Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-11354

Final Order
Extension of Time for Permit Number G-10479

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request 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 file 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 G-10479 on February 25, 1980. The permit called for completion of construction by October 1, 1986, and complete application of water to beneficial use by October 1, 1987. On October 31, 2003, the City of Portland submitted an application to the Department for an extension of time for Permit G-10479. In accordance with OAR 690-315-0050(2), on August 4, 2009, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2085 and to extend the time to fully apply water to beneficial use to October 1, 2085. The protest period closed September 18, 2009, in accordance with OAR 690-315-0060(1). No protest was filed.

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**

Diversion of any water beyond 4.75 cfs under Permit G-10479 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit G-10479 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 that is on file with the Department.

The deadline established in this PFO 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 this order may also meet the WMCP submittal requirements of other Department orders.

2. **Persistence of Fish Conditions**

A. Minimum Fish Flow Needs

Minimum fish flow needs on the Columbia River as recommended by ODFW are in Table 1, below; flows must be measured as the total outflow discharge from Bonneville Dam (as determined by the U.S. Army Corps of Engineers Division of Water Management) or an equivalent measurement thereof.

Table 1

MINIMUM FISH FLOW NEEDS ON THE COLUMBIA RIVER AT BONNEVILLE DAM	
Month	Cubic Feet per Second
April 1 – April 30	183,000
May 1 – May 31	328,000
June 1 – June 30	471,000
July 1 – July 31	325,000
August 1 – August 31	184,000
Sept. 1 – Sept. 30	117,000

B. Determining Water Use Reductions - Overview

The use of the undeveloped portion of Permit G-10479 that impacts Columbia River surface water and legally can be diverted must 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 Columbia River at Bonneville Dam (measured as the total outflow discharge from Bonneville Dam - as determined by the U.S. Army Corps of Engineers Division of Water Management - or an equivalent measurement thereof). This reduction will be adjusted by (1) a Consumptive Use Percentage, when applicable, as per Item 2.D., below, and (2) all or a portion of the Actual HCP Flows as described in Item 2.E., below. The overall reduction to the maximum total amount of the undeveloped portion of the permit that impacts Columbia River surface water and legally can be diverted will not exceed 20%.

C. Percent of the Undeveloped Portion with Impacts on Surface Water.

For the purpose of calculating the amount of the undeveloped portion of Permit G-10479 that can be diverted as a result of this fish persistence condition, 9.6% of the undeveloped portion under this permit impacts Columbia River surface water.

D. "Consumptive Use Percentages"

a. Initial Consumptive Use Percentages
Initial Consumptive Use Percentages for the City of Portland to adjust water use reductions for the purpose of calculating the amount of the undeveloped portion of Permit G-10479 that can be diverted as a result of this fish persistence condition are as shown in the Table 3, below. Utilization of Initial Consumptive Use Percentages is subject to an approval period described in 2.D.e, below.

Table 3

Month	Initial Consumptive Use Percentages
April	3.4%
May	15.4%
June	29.6%
July	42.7%
August	42.5%
September	29.1%

b. Consumptive Use Percentages Updates
Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit G-10479 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.D.e, below) is contingent upon the City submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.D.e, 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, April through September, 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.

c. Changes to Wastewater Technology and/or Wastewater Treatment Plant

Practices

If there are changes to either wastewater technology or the practices at the Columbia Boulevard Wastewater Treatment Plant (WWTP) resulting in 25% or more reductions in average monthly return flows to the Columbia River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the amount of the undeveloped portion of Permit G-10479 that can be diverted as result of this fish persistence condition. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the Columbia River as compared to the average monthly wastewater return flows from the years 2000 to 2009.

If such changes to the Columbia Boulevard WWTP occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the City submitting Consumptive Use Percentages Updates as per 2.D.b., above, and receiving the Water Resources Director's concurrence with the updated Consumptive Use Percentages.

d. 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 amount of the undeveloped portion of Permit G-10479 that can be diverted as 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 City (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.D.b., above, and receiving the Water Resources Director's concurrence with the updated Consumptive Use Percentages.

e. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum total amount of the undeveloped portion of Permit G-10479 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins from either (1) the date of the Extension Final Order, or (2) 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.D.c, or 2.D.d. (above) are applicable.

Consumptive Use Percentages 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 City at its discretion may submit updates prior to the end of an approval period.

