

STATE OF OREGON
 COUNTY OF UMATILLA
 CERTIFICATE OF WATER RIGHT
 FOR PARTIAL PERFECTION

THIS CERTIFICATE ISSUED TO

PORT OF UMATILLA
 PO BOX 879
 505 WILLAMETTE ST
 UMATILLA OR 97882

confirms the right to the use of water perfected under the terms of Permit S-49497. The amount of water used to which this right is entitled is limited to the amount used beneficially, and shall not exceed the amount specified, or its equivalent in the case of rotation, measured at the point of diversion from the source. The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-58245

SOURCE OF WATER: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE: 36.6 CUBIC FEET PER SECOND (CFS)

DATE OF PRIORITY: JANUARY 19, 1979

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	10	NE SE	1970 FEET NORTH AND 280 FEET WEST FROM SE CORNER, SECTION 10

A description of the place of use is as follows:

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	2	NW NE
4 N	28 E	WM	2	SW NE
4 N	28 E	WM	2	NW NW
4 N	28 E	WM	2	SW NW
4 N	28 E	WM	2	SE NW
4 N	28 E	WM	2	NE SW
4 N	28 E	WM	2	NW SW

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	2	SW SW
4 N	28 E	WM	2	SE SW
4 N	28 E	WM	2	NW SE
4 N	28 E	WM	2	SW SE
4 N	28 E	WM	3	NE NE
4 N	28 E	WM	3	NW NE
4 N	28 E	WM	3	SW NE

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and 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. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate within three months after issuance of the certificate.

Twtp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	3	SE NE
4 N	28 E	WM	3	NW SW
4 N	28 E	WM	3	SW SW
4 N	28 E	WM	3	SE SW
4 N	28 E	WM	3	NE SE
4 N	28 E	WM	3	NW SE
4 N	28 E	WM	3	SW SE
4 N	28 E	WM	3	SE SE
4 N	28 E	WM	4	NE NE
4 N	28 E	WM	4	SE NE
4 N	28 E	WM	4	NE SE
4 N	28 E	WM	4	SE SE
4 N	28 E	WM	8	SE SE
4 N	28 E	WM	9	NE NE
4 N	28 E	WM	9	SW NE
4 N	28 E	WM	9	SE NE
4 N	28 E	WM	9	NE SE
4 N	28 E	WM	9	NW SE
4 N	28 E	WM	9	SW SE
4 N	28 E	WM	9	SE SE
4 N	28 E	WM	10	ALL
4 N	28 E	WM	11	NW NE
4 N	28 E	WM	11	SW NE
4 N	28 E	WM	11	SE NE
4 N	28 E	WM	11	NE NW
4 N	28 E	WM	11	NW NW
4 N	28 E	WM	11	SW NW
4 N	28 E	WM	11	SE NW
4 N	28 E	WM	11	NE SW
4 N	28 E	WM	11	NW SW
4 N	28 E	WM	11	SW SW
4 N	28 E	WM	11	SE SW
4 N	28 E	WM	11	NE SE
4 N	28 E	WM	11	NW SE
4 N	28 E	WM	11	SW SE
4 N	28 E	WM	11	SE SE
4 N	28 E	WM	12	NW NW
4 N	28 E	WM	12	SW NW
4 N	28 E	WM	12	SE NW
4 N	28 E	WM	12	NE SW
4 N	28 E	WM	12	NW SW
4 N	28 E	WM	13	NE NE
4 N	28 E	WM	13	NW NE
4 N	28 E	WM	13	SW NE
4 N	28 E	WM	13	SE NE
4 N	28 E	WM	13	NE NW
4 N	28 E	WM	13	SW NW
4 N	28 E	WM	13	SE NW
4 N	28 E	WM	13	NE SW
4 N	28 E	WM	13	NW SW
4 N	28 E	WM	13	SW SW
4 N	28 E	WM	13	SE SW

