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February 1, 2023

Deschutes County Board of Commissioners  
1300 NW Wall Street  
Bend, OR 97703

*Delivered via email*

**re: 247-22-000678-MC / 247-22-000984-A / 247-23-000003-A, Appeal of Denial of Request to Amend the Final Master Plan (FMP) for the Thornburgh Destination Resort by amending the Fish and Wildlife Management Plan (FWMP)**

Dear Commissioners,

On behalf of Central Oregon LandWatch thank you for the opportunity to comment on the above-referenced proposal. We respectfully urge the Commissioners to deny Thornburgh Resort's proposal to amend the original FWMP. The proposed changes constitute substantial changes in the original submitted plans for the resort that necessitate a new destination resort application.

The County code provisions authorizing the siting of destination resorts place strict limitations on approval to ensure resorts are beneficial to the County and do not cause harm to either the County's natural resources or its existing residents. DCC 18.113. Before a resort may be approved, a developer must prove any effects on fish and wildlife will be completely mitigated and that the destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs, or prevents permitted or conditional uses of surrounding properties.

Naturally, given the County's geography in a region of limited precipitation in Oregon's High Desert, a developer must also prove that a proposed resort has "adequate water ... available for all proposed uses at the destination resort." No destination resort can be approved in Deschutes County without meeting these criteria. DCC 18.113.070 provides in relevant part:

D. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.

K. Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not



reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in the affected area.

P. The destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs, or prevents permitted or conditional uses of surrounding properties.

When the Thornburgh Resort was approved over a decade ago the developer submitted evidence that the above criteria would be met in a "conceptual master plan" and later in a "final master plan." The developer was required to provide a hydrological study demonstrating:

- ◆ the availability of water for estimated demands at the destination resort;
- ◆ the identification of the area that may be measurably impacted by the water used by the destination resort (the impact area), and;
- ◆ a statistically valid sampling of domestic and other wells within the impact area.

The original approval of the resort was explicitly based on the resort's "submitted plan" demonstrating that the resort had acquired a water right for 9.28 cfs via permit G-17036, that neighboring wells would not be limited or impaired, and that any impacts on fish and wildlife from the resort's withdrawal of groundwater would be completely mitigated. The original approval provides:

**"1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application."**

Specifically, the 2008 Final Master Plan (FMP) and the 2008 FWMP ("Fish and Wildlife Management Plan") approvals were based on findings of fact that the resort had obtained Oregon Water Resources Department (OWRD) water right permit G-17036 pursuant to OWRD water permit application G-16385. FMP, 2008, p. 11 (finding the resort obtained the necessary approval of a water right application, referring to the resort's FMP Application Ex. K2); Thornburgh FMP Application Ex. K2 (approving water right application G-16385) (Ex. 1); FWMP Revised Incremental Mitigation Plan for Thornburgh Utility Group (Thornburgh Resort), 2008, p.1 ("This Revised Incremental Mitigation Plan is submitted in connection with Application G- 16385, in the name of Thornburgh Utility Group ("Thornburgh').")



Permit G-17036, the water permit on which the findings of fact for both the 2008 FMP and the 2008 FWMP relied, expired in 2018 when the resort failed to prove up its water right by putting the water to beneficial use prior to the permit's 2018 expiration date.

Pursuant to Thornburgh's forfeiture of its 9.28 cfs water right, OWRD issued two orders in July of 2022. OWRD indicated in a Superseding Proposed Final Order that the resort's request for an extension of its now-expired permit is denied. OWRD, 2022, Superseding Proposed Final Order "In the Matter of the Application for an Extension of Time for Permit G-17036, Water Right Application G-16385, in the name of the Pinnacle Utilities, LLC", July 26, 2022, ("[T]he Department has determined that the permit holder has not shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e) because the permit holder did not prosecute the construction of the well within five years of permit issuance as required by ORS 537.630(2).") (Ex. 2).

OWRD also issued in July of 2022 a Water Right Application Initial Review holding that Thornburgh Resort cannot replace its expired water right G-17036 for 9.28 cfs because to do so is no longer within the capacity of the groundwater resource. (Ex. 3). Apparently in anticipation that OWRD would deny the resort's request for extension of G-17036, the resort filed a back-up application for the identical quasi-municipal use permitted in groundwater permit G-17036. OWRD responded on July 1, 2022, that the resort's re-application for the same groundwater right, i.e., the resort's re-application for the groundwater right on which approval of the FMP and FWMP were based, was not available within the capacity of the groundwater resource, and that "groundwater is not available for the proposed use." OWRD, Water Right Application Initial Review, Application G-19139 (July 1, 2022) ("Groundwater ... is determined to not be available within the capacity of the resource as defined in OAR 690-400-0010"); "[G]roundwater is not available for the proposed use.").

