

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number S-55346

Final Order
Extension of Time for Permit Number S-49653
Permit Holder: City of The Dalles

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

Permit S-49653 was issued by the Department on June 30, 1986. The permit called for completion of construction by October 1, 1988, and complete application of water to beneficial use by October 1, 1989. On March 21, 2011, City of The Dalles submitted an application to the Department for an extension of time for Permit S-49653. In accordance with OAR 690-315-0050(2), on August 21, 2012, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2073, and the time to fully apply water to beneficial use to October 1, 2073. The protest period closed 10/5/2012, in accordance with OAR 690-315-0060(1). No protest was filed.

The Department adopts and incorporates by reference the Proposed Final Order dated August 21, 2012.

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-49653 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. 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-49653 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with 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 this order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

A. Minimum Fish Flow Needs

- a. Minimum fish flow needs in the Columbia River as recommended by ODFW are in Table 2, below; flows are to be measured in the Columbia River at McNary Dam. Daily flow reports for McNary Dam are available from the Fish Passage Center (FPC) established by the Northwest Power Planning Council (NPPC) at <http://www.fpc.org/currentdaily/flowspil.txt>.

Table 2

ODFW'S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE COLUMBIA RIVER , MEASURED AT McNARY DAM NEAR UMATILLA, OREGON	
Month	1000 Cubic Feet per Second
April 10 – June 30	260
July 1 – August 31	200

- b. Alternate Streamflow Measurement Point
The location of a steamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the City provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions – Generally

The maximum amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of average of mean daily flows measured in the Columbia River at McNary Dam. The percent of missed target flows is defined as:

$$(1 - [Q_A / Q_T]) \times 100\%$$

where Q_A is the actual flow measured at the designated location based on the seven day rolling average, and Q_T is the target flow (from Table 2).

The percent missed target flows applied to the undeveloped portion of the permit provides the maximum amount of undeveloped water that can be diverted as a result of this fish persistence condition, and is defined as:

$$E - (E \times \% \text{ missed target flows}),$$

where E is the undeveloped portion of the permit as of this extension, being 40.0 cfs.

The maximum amount of undeveloped water that can be diverted as a result of this fish persistence condition may be adjusted by a Consumptive Use Percentage, when applicable, as per Item 2.C., below. The overall reduction to the amount of the undeveloped portion of the permit will not exceed 20%.

When $Q_A \geq Q_T$, the amount of the undeveloped portion of the permit that can be diverted would not need to be reduced as a result of this fish persistence condition.

C. “Consumptive Use Percentages”

a. Initial Consumptive Use Percentages

Initial Consumptive Use Percentages for the City of The Dalles to adjust water use reductions for the purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition are shown in Table 3, below. Utilization of initial Consumptive Use percentages is subject to an approval, described in 2.C.e, below.

Table 3

Month	Initial¹ Consumptive Use Percentage (%)
April	18.3
May	41.4
June	54.8
July	67.8
August	64.5

¹Use of these initial percentages expires 10 years from the date of the Final Order for this Extension of Time

b. Continuing Use of Consumptive Use Percentages by Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.e, below) is contingent upon the City submitting

updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.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 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.

c. 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 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 S-49653 that can be diverted as a 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 10 year period just prior to date of the first approval period described in 2.C.e., 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.C.b., above, and receiving the Water Resources Director's concurrence with the proposed 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 purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a 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 Percentage Updates as per 2.C.b, above and receiving the Water Resources Director's concurrence with the proposed 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 S-49653 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.C.c, or 2.C.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.

D. Examples

Example 1: Target flow met.

On April 15, the last seven mean daily flows in the Columbia River at McNary Dam¹ were 310K, 290K, 280K, 260K, 260K, 240K and 250K cfs. The seven day rolling average (Q_A) is 270K cfs. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the 7 day average of mean daily flows is greater than the 260K cfs target flow (Q_T) for April 15. In this example, Q_A ≥ Q_T.

Example 2: Target flow missed.

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 170K cfs, and the target flow (Q_T) is 200K, then the target flow would be missed by 15.0%.

$$(1 - (170 / 200)) \times 100\% = 15.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 67.8% during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 15.0% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 10.2%.

$$(67.8\% \times 15.0\%) / 100 = 10.2\%$$

¹ Daily flow data for McNary Dam is available at <http://www.fpc.org/currentdaily/flowspil.txt>.

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit would only be reduced by the % by which the target flow is missed – 15.0% in this example).

Step 3: The overall reduction of 10.2% of the amount of the undeveloped portion of the permit does not exceed 20%.

Step 4: The undeveloped portion of this permit as of this extension (E) is 40.0 cfs. Therefore, in this example, the maximum amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition is 35.9 cfs.

$$40.0 - ((40.0 \times 10.2\%) / 100) = 35.9$$

Step 5: Given that the entire permit, being 40.0 cfs, is undeveloped, if the amount of water legally authorized for a diversion at a given point in time (for example, authorization provided through a WMCP) is 5.0 cfs, then 5.0 cfs of water would be available for use by the permit holder.

In this example, the 5.0 cfs of undeveloped water is less than the 35.9 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, there would be no required reduction in water use of the undeveloped portion under the permit.

Step 6: If the amount of water legally authorized for a diversion at a given point in time is 38.0 cfs, then of the 40.0 cfs only 38.0 cfs of undeveloped water would be available for use by the permit holder.

In this example, the 38.0 cfs of undeveloped water is greater than the 35.9 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, the amount of undeveloped water diverted by the permit holder would need to be reduced by 2.1 cfs.

$$38.0 - 35.9 = 2.1$$

Summary

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-55346, Permit S-49653, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1996 to October 1, 2073. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 1996 to October 1, 2073.

DATED: October 16, 2012


Dwight French, Water Right Services Division Administrator *for*
PHILLIP C. WARD, DIRECTOR

If you have any questions about statements contained in this document, please contact Ann L. Reece at (503) 986-0827.

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



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

“Consumptive Use Percentages” Update Form

TO THE WATER RIGHTS ADMINISTRATOR
 OF THE OREGON WATER RESOURCES DEPARTMENT

Re: **Fish Persistence Condition Applicable to:**
Application S-55346 / Permit S-49653
Permit Holder: City of The Dalles

“Consumptive Use Percentages” Updates

- For each month listed below, provide the consumptive use percentage for the purpose of calculating the maximum total amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of the fish persistence condition on the extension Final Order Dated Month, Day, 2009.

Month	Consumptive Use Percentage	Month	Consumptive Use Percentage
January	%	July	%
February	%	August	%
March	%	September	%
April	%	October	%
May	%	November	%
June	%	December	%

- Provide a description and justification of the methods utilized to determine the percentages. Please attach additional pages as necessary.
- The use of these “Consumptive Use Percentages” for the purposes stated above may continue for a 10 year approval period unless further utilization of Consumptive Use Percentages is contingent upon the City submitting Consumptive Use Percentages Updates due to changes in wastewater technology and/or the wastewater treatment plant or due to relocation of the point(s) of diversion(s) and/or return flows.

Signature _____ Date _____

For OWRD use only

WRD Concur with these “Consumptive Use Percentages” Updates Yes No

Approved by: _____
 for the Water Resources Director

Date: _____

For OWRD use only

WRD Concur with these "Consumptive Use Percentages" Updates Yes No

Approved by: _____

Date:

_____ for the Water Resources Director