

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

Water Rights Application
Number S-88402

Prior to the issuance of a permit, the Department must receive the balance of the permit recording fees in the amount of \$350.00. Please include the application number on a check made out to the Oregon Water Resources Department.

Proposed Final Order

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

Findings of Fact

1. On March 10, 2017, U.S. Bureau of Reclamation (BOR) submitted an application to the Department for the following water use permit:
 - Amount of Water: 5100.0 acre-feet (CFS) each year
 - Use of Water: establish flow augmentation for wildlife and fish life; and to establish mitigation credits under the Deschutes Ground Water Mitigation Program for the City of Prineville
 - Source of Water: Prineville Reservoir, constructed under permit R-2223, a tributary of Crooked River
 - Area of Proposed Use: In the Crooked River from Bowman Dam downstream to Lake Billy Chinook within Crook, Deschutes and Jefferson Counties
2. On April 21, 2017, the Department mailed the applicant notice of its Initial Review, determining that "*The diversion of 5100.0 AF of water from Prineville Reservoir, constructed under permit R-2223, a tributary of Crooked River for year-round wildlife and fish life use is allowable.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On April 25, 2017, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

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

- any applicable basin program
 - applicable statutes, administrative rules, and case law
 - the amount of water available
 - the rate and duty for the proposed use
 - pending senior applications and existing water rights of record
 - any applicable comprehensive plan or zoning ordinance
 - recommendations by other state agencies
 - the Scenic Waterway requirements of ORS 390.835
 - any comments received
4. The Deschutes Basin Program allows the use of water for wildlife and fish life; (OAR 690-505-0030).
 5. Senior water rights exist on Prineville Reservoir, constructed under permit R-2223, a tributary of Crooked River, or on downstream waters.
 6. Prineville Reservoir, constructed under Permit R-2223, a tributary of Crooked River is above the Deschutes River State Scenic Waterway.
 7. The federal legislation under the Crooked River Collaborative Water Security and Jobs Act of 2014 and the final order incorporating settlement agreement approving a Change in Character of Use under Transfer T-12239 (recorded at Sp. Or. Vol. 103, Pg. 732) dedicated 5100 AF of stored water to the City of Prineville for mitigation consistent with State of Oregon statutes and rules. Therefore stored water is available for further appropriation from water legally stored in Prineville Reservoir, constructed under Permit R-2223, a tributary of Crooked River.
 8. The Department finds that the amount of water requested, 5100.0 AF, is an acceptable amount.
 9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
 10. 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.

Preliminary Award of Deschutes Basin Mitigation Credits

- OAR 690-521-0100 to 690-521-0600 establishes the process in which
1. anyone may submit a water-mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.
 2. The U.S. Bureau of Reclamation has requested this surface-water application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The applicant has requested that any mitigation credits generated from this project be assigned to the City of Prineville.
The Department assigned this mitigation-credit project number
 3. MP-222.
The Department consulted with representatives from ODFW, DEQ,
 4. Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300(7) and OAR 690-505-0630(2) on May 8, 2017. No comments were received from other agencies.
The Department provided notice of the mitigation-credit project
 5. pursuant to OAR 690-521-0300(6) on May 9, 2017. No public comments were received in response to this notice.
The proposed surface-water application is intended to provide
 6. 5100.0 AF of stored water for flow augmentation, and will provide 5100.0 AF of mitigation water. Therefore, 5100.0 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation-credit project and assigned to the City of Prineville. The mitigation credits may be used to mitigate for offsetting impacts to surface water, related to groundwater production by the City of Prineville, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the General and Crooked River Zones of Impact.
Based on federal legislation under the Crooked River Collaborative
 7. Water Security and Jobs Act of 2014 and the Final Order incorporating Settlement Agreement approving a change in Character of Use under Transfer T-12239 (recorded Sp, Or. Vol. 103, Pg. 732) that dedicated 5100 AF of stored water to the City of Prineville

for mitigation consistent with State of Oregon statutes and rules, the Department has determined that these credits, once awarded, may only be used by the City of Prineville and cannot be conveyed to any other person or mitigation bank.

In the event that a volume of water less than 5100.0 AF is

8.

released for mitigation use under this permit, the number of mitigation credits available that year will be reduced proportionally.

The Department shall award final mitigation credits and a

9.

certificate upon completion of the approved project by the applicant, and verification by the Department that the project is complete. Credits may be available for use by the City of Prineville when the project is deemed complete by the Department.

Conclusions of Law

1. 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.
2. The proposed use requested in this application is allowed in the Deschutes Basin Program.
3. Stored water is available for the proposed use from Prineville Reservoir, constructed under Permit R-2223, a tributary of Crooked River.
4. The proposed use will not injure other water rights.
5. The application is in compliance with the State Agency Coordination Program regarding land use.
6. The proposed use complies with rules of the Water Resources Commission not otherwise described above.
7. For these reasons, the required presumption has been established.

8. 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.
9. 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.
10. The Department therefore concludes that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.
11. 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.
12. Mitigation credit project MP-222 appears to result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

Recommendation

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

Establishment of Mitigation Credits

1. Preliminary award of mitigation credits may be made upon approval of this application and issuance of the water-use permit associated with this mitigation project. Final award of mitigation credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. If completed as proposed, mitigation credits, in the amount of up to 5100.0 credits, as described and conditioned herein, may be awarded to this mitigation project and assigned to the City of Prineville. Mitigation credits awarded may be used to mitigate impacts to surface water related to groundwater production by the City of Prineville in the General and/or Crooked River Zones of Impact.
2. Upon final award, mitigation credits are valid until used to satisfy a mitigation obligation of a groundwater permit or certificate held by the City of Prineville within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when documentary evidence that valid credits has been obtained and assigned to satisfy a mitigation obligation have been submitted to the Department.
3. This flow augmentation permit shall be identified as a mitigation-credit project for the City of Prineville. Upon final award, the flow augmentation certificate will include the number of mitigation credits, and the zone of impact in which the mitigation credits were generated and may be used.

