

# Oregon Water Resources Department

## Water Right Services Division

Water Right Application G-18384 in the )  
name of WAIBEL PROPERTIES 3 LLC, ) PROPOSED FINAL ORDER  
THE RUSSELL LLC, and BOB )  
WILLIAMS )

**Summary:** The Department proposes to issue an order approving Application G-18384, as amended, and a permit consistent with the attached draft permit.

**Prior to the issuance of a permit, if one is issued the Department must receive the following:**

- **A mitigation fee in the amount of \$670.00. A check should be made out to the Oregon Water Resource Department or OWRD.**

**Please include the application number on any documents submitted.**

### *Authority*

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410, and the Deschutes Basin Program OAR 690-505. OAR 690-505 and 521 describe the process by which certain groundwaters in the Deschutes Basin may be appropriated by mitigating the impact of the proposed use. These statutes and rules can be viewed on the Oregon Water Resources website: <http://www.oregon.gov/owrd/pages/law/index.aspx>

The Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- a) 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);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.621(2); OAR 690-310-0150(2)(b)

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. When the criteria are met and the presumption is established the Department must further evaluate the proposed use, any comments received information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0140

If the Department determines that the presumption is established and not overcome, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions.

## **FINDINGS OF FACT**

### **Application History**

1. On September 12, 2016, Waibel Properties 3 LLC, The Russell LLC, and Bob Williams filed a complete application for the following water use:
  - Amount of Water: 0.266 cubic foot per second (CFS)
  - Use of Water: Irrigation of 40.0 acres
  - County: Crook County
  - Location: Section 24, Township 15 South, Range 16 East, W.M.
  - Source of Water: A well in the Deschutes River Basin
2. On October 27, 2017, the Department mailed the applicant notice of its Initial Review, determining that, "**The appropriation of 0.266 CFS from a well in Deschutes River Basin for irrigation of 40.0 acres, March 1 through October 31 of each year, is allowable because you have demonstrated that sufficient mitigation water is in place for this application under OAR 690-505-0610.**" The applicant did not notify the Department to stop processing the application within 14 days of that date. The initial Review include the Notice of Mitigation Obligation for the proposed groundwater use pursuant to the Deschutes Groundwater Mitigation Rules (OAR 690-505)
3. On October 31, 2017, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On February 28, 2018 the Department received the applicant's request to revise the well location and correct the location of the proposed place of use.

### **Presumption Criteria (a) - Consistency with Basin Program**

5. The proposed groundwater use is located within the Deschutes Groundwater Study Area, and is subject to the Deschutes Groundwater Mitigation Rules (OAR 690-505).
6. The proposed use is allowed under the Deschutes Basin Program (OAR 690-505-0400). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)
7. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS limit on the amount of new groundwater use that may be allocated within the Deschutes Groundwater Study Area. Any water allocated under this application will not exceed the limit.
8. The mitigation obligation for the proposed use is 72.0 acre feet (AF), which represents the Department's determination of the consumptive portion of the proposed use. Each mitigation credit is equivalent to 1.0 AF of mitigation water. OAR 690-505-0610(5)
9. Mitigation shall be provided in the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).

**Presumption Criteria (b) - Water Availability**

10. An assessment of groundwater availability has been completed by the Groundwater/Hydrology section. A copy of this assessment is in the file. The proposed use of groundwater will, if properly conditioned, avoid injury to existing groundwater rights and the groundwater resource. ORS 537.621(3)(c); OAR 690-310-0150(2)(c)

**Presumption Criteria (c) - Injury Determination**

11. The proposed groundwater use is junior to existing water rights downstream in the Deschutes River Basin. Therefore, the proposed use, if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e)

**Presumption Criteria (d) - Whether the use complies with rules of the Commission**

12. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b)
13. The proposed groundwater use is not within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)
14. The proposed use will have the potential for substantial interference with the Deschutes River (OAR 690-009). The Division 9 (Groundwater Interference with Surface Water) review is in the file and can be viewed on the Department's website. ORS 537.621(3)(b); OAR 690-009-0040(4).
15. On April 12, 2018, the Department received the applicant's Response to Notice of Mitigation Obligation Credit or Project Option, wherein the applicant acknowledged that they intend to provide mitigation in the amount of 72.0 AF within Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).
16. The Department finds that the mitigation proposed by the applicant will satisfy the mitigation required under OAR Chapter 690, Division 505; therefore, pursuant to OAR 690-505-0630, mitigation effectively eliminates the potential for substantial interference with surface water.
17. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

**Determination of Presumption that a proposed groundwater use will ensure the preservation of the public welfare, safety and health**

Based on the review of the presumption criteria (a)-(d), the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g)

**Further evaluation of the proposed use**

18. No comments were received by the close of the comment period. OAR 690-310-0140(3)(a).
19. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not ensure the preservation of the public welfare, safety, and health under ORS 537.525. OAR 690-310-0140(3)

**Other Criteria and Requirements**

- 20. The applicant proposed to apply water when needed and use the most efficient method of water application for the crop being irrigated. These measures are adequate at this time. OAR 690-310-0150(2)(j)
- 21. The Department requested comments on the application and proposed mitigation from the Oregon Department of Fish and Wildlife, Environmental Quality, State Lands, Parks and Recreation, and Oregon Department of Agriculture pursuant to the Deschutes Groundwater Mitigation Rules. No issues were raised in that review that required conditioning of the attached draft permit.
- 22. The applicant has indicated that, consistent with OAR 690-505-0610(8), they intend to offset 72.0 AF of the Mitigation Obligation through Voluntary Cancellation of Water Right certificate 60424.
- 23. Pursuant to ORS 390.835(9), the proposed use shall be denied unless mitigation is provided. Without the required mitigation, there is a preponderance of evidence that the proposed use will measurably reduce surface water flows necessary for the Deschutes River Scenic Waterway. The applicant must mitigate for the proposed use.

