



Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture

Office of the Director

635 Capitol Street NE
Salem, OR 97301-2532

(503) 986-4552

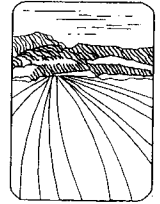
FAX (503) 986-4750

December 13, 2004

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**WATER RESOURCES DEPT
SALEM, OREGON**



Phil Ward, Director
Oregon Water Resources Department
725 NE Summer Street, Suite A
Salem, Oregon 97301-1271

SUBJECT: Proposed Extension of Donner und Blitzen Subbasin Irrigation Season

In January 1942, the Harney County Circuit Court issued a decree determining the relative rights of claimants in the Donner und Blitzen River subbasin. The decree establishes an irrigation season of March 15 to October 1 of each year. All water rights for irrigation within the subbasin, unless otherwise individually conditioned, are limited to this season. In the Donner und Blitzen subbasin, there is a legitimate need, during many years, for a limited amount of irrigation use outside the prescribed season.

Irrigation in the Donner und Blitzen subbasin is largely dependant on the timing of snowmelt. When the main snowmelt(s) occur in the subbasin prior to March 15, the majority of the opportunity to irrigate may be lost. In such early snowmelt years, irrigators in the subbasin would benefit greatly if they were provided the opportunity to irrigate prior to March 15.

The Oregon Department of Agriculture therefore requests that the Water Resources Commission extend the irrigation season in the Donner und Blitzen subbasin (including the Diamond Area tributaries) for existing irrigation water right holders to March 1 or earlier of each year under the provisions of ORS 537.385.

If you should have any questions about this request please contact Chuck Craig of my staff at (503) 986-4556.

Sincerely,

Katy Coba,
Director



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

Fish Division
 3406 Cherry Avenue NE
 Salem, OR 97303
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JAN 05 2005

**WATER RESOURCES DEPT
 SALEM, OREGON**



Mr. Phil Ward, Director
 Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-0900

RE: Proposed Extension of Donner und Blitzen Subbasin Irrigation Season

This letter responds to Water Resources Department's request that the Oregon Department of Fish and Wildlife (ODFW) comment on whether extending the irrigation season will impair in-stream flows that are necessary to protect aquatic resources. (See ORS 537.385).

The Department of Agriculture has requested that the Water Resources Commission extend the irrigation season in the Donner und Blitzen subbasin from March 15th to March 1st of each year. ODFW understands the irrigation season extension request is to provide greater flexibility for irrigation water users to divert water during early season snowmelt events and to help facilitate the resolution of concerns over water right application S 84222 in the name of the U.S. Fish and Wildlife Service for the Malheur National Wildlife Refuge.

ODFW has the following comments and recommendations:

ODFW's main concern is to maintain habitat and stream flows for redband trout and other aquatic species. Actual timing of migration and spawning of redband trout in the Donner und Blitzen River and its tributaries has not been definitively determined. Current exercise of water rights during the irrigation season of March 15 to October 1 limits the redband's options for full life history functions such as migration, spawning and rearing. By extending the irrigation season from March 15th to March 1st winter rearing habitat for the redband trout and other aquatic species may be compromised by reducing flows earlier in the season. Since migration and spawning activity typically occur after March 15th, in this subbasin, ODFW's main concern in commenting on the proposed extension of irrigation season is to maintain winter rearing habitat during that period. In order to ensure water withdrawals during the extended irrigation season would not impair instream habitat necessary to protect aquatic resources, ODFW requests that the Commission:

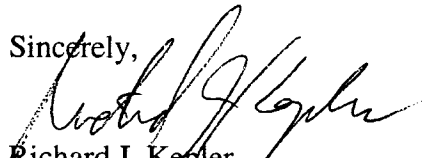
- 1) Include in its order a bypass flow that must be met prior to diversion being allowed under the extended irrigation water rights. The bypass flow should be in place during the extended irrigation season, March 1 to March 15. More specifically, during this period, the bypass flows should be 73.0 cfs for the Donner und Blitzen River (as measured at USGS gaging station 10396000, 11.0 cfs for Bridge Creek (as measured at USFWS gaging station 357004, and 5.0 cfs for McCoy Creek (as measured at USFWS gaging station 357007 and on through the Malheur National Wildlife Refuge.

- 2) Include in its order a provision that ensures the extended irrigation water rights are not enlarged. Specifically, the existing rate of withdrawal and the existing annual duty shall be retained as the rate and duty for the extended season.
- 3) Additionally, ODFW understands that water withdrawals during the extended irrigation season are not for new storage of peak flow. ODFW's understanding is that any proposed storage projects or other new water rights would go through the existing water right permit process which allows for ODFW to participate in evaluation of the proposal and provide comments on the effects to aquatic resources.

With these conditions ODFW believes that the redband trout and other aquatic resources would not be impaired further than under the current March 15th irrigation season start date and does not object to the extension of the irrigation season from March 15th to March 1st.

Thank you for consideration of these comments and recommendations. If you have any questions or concerns please contact me at (503) 947-6084.

