

**Final Order Incorporating Settlement Agreement
Extension of Time for Permit S-49240**

Appeal Rights

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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

The Department issued Permit S-49240 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. On January 18, 2005, Tualatin Valley Water District (TVWD) submitted an application to the Department for an extension of time for Permit S-49240. In accordance with OAR 690-315-0050(2), on February 20, 2007, the Department issued a Proposed Final Order (PFO) proposing to extend the time to complete construction and the time to fully apply water to beneficial use to October 1, 2047, and to make the extension subject to certain conditions. The protest period closed on April 6, 2007, in accordance with OAR 690-315-0060(1). On April 6, 2007, WaterWatch of Oregon filed a protest against the PFO. On June 7, 2007, the permit was assigned from Tualatin Valley Water District to the Willamette River Water Coalition (WRWC).

In the PFO, the Department concluded that, based on the factors demonstrated by TVWD, the permit may be extended subject to certain conditions. On June 21, 2007, a Settlement Agreement was entered into between OWRD, the WRWC, and WaterWatch of Oregon. The Settlement Agreement is incorporated into this Final Order and is attached hereto. Pursuant to the Settlement Agreement, the following permit extension conditions have been agreed to:

Conditions

Development Limitations

1. The first diversion by each municipal water supplier of any water under permit S-49240 shall only be authorized after a period of 60 days from the date of issuance of a final order pursuant to OAR Chapter 690, Division 86 approving a Water Management and Conservation Plan (WMCP). For each subsequent WMCP filed by each municipal water supplier requesting diversion of water under permit S-49240, diversion of any amount of water by that municipal water supplier greater than the amount of water authorized for diversion by the previous WMCP shall only be authorized after a period of 60 days from the date of issuance of a final order pursuant to OAR Chapter 690, Division 86

approving that subsequent WMCP. For example, if in the year 2008 the initial WMCP final order authorizes use of 5.0 cfs under extended permit S-49240, and the subsequent WMCP final order in the year 2012 authorizes use of a total of 10.0 cfs under extended permit S-49240, the subject municipal water supplier shall not divert or use the additional 5.0 cfs under the year 2012 WMCP final order for 60 days after the final order is issued. Initial WMCPs shall be submitted to the Department by the municipal water suppliers that are authorized to use water under this permit as of the date of this Final Order, within 3 years from the date of this Final Order. Use of water under permit S-49240 shall be consistent with the applicable approved WMCP.

2. The deadline established in this 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. The Department may determine that a WMCP submitted to meet the requirements of this order also meets the WMCP submittal requirements of other Department orders.
3. Additional future municipal water suppliers that serve more than 1,000 individual residential or business end-user customer accounts, and that are authorized to use water under this permit pursuant to any contract or Intergovernmental Agreement (excluding short-term or emergency arrangements), shall submit a new or revised WMCP that also meets the requirements of items (4) and (5) below. Any such contract or Intergovernmental Agreement (excluding short-term or emergency arrangements) that allows municipal water suppliers that serve more than 1,000 individual residential or end-user business customer accounts to use water under Permit S-49240 shall include a provision that provides notice of the provisions of this extension Final Order, and in particular conditions #1 and #3 of this Final Order. For the purposes of this condition "short-term" means an Intergovernmental Agreement or contract that does not exceed one continuous period of two calendar years. For the purposes of this condition "emergency arrangement" means an Intergovernmental Agreement or contract to provide water to an entity in the event the entity loses its water supply due to unforeseen circumstances, for a period not to exceed one continuous period of one calendar year.
4. In addition to the requirements of OAR Chapter 690, Division 86, before using water under permit S-49240, each municipal water supplier authorized to divert or use water under this permit, and which is required to submit a WMCP pursuant to this extension Final Order, shall submit a WMCP that includes a section titled "Willamette River Fish Flows: Public Education and Voluntary Conservation" and receive a final order approving the WMCP pursuant to OAR Chapter 690, Division 86. Each subsequent WMCP submitted by these municipal water suppliers will also include such a section. WMCP section "Willamette River Fish Flows: Public Education and Voluntary Conservation" will include the following elements:
 - a. Implementation steps for initiating and disseminating a public education message (as further specified below) to its water use customers, reasonably calculated to inform the customers of the municipal water supplier. Such education message shall be disseminated by placing such message on the water supplier's website and by either (1) media, or (2) print or electronic communications delivered to the customers (e.g. bill inserts or e-mail communications), or both.

