



# Oregon

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## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Tom Paul, Administrator Field Services Division

**SUBJECT:** Agenda Item M, January 14, 2005  
Water Resources Commission Meeting

### **Proposed Extension of Donner und Blitzen Subbasin Irrigation Season**

#### **I. Issue Statement**

The Oregon Department of Agriculture (ODA) requests the Commission extend the irrigation season in the Donner und Blitzen Subbasin of the Malheur Lake Basin from March 15 to March 1 of each year. The request is made pursuant to ORS 537.385.

#### **II. Background**

An *irrigation season* governs the period of use for irrigation water rights within a given basin or subbasin. Irrigation seasons have been established for most river basins in Oregon either by basin adjudication or basin rulemaking under ORS 536.300. In basins where the adjudication decree and the basin administrative rules do not specify an irrigation season, the irrigation season is established by administrative rule (OAR 690-250-070) as being from March 1 through October 31 of each year.

ORS 537.385 authorizes ODA to request the Commission extend an irrigation season which has been established by adjudication, administrative rule, permit, or certificate. The Commission may issue an order to extend an irrigation season if it finds:

1. Water is available during the period of the extended irrigation season;
2. Water use during the extended irrigation season would not impair instream flows that are necessary to protect aquatic resources; and
3. Water diversion and use during the period of the extended irrigation season would not impair the achievement or maintenance of water quality standards as established for the water source by the Department of Environmental Quality.

In order to protect existing and future water rights from injury, ORS 537.385 places conditions on the use of water during the extended irrigation season. The conditions are:

1. The use of water is subordinate to all existing and future water rights;
2. The use of water shall comply with all conditions and limitations of the permit or certificate, including the rate, duty, and place of use of the water right; and
3. The use of water shall be regulated among the irrigators for whom the irrigation season has been extended according to priority date.

The Donner und Blitzen River Decree, issued January 8, 1942, established an irrigation season of March 15 through October 1 of each year. Streamflow in the Donner und Blitzen Subbasin is snow pack dependent, and irrigation is closely linked to the timing of snow pack melt and runoff. Most existing reservoirs in the subbasin are of modest size, do not have significant storage capability, and present little opportunity to moderate and redistribute runoff. Given this, ODA requests an extension of the irrigation season to March 1 of each year to enable irrigators the opportunity to apply water to beneficial use in years when the subbasin experiences conditions that lead to rapid melting of snow pack and early season runoff. The ODA request is included as Attachment 1.

The proposal to extend the irrigation season in the Donner und Blitzen Subbasin has been part of a settlement agreement related to the U.S. Fish and Wildlife Service's water right application S-84222 for the Malheur Wildlife Refuge. (See Agenda Item L, January 14, 2005). The proposal has been shared with the subbasin water users in various forums over the last few months. Water Resources Department staff also solicited comments on the proposal to extend the irrigation season from the Oregon Department of Fish & Wildlife (ODFW) and the Oregon Department of Environmental Quality (DEQ). The comments are included as Attachments 2 and 3.

### **III. Discussion**

In responding to the request by ODA to extend the irrigation season, the Commission must find that water is available during the extended irrigation season and the use of water would not impair instream flows or the ability to achieve or maintain water quality standards for the source.

#### ***Water Availability***

The Department's water availability analysis (adjusted to reflect modifications of application S-84222) indicates water is available for new uses during the month of March (See Attachment 4).

#### ***Instream Flows Necessary to Protect Aquatic Resources***

ODFW does not oppose the proposed extension of the irrigation season in the Donner und Blitzen Subbasin, but recommends bypass flows for the Donner und Blitzen River and Bridge and McCoy Creeks to maintain migration, spawning, and rearing habitat for redband trout and other aquatic species (See Attachment 2).

ODFW recommends the following bypass flows be met at the respective measurement sites before irrigators are allowed to divert 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

Consistent with ORS 537.385 and the Department's administration of water rights, ODFW also requests that any order extending the irrigation season not allow for the enlargement of water rights and that the diversion of water during the extended season be limited to the allowable rate and be calculated as part of the annual duty of water under each water right.

Finally, ODFW explicitly reserves the opportunity to evaluate and comment on any new additional water right applications in the subbasin, and recommend conditions on proposed appropriations as necessary to protect aquatic resources.

#### *Achieving and Maintaining Water Quality Established for the Source*

The Oregon Department of Environmental Quality identified the only documented water quality problem as elevated stream temperature during the summer months and does not oppose the proposed extension of the irrigation season in the Donner und Blitzen Subbasin. DEQ's comments are included as Attachment 3.

#### **IV. ORS 537.385 Findings**

Based on analysis of water availability data and comments from ODFW and DEQ, the Commission can make the following findings necessary to issue an order extending the irrigation season in the Donner und Blitzen Subbasin:

1. Water is available for new uses during March, at an eighty percent exceedance level;
2. Water use, consistent with identified bypass flows during the extended irrigation season of March 1 to March 15, will not impair instream flows that are necessary to protect aquatic resources; and
3. Water diversion and use during the period of the extended irrigation season will not impair the achievement or maintenance of water quality standards as established for the Donner und Blitzen Subbasin.

#### **VI. Summary**

ODA has requested the Commission issue an order to extend the irrigation season in the Donner und Blitzen Subbasin to March 1 of each year. For the Commission to issue an order to extend the irrigation season, it must find that water is available to extend the irrigation season and that an extended irrigation season will not impair instream flows for aquatic resources or meeting water quality standards. Staff analyzed water availability and consulted with ODFW and DEQ

about the proposed extended irrigation season. Staff conclude the Commission can make findings necessary to issue an order extending the irrigation season under ORS 537.385. Water use during the extended irrigation season would be subject to the statutory conditions to ensure no injury to existing or future water rights.

## **I. Alternatives**

The Commission may consider the following alternative actions:

1. Issue an order extending the irrigation season to March 1 of each year as provided in Attachment 5.
2. Decline to issue an order extending the irrigation season.

## **VI. Director's Recommendation**

The Director recommends that the Commission adopt Alternative 1 and issue an order substantially similar to the draft order in Attachment 5 extending the irrigation season in the Donner und Blitzen Subbasin to March 1 of each year.

### Attachments:

1. ODA Request to Extend Donner und Blitzen Subbasin Irrigation Season
2. ODFW Comments on Extending the Irrigation Season
3. DEQ Comments on Extending the Irrigation Season
4. Water Availability Data
5. Draft Final Order

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