

Oregon Water Resources Department



Superseding Final Order Limited License Application LL-1681

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition 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 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.

Requested Water Use

On December 14, 2016, the Water Resources Department received completed limited license request **LL-1681** from Port of Morrow for the use of 12,000 gallons per minute up to 3,370 million gallons per year from the Columbia River, located in the SW ¼, SE ¼, Section 35, Township 5 North, Range 25 East, W.M., for the purpose of artificial groundwater recharge, for the period of (five years from effective date).

On January 10, 2018, the Department issued limited license **LL-1681**.

On February 2, 2017, a timely request for reconsideration was received from the applicants agent. The request asked for an additional year to replace the time spent in processing the limited license and a request to ODFW to modify the season of use.

Authorities

The Department may approve a limited license pursuant to its authority under ORS 537.143, 537.144 and OAR 690-340-0030.

ORS 537.143(2) authorizes the Director to revoke the right to use water under a limited license if it causes injury to any other water right or a minimum perennial streamflow.

A limited license will not be issued for more than five consecutive years for the same use, as directed by ORS 537.143(8).

Findings of Fact

1. The forms, fees and map have been submitted, as required by OAR 690-340-0030(1).
2. The Department provided public notice of the application, on December 20, 2016 as required by OAR 690-340-0030(2).

3. This limited license request is limited to an area within a single drainage basin as required by OAR 690-340-0030(3).
4. The Department has determined that there is water available for the requested use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.
6. Because this use is from surface water and has the potential to impact fish, the Department finds that fish screening is required to protect the public interest.
7. Because the use requested is longer than 120 days and because the use is in an area that has sensitive, threatened or endangered fish species, the use is subject to the Department's rules under OAR 690-33. These rules aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species. No comments were received that would cause the Department to require additional conditions or limitations.
8. The Department has determined that the use is not subject to its rules under OAR 690-350. However, artificial groundwater recharge testing must be done in a manner that provides a test with results and supplemental information for the user's artificial groundwater recharge permit application. Consistent with this intent, the Department has added conditions pertaining to testing, monitoring, reporting and coordination with Oregon Department of Environmental Quality (ODEQ), Oregon Department of Fish and Wildlife (ODFW) and this Department.
9. The Department has received comments relating to water quality, monitoring and reporting from Oregon Department of Environmental Quality. The authorization of license **LL-1681** is conditioned to satisfactorily address issues raised in those comments.
10. The Department has received the following comments from Oregon Department of Fish and Wildlife (ODFW) as required under OAR 690-350-0120 (3)(a). The Oregon Department of Fish and Wildlife (ODFW) verifies that there is currently no minimum perennial stream flow or instream water right for the protection of aquatic and fish life established for the source stream identified in the Port of Morrow's limited license applications LL-1681 and LL-1682. Therefore, the applicant does not need to provide a copy of a minimum perennial stream flow or instream water right as an attachment to the application. ODFW recommended conditions to protect and enhance Oregon's fish and wildlife and their habitats. These conditions are incorporated in the Final Order below.
11. Based on further information submitted by ODFW pertaining to period of use, the Department finds that re-consideration is warranted and issues the following superseding order.
12. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.

Conclusions of Law

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

Order

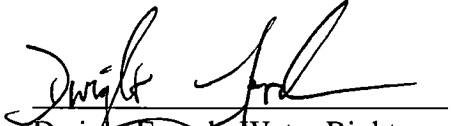
Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application for license **LL-1681** is approved as conditioned below.