**CONCLUSION OF LAW**

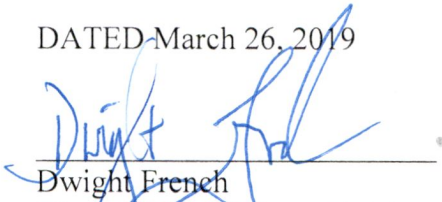
- 1. The proposed use as conditioned would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

**PROPOSED ORDER**

The Department recommends approval of Application G-18384 and issuance of a permit consistent with the attached draft permit.

DATED March 26, 2019



Dwight French  
Water Right Services Division Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

## Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **May 10, 2019**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

## Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **May 10, 2019**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$230. If a hearing is scheduled, an additional fee of \$580 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have any questions about statements contained in this document, please contact Lisa Graham at [Elisabeth.A.Graham@oregon.gov](mailto:Elisabeth.A.Graham@oregon.gov) or 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 Patricia McCarty 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 Right Services Division  
725 Summer St NE, Suite A  
Fax: 503-986-0901                              Salem, OR 97301-1266
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STATE OF OREGON

COUNTY OF CROOK

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WAIBEL PROPERTIES 3 LLC  
THE RUSSELL LLC  
PO BOX 5350  
BEND OR 97708

BOB WILLIAMS  
3672 SE JUNIPER CANYON RD  
PRINEVILLE OR 97754

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

APPLICATION FILE NUMBER: G-18384

SOURCE OF WATER: A WELL IN DESCHUTES RIVER BASIN

PURPOSE OR USE: IRRIGATION OF 40.0 ACRES

MAXIMUM RATE: 0.266 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 12, 2016

WELL LOCATION:

| Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances                                             |
|------|------|-----|-----|-------|----------------------------------------------------------------|
| 15 S | 16 E | WM  | 24  | NE SE | 1010 FEET SOUTH AND 240 FEET WEST FROM E1/4 CORNER, SECTION 24 |

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 PLACE OF USE IS LOCATED AS FOLLOWS:

| Twp  | Rng  | Mer | Sec | Q-Q   | Acres |
|------|------|-----|-----|-------|-------|
| 15 S | 16 E | WM  | 24  | NE SE | 2.6   |
| 15 S | 16 E | WM  | 24  | NW SE | 14.1  |
| 15 S | 16 E | WM  | 24  | SW SE | 21.9  |
| 15 S | 16 E | WM  | 24  | SE SE | 1.4   |

**1. Measurement Devices, and Recording/Reporting of Annual Water Use Conditions:**

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the device in good working order.

- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water used each month, and shall submit an annual 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.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

## 2. **Static Water Level Condition:**

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or



- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

**3. Well Identification Tag Condition:**

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

**4. Groundwater Mitigation Conditions:**

- a. Mitigation Obligation: 72.0 acre-feet (AF) of mitigation water in the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).
- b. Mitigation Source: 72.0 AF has been offset by Voluntary Cancellation of Water Right certificate 60424
- c. Mitigation water must be legally protected instream in the Crooked River Zone of Impact 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.
- d. The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the appropriation has increased beyond that used to compute the volume of mitigation water originally.
- e. 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 maintenance and terms and conditions of a valid contract or 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.
- f. Failure to comply with these mitigation conditions shall result in the Department regulating the groundwater permit, or subsequent certificate(s), proposing to deny any permit extension application for the groundwater permit, and proposing to cancel the groundwater permit, or subsequent certificate(s).

## 5. Scenic Waterway 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 reduced subsequently. However, the use of groundwater allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the mitigation required is maintained.

### STANDARD CONDITIONS

1. 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.
2. 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 be subject to cancellation, unless the Department authorizes the change in writing.
3. If substantial interference with surface water or 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.
4. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.
5. 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.
6. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.
7. 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.
8. 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.
9. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.

10. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
11. 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.

Issued

**DRAFT - THIS IS NOT A PERMIT**

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Dwight French  
Water Right Services Division Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

# Mailing List for PFO Copies

Application G-18384

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PFO Date March 26, 2019

**Original mailed via CERTIFIED MAIL to applicant:**

WAIBEL PROPERTIES 3 LLC  
THE RUSSELL LLC  
BOB WILLIAMS  
3672 SE JUNIPER CANYON RD  
PRINEVILLE OR 97754

**SENT VIA AUTO EMAIL:**

1. WRD - Jeremy Giffin - # 11
2. Agent – John Short – [johnshort@usa.com](mailto:johnshort@usa.com)

**Copies sent to:**

3. WRD - File # G-18384
4. WRD - Sarah Henderson
5. WRD – Surface Water Section
6. DRC – Genevieve Hubert
7. ODFW District Biologists: Brett Hodgson and Amy Stuart
8. ODFW: Danette Faucera
9. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
10. DOA: Salem: Jim Johnson & Paul Measeles
11. DSL: Shawn Zumwalt

SPECIALIST: Lisa Graham

Copies Mailed

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

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

Protest/ Standing Dates  
checked

5/10/2019

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