

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number S-29527

**Final Order
Extension of Time for Permit Number S-23210
Permit Holder: City of Medford**

Permit Information

Application File S-29527/ Permit S-23210

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: October 22, 1954

Authorized Use of Water

Source of Water:	Rogue River, a Tributary of the Pacific Ocean
Purpose or Use:	Municipal Use
Maximum Rate:	39.15 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

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-23210 was issued by the Department on February 21, 1955. The permit called for completion of construction by October 1, 1961, and complete application of water to beneficial use by October 1, 1962. On September 28, 2000, City of Medford submitted an application to the Department for an extension of time for Permit S-23210. In accordance with OAR 690-315-0050(2), on October 1, 2013, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2050, and the time to fully apply water to beneficial use to October 1, 2050. The protest period closed November 15, 2013, in accordance

with OAR 690-315-0060(1). No protest was filed.

Findings of Fact

The Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated October 1, 2013.

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 of the remaining unperfected portion of water under Permit S-23210, being 39.15 cfs, shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86, that authorizes access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-23210 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, 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 the final order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

A. Fish Persistence Target Flows

- a. Fish persistence target flows in the Rogue River as recommended by ODFW are in Table 1, below; flows are to be measured in the Rogue River near Agness, Oregon (USGS Gage Number 14372300, or its equivalent), or at Raygold, near Central Point, Oregon (USGS Gage Number 14359000, or its equivalent), depending on the time of year.

Table 1

FISH PERSISTENCE TARGET FLOWS ON THE ROGUE RIVER MEASURED AT USGS GAGE 14372300 NEAR AGNESS, OREGON	
Month	Cubic Feet per Second
May 1 – June 30	3800
July 1 – Sept 10	2000
FISH PERSISTENCE TARGET FLOWS ON THE ROGUE RIVER MEASURED AT USGS GAGE 14359000 AT RAYGOLD, NEAR CENTRAL POINT OREGON	
Month	Cubic Feet per Second
Sept 11 – April 30	1200

- b. Alternate Streamflow Measurement Point
 The location of a target flow 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-23210 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 1 are missed based on a seven day rolling average of mean daily flows measured in the Rogue River at the specified gage location. 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 1).

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

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

where E is the undeveloped portion of the permit as of this extension, being 39.15 cfs.

The maximum amount of undeveloped portion of the permit 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.

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 for Utilization in Rogue River Calculations

a. Initial Consumptive Use Percentages

The City of Medford has not identified any Consumptive Use Percentages based on the return of flows to the Rogue River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-23210 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 maximum amount of the undeveloped portion of Permit S-23210 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.C.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 maximum amount of the undeveloped portion of Permit S-23210 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., 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.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 Rogue River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-23210 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 Rogue 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.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.C.c., above, and receiving the Water Resources Director's concurrence with the proposed 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 maximum amount of the undeveloped portion of Permit S-23210 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 Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed 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 amount of the undeveloped portion of Permit S-23210 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that ends 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.d., or 2.C.e. (above) are applicable.

Consumptive Use Percentages (first time utilization or 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. Big Butte Creek Restoration Credits for Utilization in Rogue River Calculations

This flow restoration credit is based on the amount of water restored to Big Butte Creek through qualified and Department-approved instream transfers. The credit is in cubic feet per second (cfs). When target flows are not met, the credit may be used to increase the allowed diversion to the extent discussed below, when diverting the undeveloped portion of Permit S-23210.¹

a. The credit will equal the total combined maximum rate of the instream transfer(s) that protect water to the mouth of Big Butte Creek and also meet at least one of the following three criteria:

1. The POD(s) are downstream of Eagle Point Irrigation District's (EPID) Big Butte Creek diversion located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.; or
2. The priority date(s) are senior to April 21, 1915; or
3. A written agreement with EPID protects the water transferred instream past EPID's Big Butte Creek diversion located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.

b. The credit may be applied to the calculated allowed diversion of the undeveloped portion of Permit S-23210 so long as (1) the total credit as determined above is not exceeded, (2) the allowed diversion of the undeveloped portion of the permit is determined in accordance with 2.A. 2.B, and 2.C, above, and (3) the legal amount of water that can be diverted under Permit S-23210 as granted through the Department's review and approval of the municipal water user's WMCP under OAR 690-086 is not exceeded.

c. Establishing the Flow Restoration Credit

The City of Medford has not identified any instream transfers in Big Butte Creek that meet the criteria in Section 2.D.a., above, for the purpose of a flow restoration credit. Thus, at this time the City may not utilize a Flow Restoration Credit for the purpose of offsetting any required reduction to use of the undeveloped portion of Permit S-23210 due to fish persistence conditions.

¹ A separate potential credit based on the same instream transfers is also applicable to the undeveloped portions under Permits S-6884.

In order to establish the Flow Restoration Credit, the City must receive the Water Resources Director's concurrence with any proposed Flow Restoration Credit.

E. Examples

Example 1: Target flow met.

On June 15, the last seven mean daily flows in the Rogue River at the Agness gage were 4100, 4000, 4100, 4000, 3900, 3800 and 3800 cfs. The seven day rolling average (Q_A) is 3957 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 3800 cfs target flow (Q_T) for June 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

Step 1: If on June 15, the average of the last seven mean daily flows (Q_A) was 2600 cfs, and the target flow (Q_T) is 3800, then the target flow would be missed by 31.6 %.

$$(1 - (2600 / 3800)) \times 100\% = 31.6\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%² during the month of June and the utilization of this percentage is authorized, and the target flow is missed by 31.6% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 19.7%.

$$(62.2\% \times 31.6\%) / 100 = 19.7\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit would be reduced only by the % by which the target flow is missed – 31.6% in this example).

Step 3: Given that the undeveloped portion of this permit as of this extension (E) is 39.15 cfs, and the undeveloped portion of the permit needs to be reduced by 19.7% (from Step 2), or 7.71 cfs, then the maximum amount of the undeveloped portion of Permit S-23210 that could be diverted as a result of this fish persistence condition would be 31.44 cfs.

$$(39.15 \times 19.7\%) / 100 = 7.71$$

$$39.15 - 7.71 = 31.44$$

² Currently, the City of Medford may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-23210 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 62.2% is only for illustrative purposes in this example.

Step 3: Assuming the Flow Restoration Credit is 2.0 cfs, and the utilization of this credit is authorized, then the maximum amount of water that could be diverted as a result of this fish persistence condition is 33.44 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$31.44 + 2.0 = 33.44$$

Step 4: The calculated maximum amount of water that could be diverted due to the fish persistence condition may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 25.0 cfs (for example, authorization provided through a WMCP), then 25.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 33.44 cfs from Step 3.

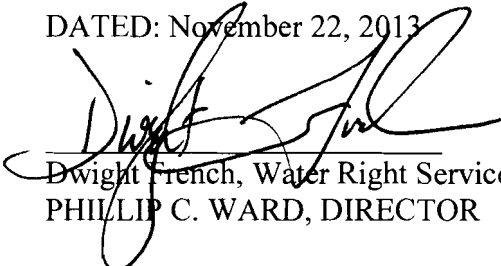
(Conversely, if the amount of water legally authorized for diversion under this permit is 35.0 cfs, then 33.44 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

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-29527, Permit S-23210, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2000 to October 1, 2050. 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, 2050.

DATED: November 22, 2013



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) 986-0834.

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.
