

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-58951

Final Order
Extension of Time for Permit Number S-44462

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 S-44462 on November 14, 1979. The permit called for completion of construction by October 1, 1981, and complete application of water to beneficial use by October 1, 1982. On March 20, 1998, City of Dundee submitted an application to the Department for an extension of time for Permit S-44462. 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, 2025 and to extend the time to complete construction to October 1, 2025, and the time to fully apply water to beneficial use to October 1, 2025. 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 under Permit S-44462 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 S-44462 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 Willamette River as recommended by ODFW are in Table 1, below; flows are to be measured on the Willamette River at Salem, Oregon (USGS Gage Number 14191000, or its equivalent).

Table 1

MINIMUM FISH FLOW NEEDS ON THE WILLAMETTE RIVER MEASURED AT USGS GAGE 14191000 SALEM, OREGON	
Month	Cubic Feet per Second
July 1– October 31	5,630
November 1 – March 31	6,000
April 1 – April 15	15,000
April 16 –April 30	17,000
May 1 – May 31	15,000
June 1 – 15	12,600
June 16 – 30	8,500

B. **Determining Water Use Reductions - Generally**

The use of the undeveloped portion of Permit S-44462 that legally can be diverted must be reduced in proportion to the amount by which the flows shown in Table 2 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, or its equivalent). This reduction will be adjusted by a Consumptive Use Percentage, when applicable, as per Item 2.C., below. The overall reduction to the maximum total amount of the undeveloped portion of the permit that legally can be diverted will not exceed 20%.

C. **Consumptive Use Percentages**

a. **Initial Consumptive Use Percentages**

The City of Dundee has not identified any Consumptive Use Percentages based on the return of flows to the Willamette River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped

portion of Permit S-44462 that can be diverted as a result of this fish persistence condition.

b. First Time Utilization of Consumptive Use Percentages

Utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-44462 that can be diverted as a result of this fish persistence condition may begin after the issuance of the Final Order for this extension of time.

First time utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in 2.D.f., below.

Consumptive Use Percentages submitted to the Department for review must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The proposed Consumptive Use Percentages should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-44462 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.D.f., 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.f., 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 of the year 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.

d. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology or the practices at the City's wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the Willamette 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

S-44462 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 Willamette River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in 2.D.f., below.

If such changes to either wastewater technology or the practices at the City's wastewater treatment facility 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.c., above, and receiving the Water Resources Director's concurrence with the updated Consumptive Use Percentages.

e. 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 S-44462 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.c., above, and receiving the Water Resources Director's concurrence with the updated Consumptive Use Percentages.

f. 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 S-44462 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins 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.d., or 2.D.e. (above) are applicable.

D. Examples

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 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 5,630 cfs target flow for July 15.

Example 2:

- Step 1: If on July 15, the average of the last seven mean daily flows was 5011 cfs, the target flow would be missed by 11%. 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 5,630 cfs target flow for July 15.

$$(100 - [(5011 / 5630) \times 100\%]) = 11\%$$

- Step 2: Assuming the Consumptive Use Percentage is 78.7%⁹ during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 11% (from Step 1), then the reduction to the maximum total amount of the undeveloped portion of the permit that legally can be diverted would be 8.7%.

$$([11\% \times 78.7\%] / 100) = 8.7\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, the undeveloped portion would be reduced only by the % by which the target flow is missed – 11% in this example).

- Step 3: If the maximum total amount of the undeveloped portion of the permit that legally can be diverted under a permit is 10.0 cfs, then in this example the reduction due to the missed target flow percentage adjusted by the Consumptive Use Percentage would be 0.87 cfs.

$$(10.0 \text{ cfs} \times [8.7\% / 100]) = 0.87 \text{ cfs}$$

- Step 4: This 0.87 cfs reduction is 8.7% of 10.0 cfs (the maximum total amount of the undeveloped portion of the permit that legally can be diverted). This 8.7% does not exceed the 20% maximum overall reduction.

$$([0.87 / 10) \times 100\%]) = 8.7\%$$

- Step 5: 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 9.13 cfs

$$(10.0 \text{ cfs} - .87 \text{ cfs}) = 9.13 \text{ cfs}$$

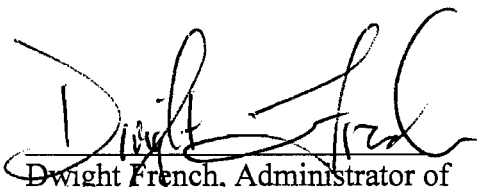
⁹ Currently, the City of Dundee may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-44462 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 78.7% is only for illustrative purposes in this example.

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-58951, Permit S-44462, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2025. The deadline for applying water to full beneficial use is extended to October 1, 2025.

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
