

Oregon Water Resources Department

Water Right Services Division

Water Right Application R-88318 in the)
name of BLUE MT ANGUS LLC) PROPOSED FINAL ORDER
)

Summary: The Department proposes to issue an order approving Application R-88318, as amended, and a permit consistent with the attached draft permit.

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

- Permit recording fees in the amount of \$520.00. A check should be made out to the Oregon Water Resources Department or OWRD.

Please include the application number on any documents submitted.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and John Day Basin Program OAR 690-506. These statutes and rules can be viewed on the Oregon Water Resources website: <http://www.oregon.gov/owrd/pages/law/index.aspx>

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

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

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

FINDINGS OF FACT

Application History

1. On November 28, 2016, Blue Mt Angus LLC filed a complete application for the following water use:
 - Amount of Water: 17.5 acre-feet (AF)
 - Use of Water: storage for livestock, fire protection, irrigation, wildlife and aesthetics
 - County: Grant County
 - Location: within Section 4, Township 14 South, Range 33 East, and Sections 28 & 33, Township 14 South, Range 33 East, W.M
 - Source of Water: Indian Creek, tributary to John Day River
2. On January 13, 2017, the Department mailed the applicant notice of its Initial Review, determining that "*Because not all items above are favorable, the diversion of 17.5 AF of water from Indian Creek, runoff, and a spring, tributaries of John Day River for storage in four ponds for livestock, fire protection, irrigation, wildlife and aesthetics, is not allowable for Pond 1, Pond 2, and Pond 3, and it appears unlikely that a permit for all four ponds will be issued.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On January 17, 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.

Presumption Criteria (a) Consistency with Basin Program

4. The John Day Basin Program allows storage for livestock, fire protection, irrigation, wildlife, and aesthetics. OAR 690-506-0080

Presumption Criteria (b) Water Availability

5. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System (WARS). A copy of this assessment is in the application file. For this application, and for most reservoir applications, the Department uses WARS at 50% exceedance for determining water availability to provide a consistent method of avoiding periods of the year when flows are low and seldom exceed the needs of water rights and when additional flows are needed to support public uses. This review is done consistent with OAR 690-410-0070(2)(c). The assessment for Ponds 1, 2 and 3 established that water is available at a 50% exceedance during the month of June. The assessment for Pond 4 established that surface water is available at a 50% exceedance in the period of December 1 to June 30 ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

6. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0110(1)(c)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b) ORS 537.153(2)(b); OAR 690-310-0110(2)(d)

8. The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140, and OAR 690-033-0310 thru -00340 applies. These rules establish definitions, additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)

9. The proposed use is located in the John Day Basin; therefore the Upper Columbia Rules apply.
10. The proposed use is consistent with the Fish and Wildlife Program.
11. The application is not presumed to impair or be detrimental to the public interest. OAR 690-003-0120(1)
12. The applicant has not provided information to show compliance with the following standards: OAR 690-033-0120(2)(a)

(a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140

OAR 690-033-0310 to -0340 Statewide Rules

13. The proposed use occurs in an area that may affect the habitat of sensitive fish species, and/or outside the Columbia Basin, where, threatened or endangered fish species are located. OAR 690-033-0310
14. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
15. The interagency review team (Team) has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
16. The Team reviewed the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). The draft permit has been conditioned accordingly.
17. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

18. Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

19. Information available in department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

20. The proposed use is located within or above the John Day Scenic Waterway, as designated under ORS 390.826.

CONCLUSION OF LAW

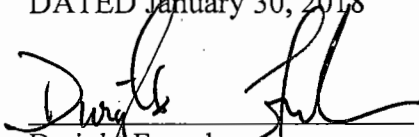
The proposed use would not impair or be detrimental to the public interest.

When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project. The attached draft permit is conditioned accordingly.

PROPOSED ORDER

The Department recommends approval of Application R-88318, and issuance of a permit consistent with the attached draft permit.

DATED January 30, 2018



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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **Friday, March 16, 2018**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

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

Requests for standing must be received in the Water Resources Department no later than **Friday, March 16, 2018**. 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

STATE OF OREGON

COUNTY OF GRANT

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BLUE MT ANGUS LLC
64444 INDIAN CREEK RD
PRAIRIE CITY OR 97869

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

APPLICATION FILE NUMBER: R-88318

SOURCE OF WATER: INDIAN CREEK AND RUNOFF, TRIBUTARIES TO JOHN DAY RIVER

STORAGE FACILITY: POND 4

PURPOSE OR USE OF THE STORED WATER: LIVESTOCK, FIRE PROTECTION, IRRIGATION,
WILDLIFE, AND AESTHETICS

VOLUME/RATE: 4.0 ACRE-FEET

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

DATE OF PRIORITY: NOVEMBER 28, 2016

DAM MAXIMUM HEIGHT / THE MAXIMUM DAM HEIGHT OF THE DAM SHALL NOT
EXCEED 10 FEET

DAM LOCATION:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Area Acres
POND 4	13 S	33 E	WM	28	NE NE	4170 FEET NORTH AND 4890 FEET EAST FROM SW CORNER, SECTION 28	0.7

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

Twp	Rng	Mer	Sec	Q-Q
13 S	33 E	WM	28	NE NE

1. Measurement Devices and Recording/Reporting of Annual Water Storage Conditions:

- A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. 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 Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
3. Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows are 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 at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (cfs)
November	500
December	500
January	500
February	1000
March	2000
April	2000
May	2000
June	2000

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 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.

The permitted volume of water shall be stored within ten 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

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