An annual April 1 public education message will be provided. The April 1 public education message covers instances where streamflows fall below the minimum fish flow needs at Salem identified in this Final Order on extension of permit S-49240 (minimum fish flow needs at Salem) during the entire April 1 to May 31 time period.

An additional public education message will be provided upon the seven-day rolling average of mean daily streamflows (measured on the Willamette River at Salem, USGS Gage number 14191000) falling below the minimum fish flow needs at Salem by 10 percent or more for 15 consecutive days, at any time of the year (except for April 1 to May 31). Such message will be placed on the water supplier's website until the minimum fish flow needs at Salem are met.

Another message will be distributed through the media, or by print or electronic communication for each period of 15 consecutive days that the seven-day rolling average of mean daily streamflows are below the minimum fish flow needs at Salem by 10 percent or more.

- b. Description of the content of the public education message:
 - i. Inform customers: about the status of river flows in relation to the minimum fish flow needs in the Willamette River, measured at Salem and the connection between their water use and Willamette River flows; that Willamette River flows are important to fish (including a description of fish resources and the presence of any listed fish); and that the Willamette River is part of the entity's source of supply.
 - ii. Provide a list of voluntary water conservation measures that are commonly accepted as effective, consistent with the municipal water supplier's WMCP, varying by season as appropriate. Such list must include, but shall not be limited to, avoidance of outdoor watering, avoidance of outdoor car washing, and avoidance of washing outdoor surfaces.
 - iii. Inform water use customers that while water conservation is important year-round, it is especially important when minimum fish flow needs in the Willamette River, measured at Salem, are not being met.
- c. A discussion of the public education message distribution and the recommended voluntary conservation measures and why they are reasonably expected to reduce water use.
- d. A reminder to OWRD staff concerning OWRD's obligation described in Term 3 of the Settlement Agreement concerning extension of time for Permit S-49240.

Conditions to Maintain the Persistence of Listed Fish

- 5. The maximum total amount of water that can legally be diverted shall be reduced in proportion to the amount by which the flows shown in Table 1 are not met based on a seven day rolling average of mean daily flows measured on the Willamette River at Salem (USGS Gage Number 14191000), as illustrated in the examples below. During April, May and June, the reduction in the amount that can be legally diverted will not exceed 20 percent.

Example 1:

On July 15, the last seven mean daily flows were 7000, 6500, 6000, 5500, 5250, 5000 and 4750 cfs. The seven day rolling average is 5714 cfs. The maximum total amount of water that can legally be diverted under this permit would not be reduced because the 7 day average of mean daily flows is greater than the 5,630 target flow for July 15.

Example 2:

If on July 15 the average of the last seven mean daily flows was 5,011 cfs, then the target flows would be missed by 11 percent ($100 - (5010/5630)*100$). If the applicable WMCP indicates that the maximum total amount of water that can be legally diverted under the permit is 10 cfs, then the maximum total amount of water that could be legally diverted under this permit would be reduced by 11 percent.

MINIMUM FISH FLOW NEEDS AT SALEM	
July - October	5,630
November - March	6,200
April - May	15,000
June 1 - 15	12,600
June 16 - 30	8,500

Based on comments on the PFO from TVWD, OWRD's continuing evaluation reveals that certain other changes should be made to the PFO. The two following sections supersede the corresponding original sections from the PFO.

Findings of Fact

48. In accordance with OAR 690-315-0090(3), and as specified under Item 1 (Development Limitations) of the "Conditions" section of this PFO, the Department has determined that this extension shall be conditioned to provide that the diversion of any water under Permit S-49240 shall only be authorized under a final order issued pursuant to OAR Chapter 690, Division 86 approving a WMCP(s).