E. Adjustments by Actual HCP Flows

HCP Flows are defined as the instream flows provided to the Lower Bull Run River by the City of Portland in response to its Bull Run Water Supply Habitat Conservation Plan (HCP) habitat conservation measure 7.2.1 (UTL-2.07, Instream Flow Measures in the Lower Bull Run River, pgs 7-6 to 7-13). The quantification of HCP flows will be based on a seven day rolling average of mean daily flows measured on the Bull Run River near Bull Run, Oregon (USGS GAGE No. 1414000, or its equivalent). HCP flows based this seven day rolling average are referred to as Actual HCP Flows.

For the purpose of calculating the amount of the undeveloped portion of Permit G-10479 that can be diverted as a result of this fish persistence condition, all or a portion of the Actual HCP Flows may be utilized to offset water use reductions. The total sum of all HCP flow adjustments made to any combination of undeveloped portions reduced under Permits G-8755, G-10124, G-10455 and/or G-10479 as a result of extension fish persistence conditions may not exceed the Actual HCP Flows for any seven day rolling average period.

F. Examples

Example 1:
If on April 15, the last seven mean daily flows were 208,100; 206,200; 201,400; 202,300; 190,900; 182,100; and 180,300 cfs; the seven day rolling average is 195,900 cfs. The use of the maximum total amount of the undeveloped portion of the permit that legally could be diverted would not be reduced because the 7 day average of mean daily flows is greater than the 183,000 cfs target flow during the month of April.

Example 2:

Step 1: If on July 15, the average of the last seven mean daily flows was 111,200 cfs, the target flow would be missed by 65.8%. The use of the maximum total amount of the undeveloped portion of the permit that legally could be diverted would be reduced because the 7 day average of mean daily flows is less than the 325,000 cfs target flow during the month of July.

$$(100 - [(111{,}200 / 325{,}000) \times 100\%]) = 65.8\%$$

Step 2: If the maximum total amount of the undeveloped portion of the permit that legally can be diverted under a permit is 5.0 cfs and 9.6% of the undeveloped portion impacts Columbia River surface water, then the maximum total amount of the undeveloped portion of the permit with surface water impacts and legally can be diverted would be 0.48 cfs.

$$(5.0 \text{ cfs} \times [9.6\% / 100]) = 0.48 \text{ cfs}$$

Note: In Steps 3 – 5, the maximum total amount of the undeveloped portion of

the permit with surface water impacts and legally can be diverted will be referred to as the "qualified undeveloped portion."

Step 3: Assuming the Consumptive Use Percentage is 42.7% during the month of July and the utilization of this percentage is authorized, and the flow target is missed by 65.8% (from Step 1), then the reduction to the qualified undeveloped portion would 28.1%.

$$([65.8\% \times 42.7\%] / 100) = 28.1\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, the qualified undeveloped portion would be reduced only by the % by which the target flow is missed – 65.8% in this example).

Step 4: In this example, the reduction to the qualified undeveloped portion due to the missed target flow percentage adjusted by the Consumptive Use Percentage would be 0.13 cfs.

$$(0.48 \text{ cfs} \times [28.1\% / 100]) = 0.13 \text{ cfs}$$

Step 5: Assuming the Actual HCP Flows were 20.0 cfs, and 19.95 cfs is utilized to offset reductions in other South Shore Columbia Well Field permits, 0.05 cfs of the Actual HCP Flows would be available to offset reductions in G-10479. The 0.13 cfs determined in Step 4 would be decreased by 0.05 cfs, ending with an overall reduction to the qualified undeveloped portion of 0.08 cfs.

$$(0.13 - [20.0 \text{ cfs} - 19.95 \text{ cfs}]) = 0.08 \text{ cfs}$$

Step 6: This 0.08 cfs reduction is 16.6% of 0.48 cfs (the maximum total amount of the undeveloped portion of the permit with surface water impacts and legally can be diverted as calculated in Step 2). This 16.6% does not exceed the 20% maximum overall reduction.

$$([0.08 / 0.48] \times 100\%) = 16.6\%$$

Step 7: In this example, the maximum total amount of the undeveloped portion of the permit that legally could be diverted under the permit under this condition would be 4.92 cfs

$$(5.0 \text{ cfs} - 0.08 \text{ cfs}) = 4.92 \text{ cfs}$$

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0080(3).

Order

The extension of time for Application G-11354, Permit G-10479, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2085. The deadline for applying water to full beneficial use is extended to October 1, 2085.

DATED: October 6, 2009

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

If you have any questions about statements contained in this document, please contact Scott Kudlemyer at (503) 986-0813.

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.
