

**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-40699, Water Right Application S-51339,) FINAL
in the name of the Tri Authority Water & Sanitary Authority) ORDER

Permit Information

Application File S-51339/ Permit S-40699

Basin 16 – Umpqua Basin / Watermaster District 15

Date of Priority: October 4, 1973

Authorized Use of Water

Source of Water: South Umpqua River, a tributary of Umpqua River
Purpose or Use: Municipal Use
Maximum Rate: 3.00 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

Appeal Rights

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

Application History

Permit S-40699 was issued by the Department on September 16, 1976. The permit called for completion of construction by October 1, 1978, and complete application of water to beneficial use by October 1, 1979. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 1996. On October 2, 2003, Tri Authority Water & Sanitary Authority submitted an application to the Department for an extension of time for Permit S-40699. In accordance with OAR 690-315-0050(2), on November 30, 2021, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2046, and the time to fully apply water to beneficial use to October 1, 2046. The protest period closed January 14, 2022, in accordance with OAR 690-315-0060(1). No protest was filed.

FINDINGS OF FACT

The Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated November 30, 2021.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. Development Limitations

A maximum diversion of 1.78 cfs of water is currently allowed under Permit S-40699. Any diversion of water beyond 1.78 cfs (not to exceed the maximum amount authorized under the permit, being 3.00 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-40699 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department. For review of water management and conservation plans that propose to increase the maximum rate of water diverted under an Extended Permit, after January 1, 2042, that the additional diversion of water will not impair or be detrimental to the public interest.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-40699 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

The first 1.78 cfs of water under Permit S-40699 or any subsequent water right(s) originating from Permit S-40699 is not and will not be conditioned for maintaining fish persistence.

The portion of Permit S-40699 subject to these fish persistence conditions is established as 1.22 cfs in accordance with ORS 537.230(3)(d). The use of 1.22 cfs as authorized under this permit must be hereafter conditioned with these fish persistence conditions. Therefore, all subsequent water right(s) originating from this portion of Permit S-40699 implemented will include these Conditions to Maintain the Persistence of Listed Fish. If more than one resulting water right is subject to these Conditions to Maintain the Persistence of Listed Fish, then legal use of the 1.22 cfs conditioned to maintain the

persistence of listed fish species shall be determined among all the permit/water right holders of record; all the permit/water right holders of record subject to these Conditions to Maintain the Persistence of Listed Fish must ensure that these fish persistence conditions are met.

A. Minimum Fish Flow Needs

Fish persistence target flows in the South Umpqua River as recommended by ODFW are in Table 2, below; flows are to be measured at USGS streamgage #14312000, South Umpqua River near Brockway, OR.

Table 2

Month	ODFW Target Flows at Gage 14312000 (cfs)
JAN	571
FEB	571
MAR	571
APR	571
MAY	336
JUN	226
JUL	226
AUG	201
SEPT 1-15	178
SEPT 16-30	225
OCT 1-15	268
OCT 16-31	419
NOV	571
DEC	571

Alternate Streamflow Measurement Point

The location of a streamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the permit

or water right holder provides evidence in writing that ODFW has determined that flows may be measured at an alternate streamflow measurement point and the permit or water right holder 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 1.22 cfs conditioned for fish persistence that can be

appropriated is determined in proportion to the amount by which the target flows shown in Table 2 are missed based on measured daily flows as determined or measured by the water user at USGS streamgage #14312000, South Umpqua River near Brockway, OR.

The fraction of target flow achievement is defined as:

$$T_a = (Q_g - P) / Q_t \quad (EQ 1)$$

Q_g = gaged daily flow

P = amount of water conditioned for fish persistence (1.22 cfs)

Q_t = target flow

T_a = target flow achievement

When the fraction target flow achievement (T_a) is greater than 1, no curtailment is recommended. When T_a is less than one, full or partial curtailment is recommended as outlined below.

