

**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-49245, Water Right Application S-68266,) FINAL
in the name of the City of Philomath) ORDER

Permit Information

Application File S-68266/ Permit S-49245

Basin 16 – Willamette Basin / Watermaster District 16

Date of Priority: January 28, 1985

Authorized Use of Water

Source of Water: Mary's River, a tributary of Willamette River
Purpose or Use: Municipal Use
Maximum Rate: 3.50 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-49245 was issued by the Department on April 8, 1985. The permit called for completion of construction by October 1, 1987, and complete application of water to beneficial use by October 1, 1988. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 1993. On May 1, 2012, City of Philomath submitted an application to the Department for an extension of time for Permit S-49245. In accordance with OAR 690-315-0050(2), on November 29, 2022, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2043, and the time to fully apply water to beneficial use to October 1, 2043. The protest period closed January 15, 2023, 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 February 21, 2023.

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 1.68 cfs of water is currently allowed under Permit S-49245. Any diversion of water beyond 1.68 cfs (not to exceed the maximum amount authorized under the permit, being 3.50 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-49245 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-49245 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**

Up to 1.68 cfs of water from Marys River under this or any subsequent water right(s) originating from Permit S-49245 is not and will not be conditioned to maintain fish persistence.

The undeveloped portion of the permit from Marys River subject to these fish persistence conditions is established as 1.82 cfs in accordance with 537.230(2)(c). The use of 1.82 cfs of water from Marys River as authorized under this permit must be hereafter conditioned with these fish persistence conditions. Therefore, all subsequent water right(s) originating from Permit S-49245 must 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 1.82 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 Target Flows

Fish persistence target flows in Marys River as recommended by ODFW are in Table 2, below; flows are to be measured USGS streamgage #14171000, ~3.5 miles downstream of the point of diversion (POD).

Table 2

Month	ODFW Target Flows at Gage 14171000 (cfs)
JAN	135.0
FEB	135.0
MAR	135.0
APR	135.0
MAY	135.0
JUN 1-15	70.0
JUN 16-30	40.0
JUL 1-15	20.0
JUL 16-31	15.0
AUG	15.0
SEPT	15.0
OCT 1-15	20.0
OCT 16-31	38.7
NOV 1-15	70.0
NOV 16-30	135.0
DEC	135.0

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. If the City of Philomath elects to install an appropriate streamflow measurement device near the POD for compliance purposes in place of the USGS gage, ODFW will provide revised target flows to reflect the POD monitoring location.

B. Determining Water Use Reductions - Generally

The maximum amount of the 1.82 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 as measured at USGS streamgage #14171000, ~3.5 miles downstream of the point of diversion (POD). The fraction of target flow achievement is defined as:

$$T_a = (Q_g - P) / Q_t$$

(Equation 1)

- T_a = target flow achievement
- Q_g = gaged daily flow
- P = amount of water conditioned for fish persistence (1.82 cfs)
- Q_t = target flow

When target flow achievement (T_a) is greater than 1, no curtailment is recommended. When target flow achievement is less than 1, curtailment of the undeveloped portion is recommended. For partial curtailment, the curtailed permit rate is determined by scaling the undeveloped portion of the permit by the fraction the flow target is not met (*Equation 2*).

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

$$D_m = T_a * P \quad (\text{Equation 2})$$

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

For descriptive purposes only, expected levels of target flow achievement based on historical data are shown in Table 3, which tabulates the analysis described above using daily gage data for the period of record from 10/1/2000-5/20/2018, the undeveloped water right, and monthly target flows for fish persistence. For the years analyzed, the fraction of target non-achievement by month (Table 3-column 2) ranged from 0 to 0.62. Target flows are generally met during winter and early spring. The most frequent incidences of target non-achievement occur in late summer and fall.

Table 3. Fraction of the time monthly target flows were missed and the median of target flow achievement when missed.

Month	Fraction of period target missed	Median of Target Flow Achievement (T_a) when $T_a < 1$
JAN	0.03	0.91
FEB	0.02	0.87
MAR	0.04	0.69
APR	0.00	na
MAY	0.32	0.80
JUN 1-15	0.20	0.87
JUN 16-30	0.08	0.78
JUL 1-15	0.05	0.91
JUL 16-31	0.06	0.78
AUG	0.37	0.71

SEP	0.62	0.74
OCT 1-15	0.48	0.61
OCT 16-31	0.60	0.57
NOV 1-15	0.37	0.51
NOV 16-30	0.30	0.64
DEC	0.12	0.59

C. Examples

Example 1: Target flow met.

On August 15, the gaged daily flow is (Q_g) 19.0 cfs. Given that the amount of water conditioned for fish persistence (P) is 1.82 cfs, then the gaged daily flow (Q_g) minus 1.82 is (P) greater than the 15.0 cfs target flow (Q_t) for August 15. In this example, $(Q_g - P)/Q_t \geq 1$.

$$(19.0 - 1.82)/15.0 \geq 1$$

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.

On August 15, the gaged daily flow (Q_g) is 12.0 cfs. Given that the amount of water conditioned for fish persistence (P) is 1.82 cfs, then the gaged daily flow (Q_g) minus 1.82 cfs (P) is less than the 15.0 cfs target flow (Q_t) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence (P) is 1.82 cfs, if on August 15, the average of the gaged daily flow (Q_g) is 12.0 cfs and the target flow (Q_t) is 15.0 cfs, the fraction of target flow achievement (T_a) is less than 1.

$$(12.0 - 1.82) / 15 = 0.679$$

$$0.679 < 1$$

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 1.89 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 1.28 cfs.

$$0.679 * 1.82 \text{ cfs} = 1.24 \text{ cfs}$$

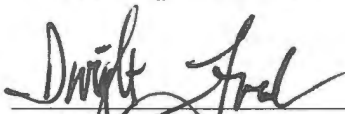
CONCLUSION OF LAW

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-68266, Permit S-49245, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1993, to October 1, 2043. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 1993, to October 1, 2043.

DATED: April 14, 2023



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. Pierce at 503-986-0802.

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