These facts: 1) the resort's forfeiture of its water right; 2) OWRD's indication in a July 2022 order that no extension will be forthcoming; and 3) OWRD's indication in a second July 2022 order that replacing the original water right is physically and legally impossible because to do so would now exceed the capacity of the groundwater resource, all constitute substantial changes in the 2008 original plan for the resort. Such substantial changes to the approved plan require a



new application by the terms of the original 2008 resort approval.

The original 2008 approval relied heavily on the original FWMP, which in turn explicitly relied on the expired and, according to orders issued by OWRD in July 2022, irreplaceable water permit G-17036 for 9.28 cfs. This significant alteration in the conditions under which the original FWMP was created constitutes an additional substantial change in the original submitted plan that independently triggers a new application for the resort pursuant to the County's strict criteria limiting the approval of destination resorts.

Moreover, Thornburgh's proposal to reduce hypothetical water withdrawals by dropping one golf course and "only" adding two new golf courses and 950 luxury houses constitutes a substantial change to the original FMP open space plan. The original approval depended on the use, location, size, and design of the resort's open spaces in the submitted resort plan. DCC 18.113.090(1)(A). Removal of a golf course constituting hundreds of acres of open space constitutes a substantial change in use, location, size, and design of open space that independently triggers the requirement for a new application for the resort.

The resort lacks the right to withdraw water pursuant to G-17036. The findings of fact on which the original approvals of the FMP and the FWMP were based are materially affected by the resort's forfeiture of its water right under G-17036. DCC 18.113.080. The loss of the resort's water right, the proposed denial of a request for an extension, the apparent impossibility of replacing the water right the resort forfeited, and the multiple changes proposed in the FWMP all constitute substantial changes to the "submitted plans" for the FMP and FWMP approved in 2008 that each trigger a new resort application.

Again, DCC 18.113 imposes strict limitations on approval of destination resorts. A resort must prove that fish and wildlife will be protected, that adequate water is available for all proposed uses at the destination resort, and that resort water use will not "reduce the availability of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in the affected area." Now that the permit on which Thornburgh Resort's approval was based no longer provides a right to water, the resort is back to square one. The resort must prove that whatever *new water* it proposes to use will *equally* protect fish and wildlife, is



*equally* adequate for all proposed uses at the resort, and *equally* will not reduce the availability of water to existing wells.

LandWatch shares the concerns of the Oregon Department of Fish and Wildlife (ODFW) expressed in its October 21, 2022, letter to the County. In particular, LandWatch agrees that the proposed plan is lacking in detail to provide substantial evidence for the resort's stated claims.

ODFW wrote:

"ODFW recommends the County request additional information for each water right proposed for transfer, including the reliability of the rights, season of use, and actual historical use. This information is needed to assess if the proposal provides paper water vs. wet water, which is an important distinction for ODFW."

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"ODFW is concerned with the lack of information regarding how compliance will be ensured over time."

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"Based on our current understanding of the 2022 Mitigation Proposal, it is yet unclear if the Plan will result in outcomes that meet the County's standard in DCC 18.113.070(D), including actions that fully mitigate the Habitat Category 2 impact through in-kind, in proximity mitigation. The proposed Plan is lacking the detail to provide substantial evidence for stated claims. In addition, the proposed Plan is challenging to understand..."

The County should affirm the Hearings Officer's decision, deny the requested modification, and declare that based on the evidence in the record the findings of fact for the original approval are materially affected such that there are substantial changes in the resort's submitted plan that trigger the requirement for a new destination resort application under the express terms of the resort's original approval.

Sincerely,

*/s/ Carol Macbeth*

Carol Macbeth  
Staff Attorney  
Central Oregon LandWatch



**BURDEN OF PROOF  
IN SUPPORT OF  
FINAL MASTER PLAN APPLICATION**

**APPLICANT**

Thornburgh Resort Company, LLC  
c/o Schwabe, Williamson & Wyatt, PC  
549 Mill Way, Suite 100  
Bend, OR 97202  
Telephone: (541) 749-4044

**APPLICANT'S  
REPRESENTATIVE:**

Schwabe, Williamson & Wyatt, PC  
Peter Livingston, Attorney at Law  
1211 SW Fifth Ave., Suite 1600  
Portland, OR 97204  
Telephone: (503) 796-2892

Myles A. Conway, Attorney at Law  
549 Mill Way, Suite 100  
Bend, OR 97202  
Telephone: (541) 749-4019

