

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number S-65051

Final Order
Extension of Time for Permit Number S-48451
Permit Holder: City of Sandy

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-48451 was issued by the Department on June 11, 1984. The permit called for completion of construction by October 1, 1986, and complete application of water to beneficial use by October 1, 1987. On July 29, 2003, City of Sandy submitted an application to the Department for an extension of time for Permit S-48451. The City provided additional information on February 27, 2006, June 19, 2012, and September 7, 2012. In accordance with OAR 690-315-0050(2), on September 25, 2012, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2069, and the time to fully apply water to beneficial use to October 1, 2069. The protest period closed 11/9/2012, in accordance with OAR 690-315-0060(1). No protest was filed.

Except as expressly stated herein, The Department adopts and incorporates by reference the Proposed Final Order dated September 25, 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-48451 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 this final order. Use of water under Permit S-48451 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

2. **Conditions to Maintain the Persistence of Listed Fish**

There are two sets of conditions for maintaining the Persistence of Listed Fish for Permit S-48451. "Condition A" pertains to the any POD above the confluence of the Salmon River and Boulder Creek at approximately RM 0.8, including the original POD location authorized under Permit S-48451 on the Salmon River, upstream from the confluence of the Salmon River and Cheeney Creek. The original POD is located within the SE¼ NW¼, Section 16, Township 3 S, Range 7 E, W.M. "Condition B" pertains to any POD(s) located downstream from the confluence of the Salmon River and Boulder Creek at approximately RM 0.8. Condition B is contingent upon the permit holder receiving approval from OWRD for a permit amendment under the applicable requirements for an additional or a relocated POD at or below approximately RM 0.8 on the Salmon River. One or both sets of conditions may be applicable depending on which POD location or locations are authorized from which water is being diverted from under Permit S-48451.

A. Condition A. Diversion from a POD upstream from the confluence of the Salmon River and Boulder Creek.

- a. Use of water from the Salmon River under Permit S-48451 is subject to an *Agreement for Instream Conversion* executed October 24, 2002 (Agreement), which is part of a signed *Settlement Agreement Concerning the Removal of the Bull Run Hydroelectric Project FERC Project No. 447*, Clackamas County, Oregon. This Agreement is adopted and incorporated as if set forth fully herein. The agreement provides, in pertinent part, that the City of Sandy can divert up to 16.3 cfs of water when the flow available in the Sandy River near Marmot, OR is 600 cfs or less, but can divert up to the 25.0 cfs of water authorized under Permit S-48451 when the flow available is more than 600 cfs.
- b. A means of measuring streamflow at a location between Cheeney Creek and the mouth of the Salmon River must be established by the permit holder prior to water use under this permit at any point of diversion upstream from the confluence with Boulder Creek. The permit holder must provide an adequate description of the means of measuring streamflow and the location of the measurement point, and receive the Water Resources Director's concurrence in writing.

- c. Prior to any use of water under Permit S-48451 from this location, the permit holder must provide OWRD an executed agreement between the permit holder of Permit S-48451 and ODFW setting out specific fish passage requirements that ensure adequate upstream and downstream passage for fish.
- d. During the period of August 16 through October 31, no water may be diverted under Permit S-48451.
- e. During the period of November 1 through February 29, the target flow (Q_T) for maintaining the persistence of listed fish species in the Salmon River is 129 cfs, or the average flow for the previous October, whichever is less. Actual flows (Q_A) are to be measured at the approved location as per Section 1.A.b., above, and compared to the target flow (Q_T) to determine if any, or how much water may be diverted during this time period.
 - i. When $Q_A \leq Q_T$:
No water may be diverted.
 - ii. When $Q_A > Q_T$:
The maximum amount of undeveloped water that can be diverted is defined as:
 $(Q_A - Q_T)$, not to exceed E

where E is the undeveloped portion of the permit as of this extension, being 25.0 cfs,

and in addition the requirements of the Agreement (*see* Section 1.A.a., above) are met.
 - iii. When $Q_A - Q_T \geq E$, the amount of the undeveloped portion of the permit that can be diverted would not need to be reduced unless a reduction is required to meet the Agreement (*see* Section 1.A.a., above).
- f. During the period of March 1 through August 15, the persistence of listed fish species in the Salmon River will be maintained when water use under Permit S-48451 meets the requirements of the Agreement (*see* Section 1.A.a., above), and can be up to 25.0 cfs when the flow available in the Sandy River near Marmot, OR is more than 600 cfs, and up to 16.3 cfs when the flow available is 600 cfs or less.
- g. Summary Table for Condition A

Date Range	Flow Target (Q_T)	Subject to Agreement ^a
Nov 1 – Feb 29	129 cfs or the average flow for the previous October, whichever is less	Yes
Mar 1 – Aug 15	None	Yes
Aug 16 – Oct 31	N/A – no water may be diverted	