Conclusions of Law

7. In accordance with OAR 690-315-0090(3), and as described in Finding 48 above, the Department has established, as specified under Item 1 of the "Conditions" section of this Proposed Final Order for an Extension of Time, that the diversion of any water under Permit S-49240 shall only be authorized under a final order

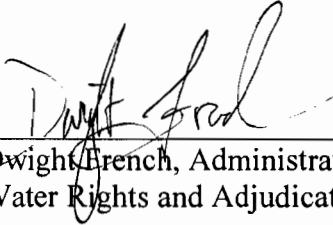
issued pursuant to OAR Chapter 690, Division 86 approving a WMCP(s), except that diversion of any amount of water authorized for the first time by any WMCP shall not occur until 60 days after issuance of the final order, as specified in Development Limitation 1.

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-50693, Permit S-49240, therefore, is approved subject to conditions contained herein. The deadlines for complete construction and the time to fully apply water to beneficial use are extended to October 1, 2047.

DATED: June 26, 2007



Dwight French, Administrator
Water Rights and Adjudications Division
for
Phillip C. Ward, Director

If you have any questions about statements contained in this document, please contact Ann L. Reece at (503) 986-0808.

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

NOTE: Include a copy of the “Important Notice” document along with the original copy of the Final Order being sent to the permit holder.

Mailing List for Extension FO Copies

Application S-50693
Permit S-49240

FO Date: June 26, 2007

Original mailed to permit holder:

Willamette River Water Coalition
Attn: General Manager, Tualatin Valley Water Dist.
PO Box 745
Beaverton, OR 97075

Copies Mailed
By: (SUPPORT STAFF)
on: (DATE)

Copies sent to:

1. WRD - Appl. File S- 50693 / Permit S-49240
2. WRD – Dwight French, Administrator – Water Rights and Adjudications Division
3. WRD – Debbie Colbert, Senior Policy Coordinator
4. WRD – Bill Fujii
5. ODFW – North Willamette District 3, Danette Ehlers, Clackamas
6. DEQ – NW Region, Andy Schaedel, Portland
7. Golder Associates, Inc., 9 Monroe Parkway, Suite 270, Lake Oswego, OR 97035
8. Adam Sussman, GSI Water Solutions, 1600 Western Blvd., Suite 240, Corvallis, OR 97333
9. Clark Balfour, Cable Huston Benedict Haagensen & Lloyd LLP, Suite 2000, 1001 SW Fifth Ave., Portland, OR 97204-1136

Fee paid as specified under ORS 536.050 to receive copy:

10. None

Receiving via e-mail (10 AM Tuesday of signature date)

11. PFO: WRD – Watermaster District 16 – Mike McCord, Salem
Done by _____ *Date* _____

CASEWORKER: ALR

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Extension of Time for Application)	
S-50693, Permit S-49240 in the name of the)	
Willamette River Water Coalition,)	SETTLEMENT
<i>Applicant,</i>)	AGREEMENT
)	
WaterWatch of Oregon, Inc.,)	
<i>Protestant</i>)	
)	
_____)	

The Oregon Water Resources Department (“OWRD”), the Willamette River Water Coalition (“WRWC”), and WaterWatch of Oregon, Inc. (“Protestant”), referred to collectively as “the Parties” and each individually a “Party,” do hereby stipulate and agree in this “Settlement Agreement” as follows:

Stipulations

- I. On January 18, 2005, Tualatin Valley Water District (“TVWD”) submitted a \$250 application fee and an “Application for Extension of Time,” consistent with municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100, requesting the time to complete construction of the water system and to apply water to full beneficial use be extended from October 1, 1997 to October 1, 2047.
- II. On February 20, 2007, OWRD issued a Proposed Final Order (“PFO”) recommending approval of the request for an extension of time with certain conditions.
- III. On April 6, 2007, the Protestant submitted a \$250 protest fee and a protest regarding the PFO on extension of time for Permit S-49240, Application S-50693.
- IV. On June 7, 2007, OWRD approved an assignment of Permit S-49240 from Tualatin Valley Water District to the WRWC. The WRWC now holds Permit S-49240.
- V. The Parties agree to resolve Protestant’s pending administrative protest to the February 20, 2007 PFO on application for extension of time for Permit S-49240, Application S-50693 on the following terms.