Martha O. Pagel, Attorney at Law  
530 Center St., Suite 400  
Salem, OR 97301  
Telephone: (503) 540-4260

**APPLICANT'S  
ENGINEER:**

Hickman Williams & Associates  
Jeffrey D. Fuchs  
698 NW York Drive  
Bend, OR 97701  
Telephone: (541) 389-9351

**PROPERTY:**

Tax Lot 5000, T15S, R12E, Sections 17 and 20  
Tax Lot 5001, T15S, R12E, Section 20  
Tax Lot 5002, T15S, R12E, Section 20  
Tax Lot 7700, T15S, R12E, Sections 20, 21 and 28  
Tax Lot 7701, T15S, R12E, Section 20  
Tax Lot 7800, T15S, R12E, Sections 29 and 30  
Tax Lot 7801, T15S, R12E, Section 29  
Tax Lot 7900, T15S, R12E, Section 29  
Tax Lot 8000, T15S, R12E, Section 30

**PROPOSAL:**

Applicant requests approval of a Final Master Plan (FMP) for a destination resort.

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16385

RECEIVED

Final Order Incorporating Settlement Agreement

MAR 26 2007

Hearing and Appeal Rights

Schwabe, Williamson & Wyatt

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	Annual Volume	Mitigation Obligation
	Rate CFS		
<u>Golf Courses (3)</u>	5.82	717 af	645 af
<u>Standard Irrigation</u>	1.20	195 af	117 af
<u>Reservoir Maintenance</u>	0.80	246 af	206 af
<u>Other Quasi-Municipal</u>	2.15	971 af	388 af
<b>TOTALS</b>	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).

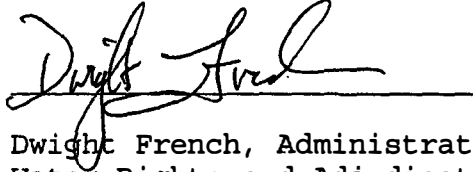
Application G-16385 is therefore approved as provided herein. Upon payment of outstanding fees in the amount of \$250.00, and upon submission of land use approval for the proposed use, a permit shall be issued authorizing the

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 22, 2007

A handwritten signature in cursive script, 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

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time	)	SUPERSEDING
for Permit G-17036, Water Right Application G-16385,	)	PROPOSED
in the name of the Pinnacle Utilities, LLC	)	FINAL ORDER

**Permit Information**

**Application File G-16385 / Permit G-17036**

Basin: 5 / Deschutes Basin / Watermaster District 11  
 Date of Priority: February 9, 2005

**Authorized Use of Water**

Source of Water: Six wells in Deschutes River Basin  
 Purpose or Use: Quasi-Municipal uses, including irrigation of golf courses and commercial areas, and maintenance of reservoirs  
 Maximum Rate: 9.28 cubic feet per second (cfs), 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 of golf courses shall not exceed 717.0 AF

**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.*

This Proposed Final Order applies only to Permit G-17036, water right Application G-16385.

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

**The Department proposes to:**

- Deny an extension of time to complete construction from October 1, 2018, to October 1, 2035.
- Deny an extension of time to apply water to full beneficial use from October 1, 2018, to October 1, 2035.

## **ACRONYM QUICK REFERENCE**

Department – Oregon Department of Water Resources  
PFO – Proposed Final Order  
WMCP – Water Management and Conservation Plan  
Pinnacle – Pinnacle Utilities, LLC  
Thornburgh - Thornburgh Utility Group, LLC

### Units of Measure

cfs – cubic feet per second  
AF – acre-feet

## **AUTHORITY**

**Generally, see ORS 537.630 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, 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.

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

## **FINDINGS OF FACT**

1. On February 7, 2013, Permit G-17009 was issued to Thornburgh Utility Group, LLC (Thornburgh) by the Department. The permit authorizes the use of up to 9.28 cfs of water, limited to a maximum annual volume of 2,355.0 AF of water, from six wells in the Deschutes River Basin for quasi-municipal uses, including irrigation of golf courses and commercial areas, and maintenance of reservoirs. The rate and volume are further limited by the corresponding mitigation provided. The maximum volume for irrigation of 323.0 acres for golf courses shall not exceed 717.0 AF. The permit specified completion of construction and complete application of water was to be made within five years of permit issuance, being February 7, 2018.