Sincerely,



Richard J. Kepler

Manager, Water Quantity/Quality Section

Cc: Bob Hooton, ODFW Bend
Tim Walters, ODFW Hinds
Mike Eberle, USFWS
Judge Steven E. Grasty, Harney County
Karen Russell, WaterWatch
Katy Coba, Oregon Department of Agriculture



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

2146 NE 4th Street, Suite 104

Bend, OR 97701

(541) 388-6146

Eastern Region

Bend Office

December 21, 2004

Mr. Phil Ward, Director
Oregon Water Resources Department
725 Summer Street, NE Suite A
Salem, OR 97301-1271

RE: Extension of Irrigation Season for
Donner und Blitzen Subbasin

Mr. Ward:

I have reviewed the December 13, 2004, request by Katy Coba, Director of the Oregon Department of Agriculture, to expand the beginning of the irrigation season in the Donner und Blitzen subbasin from March 15 of each year to an earlier date.

Elevated stream temperature is the only known or documented water quality problem in the Donner und Blitzen subbasin and occurs only in the summer. This is based upon a review of the Department's 303d list.

Based upon this information, the Department does not object to expanding the beginning of the irrigation season to an earlier date in the year.

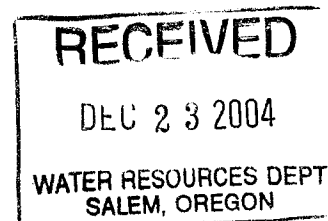
If you have questions, please call me in Bend at 541-388-6146, X251.

Sincerely,

Dick Nichols, Manager
Bend WQ Section
Eastern Region

DN/rm

Cc: Katy Coba/Chuck Craig – ODA – Salem
Adam Sussman – OWRD - Salem



**BEFORE THE WATER RESOURCES COMMISSION OF OREGON
HARNEY COUNTY**

IN THE MATTER OF EXTENDING THE) DRAFT
IRRIGATION SEASON FOR THE DONNER) FINAL O R D E R
UND BLITZEN SUBBASIN OF THE MALHEUR)
LAKE BASIN UNDER ORS 537.385)

ORS 537.385 authorizes the Commission, upon receipt of a request by the Oregon Department of Agriculture, to enter an order to extend an irrigation season of a subbasin beyond the period established by adjudication, administrative rule, or by condition imposed on a permit or certificate.

Findings of Fact

1. On December 13, 2005, the Oregon Department of Agriculture submitted a request to the Oregon Water Resources Commission to extend the irrigation season for the Donner und Blitzen Subbasin to begin March 1 of each year.
2. The irrigation season for the use of surface water in the Donner und Blitzen Subbasin was established by Decree of the Harney County Circuit Court entered on January 8, 1942. The decree establishes the irrigation season as March 15 to October 1 of each year.
3. Water is available for new uses in an extended irrigation season during the month of March.
4. Water use, consistent with identified bypass flows during the extended irrigation season of March 1 to March 15 of each year, will not impair instream flows necessary to protect aquatic resources. The bypass flows are as follows:

Quantity (cfs)	Source	Measurement Site
73.0	Donner und Blitzen River	USGS Gage 10396000
11.0	Bridge Creek	USFWS Gage 357004
5.0	McCoy Creek	USFWS Gage 357007 & through Refuge

5. Water diversion and use during the period of the extended irrigation season of March 1 to March 15 of each year will not impair the achievement and maintenance of water quality standards for the Donner und Blitzen Subbasin.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Conclusions of Law

The Water Resources Commission concludes that the requirements to extend the irrigation season for the Donner und Blitzen Subbasin under ORS 537.385 are satisfied.

Now, therefore, it is ORDERED:

1. The irrigation season for the Donner und Blitzen Subbasin of the Malheur Lake Basin is extended and shall be established as the period between March 1 and October 1 of each year.
2. The following bypass flows must be met at the respective measurement sites prior to irrigators diverting water under the extended irrigation season of March 1 to March 15 of each year:

Quantity (cfs)	Source	Measurement Site
73.0	Donner und Blitzen River	USGS Gage 10396000
11.0	Bridge Creek	USFWS Gage 357004
5.0	McCoy Creek	USFWS Gage 357007 & through Refuge

3. New water use permits allowing direct flow diversion for irrigation are subject to the above bypass flows during the extended irrigation season as well as additional conditions or bypass flows that may be necessary to protect aquatic resources.
4. All new appropriations of water are subject to applicable public interest review standards.
5. Pursuant to ORS 537.385, the use of water for irrigation during the period March 1 to March 15 of each year shall be subordinated to all existing and future water rights.
6. Pursuant to ORS 537.385, the use of water during the extended irrigation season shall comply with all conditions and limitations of the permit or certificate under which use is made, including the rate, duty, and place of use.
7. Pursuant to ORS 537.385, the use of water shall be regulated among irrigators for whom the irrigation season has been extended according to the priority date of the permit or certificate.

Dated at Salem, Oregon this _____ day of January __, 2005.

Dan Thorndike, Chair
Oregon Water Resources Commission