

FINDINGS OF FACT

Application History

1. On December 23, 2020, Boise Cascade Wood Products LLC filed a complete application for the following water use:

Source: WASTEWATER FROM CERTIFICATE 20584, TRIBUTARY TO GRANDE RONDE RIVER
Use: STORAGE FOR INDUSTRIAL USE AND IRRIGATION
Rate/Volume: 220.8 ACRE-FEET (AF), BEING 130.8 AF IN RESERVOIR PWP1 AND 90.0 AF IN RESERVOIR PWP2
Period of Use: JANUARY 1 THROUGH DECEMBER 31
County: UNION COUNTY
Place of Use: SECTIONS 16 AND 21, TOWNSHIP 1 NORTH, RANGE 39 EAST, W.M.

2. On January 29, 2021, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 220.8 AF of wastewater for storage, being 130.8 AF in Reservoir PWP1, constructed under Permit R-6481, and 90.0 AF in Reservoir PWP2, constructed under Permit R-15380, tributary to Phillips Creek, for industrial use and irrigation is allowable January 1 through December 31 of each year. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On February 2, 2021, the Department provided notice of the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

Presumption Criteria (a) Consistency with Basin Program

4. Storage for industrial use and irrigation is allowed under the Grande Ronde Basin Program (OAR 690-508-0020(1)(a)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

5. Water is determined to be available for further appropriation from wastewater under Water Right Certificate 20584.

Presumption Criteria (c) Injury Determination

6. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

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 537.153(2)(b); OAR 690-310-0150(2)(b)

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 -0340 apply. 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)

- A. The proposed use is not consistent with the Fish and Wildlife Program (Program).
- B. The proposed use can be conditioned to be consistent with the Program.
- C. The application, as conditioned, is presumed to not impair or be detrimental to the public interest. OAR 690-033-0120(1)
- D. The applicant has provided information to show compliance with the following standards, which will form the basis for permit conditions (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;
 - b. The proposed use complies with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;
 - c. The proposed use complies with existing state and federal water quality standards; and
 - d. The proposed use complies with water use measurement, recording and reporting required by the Director.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. 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)
- C. The interagency review 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)
- D. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). As a result of this review, Permit Specific Conditions #3 through #6 have been included in the draft permit.

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

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

9. No comments were received by the close of the comment period. OAR 690-310-0120(3)
10. 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 impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

11. The proposed use is located above the Wallowa-Grande Ronde River Scenic Waterway, as designated under ORS 390.826.
12. The amount requested, 220.8 AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
13. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)
14. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: 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.

PROPOSED ORDER

The Department recommends approval of Application R-88908 and issuance of a permit consistent with the attached draft permit.

DATED May 17, 2022



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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received by the Water Resources Department no later than **July 1, 2022**.

Protests must be in writing and 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, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 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 **July 1, 2022**. 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

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF UNION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BOISE CASCADE WOOD PRODUCTS LLC
90 S 21ST ST
ELGIN, OR 97827

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

APPLICATION FILE NUMBER: R-88908

SOURCE OF WATER: WASTEWATER FROM CERTIFICATE 20584, TRIBUTARY TO GRANDE RONDE RIVER

STORAGE FACILITIES: RESERVOIR PWP1 AND RESERVOIR PWP2

MAXIMUM DAM HEIGHT:

RESERVOIR PWP1 - 13.5 FEET
RESERVOIR PWP2 - 25.0 FEET

PURPOSE OR USE OF THE STORED WATER: INDUSTRIAL USE AND IRRIGATION

MAXIMUM VOLUME: 220.8 ACRE-FEET, BEING 130.8 AF IN RESERVOIR PWP1 AND 90.0 AF IN RESERVOIR PWP2

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: DECEMBER 23, 2020

AUTHORIZED POINT OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
MAIN WASTEWATER PUMPHOUSE	1 N	39 E	WM	16	SE SE	1310 FEET NORTH AND 210 FEET WEST FROM SE CORNER, SECTION 16

DAM LOCATIONS:

Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
RESERVOIR PWP1	1 N	39 E	WM	16	SW SE	90 FEET NORTH AND 1970 FEET WEST FROM SE CORNER, SECTION 16
RESERVOIR PWP2	1 N	39 E	WM	21	NE NE	480 FEET SOUTH AND 700 FEET WEST FROM NE CORNER, SECTION 21

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
1 N	39 E	WM	16	NW SE
1 N	39 E	WM	16	SW SE
1 N	39 E	WM	16	SE SE
1 N	39 E	WM	21	NE NE

PERMIT SPECIFIC CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. **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 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.

3. **Maintain Passage:**

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or where historically inhabited by native migratory fish (ORS 509.585).

4. **Riparian Area Restoration:**

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.

5. In-Water Work:

Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1 through October 15, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

6. Fish Stocking:

Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit issued by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to ensure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

DAM CONDITIONS

1. Prior to commencing construction activity, all design reports, drawings of the dam and critical appurtenant structures, specifications, and plans for construction administration must be approved by the State Engineer as indicated by the State Engineer's stamp and a written letter of approval from the State Engineer.

RESERVOIR CONDITIONS

1. 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.
2. 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.
3. The permittee may be required in the future to install, maintain, and operate fish screening and bypass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
4. 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.

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
4. 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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. 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.
2. 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.
3. 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
Oregon Water Resources Department