

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

Water Rights Application
Number S-47642

**Final Order
Extension of Time for Permit Number S-35222
Permit Holder: City of Falls City**

Permit Information

Application File S-47642/ Permit S-35222

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: October 14, 1970

Authorized Use of Water

Source of Water:	Berry Creek, a Tributary of Little Luckiamute River
Purpose or Use:	Municipal Use
Maximum Rate:	1.0 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-35222 was issued by the Department on May 26, 1971. The permit called for completion of construction by October 1, 1973, and complete application of water to beneficial use by October 1, 1974. The most recently approved extension authorized completion of construction and complete application of water to beneficial use by October 1, 2001. On December 12, 2012, City of Falls City submitted an application to the Department for an

extension of time for Permit S-35222. In accordance with OAR 690-315-0050(2), on July 8, 2014, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2043, and the time to fully apply water to beneficial use to October 1, 2043. The protest period closed August 22, 2014, in accordance with OAR 690-315-0060(1). No protest was filed.

Findings of Fact

Except as expressly stated herein, the Department adopts and incorporates by reference the Proposed Final Order dated July 8, 2014.

Finding of Fact 35.a. is modified as follows to clarify that the water user is responsible for determining or otherwise measuring flows (additions are shown in underlined text):

- a. The target flows needed to maintain the persistence of fish must be determined or measured by the water user in the Little Luckiamute River at Falls City, Oregon, USGS GAGE No.14190100, or its equivalent.

As a result of this modification to this Finding of Fact 35.a., the “Conditions to Maintain the Persistence of Listed Fish” at Condition 2.B. in this Final Order is modified as follows to be consistent with the above modification: (additions are shown in underlined text; deletions shown in ~~strikethrough~~ text):

- B. Determining Water Use Reductions – Generally
The maximum amount of the undeveloped portion of Permit S-35222 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 average¹ of mean daily flows as determined or measured by the water user in the Little Luckiamute River at Falls City (USGS Gage Number 14190100, or its equivalent). The percent . . .

¹ Alternatively, the ~~permit holder~~ water user may use a single daily measurement.

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 up to 1.0 cfs under Permit S-35222 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 appropriation 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-35222 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 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 Little Luckiamute River as recommended by ODFW are in Table 1, below; flows are to be measured in the Little Luckiamute River at Falls City, Oregon (USGS Gage Number 14190100, or its equivalent).

Table 1

FISH PERSISTENCE TARGET FLOWS IN THE LITTLE LUCKIAMUTE RIVER MEASURED AT USGS GAGE 14190100, AT FALLS CITY, OREGON	
Month	Cubic Feet per Second
October	20
November – May	80
June	50
July	35
August – September	15

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-35222 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 average¹ of mean daily flows as determined or measured by the water user in the Little Luckiamute River at Falls City (USGS Gage Number 14190100, or its equivalent). The percent of missed target flows is defined as:

¹ Alternatively, the water user may use a single daily measurement.

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

where Q_A is the actual flow measured at the designated gage based on the seven day rolling average, E is the undeveloped portion of the permit, 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:

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

where E is the undeveloped portion of the permit, being 1.0 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 $Q_A - E \geq Q_T$, 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

The City of Falls City has not identified any Consumptive Use Percentages based on the return of flows to the Little Luckiamute 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-35222 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-35222 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-35222 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 waste water treatment facility resulting in 25% or more reductions in average monthly return flows to the Little Luckiamute 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-35222 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 Little Luckiamute 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 waste water 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-35222 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-35222 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 August 15, the last seven mean daily flows were 16, 17, 18, 19, 20, 19 and 17 cfs. The seven day rolling average (Q_A) is 18.0 cfs. Given that the undeveloped portion of this permit (E) is 1.0 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 15.0 cfs target flow (Q_T) for August 15. In this example, $Q_A - E \geq Q_T$.

$$18.0 - 1.0 \geq 15.0$$

The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the target flow is considered met.

Example 2: Target flow missed.

Step 1: Given that the undeveloped portion of this permit (E) is 1.0 cfs, if on August 15, the average of the last seven mean daily flows (Q_A) was 12.0 cfs, and the target flow (Q_T) is 15.0 cfs, then the target flow would be missed by 26.7%.

$$(1 - [(12.0 - 1.0) / 15.0]) \times 100\% = 26.7\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%² during the month of August and the utilization of this percentage is authorized, and the target flow is missed by 26.7% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 21.0%.

$$(78.7\% \times 26.7\%) / 100 = 21.1\%$$

(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 – 26.7% in this example).

Step 3: Given that the undeveloped portion of the permit (E) is 1.0 cfs, and the undeveloped portion of the permit needs to be reduced by 21.1%, (from Step 2), or 0.21 cfs, then the maximum amount of the undeveloped portion of Permit S-35222 that could be diverted as a result of this fish persistence condition is 0.79 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(1.0 \times 21.0\%) / 100 = 0.21$$

$$1.0 - 0.21 = 0.79$$

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 0.50 cfs (for example, authorization provided through a WMCP), then 0.50 cfs would be the maximum amount of diversion allowed under this permit, rather than 0.79 from Step 3.

(Conversely, if the amount of water legally authorized for diversion under this permit is 0.85 cfs, then 0.79 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

Conclusion of Law

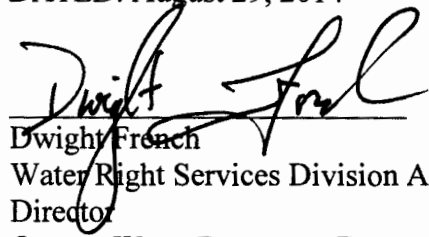
The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0080(3).

² Currently, the City of Falls City may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-35222 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.

Order

The extension of time for Application S-47642, Permit S-35222 therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2001 to October 1, 2043. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 2001 to October 1, 2043.

DATED: August 29, 2014

A handwritten signature in black ink, appearing to read "Dwight French", is written over a horizontal line.

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