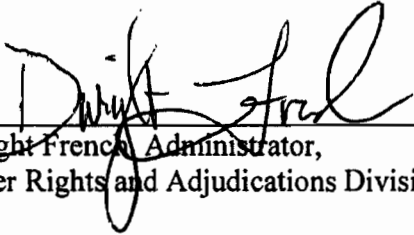
Terms of Agreement

- 1. Effective immediately upon signature of this Settlement Agreement by all Parties, the WRWC withdraws its application for an extension of time for Permit S-49240 pursuant to Oregon Administrative Rule (OAR) Chapter 690 Division 320. The WRWC expressly retains its application for an extension of time for Permit S-49240 pursuant to OAR Chapter 690 Division 315.
- 2. Regarding the application for extension of time for Permit S-49240, Application S-50693, dated January 18, 2005, WRWC and Protestant hereby expressly waive all right and opportunity to request a contested case hearing, request for reconsideration, exceptions, or to

seek judicial review of the Final Order if substantively consistent with this Settlement Agreement and the attached Draft Final Order, in addition to waiving any right and opportunity to challenge this Settlement Agreement, including the attached Draft Final Order which is part of the Settlement Agreement. The Parties expressly retain the right to take whatever lawful action is necessary to remedy a breach or ensure performance of this Settlement Agreement and Final Order by any entity or party required to perform pursuant to it. Nothing in this Settlement Agreement affects the rights of any party to challenge other orders pertaining to the use of water under this permit, including orders regarding associated Water Management and Conservation Plans.

3. In reviewing Water Management and Conservation Plans (WMCP) of municipal water suppliers authorized to use water under Permit S-49240 and which are required to submit WMCP(s) pursuant to the Final Order on extension of time for permit S-49240, OWRD will make a finding regarding whether the WMCP section "Willamette River Fish Flows: Public Education and Voluntary Conservation" includes the elements set forth in Development Limitation Condition 4 of the Final Order on extension of time for Permit S-49240. In the event that OWRD inadvertently fails to make such a finding, OWRD shall have an opportunity to correct the omission in a timely manner once the omission is discovered.
4. After WRWC and Protestant sign this Settlement Agreement, they will mail the complete signed original documents back to the Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
5. Within 30 days after OWRD receives the original Settlement Agreement signed by WRWC and Protestant, OWRD will issue a Final Order consistent with this Settlement Agreement and substantively consistent with the Draft Final Order attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.
6. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
7. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord. Each Party to this Settlement Agreement also certifies that it has read and understands the entire Settlement Agreement and Draft Final Order.
8. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement. This Settlement Agreement is only effective after all Parties have signed the Settlement Agreement.

**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT
ON EXTENSION OF TIME FOR APPLICATION S-50693, PERMIT S-49240**

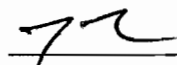


Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

June 15, 2007
Date

Print name: _____
for
Willamette River Water Coalition

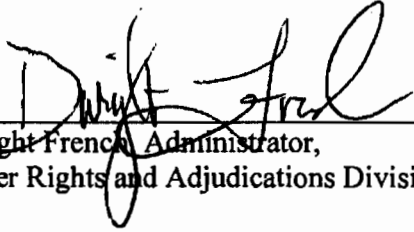
Date



John DeVoe
for
Water Watch of Oregon, Protestant

June 21, 2007
Date

**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT
ON EXTENSION OF TIME FOR APPLICATION S-50693, PERMIT S-49240**



Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

June 15, 2007
Date



Print name: Richard P. Burke
for
Willamette River Water Coalition

6-18-07
Date

John DeVoe
for
Water Watch of Oregon, Protestant

Date

RECEIVED

JUN 21 2007

WATER RESOURCES DEPT
SALEM, OREGON