

**Oregon Water Resources Department  
Water Rights Division**

Water Rights Application  
Number R-84768

**Superseding Proposed Final Order**

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On June 1, 2001, Blaine Limited Partnership submitted an application to the Department for the following water use permit:

- Amount of Water: 160.0 ACRE-FEET (AF), BEING 80.0 AF IN RESERVOIR 1 AND 80.0 AF IN RESERVOIR 2 (ENLARGEMENT, ORIGINALLY CONSTRUCTED UNDER PERMIT R-14054)
- Use of Water: STORAGE FOR SUPPLEMENTAL IRRIGATION OF 462.1 ACRES TO BE APPROPRIATED UNDER APPLICATION S-84767
- Source of Water: WINTER RUNOFF IN LOST & BOULDER DITCH, TRIBUTARY TO GATE CREEK
- Area of Proposed Use: WASCO COUNTY WITHIN SECTION 32 AND SECTION 33, TOWNSHIP 4 SOUTH, RANGE 12 EAST, W.M.

On February 22, 2002, the Department mailed the applicant notice of its Initial Review, determining that "*The use of 160.0 acre-feet, being 80.0 AF in Reservoir #1 and 80.0 AF Reservoir #2 in runoff, a tributary of Gate Creek, for storage for supplemental irrigation of 462.1 acres is allowable from January 1 through April 14 of each year, contingent upon the approval of Application R-81465, Application S-84335, and Transfer T-8808.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.

The Initial Review incorrectly referenced transfer application T-8808; the correct transfer application is T-8088.

On March 12, 2002, 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 both obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

The application has been on administrative hold since the Initial Review was issued on February 22, 2002, pending processing of Application R-81465 and Transfer T-8088.

On February 23, 2010, the Department issued a Proposed Final Order recommending denial of the application because the proposed use was not consistent with the Oregon Administrative Rules (OAR) 690-505-0020(1)(c), the Deschutes Basin Program). The Deschutes Basin Program allows storage for supplemental irrigation if the applicant gives proper cognizance to the multi-purpose concept. As of February 23, 2010, the application file did not contain information documenting proper cognizance of the multi-purpose concept.

On March 12, 2010, the applicant submitted information addressing the multi-purpose concept, and a revised map showing the correct location and coordinates of Pump #1, the point of diversion from Reservoir 1.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- recommendations by other state agencies
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

#### *Findings of Fact*

The Initial Review described the source as runoff, tributary to Gate Creek. The correct source is Lost & Boulder Ditch, tributary to Gate Creek.

The issuance of a Final Order approving transfer application T-8088 on October 31, 2008 as recorded in Special Order Volume 76, Pages 668-670, resolved the conflict addressed in the Initial Review.

The Deschutes Basin Program allows storage for supplemental irrigation if the applicant gives proper cognizance to the multi-purpose concept.

On March 12, 2010, the Department received documentation from the applicant demonstrating proper cognizance to the multi-purpose concept.

Senior water rights exist on Lost & Boulder Ditch, tributary to Gate Creek, or on downstream waters.

Lost & Boulder Ditch, a tributary of Gate Creek, is above the Deschutes River State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that water is available for further appropriation (at a 50 percent exceedance probability) from January 1 through June 30 and from August 1 through August 31.

The Department finds that the amount of water requested, 160.0 AF, being 80.0 AF in Reservoir 1 and 80.0 AF in Reservoir 2, is an acceptable amount.

In accordance with OAR 690-033-0330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality (DEQ), Fish and Wildlife (ODFW), and Agriculture. WRD and ODFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use of water as proposed in this application is not allowed April 15 through September 30 per OAR 690-033, which sets public interest standards for threatened, endangered or sensitive fish species.

#### *Conclusions of Law*

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Deschutes Basin Program, or a preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
  - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

When issuing permits, ORS 537.211(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public interest. The attached draft permit is conditioned accordingly.

#### Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED May 25, 2010

*E. Timothy Wall*

for Phillip C. Ward, Director  
Water Resources Department

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

## Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **July 9, 2010**. 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 this 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;
- If you are the applicant, the protest fee of \$300 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$600 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. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.*

## Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), 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 **July 9, 2010**. 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 \$150. If a hearing is scheduled, an additional fee of \$350 must be submitted along with a request for intervention.

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.

*This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.*

*If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

*If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:*

*Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.*

DRAFT

This is not a permit.  
STATE OF OREGON

DRAFT

COUNTY OF WASCO

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BLAINE LIMITED PARTNERSHIP  
4676 HUTSON DR  
PARKDALE, OREGON 97041

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

APPLICATION FILE NUMBER: R-84768

SOURCE OF WATER: LOST & BOULDER DITCH, TRIBUTARY TO GATE CREEK

STORAGE FACILITIES: RESERVOIR 1 AND RESERVOIR 2 (ENLARGEMENT, ORIGINALLY CONSTRUCTED UNDER PERMIT R-14054)

PURPOSE OR USE OF THE STORED WATER: STORAGE FOR SUPPLEMENTAL IRRIGATION OF 462.1 ACRES TO BE APPROPRIATED UNDER PERMIT S-XXXXX (APPLICATION S-84767)

MAXIMUM VOLUME: 160.0 ACRE FEET (AF), BEING 80.0 AF IN RESERVOIR 1 AND 80.0 AF IN RESERVOIR 2

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: JANUARY 1 THROUGH APRIL 14

DATE OF PRIORITY: JUNE 1, 2001

THE AREA SUBMERGED BY RESERVOIR 1, WHEN FULL, WILL BE 10.3 ACRES AND THE MAXIMUM DEPTH OF WATER WILL BE 14.0 FEET. THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 16.0 FEET.