^a *Agreement for Instream Conversion* executed October 24, 2002 (Agreement), which is part of a signed *Settlement Agreement Concerning the Removal of the Bull Run Hydroelectric Project FERC Project No. 447*.

h. Examples for "Condition A" for November 1 through February 29, when $Q_A > Q_T$

Example 1: Salmon River target flow met

Step 1: Assuming that the preceding October flows were 122.5 cfs at the approved measurement site (Q_T), and if on January 31, the actual flow at the approved measurement site (Q_A) is 149.0 cfs, given that the undeveloped portion of this permit as of this extension (E) is 25.0 cfs, then the actual flows minus the undeveloped portion is greater than the 122.5 cfs target flow for January. In this example, $Q_A - E \geq Q_T$.

$$149.0 - 25.0 \geq 122.5$$

The amount of the undeveloped portion of the permit that can be diverted would not be reduced as a result of the Salmon River actual (Q_A) and target (Q_T) flow comparisons. However, a limitation of 16.3 cfs may still apply to use of water under this permit pursuant to the requirements of the Agreement (*see* Section 1.A.a., above).

Example 2: Salmon River target flow missed.

Step 1: If on January 31, (Q_A) was 142.0 cfs, and the target flow (Q_T) is 129, then $Q_A > Q_T$. Therefore, the maximum amount of the undeveloped portion of Permit S-48451 that could be diverted based on streamflows in the Salmon River would be 13.0 cfs.

$$(142.0 - 129.0) = 13.0, \text{ not to exceed } 25.0$$

Note: 13.0 cfs is less than the limitation of 16.3 cfs that may apply to use of water under this permit pursuant to the requirements of the Agreement (*see* Section 1.A.a., above).

Determine the Amount of Reduction to Diversion of Undeveloped Water

Step 2: Given that the entire permitted quantity authorized (25.0 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 10.0 cfs, then 10.0 cfs of water would be available for use by the permit holder.

In this example, the 10.0 cfs of undeveloped water is less than the 13.0 cfs maximum undeveloped portion (from Step 1) 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 3: If the amount of water legally authorized for a diversion at a given point in time is 15.0 cfs, then of the 25.0 cfs only 15.0 cfs would be available for use by the permit holder.

In this example, the 15.0 cfs of undeveloped water is greater than the 13.0 cfs maximum undeveloped portion (from Step 1) 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 2.0 cfs.

$$15.0 - 13.0 = 2.0$$

B. Condition B. Diversion from a POD downstream from the confluence with Boulder Creek at approximately RM 0.8.

- a. Use of water under Permit S-48451 is subject to an *Agreement for Instream Conversion* executed October 24, 2002 (Agreement), which is part of a signed *Settlement Agreement Concerning the Removal of the Bull Run Hydroelectric Project FERC Project No. 447*, Clackamas County, Oregon. This Agreement is adopted and incorporated as if set forth fully herein. The agreement provides, in pertinent part, that the City of Sandy can divert up to 16.3 cfs if water when the flow available in the Sandy River near Marmot, OR is 600 cfs or less, but can divert up to the 25.0 cfs of water authorized under Permit S-48451 when the flow available is more than 600 cfs.
- b. Prior to any use of water under Permit S-48451, the permit holder must provide OWRD an executed agreement between the permit holder and ODFW setting out specific fish passage requirements that ensure adequate upstream and downstream passage for fish.
- c. The persistence of listed fish species in the Salmon River will be maintained when water use under Permit S-48451 meets the requirements of the Agreement (see Section 1.B.a., above).

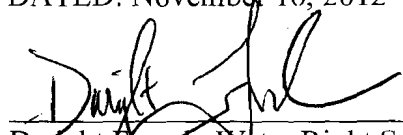
Summary

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-65051, Permit S-48451, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2000 to October 1, 2069. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 2000 to October 1, 2069.

DATED: November 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



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"Consumptive Use Percentages" Update Form

TO THE WATER RIGHTS ADMINISTRATOR OF THE OREGON WATER RESOURCES DEPARTMENT

Re: Fish Persistence Condition Applicable to:
Application S-65051 / Permit S-48451
Permit Holder: City of Sandy

"Consumptive Use Percentages" Updates

1. 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 48451 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	%

2. Provide a description and justification of the methods utilized to determine the percentages. Please attach additional pages as necessary.

3. 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 Concurs with these "Consumptive Use Percentages" Updates ☐ Yes ☐ No

Approved by: _____
for the Water Resources Director

Date: _____

For OWRD use only

WRD Concurrs with these "Consumptive Use Percentages" Updates ☐ Yes ☐ No

Approved by: _____
for the Water Resources Director

Date: _____