

**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