When target flow achievement is missed ($T_a < 1$; determined using Equation 1) from September 16 through October 31, of each year, the full undeveloped portion of 1.22 cfs shall be curtailed.

When target flow achievement is missed ($T_a < 1$; determined using Equation 1) during the periods of January 1 through September 15, and November 1 through December 31, of each year, partial curtailment of the amount of water conditioned for fish persistence is recommended. The curtailed permit rate is determined by scaling the amount of water conditioned for fish persistence by the fraction the flow target is not being met (EQ 2).

If $T_a \geq 1$, no curtailment necessary. Otherwise:

$$D_m = T_a * P \quad (EQ 2)$$

D_m = maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition

C. Consumptive Use Percentages for Utilization in South Umpqua River Calculations

a. Initial Consumptive Use Percentages

The Tri-City Water and Sanitary Authority (TCWSA) has not identified any Consumptive Use Percentages based on the return of flows to the S. Umpqua River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition.

b. First Time Utilization of Consumptive Use Percentages

Utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition may begin after the issuance of the Final Order for this extension of time.

First time utilization of Consumptive Use Percentages is contingent upon the TCWSA (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 2.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 this extension of time.

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., below) is contingent upon the City 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 2.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 this extension of time.

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

If there are changes to either wastewater technology or the practices at the TCWSA wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the South Umpqua 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 undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the South Umpqua 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 2.C.f., below.

If such changes to either wastewater technology or the practices at TCWSA wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the TCWSA submitting Consumptive Use Percentages Updates as per 2.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 undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the TCWSA (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 2.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 undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that ends 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 2.C.d., or 2.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 TCWSA at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On August 15, the gaged daily flow is (Q_g) 245.0 cfs. Given that the amount of water conditioned for fish persistence (P) is 1.22 cfs, then the gaged daily flow (Q_g) minus 1.22 is (P) greater than the 201.0 cfs target flow (Q_t) for August 15. In this example, $(Q_g - P)/Q_t \geq 1$.

$$(245.0 - 1.22)/201 \geq 1$$

The amount of water conditioned for fish persistence that can be diverted would not be reduced because the target flow is considered met.

Example 2: Target flow missed during the periods of January 1 through September 15, and November 1 through December 31, of each year.

On August 15, the gaged daily flow (Q_g) is 198.0 cfs. Given that the amount of water conditioned for fish persistence (P) is 1.22 cfs, then the gaged daily flow (Q_g) minus 1.22 cfs (P) is less than the 201.0 cfs target flow (Q_t) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence (P) is 1.22 cfs, if on August 15, the average of the gaged daily flow (Q_g) is 198.0 cfs and the target flow (Q_t) is 201.0 cfs, the fraction of target flow achievement (T_a) is less than 1.

$$(198.0 - 1.22) / 201.0 = 0.979$$

$$0.979 < 1$$

Step 2: Given the fraction of target flow achievement (T_a) is less than 1 (from Step 1), and amount of water conditioned for fish persistence (P) is 1.22 cfs; the maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition (D_m) is 1.19 cfs.

$$0.979 * 1.22 \text{ cfs} = 1.19 \text{ cfs}$$

Example 3: Target flow missed during the period September 16 through October 31, of each year.

On October 15, the gaged daily flow is (Q_g) 245.0 cfs. Given that the amount of water conditioned for fish persistence (P) is 1.22 cfs, then the gaged daily flow (Q_g) minus 1.22 is (P) less than the 268 cfs target flow (Q_t) for October 15. In this example, $(Q_g - P)/Q_t < 1$.

$$(245.0 - 1.22)/268 < 1$$

Because $T_a < 1$ during the period of full curtailment, no water can be diverted under the conditions of this permit.


CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0080(3).

ORDER

The extension of time for Application S-51339, Permit S-40699, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1996, to October 1, 2046. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 1996, to October 1, 2046.

DATED: January 28, 2022



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

If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503-979-3213.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