1. The period and rate of use for License **LL-1681** shall be from October 1, 2018 through September 30, 2023, for the use of 12,000 gallons per minute up to 3,370 million gallons per year from the Columbia River, for the purpose of artificial groundwater recharge testing. The season of use is October 1, through April 14 of each year, as limited in condition 2 below.
2. Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence from November through early April. The volume of unregulated flow into the Columbia River upstream of Bonneville Dam is critical in meeting the spawning elevations. Therefore, in accordance with the Biological Opinion, and to ensure spawning habitat is available, ODFW recommends the permittee divert water only during November 1 – December 31, or until a stage height set by the Action Agencies for that year has been determined, when the 7-day rolling average of the mean daily gage height, or tailwater elevation, below Bonneville Dam is equal to or greater than a height of 11.5 feet or the height set by the Action Agencies. After a stage height is set by the Action Agencies (usually late December), ODFW recommends the permittee divert water only when the 7-day rolling average of the mean daily gage height, or tailwater elevation, below Bonneville Dam is equal to or greater than the stage height set. The permittee should contact the Army Corps of Engineers representative of the Technical Management Team to identify when the stage height is set (contact information can be found on the meeting agendas here: <http://www.nwd-wc.usace.army.mil/tmt/>). To monitor mean daily stage at this location, the permittee will use the official project tailwater elevation gage (USGS gage station #14128870 Columbia River below Bonneville Dam, OR). Real-time data from this station is available online at the United States Geological Survey website: http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. ODFW recommends the permittee maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is withdrawing water from November 1 – April 14, which will be available to WRD upon request. ODFW recommends any mitigation provided to compensate for withdrawals made when the stage height is below 11.5 feet, or that set by the Action Agencies for the period November 1 through April 14, be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146.
3. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under this limited license. The notice shall include the location of the diversion, and the volume of water to be diverted and the intended use and place of use.

4. Before water use may begin under this license, the licensee shall install a totalizing flow meter at each point of diversion and at the entry point to each recharge test site. The totalizing flow meters must be installed and maintained in good working order. In addition the licensee shall maintain a record of all water use, including the total number of hours of diversion, the total volume diverted, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be available for review by the Department upon request, and shall be submitted to the Watermaster upon request. This record shall include the amount of water diverted from the Columbia River, and the amount delivered to each recharge area.
5. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other reason.
6. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses that rely upon the same source.
7. Before water use begins, the permittee will certify to the Department, the existence of fish screens at each point of diversion on the Columbia River that meet Oregon Department of Fish and Wildlife (ODFW) and National Oceanic and Atmospheric Administration specifications for adequate protection of aquatic life, and to maintain fish screens to the specification of ODFW for the life of the water right.
8. The licensee is required to provide a written annual report by February 15th of each year. This report will detail recharge testing and any subsequent recovery under a secondary limited license from the preceding water year. Reporting shall include, but is not limited to, the results of testing efforts that relate to water quality, water quantity, and operations. Water level data shall be submitted in a Department-specified digital format. The licensee shall consult with ODEQ and OWRD to identify additional specific reporting elements. The first report is due in February 2019.
9. The licensee shall adhere to the current, approved test and monitoring plan. A revised, superseding plan may be submitted to the Department at any time. The Department may approve, condition, or reject such plans.
10. The licensee shall comply with all ODEQ water quality requirements. If monitoring data or other information result in identification of potential water quality concerns, ODEQ may seek modifications to the monitoring and test plans and/or require a permit of its own to address the water quality concerns prior to resumption of artificial groundwater recharge testing.
11. Failure to meet the conditions of the license to the satisfaction of the Department will lead to a cancellation of the limited license, in which case it would no longer be in force.
12. The licensee shall conduct recharge testing as proposed in the application and later amended by the licensee, and as otherwise conditioned herein.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

Issued February 20, 2018



Dwight French, Water Right services Division Administrator
For Thomas M. Byler, Director

Enclosures - limited license, fish screening criteria, monitoring plan

cc: Greg Silbernagel, District 5 Watermaster
Bill Duke, ODFW
Danette Faucera, ODFW
Anna Pakenham Stevenson, ODFW
Phil Richerson, ODEQ
File

If you need further assistance, please contact the Water Rights Section at the address, phone number, or fax number below. When contacting the Department, be sure to reference your limited license number for better service.

Remember, the use of water under the terms of this limited license is not a secure source of water. Water use can be revoked at any time. Such revocation may be prompted by field regulatory activities or many other reasons.

Water Rights Section
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem OR 97301-1271
Phone: (503) 986-0817 Fax: (503) 986-0901