2. On April 3, 2013, Superseding Permit G-17036 was issued by the Department to correctly describe the maximum annual volume. The superseding permit authorizes the use of up to 9.28 cfs of water, limited to a maximum annual volume of 2,129.0 AF of water, from six wells in the Deschutes River Basin for quasi-municipal uses, including irrigation of golf courses and commercial areas, and maintenance of reservoirs. The rate and volume are further limited by the corresponding mitigation provided. The maximum volume for irrigation of 323.0 acres for golf courses shall not exceed 717.0 AF. The permit specified completion of construction and complete application of water was to be made within five years of permit issuance, being February 7, 2018.
3. On March 10, 2014, an assignment from Thornburgh Utility Group, LLC, to Pinnacle Utilities, LLC (Pinnacle) was recorded in the records of the Water Resources Department.
4. On April 2, 2018, Pinnacle submitted an "Application for Extension of Time" (Application) to the Department requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit G-17036 be extended from October 1, 2018, to October 1, 2035. This is the first extension of time request for Permit G-17036.
5. Notification of the Application for Extension of Time for Permit G-17036 was published in the Department's Public Notice dated April 3, 2018. No public comments were received regarding the extension application.
6. On May 8, 2018, the Department issued a Proposed Final Order to deny the Extension of Time.
7. On May 22, 2018, the Department issued an Order Withdrawing the Proposed Final Order to deny the Extension of Time for additional consideration and clarification.
8. On May 25, 2018, Janet Neuman, council for Pinnacle, submitted additional information regarding construction of Well 2.
9. On June 5, 2018, the Department issued a Proposed Final Order to approve an Extension of Time from April 3, 2018, to October 1, 2035.
10. On July 20, 2018, a protest to the Proposed Final Order was filed in opposition to the proposed approval of the extension of time<sup>1</sup>.
11. On October 26, 2018, the Department issued a Final Order in the matter of an Application for Extension of Time for Permit G-17036.

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<sup>1</sup> The protest submitted on July 20, 2018, will be returned on issuance of this superseding proposed final order.

12. On December 7, 2018, a Petition for Judicial Review and Declaratory Judgement of the October 26, 2018, Final Order in the Marion County Circuit Court of Appeals (Case No. A169580).
13. On January 31, 2019, the Department issued an Order on Reconsideration Withdrawing Final Order Approving Extension of Time for Permit G-17036.

**Review Criteria for 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>2</sup>, 537.630<sup>3</sup> and/or 539.010(5)<sup>4</sup>*

*ORS 537.630(2) states, Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time beyond the five year period, for the **completion** of the well or other means of developing and securing the ground water or for complete application to beneficial use.” The statute does not provide for an extension of time to begin the construction of the well or other means of securing the ground water.*

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

14. On April 2, 2018, the Department received an Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

15. The Application for a Permit to Use Ground Water, submitted February 9, 2005, the six wells are “Proposed”. Note 1 on page 3 of this permit application indicate a seal depth of 20 feet would be the minimum seal depth, with the final seal depth to be determined during well construction.
16. According to the Application for an Extension of Time submitted on April 2, 2018, Chart-IV, page 15 of 24, wells 1-6 have not been constructed.
17. According to the additional information submitted to the Department on May 25, 2018, three wells currently exist on the subject property, including DESC 756, DESC 3666, and DESC 3669. It is asserted in this information that DESC 756 corresponds to Well #2 on the permit.

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<sup>2</sup> ORS 537.230 applies to surface water 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.

18. The Ground Water Review performed by the Department Ground Water Section on March 21, 2005, identifies all wells being evaluated are “Not yet drilled”.
19. The Well Log for DESC 756 provides that this well was constructed with a cement seal to a depth of 18.5 feet.
20. The authorized location for Well 2 under Permit G-17036 is within the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 29, Township 15 South, Range 12 East. DESC 756 is located within NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , Section 29, Township 15 South, Range 12 East. These location are, at minimum, one-quarter of a mile apart.

Based on Findings of Fact (FOF) 15, 16, 17, 18, 19, and 20, the Department has determined that DESC 756 is not constructed at an authorized location under Permit G-17036. The Department cannot find that DESC 756 was the well intended for use under Permit G-17036.

21. ORS 537.630(2) states in part that “Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, 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”. The statute does not provide for an extension of time to begin the construction of the well or other means of securing the ground water.
22. Permit G-17036 was issued pursuant to ORS 537.625. The application does not provide evidence of prosecution of construction of the well within five years of permit issuance, being February 7, 2018.
23. OAR 690-315-0070(3)(c) requires that quasi-municipal water right permit holders must provide evidence of the actions taken to begin actual construction on the project, as defined in OAR 690-315-0020(3)(d), if required under the applicable statute.
24. The Application does not provide evidence of actual construction as defined in OAR 690-315-0020(3)(d).

Based on Findings of Fact (FOF) 21, 22, 23, and 24, the Department has determined that prosecution of construction of the well did not occur prior to February 7, 2018, as being the date for complete application of water under Permit G-17036, as required by ORS 537.630(2).

