

STIPULATED FINAL ORDER AND AGREEMENT ON RECONSIDERATION

STATE OF OREGON

WATER RESOURCES DEPARTMENT

[Oregon Department of Water Resources Permit](#)

In the matter of the Special Order, Volume 50, Page 578-579 Approving an Additional Point of Diversion for City of Yachats, Transfer 7589 Modification of Permit 51190

Background

On July 8, 1996, pursuant to ORS 537.211(4), the City of Yachats (City) submitted an application to add a point of diversion to the water right authorized by permit 51190 (T-7589). The additional point of diversion is proposed downstream from the original, in the Yachats River estuary. The Department received comments opposing the application to add a point of diversion from the Yachats Area Watershed Restoration Advisory Council, WaterWatch and others on or before September 12, 1996.

On September 12, 1996, the Department granted the City's request (Special Order Vol. 50, page 578). On November 8, 1996, WaterWatch of Oregon; T.B. Dame and Paul Engelmeyer; Yachats Area Watershed Restoration Advisory Council (Council); Dike Dame; Ron Taves; Hans Radtke; Andrea Scharf; Paul Engelmeyer; and James Adler (collectively, "the Petitioners") petitioned the Department to reconsider its approval of the permit amendment, on several grounds.

On April 4, 1997, the Department issued an "Order of Reconsideration" and listed the two matters on which the Department sought additional evidence and argument before entering a final order. A second "Order on Reconsideration" reciting the basis for the grant of reconsideration and referring the matter to contested case hearing, was issued on October 10, 1997. An order setting contested case hearing was issued on January 28, 1998, by Administrative Law Judge Weisha Mize.

The Petitioners contest the City's proposed action, maintaining, inter alia, that the Water Resources Department has no authority to issue an order adding a point of diversion, that an additional point of diversion will result in injury to existing instream water rights, that approval of the City's proposed action allows violation of permit conditions which include compliance with land use laws and that the approval of the City's proposed action sets bad polity because it allows for expansion of a permit and perpetuates wasteful use of water. The City contends inter alia, that the proposed diversions are lawful and necessary to maintain a reliable water supply for the current and future residents of Yachats.

Agreed Terms and Conditions

The City, the Petitioners and the Department now agree that the issues in this case may be settled on the following terms and conditions and hereby stipulate as follows:

1. Entry of this stipulate final order by the Administrative Law Judge.
2. Issuance of an order approving the City's permit amendment application (T-7589), a draft of which is attached and incorporated herein by reference. The attached order shall supersede the Special Order at Volume 50, Page 578

3. Issuance of a permit superceding permit 51190, a draft of which is attached and incorporated herein by reference.

4. The parties waive the right to file exceptions to this order and the right to judicial review of this order and agreement, and permit conditions arising from this order and agreement.

5. The City shall install and maintain a permanent recording measuring device on the Yachats River, the design and location of which will be specified in consultation with the Water Resources Department (WRD) and the Department of Fish and Wildlife (ODFW). The device shall be installed prior to any diversions or use of water under this permit, placed so as to accurately measure steam flows needed to meet instream water rights Cert. 59739, Cert 59608 and Cert. 73161, and be accessible to WRD and ODFW staff at all times. Maintenance of the measuring device and associated rating curve shall substantially comply with the applicable provisions of OAR 690-085-015(4) (methods for measuring open channels) so an estimate of flow can be made at any time. Flow shall be determined prior to and during diversions under this permit, and the City shall maintain a record of flow measurements and observations.

6. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the volume and instantaneous rate of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located with a private structure, the watermaster shall request access upon reasonable notice.

7. When streamflow on the Yachats River, measured at the device described in #5 above, exceeds senior and junior instream rights (Cert. 59739, Cert. 59608, Cert. 73161) the City may exercise this permit (both points of diversion and the full 2.0 cfs) without restriction beyond the existing terms of the permit as amended. The minimum streamflows are set out in the following table:

MONTH	DAYS	59739	59608	73161
Jan		65.00	65.00	132.00
Feb		65.00	65.00	132.00
Mar		65.00	65.00	132.00
Apr		65.00	65.00	132.00
May		40.00	40.00	63.00
June	1 – 15	30.00	30.00	63.00
June	16 – 30	30.00	30.00	42.00
July	1 – 15	20.00	20.00	40.20
July	16 – 31	15.00	20.00	40.20

Aug		15.00	15.00	25.60
Sep		15.00	15.00	24.90
Oct	1 – 15	15.00	25.00	49.10
Oct	16 – 31	50.00	50.00	49.10
Nov		70.00	70.00	132.00
Dec		70.00	70.00	132.00

8. When streamflows measured at the device described in #5 above drop below the flows identified in the junior instream water rights (Cert. 59739 or Cert. 69608), use of the Yachats River under this permit may be made only in emergencies or when population growth exceeds other sources of supply. Future use due to population growth exceeding supply shall be limited by the City's compliance with its approved water management and conservation plan.

a) For purposes of this settlement agreement, "emergencies" are limited to: sustained drought, accompanied by the institution of curtailment measures described in the City's water management plan that include curtailment triggers linked to steamflows; supply line breakage; firefighting; outdoor events within the City's service area which place an abnormally high demand on water supply (e.g. Cycle Oregon, outdoor festivals); catastrophic loss of use of primary water supply sources; and threats to public health, not attributable to inefficiency or chronic conditions, as may be approved jointly by ODFW and WRD.

b) For purposes of this settlement agreement, population growth will be deemed to have "exceeded other sources of supply" only if the City: (1) is in compliance with its approved water management plan which includes the elements specified in #9 of the Stipulated Final Order and Agreement on Reconsideration, and (2) (a) prior to 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first, is either meeting the plan schedule or has reached the goal of 85% water use efficiency, yet remains unable to meet the requirements of the city's resident population using other developed sources; or (b) after 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first has reached or exceeded 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources.

