

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

Water Rights Application
Number S-34141

**Final Order
Extension of Time for Permit Number S-26901,
modified by Permit Amendment T-8032
Permit Holder: City of Grants Pass**

Permit Information

Application File S-34141/ Permit S-26901, modified by Permit Amendment T-8032

Basin 15 – Rogue Basin / Watermaster District 14

Date of Priority: July 19, 1960

Authorized Use of Water

Source of Water:	The Rogue River, a tributary of Pacific Ocean
Purpose or Use:	Municipal Use
Maximum Rate:	25.0 Cubic Feet per Second (cfs), further limited to use when the flow of the Rogue River at the mouth is greater than 735 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

Application History

Permit S-26901 was issued by the Department on September 20, 1960, and modified by Permit Amendment T-8032 on August 20, 1998. The permit called for completion of construction by October 1, 1964, and complete application of water to beneficial use by October 1, 1964. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 1999. On September 3, 2002, the City of Grants Pass submitted an application to the Department for an extension of time for Permit S-26901. In accordance with OAR 690-315-0050(2), on December 3, 2013, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2040, and the time to fully apply water to beneficial use to October 1, 2040. The protest period closed January 17, 2014, in accordance with OAR 690-315-0060(1). WaterWatch of Oregon, Inc. filed a timely protest, but subsequently withdrew their protest by letter dated June 5, 2014.

Findings of Fact

On January 27, 2014, the City submitted additional information documenting that 16.95 cfs of water used under Permit S-26901 put to beneficial use prior to October 1, 1999¹; therefore the undeveloped portion of the permit is 8.05 cfs as defined in OREGON COURT OF APPEALS A147071 WATERWATCH VS OWRD & CITY OF COTTAGE GROVE, 2013.

Except as expressly stated herein, the Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated December 3, 2013.

The Proposed Final Order is modified in its entirety to the extent that references made to the developed portion in the Proposed Final Order are changed *from 17.2 to 16.95 cfs* and references to the undeveloped portion are changed *from 7.8 to 8.05 cfs*. The Conditions included in this Final Order reflect these changes.

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 16.95 cfs under Permit S-26901 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 of water 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-26901 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department.

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

2. Conditions to Maintain the Persistence of Listed Fish

The developed portion of the permit, being 16.95 cfs, is *not* subject to these fish persistence conditions.

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

¹ Pump operation records from the City of Grants Pass demonstrate that the filtration plant intake had an influent flow of 8.69 million gallons over a 10.5 hour pumping period resulting in an intake flow of 30.75 cfs, being 12.5 cfs authorized under Certificate 15839, 1.3 cfs under Permit S-47346, and 16.95 cfs under Permit S-26901.

Agness, Oregon (USGS Gage Number 14372300, or its equivalent).

Table 1

FISH PERSISTENCE TARGET FLOWS ON THE ROGUE RIVER MEASURED AT USGS GAGE 14372300 NEAR AGNESS, OREGON	
Month	Cubic Feet per Second
January 1 – April 30	935
May 1 – June 30	3800
July 1 – Sept 10	2000
September 11 – December 31	935

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-26901 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 8.05 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 Grants Pass 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-26901 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-26901 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-26901 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-26901 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-26901 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-26901 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. 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).

² Currently, the City of Grants Pass may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-26901 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: Given that the undeveloped portion of this permit as of this extension (E) is 8.05 cfs, and the undeveloped portion of the permit needs to be reduced by 19.7% (from Step 2), or 1.59 cfs, then the maximum amount of the undeveloped portion of Permit S-26901 that could be diverted as a result of this fish persistence condition would be 6.46 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(8.05 \times 19.7\%) / 100 = 1.59$$

$$8.05 - 1.59 = 6.46$$

Step 4: The calculated maximum amount of water that could be diverted under the permit 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 20.0 cfs (for example, authorization provided through a WMCP), then 20.0 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 16.95 cfs.

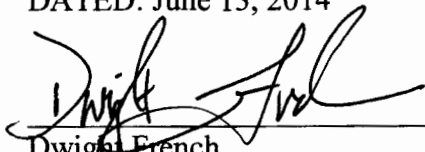
(Conversely, if the amount of water legally authorized for diversion under this permit is 24 cfs, then 23.41 cfs (6.46 from Step 3 + the 16.95 developed portion) would be the maximum amount of diversion allowed under this permit.)

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-34141, Permit S-26901, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1999 to October 1, 2040. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 1999 to October 1, 2040.

DATED: June 13, 2014



Dwight French
Water Right Services Division Administrator, for
Director
Oregon Water Resources Department

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