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

*Under OAR 690-315-0080(1)(c), (d), in order to approve an extension of time for 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.*



25. The remaining work to be accomplished under Permit G-17036 consists of construction of six wells, installation of the necessary water system equipment, including pumps, pipe, service connections, and irrigation equipment.
26. As of October 1, 2018, no water authorized under Permit G-17036 has been appropriated for quasi-municipal purposes.
27. Permit G-17036, is the only water right held by Pinnacle at the authorized place of use.
28. Pinnacle's peak water demand within its service area boundaries was 0.0 cfs in 2018.
29. According to the Application, in 2018, the population within Thornburgh Destination Resort, being the service boundary of Pinnacle, was zero. Pinnacle estimates the population to increase to an estimated population of 3,500 by the year 2035.
30. According to the Application, their peak demand is projected to be approximately 9.28 cfs of water by the year 2035.

Given that no development has occurred under Permit G-17036, the Department has determined that the permit holder's request to have until October 1, 2035, to complete construction and to accomplish the application of water to beneficial use under the terms of Permit G-17036 is not reasonable or necessary as Pinnacle did not prosecute construction of the well prior to February 7, 2018, as required by ORS 537.630(2).

**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),(3)(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 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.*

31. Construction of the well and water system did not begin prior to the deadline specified in the permit.
32. No physical construction work was accomplished during the original development time frame under Permit G-17036.
33. As of April 2, 2018, the Application states that an estimated \$28,087,618 has been invested towards development of the Thornburgh Destination Resort. These costs are associated with permit fees, land acquisition, planning, and legal fees. The permit holder

has not made an investment in the construction of the water system. The permit holder estimates an additional \$194,000,000 investment is needed for the completion of this project.

34. As of October 1, 2018, none of the 9.28 cfs of water allowed has been appropriated for beneficial quasi-municipal purposes under the terms of this permit.
35. The Department has considered the permit holder's compliance with conditions, including mitigation requirements, and has identified the following concerns:
  - The record does not show that prosecution of construction of the well or other means of securing the groundwater resource occurred within the time allowed in the permit, as required by ORS 537.630(2).
  - The record does not show that a totalizing flow meter has been installed.
  - The record does not show annual water use reports have been submitted to the Department.
  - The record does not show a Water Management and Conservation Plan (consistent with OAR Chapter 690, Division 86), was submitted within five years of issuance of Permit G-17036.<sup>5</sup>

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

36. As of April 2, 2018, the permit holder made no investment towards the cost of development of the water system. The permit holder estimates an additional \$194,000,000 investment is needed for the completion of this project.

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

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-f)].

37. 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-17036; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was

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<sup>5</sup> On February 26, 2020, Pinnacle submitted the required Water Management and Conservation Plan.

issued is determined at such time that such application for a new water right is submitted. The points of appropriation for Permit G-17036 are located within the Upper Deschutes Ground Water Mitigation Area. The points of appropriation for Permit G-17036, located within the Deschutes River Basin, are located above the Deschutes Scenic Waterway. The points of appropriation are within areas ranked high for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are 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 points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

38. As of April 2, 2018, the Application states that an estimated \$28,087,618 has been invested towards development of the Thornburgh Destination Resort. These costs are associated with permit fees, land acquisition, planning, and legal fees. The permit holder has not made an investment in the construction of the water system. The permit holder estimates an additional \$194,000,000 investment is needed for the completion of this project.

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

39. None have been identified.

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

40. Pinnacle Utilities, LLC projects a population increase from zero in 2018 to 3,500 by 2035.

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

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

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

42. Prior to issuance of Permit G-17009, and Superseding Permit G-17036, Thornburgh encountered numerous land use permitting issues, which delayed the issuance of the Ground Water permit.
43. Between February 7, 2013, and January 1, 2018, Pinnacle continued to experience issues with gaining final approvals of the Master Plan to develop a destination resort and litigation surrounding the development of the resort.
44. On January 1, 2018, the Final Master Plan was granted final approval.

45. ORS 537.769, in part states that, “No ordinance, order or regulation shall be adopted by a local government to regulate the inspection of wells, construction of wells or water well constructors subject to regulation by the Water Resources Commission or the Water Resources Department.” A review of the documents provided by the permit holder surrounding the land use approval issues and the subsequent legal challenges did not provide evidence that the permit holder was denied access to the land, or the ability to prosecute construction of the well as required by ORS 537.630(2), during the five years since permit issuance, being from February 7, 2013, to February 7, 2018.