THE AREA SUBMERGED BY RESERVOIR 2, WHEN FULL, WILL BE 23.0 ACRES AND THE MAXIMUM DEPTH OF WATER WILL BE 20.0 FEET. THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 22.0 FEET.

DAM LOCATIONS:

RESERVOIR 1: SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , SECTION 33, T4S, R12E, W.M.; 1070 FEET NORTH & 1000 FEET EAST FROM SW CORNER, SECTION 33

RESERVOIR 2: NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 32, T4S, R12E, W.M.; 330 FEET SOUTH & 35 FEET WEST FROM NE CORNER, SECTION 32



POINTS OF DIVERSION LOCATIONS:

POD #1 (FOR DAM #1): NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 4, T5S, R12E, W.M.; 120 FEET SOUTH & 860 FEET EAST FROM NW CORNER, SECTION 4

POD #2 (FOR DAM #2): NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 5, T5S, R12E, W.M.; 1150 FEET SOUTH & 2840 FEET WEST FROM NE CORNER, SECTION 5

THE AREA TO BE SUBMERGED BY THE RESERVOIRS IS LOCATED AS FOLLOWS:

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  RESERVOIR 2  
SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  RESERVOIR 2  
SECTION 32

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  RESERVOIR 1  
SECTION 33  
TOWNSHIP 4 SOUTH, RANGE 12 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

The permittee shall pass all live flow outside the storage season described above.

The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

Use of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, and discontinue diversion when the flows specified below are unmet. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet.

Deschutes River Scenic Waterway	
<b>Month</b>	<b>Minimum Bypass Flow (cfs)</b>
January	4500
February	4500
March 1-15	4500
March 16-31	4000
April	4000

### **DAM CONDITIONS**

The outlet gate shall be cycled at least once each year and shall be fully operational at all times. The embankment and spillway shall be kept clear of brush, debris, and burrowing animals.

Routine maintenance of the dam, spillway and appurtenant structures shall be performed as necessary to remove trees, brush and debris, and to repair slumps, areas of erosion, or defective equipment.

The earthen dam, concrete spillway and resultant reservoir shall be constructed and maintained according to the approved plans and specifications dated October 4, 1996, on file with Oregon Water Resources Dam Safety program. Any changes in the approved design prior to construction shall be documented in a letter to Dam Safety.

All construction shall be performed under the supervision of a professional engineer licensed in Oregon. No fill shall be placed until excavation of the foundation has been completed and examined in its entirety by the engineer of record, or by the Water Resources Dam Safety Engineer.

No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications.

If construction deviates from the approved design, a set of as-built drawings must accompany the engineer's written certification of completion.

The completed structure shall not be enlarged, modified, altered or otherwise changed without the prior written approval of the Director of the Water Resources Department or the Director's authorized representative. Except for routine repair and maintenance, plans and specifications prepared by an Oregon licensed engineer are required for any modification to the dam, spillway or appurtenant structures.

#### **STANDARD CONDITIONS**

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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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

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

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Construction shall be completed and the permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after storage of water, 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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for Phillip C. Ward, Director  
Water Resources Department

# Mailing List for PFO Copies

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Application #R-84768

PFO Date: July 9, 2010

## Original mailed to applicant:

BLAINE LIMITED PARTNERSHIP  
4676 HUTSON DR  
PARKDALE, OREGON 97041

## Copies sent to:

1. WRD - File # R-84768
2. Water Availability: Ken Stahr

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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## PFO and Map Copies sent to:

3. WRD - Watermaster # District 3
4. WRD - Regional Manager: NC
5. WRD - George Robison, Dam Safety
6. Oregon State Parks

Protest/ Standing Dates checked _____
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## Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

7. Donald Branton, CWRE #24, Tenneson Engineering Corp,  
PO Box 1132, The Dalles OR 97058

## "\$20 LETTER" sent to Interested Persons who have not protested or paid for copies

8. Lost and Boulder Ditch Improvement District,  
Edwin L. (Van) Conklin II, 54829 Smock Rd, Wamic, OR 97063 (affected land owner)
9. Davis A. Harvey, 79681 Woodcock Lane, Wamic, OR 97063 (affected land owner)
10. Ogden L. Wing, 79260 Ayres Rd, Tygh Valley, OR 97063-9769 (affected land owner)
11. Wasco County Public Works, 2705 East 2<sup>nd</sup> Street, The Dalles, OR 97058,  
RE: Wasco County Public Works Permit #1771

CASEWORKER : Kerry Kavanagh