Twtp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	13	NE SE
4 N	28 E	WM	13	NW SE
4 N	28 E	WM	13	SW SE
4 N	28 E	WM	13	SE SE
4 N	28 E	WM	14	NE NE
4 N	28 E	WM	14	NW NE
4 N	28 E	WM	14	SW NE
4 N	28 E	WM	14	SE NE
4 N	28 E	WM	14	NE NW
4 N	28 E	WM	14	NW NW
4 N	28 E	WM	14	SW NW
4 N	28 E	WM	14	SE NW
4 N	28 E	WM	14	NE SE
4 N	28 E	WM	14	SE SE
4 N	28 E	WM	15	NE NE
4 N	28 E	WM	15	NW NE
4 N	28 E	WM	15	SW NE
4 N	28 E	WM	15	SE NE
4 N	28 E	WM	15	NE NW
4 N	28 E	WM	15	NW NW
4 N	28 E	WM	15	SW NW
4 N	28 E	WM	15	SE NW
4 N	28 E	WM	15	NE SW
4 N	28 E	WM	15	NW SW
4 N	28 E	WM	16	NE NE
4 N	28 E	WM	16	NW NE
4 N	28 E	WM	16	SW NE
4 N	28 E	WM	16	SE NE
4 N	28 E	WM	16	NE NW
4 N	28 E	WM	16	NW NW
4 N	28 E	WM	16	SE NW
4 N	28 E	WM	21	SW SE
4 N	28 E	WM	22	NE NE
4 N	28 E	WM	22	NW NE
4 N	28 E	WM	22	SW NE
4 N	28 E	WM	22	SE NE
4 N	28 E	WM	23	NW NE
4 N	28 E	WM	23	SW NE
4 N	28 E	WM	23	NE NW
4 N	28 E	WM	23	SE NW
4 N	28 E	WM	24	NE NW
4 N	28 E	WM	24	NW NW
4 N	28 E	WM	24	SW NW
4 N	28 E	WM	24	SE NW
4 N	28 E	WM	24	NE SW
4 N	28 E	WM	24	NW SW
4 N	28 E	WM	24	SW SW
4 N	28 E	WM	24	SE SW
4 N	28 E	WM	27	NE SW
4 N	28 E	WM	27	NW SW
4 N	28 E	WM	27	SW SW
4 N	28 E	WM	27	SE SW

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	27	NW SE
4 N	28 E	WM	27	SW SE
4 N	28 E	WM	28	SW NE
4 N	28 E	WM	28	NE SE
4 N	28 E	WM	28	SE SE

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	30	SW NE
4 N	28 E	WM	30	NE NW
4 N	28 E	WM	30	NW NW
4 N	28 E	WM	30	SW NW
4 N	28 E	WM	30	SE NW

A. Minimum Fish Flow Needs

- a. Minimum fish flow needs in the Columbia River as recommended by ODFW are in Table 1, below; flows are to be measured in the Columbia River at McNary Dam. Daily flow reports for McNary Dam are available from the Fish Passage Center (FPC) established by the Northwest Power Planning Council (NPPC) at https://www.fpc.org/river/flowspill/FlowSpill_Query.html

Table 1

ODFW's Recommended Minimum Fish Flow Needs in the Columbia River, Measured at McNary Dam Near Umatilla, Oregon	
Month	1000 Cubic Feet per Second
April 10 – June 30	260
July 1 – August 31	200

b. Alternate Streamflow Measurement Point

The location of a streamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish (FP Conditions) may be revised if the Port provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions – Generally

The maximum amount of the conditioned portion, being 136.46 cfs as incrementally perfected, that can be diverted as a result of these FP Conditions is determined in proportion to the amount by which the flows shown in Table 1 are missed based on a seven-day rolling average of average of mean daily flows measured in the Columbia River at McNary Dam. The percent of missed target flows is defined as:

$$(1 - [Q_A / Q_T]) \times 100\%$$

where Q_A is the actual flow measured at the designated location based on the seven-day rolling average, and Q_T is the target flow (from Table 1). The percent missed target flows applied to the conditioned portion provides the maximum amount of conditioned water that can be diverted as a result of these FP Conditions, and is defined as:

$$E - (E \times \% \text{ missed target flows}),$$

where E is the conditioned portion, being 136.46 cfs.

The maximum amount of conditioned water that can be diverted as a result of these FP Conditions may be adjusted by a Consumptive Use Percentage, when applicable, as per Item C., below. The overall reduction to the amount of the conditioned portion will not exceed 20% of the conditioned portion.

When $Q_A \geq Q_T$, the amount of the conditioned portion that can be diverted would not need to be reduced as a result of this FP Condition.

C. Consumptive Use Percentages for Utilization in Columbia River Calculations

a. Initial Consumptive Use Percentages

The Port of Umatilla has not identified any Consumptive Use Percentages based on the return of flows to the Columbia River through effluent discharge. Thus, at this time the Port may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the conditioned portion that can be diverted.

b. First Time Utilization of Consumptive Use Percentages

First time utilization of Consumptive Use Percentages is contingent upon the Port (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in C.f., below.

Consumptive Use Percentages submitted to the Department for review must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The proposed Consumptive Use Percentages should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for the Extension of Time for Permit S-49497 dated August 24, 2012.

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the conditioned portion that can be diverted beyond an approval period (as described in C.f., below) is contingent upon the Port submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in C.f., below.

The updates to the Consumptive Use Percentages must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The updates should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for Extension of Time for Permit S-49497 dated August 24, 2012.

d. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology or the practices at the Port's wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the Columbia River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the conditioned portion that can be diverted. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the Columbia River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in C.f., below.