The Department recognizes that the permit holder faced challenges in gaining final approval of the Master Plan to develop a destination resort. However, because the permit holder was not precluded from prosecution of construction of the well or other means of securing the ground water resource, as required by ORS 537.630(2), the Department finds that other government requirements did not prevent prosecution of construction of the well.

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

46. According to the Application, delay of development under Permit G-17036 was due, in part, to legal challenges stemming from land use issues and foreclosure, funding availability, and the economic recession of 2008.

**SUMMARY OF FINDINGS**

In order for the Department to approve an Application for an Extension of Time, the Department must make six distinct findings: (1) the application is complete; (2) the applicant began construction; (3) the time requested is reasonable; (4) the applicant can complete the project within the time requested; (5) there is good cause; AND (6) for municipal use permits, fish persistence will be maintained upon development of the “undeveloped portion”. The Application identifies a number of issues that have delayed the ability to fully build out of the resort and make beneficial use of the water authorized by the permit. Though this could result in a finding of “Good Cause” to allow for an Extension of Time, this is only one of the six findings that must be made to approve an extension of time for a quasi-municipal water use permit. The Department has determined that construction of an authorized well under Permit G-17036, did not begin within the five years required by the permit and by ORS 537.630(2), and therefore cannot make a finding that construction began as required by ORS 537.630(2).

**CONCLUSIONS OF LAW**

1. The applicant is entitled to apply for an extension of time to complete construction and completely apply water to the full beneficial use pursuant to ORS 537.630.
2. The applicant 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 did not comply with begin construction timeline requirements pursuant to ORS 537.630(2) as required by OAR 690-315-0080(1)(b).

4. The time requested to complete construction and apply water to full beneficial use is not reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use cannot be completed by October 1, 2035, pursuant to OAR 690-315-0080(1)(d), because the permit holder did not begin construction as required by ORS 537.630(2) and OAR 690-315-0080(1)(b).
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 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 permit holder has not shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e) because the permit holder did not prosecute the construction of the well within five years of permit issuance as required by ORS 537.630(2)

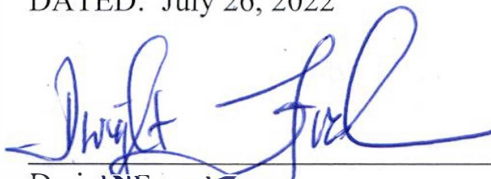
### **PROPOSED ORDER**

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

Deny the extension of time to complete construction under Permit G-17036 from February 7, 2018, to October 1, 2035.

Deny the extension of time to apply the water to beneficial use under Permit G-17036 from February 7, 2018, to October 1, 2035.

DATED: July 26, 2022

  
Dwight French  
Water Right Services Division Administrator

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

### **Proposed Final Order Hearing Rights**

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **September 9, 2022**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

2. A written protest 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 proposed 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 applicant or non-applicant protest fee required under ORS 536.050.
  
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 protest 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.

**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 Jeffrey D. Pierceall at 503-979-3213.
  
  - 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  
Salem, OR 97301-1266  
Fax: 503-986-0901
-



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

### Water Right Application Initial Review

July 1, 2022

KAMERON DELASHMUTT  
PINNACLE UTILITIES, LLC  
2447 NW CANYON DR  
REDMOND OR 97756

Reference: Application G-19139

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Water Resources Department has made the following preliminary determinations:

#### **Initial Review Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)**

1. Application G-19139 proposes the appropriation of 9.28 cubic feet per second (CFS) of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7 and Well 8 (DESC 756) in Deschutes River Basin for year-round quasi-municipal use.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Quasi-municipal use is an allowable use under the Deschutes Basin Program (OAR 690-505-0040).
4. Groundwater is not determined to be over-appropriated; however, is determined to **not be available within the capacity of the resource** as defined in OAR 690-400-0010. Therefore, groundwater is not available for the proposed use.
5. As conditioned, the proposed use of groundwater will avoid injury to existing groundwater rights and the resource.
6. The Department has determined, based upon OAR 690-09, that the proposed groundwater use will have the potential for substantial interference with Deschutes River. Therefore, in accordance with OAR 690-410-0070(1) and 690-400-0010(11)(a), surface water availability must be considered.

