

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number S-55010

Final Order
Extension of Time for Permit Number S-45565
Permit Holder: City of Salem

Permit Information

Application File S-55010/ Permit S-45565

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: December 6, 1976

Authorized Use of Water

Source of Water:	Willamette River, a tributary of Columbia River
Purpose or Use:	Municipal
Maximum Rate:	200.0 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 final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition 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-45565 was issued by the Department on April 15, 1981. The permit called for completion of construction by October 1, 1983, and complete application of water to beneficial use by October 1, 1984. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 1997. On September 25, 1997, City of Salem submitted an application to the Department for an extension of time for Permit S-45565. In accordance with OAR 690-315-0050(2), on June 2, 2015, the Department issued a

Proposed Final Order proposing to extend the time to complete construction to October 1, 2086, and the time to fully apply water to beneficial use to October 1, 2086. The protest period closed July 17, 2015, 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 June 2, 2015.

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 200.0 cfs under Permit S-45565 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-45565 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-45565 that has been established under a prior WMCP or Extension final order issued by 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

A. Fish Persistence Target Flows

- a. Fish persistence target flows on the Willamette River as recommended by ODFW are in Table 1, below; flows are to be measured on the Willamette River near Salem, Oregon (USGS Gage Number 14191000, or its equivalent).

Table 1

FISH PERSISTENCE TARGET FLOWS ON THE WILLAMETTE RIVER MEASURED AT USGS GAGE 14191000 NEAR SALEM, OREGON	
Month	Cubic Feet per Second
July 1– October 31	5,630
November 1 – March 31	6,000
April 1 – April 15	15,000
April 16 –April 30	17,000
May 1 – May 31	15,000
June 1 – 15	12,600
June 16 – 30	8,500

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-45565 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 measured in the Willamette 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 the undeveloped portion of the permit that can be diverted as a result of this fish persistence condition, and is defined as:

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

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

where E is the undeveloped portion of the permit as of this extension, being 200.0 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. 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

- i. Utilization of these “Initial Consumptive Use Percentages” is contingent upon (1) the point of diversion being located at river mile 84.4 and the return flow point located at river mile 78.25, or (2) upon the City 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.
- ii. The Initial Consumptive Use Percentages for the City of Salem to adjust water use reductions for the purpose of calculating the amount of the undeveloped portion of Permit S-45565 that can be diverted as a result of this fish persistence condition are shown in Table 2, below. Utilization of initial Consumptive Use percentages is subject to an approval period described in 2.C.e, below.

Table 2

Month	Initial¹ Consumptive Use Percentages
January	0 %
February	0 %
March	10.6 %
April	7.7 %
May	24.7 %
June	40.6 %
July	49.7 %

August	46.3 %
September	34.2 %
October	31.4 %
November	9.4 %
December	0 %

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

b. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-45565 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 Willamette 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-45565 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 Willamette 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-45565 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-45565 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) 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 July 15, the last seven mean daily flows in the Willamette River at the Salem gage were 7000, 6500, 6000, 5500, 5250, 5000 and 4750 cfs. The seven day rolling average (Q_A) is 5714 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 5,630 cfs target flow (Q_T) for July 15. In this

example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 5011 cfs, and the target flow is 5630, then the target flow would be missed by 11.0%.

$$(1 - [5011 / 5630]) \times 100\% = 11.0\%$$

Step 2: Assuming use of the Consumptive Use Percentage is 49.7% during the month of July and the use of this percentage is authorized, and the target flow is missed by 11.0% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 5.5%.

$$(11.0\% \times 49.7\%) / 100 = 5.5\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, the undeveloped portion of the permit would be reduced only by the % by which the target flow is missed – 11.0% in this example).

Step 3: The overall reduction of 5.5% of the amount of the undeveloped portion of the permit does not exceed 20%.

Step 4: Given that the undeveloped portion of this permit as of this extension (E) is 200.0 cfs, and the undeveloped portion of the permit needs to be reduced by 5.5% (from Step 2), or 11.0 cfs, then the maximum amount of the undeveloped portion of Permit S-45565 that could be diverted as a result of this fish persistence condition would be 189.0 cfs. (This maximum amount may be limited as illustrated in Step 5, below.)

$$(200.0 \times 5.5\%) / 100 = 11.0$$

$$200.0 - 11.0 = 189.0$$

Step 5: 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 189.0 cfs from Step 4.

(Conversely, if the amount of water legally authorized for diversion under this permit is 200.0 cfs, then 189.0 cfs (from Step 4) would be the maximum amount of diversion allowed under this permit.)

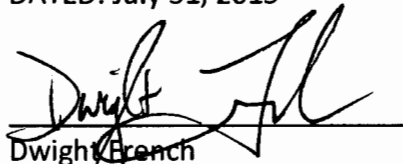
CONCLUSION OF LAW

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

ORDER

The extension of time for Application S-55010, Permit S-45565, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1997 to October 1, 2086. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 1997 to October 1, 2086.

DATED: July 31, 2015



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

If you have any questions about statements contained in this document, please contact Mabelle A Bamberger at (503) 986-0802.

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

"Consumptive Use Percentages" Update Form



Oregon Water Resources Department

725 Summer Street NE, Suite A

Salem Oregon 97301-1266

(503) 986-0900

TO THE WATER RIGHTS ADMINISTRATOR OF THE OREGON WATER RESOURCES DEPARTMENT

Re: Fish Persistence Condition Applicable to:
Application S-55010 / Permit S-45565
Permit Holder: City of Salem

"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 S-45565 that can be diverted as a result of the fish persistence condition on the extension Final Order Dated July 31, 2015.

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 Concur with these "Consumptive Use Percentages" Updates Yes No

Approved by: _____
for the Water Resources Director

Date: _____

Mailing List for Extension FO Copies

FO Date: July 31, 2015

Copies Mailed

Application S-55010

By: _____

Permit S-45565

On: _____

Original mailed to permit holder:

City of Salem
Attn: Jason Pulley
555 Liberty Street SE Room 325
Salem, OR 97301

Copies sent to:

1. WRD - App. File S-55010/ Permit 55010-45565
2. GSI Water Solution
Adam Sussman
55 SW Yamhill Street, Suite 300
Portland, OR 97204

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving electronic copy via e-mail (10 AM day of signature date)

(DONE BY EXTENSION SPECIALIST)

4. WRD - Watermaster District 16, Joel Plahn
5. WRD – NW Region Watermaster, Mike McCord
6. WRD –Lisa Jaramillo, Technical Services

CASEWORKER: MAB