

STATE OF OREGON

COUNTY OF LINCOLN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

CITY OF YACHATS
PO BOX 345
YACHATS OREGON 97498

(541)547-3565

to use the waters of YACHATS RIVER, a tributary of PACIFIC OCEAN, for MUNICIPAL USE.

This permit is issued approving Application 69856. The date of priority is March 20, 1989. The use is limited to not more than 2.0 CUBIC FOOT PER SECOND (CFS), 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, or its equivalent in case of rotation, measured at the point of diversion from the source. The use of water under this permit is further limited as described below.

The points of diversion are located as follows:

POD 1 - NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 31, T14S, R11W, WM; 1740 FEET SOUTH AND 2550 FEET EAST FROM THE NW CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 31. POD 2 - NW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 26, T14S, R12W, WM; 295 FEET NORTH AND 420 FEET EAST FROM THE NW CORNER OF THE SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 26.

Within 1 year from the date this permit is issued, the permittee shall submit a revised water management and conservation plan consistent with the Agreement and Stipulated Final Order on Reconsideration issued on September 3, 1998, and OAR Chapter 690, Division 86.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is 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

NE $\frac{1}{4}$
SECTION 34
TOWNSHIP 14 SOUTH, RANGE 12 WEST, W.M.

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.

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.

When streamflow on the Yachats River, measured at the device described 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.

When streamflows measured at the device described 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.

In the event streamflows measured at the device described 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 (POD 1) and 0.50 cfs at the lower point of diversion (POD 2).

Addition of the lower diversion point (POD 2) shall be a permanent change.

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.

Actual construction work shall begin on or before November 19, 1991, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1998 (See Special Order Volume 46, page 534 and Special Order Volume 49, page 208).

This permit 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.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

This permit is issued to supercede permit 51190. Permit 51190 is superceded in order to incorporate the relevant portions of the Stipulated Final Order and Agreement on Reconsideration issued on September 3, 1998, by Administrative Law Judge Weisha Mize and to incorporate the conditions contained in the Order Approving An Additional Point of Diversion recorded in Special Order Volume 52, pages 767-771. Permit 51190 is superceded by this instrument and is of no further force or effect.

Issued September 15, 1998

Martha O. Pagel for

Martha O. Pagel, Director
Water Resources Department

*Permit Amended
V 53 P265*