7. Surface water is not available at any time of the year due to senior water rights on Deschutes River and downstream waters
8. The proposed use of hydraulically-connected groundwater with the potential for substantial interference is not allowable in the Deschutes Basin from April 15 through September 30 of each year (OAR 690-033-120(2)(b)).
9. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS cap on the amount of new groundwater use that may be allocated within the Deschutes Groundwater Study Area. Under the current rules, once the cap is reached, the Department will not be able to propose issuance on any new permits.
10. The proposed use is located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute 390.826. The Department has determined, based upon OAR 690-310-0260, that there is 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.
11. Pursuant to OAR 690-505-0600(3), without mitigation, the Department is required by law to deny groundwater permit applications in the Deschutes Ground Water Study Area, due to impacts to scenic waterway flows in the Deschutes River. However, as noted in finding #4, groundwater for the proposed use under this application is not available within the capacity of the groundwater resource. **Therefore, mitigation obtained for this application under the Deschutes Mitigation Program will not overcome the significant impairment to the function or character of the groundwater resource.**
12. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
13. The application materials state that the applicant has a Water Management and Conservation Plan (WMCP); however the plan on file with the Department is a draft plan. Although it is unlikely that a permit will be issued, if the Department's findings change and a permit is issued, a WMCP will be required if incremental mitigation is proposed under OAR 690-505-0625(1)(c). For entities under 1,000 in population, a WMCP will be required within five years of permit issuance. For entities over 1,000 in population, a WMCP is required within five years of permit issuance or before use of the second increment of water development, whichever is sooner.

<b>Summary of Preliminary Determinations</b>
<b>The appropriation of 9.28 CFS of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7 and Well 8 (DESC 756) in Deschutes River Basin for quasi-municipal use is not allowable.</b>

**At this time, you must decide whether to proceed or to withdraw the application.**

- **To Proceed** - If you choose to proceed with the application you do not have to notify the Department. If the Department's findings change and the outcome of the application is favorable, **you will need to submit a completed Response to Notice of Mitigation Obligation (NOMO) form prior to the issuance of a Proposed Final Order.** The application will be placed



on the Department's Public Notice to allow others the opportunity to comment. After the comment period and receipt of the NOMO form (if applicable), the Department will complete a public interest review and issue a Proposed Final Order.

- To Withdraw - You may withdraw the application and receive a refund (minus a \$310 processing charge per application). You must notify the Department **in writing by July 15, 2022**. For your convenience you may use the enclosed "STOP PROCESSING" form.

**Although it is unlikely that a permit will be issued, if the Department's findings change and a permit is issued, it will likely include the following conditions:**

1. 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.
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 not be valid, unless the Department authorizes the change in writing.
3. **Water Use Measurement, Recording, and Reporting:**
  - 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.

4. **Water Management and Conservation Plan:**

For entities under 1,000 in population, the permittee shall submit a Water Management and Conservation Plan, consistent with OAR 690-086, within five years of permit issuance. For entities over 1,000 in population, a WMCP is required within five years of permit issuance or before use of the second increment of water development, whichever is sooner. The Director may approve an extension of this timeline to complete the required Water Management and Conservation Plan. The timeline for submittal of a plan under this permit does not alter the timelines for submittal of a plan under any other order of the Department. No water may be diverted if a Water Management

and Conservation Plan is not submitted within five years of permit issuance, unless an extension of this time has been approved.

**5. Scenic Waterway:**

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 groundwater allowed under the terms of this permit will not be subject to regulation for Scenic Water Way flows, provided the required mitigation is maintained.

**6. Well Identification Tag:**

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.

**Groundwater Mitigation Conditions:**

1. Mitigation Obligation: 6.896 AF of mitigation water in the Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125).
2. Mitigation Source: obtain 6.896 AF of mitigation water or equivalent mitigation credits that meet the requirements of OAR 690-505-0610(2)-(5).
3. Mitigation water must be legally protected instream in the Middle Deschutes 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.
4. 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.
5. 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.
6. 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).

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at <http://www.oregon.gov/ODA> to learn more about the plans and how they may affect the proposed water use.

**For Further Information:**

Feel free to contact me at [Kim.R.French@water.oregon.gov](mailto:Kim.R.French@water.oregon.gov) or 503-979-3168 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim French".

Kim French  
Water Right Program Analyst  
Oregon Water Resources Department

Enclosure:     Response to Notice of Mitigation Obligation  
                  Stop Processing Request Form