If such changes to either wastewater technology or the practices at the Port's wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the Port submitting Consumptive Use Percentages Updates as per C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

e. Relocation of the Point(s) of Diversion(s) and/or Return Flows

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the conditioned portion that can be diverted as a result of this FP Condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the Port (1) providing evidence in writing that ODFW has determined that any relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting Consumptive Use Percentages Updates as per C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

f. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the conditioned portion that can be diverted as a result of this FP Condition may continue for a 10 year approval period that begins 10 years from the Water Resources Director's most recent date of concurrence with Consumptive Use Percentages Updates as evidenced by the record, unless sections C.d., or C.e. (above) are applicable.

Consumptive Use Percentages (first time utilization or updates) which are submitted and receive the Director's concurrence will begin a new 10-year approval period. The approval period begins on the date of the Water Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The Port at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On April 15, the last seven mean daily flows in the Columbia River at McNary Dam¹ were 310K, 290K, 280K, 260K, 260K, 240K and 250K cfs. The seven-day rolling average (Q_A) is 270K cfs. The amount of the conditioned portion that can be diverted would not be reduced because the 7-day average of mean daily flows is greater than the 260K cfs target flow (Q_T) for April 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed - overall reduction less than 20% of conditioned portion

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 170K cfs, and the target flow (Q_T) is 200K, then the target flow would be missed by 15.0%.

$$(1 - (170 / 200)) \times 100\% = 15.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%² during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 15.0% (from Step 1), then the amount of the conditioned portion of the certificate that could be diverted would be reduced by 9.3%, or 12.69 cfs

$$(62.2\% \times 15.0\%) / 100 = 9.3\%$$
$$(136.46 \times 9.3\%) / 100\% = 12.69 \text{ cfs}$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the conditioned portion of the certificate would only be reduced by the % by which the target flow is missed – 15.0% (or 20.46 cfs) in this example).

Step 3: The overall reduction of 9.3% of the amount of the conditioned portion does not exceed 20% of the conditioned portion, being 136.46 cfs.

¹ Daily flow data for McNary Dam is available at https://www.fpc.org/river/flowspill/FlowSpill_Query.html

² Currently, the Port of Umatilla may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the conditioned portion that can be diverted. The utilization of the Consumptive Use Percentage 62.2% is only for illustrative purposes in this example.

Step 4: Given that the conditioned portion represented on this certificate is 36.6 cfs, which needs to be reduced by 12.69 cfs (from Step 2) the maximum amount of water that may be diverted under this certificate as a result of this fish persistence condition is 23.91 cfs.

$$36.6 - 12.69 = 23.91 \text{ cfs}$$

Example 3: Target flow missed - overall reduction greater than 20% of conditioned portion

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 100K cfs, and the target flow (Q_T) is 200K, then the target flow would be missed by 50.0%.

$$(1 - (100/200)) \times 100\% = 50.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%³ during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 50.0% (from Step 1), then the amount of the conditioned portion would be reduced by 31.1%.

$$(62.2\% \times 50.0\%) / 100 = 31.1\%$$

Step 3: The overall reduction of 31.1% of the amount of the conditioned portion exceeds 20% of the conditioned portion, being 136.46 cfs.

Step 4: The maximum reduction to the conditioned portion under this certificate will be 27.29 cfs.

$$(136.46 \times 20\%) / 100\% = 27.29 \text{ cfs}$$

Step 5: Given that the conditioned portion represented on this certificate is 36.6 cfs, which needs to be reduced by 27.29 cfs (from Step 4), the maximum amount of water that may be diverted under this certificate is 9.31 cfs.

$$36.6 - 27.29 = 9.31 \text{ cfs}$$

End of Conditions to Maintain the Persistence of Listed Fish

The right granted herein is limited to the amount which can be applied to beneficial use and shall not exceed 36.6 CFS measured at the point of diversion, or its equivalent in case of rotation with other water users, from the Columbia River.

This right 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 right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described; however, water may be applied to lands which are not specifically described above, provided the holder of this right complies with ORS 540.510(3).

This certificate is issued to clarify the conditions required to maintain the persistence of listed fish by an order of the Water Resources Director entered September __, 2022 at Special Order Volume 125, Page 625-628 and supersedes certificate 94987.

³ Currently, the Port of Umatilla may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the conditioned portion that can be diverted. The utilization of the Consumptive Use Percentage 62.2% is only for illustrative purposes in this example.

This certificate was issued for a partial perfection of Permit S-49497 as described in OAR 690-320-0040 and by an order of the Water Resources Director entered March 31, 2020 at Special Order Volume 116, Page 312-313.

Issued **SEP 30 2022**



Dwight French
Water Right Services Division Administrator, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department