

STATE OF OREGON

COUNTY OF LINCOLN

ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

Pursuant to ORS 537.211, after notice was given, reviewing objections, and resolving a petition for reconsideration, this order approves, as conditioned or limited herein, TRANSFER 7589 and modifies Permit 51190 in the name of CITY OF YACHATS P.O. BOX 345, YACHATS, OREGON 97498. This order is issued to modify the previous order approving T-7589 (Special Order Volume 50, Page 578-579) and by reference incorporates the Stipulated Final Order and Agreement on Reconsideration issued September 3, 1998, by Administrative Law Judge Weisha Mize.

The permit to be modified, Permit 51190, has a priority date of MARCH 20, 1989. The permit allows the use of the YACHATS RIVER, a tributary of the PACIFIC OCEAN, for MUNICIPAL USE. The amount of water to which this permit is entitled is limited to an amount actually beneficially used and shall not exceed 2.0 cubic foot per second, of which 1.0 cfs is not subject to instream water right Certificate 59608 or minimum stream flows with a date of priority of March 26, 1974, if available at the authorized point of diversion: NE $\frac{1}{4}$  SW $\frac{1}{4}$ , SECTION 31, T 14 S, R 11 W, WM; 1740 FEET SOUTH AND 2550 FEET EAST FROM THE NW CORNER OF THE SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 31, or its equivalent in case of rotation, measured at the point of diversion from the source.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

NE $\frac{1}{4}$  SE $\frac{1}{4}$   
S $\frac{1}{2}$  SE $\frac{1}{4}$   
SECTION 22

SW $\frac{1}{4}$  SW $\frac{1}{4}$   
SECTION 23

W $\frac{1}{2}$  W $\frac{1}{2}$   
SE $\frac{1}{4}$  SW $\frac{1}{4}$   
SECTION 26

NE $\frac{1}{4}$   
N $\frac{1}{2}$  SE $\frac{1}{4}$   
SE $\frac{1}{4}$  SE $\frac{1}{4}$   
SECTION 27

NE¼  
SECTION 34  
TOWNSHIP 14 SOUTH, RANGE 12 WEST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described

The applicant proposes to add an additional point of diversion to:

NW¼ SE¼, SECTION 26, T 14 S, R 12 W, WM; 295 FEET NORTH AND 420 FEET EAST FROM THE NW CORNER OF THE SW¼ SE¼, SECTION 26

THIS CHANGE TO AN EXISTING WATER PERMIT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE PERMIT HOLDER:

1. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion and is further limited as described below.
2. The City shall install and maintain a permanent recording measuring device on the Yachats River, the design and location of which will be specified in consultation with the Water Resources Department (WRD) and the Department of Fish and Wildlife (ODFW). The device shall be installed prior to any diversions or use of water under this permit, placed so as to accurately measure stream flows needed to meet instream water rights Cert. 59739, Cert 59608 and Cert. 73161, and be accessible to WRD and ODFW staff at all times. Maintenance of the measuring device and associated rating curve shall substantially comply with the applicable provisions of OAR 690-085-015(4) (methods for measuring open channels) so an estimate of flow can be made at any time. Flow shall be determined prior to and during diversions under this permit, and the City shall maintain a record of flow measurements and observations.

3. Measurement, recording and reporting conditions:
  - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the volume and instantaneous rate of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
  - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
4. When streamflow on the Yachats River, measured at the device described in #2 above, exceeds senior and junior instream rights (Cert. 59739, Cert. 59608 and Cert. 73161) the City may exercise this permit (both points of diversion and the full 2.0 cfs) without restriction beyond the existing terms of the permit as amended.
5. When streamflows measured at the device described in #2 above drop below the flows identified in the junior instream water right (Cert. 73161) or senior instream water rights (Cert. 59739 or Cert. 69608), use of the Yachats River under this permit may be made only in emergencies or when population growth exceeds other sources of supply. Future use due to population growth exceeding supply shall be limited by the City's compliance with its approved water management and conservation plan.

"Emergencies" are limited to: sustained drought, accompanied by the institution of curtailment measures

described in the City's water management plan that include curtailment triggers linked to streamflows; supply line breakage; firefighting; outdoor events within the City's service area which place an abnormally high demand on water supply (e.g. Cycle Oregon, outdoor festivals); catastrophic loss of use of primary water supply sources; and threats to public health, not attributable to inefficiency or chronic conditions, as may be approved jointly by ODFW and WRD.

Population growth will be deemed to have "exceeded other sources of supply" only if the City: (1) is in compliance with its approved water management plan which includes the elements specified in the Stipulated Final Order and Agreement on Reconsideration (T-7589), and (2) (a) prior to 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first, is either meeting the plan schedule or has reached the goal of 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources; or (b) after 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first has reached or exceeded 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources.

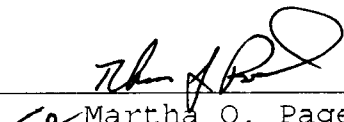
6. Addition of the lower diversion point shall be a permanent change.
7. In the event streamflows measured at the device described in #2 above are insufficient to satisfy the junior instream water right (Cert. 73161) or the senior instream water rights (Cert. 59739 and Cert. 69608), and the Yachats River is utilized under this permit, diversions shall not exceed 1 cfs, and those diversions shall be made at a rate not to exceed 0.50 cfs at the upper point of diversion and 0.50 cfs at the lower point of diversion.
8. Water may not be diverted at any point of diversion authorized under this permit until all applicable conditions of the permit have been met, including

compliance with state-wide land-use goals and any local acknowledged land-use plans.

9. Water shall be acquired from the same surface water source as the original point of diversion.
10. All other terms and conditions of the permit shall remain the same.

Permit 51190, in the name of the City of Yachats, is amended as described herein and a superceding permit, consistent with the attached draft permit shall be issued. Permit 51190 is of no further force or effect.

WITNESS the signature of the Water Resources  
Director, affixed September 8, 1998.

  
\_\_\_\_\_  
For Martha O. Pagel, Director