# APPLICATION FACT SHEET

Application File Number: G-19139

Applicant: KAMERON DELASHMUTT AND PINNACLE UTILITIES, LLC

County: DESCHUTES

Watermaster: JEREMY GIFFIN, 11, SCR

Priority Date: MAY 24, 2021

Source: WELL 1, WELL 2, WELL 3, WELL 4, WELL 5, WELL 6, WELL 7 AND WELL 8 (DESC 756) IN DESCHUTES RIVER BASIN

Use: QUASI-MUNICIPAL USE

Quantity: 9.28 CUBIC FEET PER SECOND

Basin Name & Number: DESCHUTES, #5

WAB: DESCHUTES R > COLUMBIA R - AB BUCKHORN CAN

**WELL LOCATION(S):**

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	15 S	12 E	WM	28	SE NE	2519 FEET SOUTH AND 578 WEST FROM NE CORNER, SECTION 28
WELL 2	15 S	12 E	WM	28	NW SE	2958 FEET SOUTH AND 2316 FEET WEST FROM NE CORNER, SECTION 28
WELL 3	15 S	12 E	WM	28	SE NW	1752 FEET SOUTH AND 3044 FEET WEST FROM NE CORNER, SECTION 28
WELL 3	15 S	12 E	WM	29	NW SE	1677 FEET NORTH AND 1466 FEET WEST FROM SE CORNER, SECTION 29
WELL 5	15 S	12 E	WM	20	NE SE	205 FEET SOUTH AND 434 FEET WEST FROM E1/4 CORNER, SECTION 20
WELL 6	15 S	12 E	WM	20	SW NE	244 FEET NORTH AND 1667 FEET WEST FROM E1/4 CORNER, SECTION 20
WELL 7	15 S	12 E	WM	17	SE NW	2446 FEET SOUTH AND 1180 FEET WEST FROM N1/4 CORNER, SECTION 17
WELL 8	15 S	12 E	WM	29	NE NE	900 FEET SOUTH AND 850 FEET WEST FROM NE CORNER, SECTION 29

**PLACE OF USE:**

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	17	NW NE
15 S	12 E	WM	17	SW NE
15 S	12 E	WM	17	NE NW
15 S	12 E	WM	17	SE NW
15 S	12 E	WM	17	SW SW
15 S	12 E	WM	17	SE SW
15 S	12 E	WM	17	NW SE
15 S	12 E	WM	17	SW SE
15 S	12 E	WM	20	NW NE
15 S	12 E	WM	20	SW NE
15 S	12 E	WM	20	NE NW
15 S	12 E	WM	20	NW NW

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	20	SW NW
15 S	12 E	WM	20	SE NW
15 S	12 E	WM	20	NE SW
15 S	12 E	WM	20	NW SW
15 S	12 E	WM	20	SW SW
15 S	12 E	WM	20	NE SE
15 S	12 E	WM	20	SW SE
15 S	12 E	WM	20	SE SE
15 S	12 E	WM	21	SW SW
15 S	12 E	WM	28	NE NE
15 S	12 E	WM	28	NW NE
15 S	12 E	WM	28	SW NE

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	28	SE NE
15 S	12 E	WM	28	NE NW
15 S	12 E	WM	28	NW NW
15 S	12 E	WM	28	SW NW
15 S	12 E	WM	28	SE NW
15 S	12 E	WM	28	NE SW
15 S	12 E	WM	28	NW SW
15 S	12 E	WM	28	NE SE
15 S	12 E	WM	28	NW SE
15 S	12 E	WM	29	NE NE
15 S	12 E	WM	29	NW NE
15 S	12 E	WM	29	SW NE
15 S	12 E	WM	29	SE NE

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	29	SW NW
15 S	12 E	WM	29	SE NW
15 S	12 E	WM	29	NE SW
15 S	12 E	WM	29	NW SW
15 S	12 E	WM	29	NE SE
15 S	12 E	WM	29	NW SE
15 S	12 E	WM	29	SE SE
15 S	12 E	WM	30	NW NE
15 S	12 E	WM	30	SW NE
15 S	12 E	WM	30	SE NE
15 S	12 E	WM	30	NE NW
15 S	12 E	WM	30	SE NW
15 S	12 E	WM	30	NE SE

**PUBLIC NOTICE DATE: July 5, 2022**

**14 DAY STOP PROCESSING DEADLINE DATE: July 15, 2022**

**30 DAY COMMENT DEADLINE DATE: August 4, 2022**

## APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our web site at: [www.wrd.state.or.us](http://www.wrd.state.or.us)

### **1. Pre-application considerations**

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0900.

### **2. Application filing**

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

### **3. Initial Review (IR)**

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

### **4. Proposed Final Order (PFO)**

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

### **5. Final Order (FO)**

- If no protest is filed, Final Order is issued.

#### ***The protest process***

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is issued.

#### ***Permit holder responsibilities***

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

**STOP PROCESSING REQUEST FORM**

**FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

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- Stop processing deadline is within 14 days of Initial Review.
- Applicant notification to withdraw Water Right Application **G-19139**.

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$310 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

- Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$310 examination fee) be returned.
- This notice must be received at Water Resources Department by:

**July 15, 2022**

- Return the notice to:

OWRD, Water Right Services Division  
STOP PROCESSING  
1725 Summer Street, NE - Suite A  
Salem OR, 97301-1271

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