DATED July 11, 2017



E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

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 **August 25, 2017**. Protests must be in writing, and must include the following:

- a. Your name, address, and telephone number;
- b. 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;
- c. A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your 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 to support your protest, if known;
- f. To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) the specific public interest in ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified public interest in ORS 537.170(8) would be impaired or be detrimentally affected;
- g. If you are the applicant, the protest fee of \$410 required by ORS 536.050; and
- h. If you are not the applicant, the protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.

- i. 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.

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 **August 25, 2017**. Requests for standing must be in writing, and must include the following:

- j. The requester's name, mailing address and telephone number;
- k. If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- l. A statement that the requester supports the Proposed Final Order as issued;
- m. A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- n. A standing fee of \$200. If a hearing is scheduled, an additional fee of \$500 must be submitted along with a petition for party status.

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

- o. upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or

- p. the applicant requests a contested case hearing within 30 days after the close of the protest period.

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

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

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

This document was prepared by Scott Grew. If you have any questions about any of the statements contained in this document I can be reached at 503-986-0899. 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

COUNTIES OF JEFFERSON, CROOK AND DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

U.S. BUREAU OF RECLAMATION
1917 MARSH ROAD
YAKIMA, WA 98901-2058

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

APPLICATION FILE NUMBER: S-88402

SOURCE OF WATER: PRINEVILLE RESERVOIR, CONSTRUCTED UNDER PERMIT R-2223, A TRIBUTARY OF CROOKED RIVER

PURPOSE OR USE: FLOW AUGMENTATION FOR WILDLIFE AND FISH LIFE; AND TO ESTABLISH MITIGATION CREDITS UNDER THE DESCHUTES GROUND WATER MITIGATION PROGRAM FOR THE CITY OF PRINEVILLE

MAXIMUM VOLUME: 5100.0 ACRE-FEET EACH YEAR

PERIOD OF USE: YEAR-ROUND

DATE OF PRIORITY: MARCH 10, 2017

POINT OF DIVERSION LOCATION: BOWMAN DAM - SW $\frac{1}{4}$ NW $\frac{1}{4}$ SECTION 11, T17S, R16E, W.M.; 2350 FEET SOUTH AND 650 FEET EAST FROM NW CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IN THE CROOKED RIVER, FROM BOWMAN DAM DOWNSTREAM TO LAKE BILLY CHINOOK

Measurement Devices, and Recording/Reporting of Annual Water Conditions

- A. Before water use may begin under this permit, the permittee shall install a suitable measuring device at each point of

diversion. 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 diverted each month, and shall submit a report which includes 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.

Mitigation Credit Conditions:

Preliminary Award of Mitigation Credits: Preliminary award and

1. use of mitigation credits under mitigation-credit project MP-222 shall be consistent with OAR 690-521-0400. If completed as described and conditioned herein, mitigation in the amount of up to 5100.0 credits may be awarded to MP-222 and assigned to the City of Prineville. Mitigation credits awarded may be used to satisfy a mitigation obligation of a groundwater permit or certificate held by the City of Prineville in the General and/or Crooked River Zones of Impact.
Mitigation credits awarded under mitigation-credit project MP-222
2. may be used only by the City of Prineville, and cannot be conveyed to any other person or mitigation bank.
3. By January 1 of each calendar year, BOR must provide notice to OWRD of how much water will be released from storage under this permit during the following year. In the event that an annual volume of less than 5100.0 AF will be released for mitigation use by the City of Prineville under this permit, the number of mitigation credits available that year will be reduced proportionally. The Department and the BOR may jointly agree to an alternate forecasting schedule.
4. The BOR shall, in writing, notify the watermaster of the dates and volumes that water will be released from storage under this water right.

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.

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

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 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 of the water system 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 begin construction deadline is missed.

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

Within one year after making beneficial use 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

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

Mailing List for PFO Copies

Application #S-88402

PFO Date: July 11, 2017

Original mailed via CERTIFIED MAIL to applicant:

U.S. BUREAU OF RECLAMATION
ATTN: DAWN WIEDMEIER
1917 MARSH ROAD
YAKIMA, WA 98901-2058

SENT VIA EMAIL:

1. WRD - Watermaster # 11
2. Agent - Adam Sussman - asussman@gsiws.com
3. ODFW - Rick Kepler - rick.j.kepler@oregon.gov
4. ODFW - Amy Stewart - amy.m.stuart@oregon.gov
5. ODFW - Brett Hodgson - brett.l.hodegson@oregon.gov
6. DEQ - Bonnie Lamb - bonnie.lamb@oregon.gov
7. DEQ - Eric Nigg - eric.nigg@oregon.gov
8. DOA - James Johnson - jjohnson@oregon.gov
9. DOA - Paul Measeles - pmeasesle@oregon.gov
10. DSL - Shawn Sumwalt - shawn.sumwalt@oregon.gov
11. OWRD - Jeremy Giffin - jeremy.t.giffin@oregon.gov
12. OWRD - Laura Wilke - laura.k.wilke@oregon.gov

Copies sent to:

1. WRD - Hydrographics

PFO and Map Sheet Copies sent to:

1. WRD - File # S-88402
2. Regional Manager: Oregon State Parks ODFW District Biologist:
3. Columbia River Intertribal Fish Commission
4. USFW
5. NW Power Planning Council
6. DEQ: Dick Nichols (Eastern Region)
7. DOA: Jim Johnson

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
--

Protest/ Standing Dates checked _____
--

CASEWORKER : Scott Grew