation (for a total of up to 320 acres with a permanent duty of 2.24 acre-feet per acre); 194 acre-feet for non-golf course ("standard") irrigation (up to 65 acres at a permanent duty of 3.0 acre-feet per acre); 246 acre-feet for reservoir maintenance; and 971 "other" quasi-municipal which shall include but not be limited to residential housing, overnight lodging, restaurants and other commercial facilities. The consumptive use and related mitigation obligation for each component shall be calculated separately, as set forth below.
2. **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 so long as the total volume of water applied in any given year does not exceed the maximum volume authorized under the permit or approved phase of permit development. 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 related mitigation obligation) for golf course shall be calculated at the rate of 90% of the maximum permanent duty.
3. **Standard Irrigation:** The permanent duty for standard irrigation shall be 3.0 acre-feet per acre. Consumptive use (and the related mitigation obligation) for standard irrigation shall be calculated at the rate of 60% of the maximum permanent duty.
4. **Reservoir Maintenance:** Consumptive use (and the related mitigation obligation) for reservoir maintenance shall be calculated at the rate of 100% of the annual evaporation rate. For purposes of this Final Order and water right, the annual evaporation rate shall be 2.66 acre-feet per surface area acre of the reservoirs.

5. "Other" Quasi-municipal Use: Consumptive use (and the related mitigation obligation) for all other quasi-municipal use shall be calculated at the rate of 40% of the maximum annual volume.
6. As provided by OWRD rules, Applicant shall have the option to provide for development and required mitigation in phases. In addition, 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.
7. 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.
8. In agreeing to this Settlement Agreement, Protestant intends to resolve only the specific issues associated with the water right protest and does not otherwise support or endorse the destination resort project proposed by Applicant.

**SIGNATURE PAGE FOR SETTLEMENT
ON WATER RIGHT APPLICATION G-16385**



Dwight French, Administrator,
Water Rights and Adjudications Division
for

Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

March 22, 2007
Date



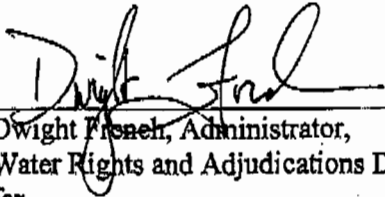
Thornburgh Utility Group LLC, Applicant

3/22/07
Date

John DeVoe, Director
WaterWatch of Oregon, Inc.

Date

**SIGNATURE PAGE FOR SETTLEMENT
ON WATER RIGHT APPLICATION G-16385**



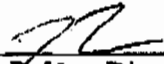
Dwight French, Administrator,
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for

Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

March 22, 2007
Date

Thornburgh Utility Group LLC, Applicant

Date



John DeVoe, Director
WaterWatch of Oregon, Inc.

3/22/07
Date

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16385

DRAFT 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.

On [REDACTED], 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		Mitigation Obligation
	Rate CFS	Annual Volume	
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
TOTALS	9.97	2,129 af	1356 af

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 27, 2007

DRAFT - DO NOT SIGN

Dwight French, Administrator
Water Rights and Adjudications Division
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: MS
(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

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

THORNBURGH UTILITY GROUP, LLC
2447 NW CANYON DR
REDMOND, OR 97756

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

APPLICATION FILE NUMBER: G-16385

SOURCE OF WATER: SIX WELLS IN DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USES, INCLUDING BUT NOT LIMITED TO, IRRIGATION OF GOLF COURSES AND COMMERCIAL AREAS, AND MAINTENANCE OF RESERVOIRS.

MAXIMUM RATE AND VOLUME: 9.28 CUBIC FEET PER SECOND, LIMITED TO A MAXIMUM ANNUAL VOLUME OF 2,129.0 ACRE FEET (AF). THE RATE AND VOLUME ARE FURTHER LIMITED BY THE CORRESPONDING MITIGATION PROVIDED. THE MAXIMUM VOLUME FOR IRRIGATION OF 320.0 ACRES FOR GOLF COURSES SHALL NOT EXCEED 717.0 ACRE FEET.

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: FEBRUARY 9, 2005

WELL LOCATIONS:

WELL 1: SE ¼ NW ¼, SECTION 28, T15S, R12E, W.M.; 1800 FEET SOUTH & 2335 FEET EAST FROM NW CORNER, SECTION 28

WELL 2: SE ¼ NW ¼, SECTION 29, T15S, R12E, W.M.; 1655 FEET SOUTH & 2750 FEET WEST FROM NE CORNER, SECTION 29

WELL 3: SW ¼ SW ¼, SECTION 21, T15S, R12E, W.M.; 1100 FEET NORTH & 400 FEET EAST FROM SW CORNER, SECTION 21

WELL 4: NE ¼ SE ¼, SECTION 20, T15S, R12E, W.M.; 2885 FEET SOUTH & 750 FEET WEST FROM NE CORNER, SECTION 20

WELL 5: SW ¼ NE ¼, SECTION 20, T15S, R12E, W.M.; 2590 FEET SOUTH & 1860 FEET WEST FROM NE CORNER, SECTION 20

WELL 6: SE ¼ NW ¼, SECTION 17, T15S, R12E, W.M.; 2375 FEET SOUTH & 3615 FEET WEST FROM NE CORNER, SECTION 17

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE BOUNDARIES OF THE THORNBURGH RESORT, BEING WITHIN SECTIONS 17, 20, 21, 28, 29, AND 30; TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M.

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 in the Final Order.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The totalizing flow meters must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). The permittee shall keep a complete record of the amount of water used each month for all quasi-municipal use, including but not limited to the specific amount of water used for golf course irrigation, 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; provided however, where the meters are located within a private structure, the watermaster shall request access upon reasonable notice.

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. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows so long as mitigation is maintained.

GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 1,356.0 acre-feet annually in the General Zone of Impact (anywhere in the Deschutes Basin above the Madras gage, located on the Deschutes River 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 690, Division 505 (Deschutes Ground Water Mitigation Rules).

The first stage of incremental development shall be met with AF of mitigation water, being mitigation water resulting from a permanent instream transfer; credits from a chartered mitigation bank; or suitable mitigation water that meets the requirements of OAR 690-505-0610(2)-(5), with the General Zone of Impact.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for 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.

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.

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.

The permittee shall provide mitigation prior to each stage of development under the permit and in accordance with the standards under 690-505-0610(2)-(5).

The permittee shall not increase the rate or amount of water diversion before increasing the corresponding mitigation.

The permittee shall seek and receive Department approval prior to changing the incremental permit development plan and related incremental mitigation.

The permittee shall report to the Department the progress of implementing the incremental permit development plan and related mitigation by not later than April 1 of each year.

Within five years of permit issuance, the permittee shall submit a new or updated Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86.

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).

STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

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.

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.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

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.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2011. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 March _____, 2007

DRAFT - DO NOT SIGN

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