9. The City will amend and resubmit its draft water management plan, currently under department review. The parties agree that submission of the amended plan triggers the review and appeal provisions of OAR 690 Division 86. The amended plan shall include the following:

a) goal of 85% water use efficiency and a plan and time table for meeting that goal by fifteen years from the date of this agreement or ten years from plan approval, whichever comes first;

b) demand projections based on the 85% efficiency level and demand figures based upon the best practicable estimate of population and occupancy figures and seasonal average water use;

c) a schedule for water audits;

d) a commitment to continue to cooperate in efforts to develop a regional water supply;

e) an analysis of the land use approval processes which will be required to develop the two points of diversion on the Yachats River described herein, and a discussion of how and when the City intends to comply with those land use processes;

f) an analysis of the feasibility of other water sources and a timeline for when the City will abandon nonviable

sources or seek to transfer those sources to instream rights;

g) a curtailment plan which includes triggers for curtailment that are based upon streamflows; and

h) all elements necessary to meet the requirements of the WRD Division 86 rules.

WRD agrees to process the amended plan in a timely manner.

10. Addition of the lower diversion point shall be a permanent change.
11. In the event streamflows measured at the device described in #5 are insufficient to satisfy the junior instream water rights (Cert. 73161) or the senior instream water rights (Cert. 59739 and Cert. 69608), and the Yachats River is utilized under this permit, diversions shall not exceed 1 cfs, and those diversions shall be made at a rate not to exceed 0.50 cfs at the upper point of diversion and 0.50 cfs at the lower point of diversion.
12. The City agrees to relinquish its rights to divert 3 cfs from Marks Creek under permit 35219. The City agrees to file an affidavit of cancellation with the Department certifying that the City is the owner of the permit and that the permit has been abandoned by the owner and that the owner desires cancellation of the permit. The City shall not divert of use water under this permit until the Marks Creek Permit 35219 has been canceled.
13. The Protestants agree not to protest or appeal Department action on the City's new permit amendment to change the upper point of diversion from 14S 11W 31 1740'S 2550'E FRM NW COR (application T-7967), and agree not to protest or appeal Department action on the City's next request for an extension on this permit that is filed specifically to extend the October 1, 1998, expiration date.
14. The terms of this agreement will be incorporated into the City's water management plan and to the extent possible, into the attached draft order approving the July, 1996, permit amendment request (T-7589). Permit 51190 shall be superceded by the attached draft permit and shall include the conditions contained in the final order approving the City's July 8, 1996, permit amendment request.
15. The Department, the City, and the petitioners agree on all aspects of this agreement and the attached draft order.
16. This agreement may be executed in counterparts.

On Behalf of WaterWatch of Oregon Date

On Behalf of Yachats Area Date

Watershed Advisory Council

T. B. ("Dike") Dame Date

Ron Taves Date

Hans Radtke Date

Andrea Scharf Date

Paul Engelmeyer Date

James Adler Date

On Behalf of the City of Yachats Date

On Behalf of Oregon Water Resources Date

Department

Stipulated Final Order

Pursuant to the Agreement described above, the City's application to add a point of diversion under Permit 51190 is approved. An order, consistent with the attached draft order, shall be issued bearing the modifications to the order recorded in Special Order Volume 50, Page 578-579. The previous order approving this permit amendment is of no further force or effect.

Date Weisha Mize

Administrative Law Judge

Water Resources Department

STATE OF OREGON

COUNTY OF LINCOLN

ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

Pursuant to ORS 537.211, after notice given, reviewing objections, and resolving a petition for reconsideration, this order approves, as conditioned or limited herein, TRANSFER 7589 and modifies Permit 51190 in the name of CITY OF YACHATS P.O. BOX 345, YACHATS, OREGON 97498. This order is issued to modify the previous order approving T-7589 (Special Order Volume 50, Page 578- 579) and by reference incorporates the Stipulated Final Order and Agreement on Reconsideration issued August XX, 1998, by Administrative Law Judge Weisha Mize.

The permit to be modified, Permit 51190, has a priority date of March 20, 1989. The permit allows the use of the YACHATS RIVER, a tributary of the PACIFIC OCEAN, for MUNICIPAL USE. The amount of water to which this permit is entitled is limited to an amount actually beneficially used and shall not exceed 2.0 cubic feet per second, of which 1.0 cfs is not subject to instream water right Certificate 59708 minimum stream flows with a date of priority of March 26, 1974, if available at the authorized point of diversion: NE ¼ SW ¼, SECTION 31, T 14 S, R 11 W, WM; 1740 FEET SOUTH AND 2550 FEET EAST FROM THE NW CORNER OF THE SW ¼ NW ¼, SECTION 31, or its equivalent in case of rotation, measured at the point of diversion from the source.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is as follows:

NE ¼ SE ¼ W ½ W ½

S ½ SE ¼ SE ¼ SW ¼

SECTION 22 SECTION 26

SW ¼ SW ¼ NE ¼

SECTION 23 N ½ SE ¼

SE ¼ SE ¼

SECTION 27

NE ¼

SECTION 34

TOWNSHIP 14 SOUTH, RANGE 12 WEST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to add an additional point of diversion to:

NW ¼ SE ¼, SECTION 26, T 14 S r 12 W, MW; 295 FEET NORTH AND 420FEET EAST FROM THE NW CORNER OF THE SW ¼ SE ¼

SECTION 26

THIS CHANGE TO AN EXISTING WATER PERMIT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE PERMIT HOLDER:

1. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion and is further limited as described below.
2. The City shall install and maintain a permanent recording measuring device on the Yachats River, the design and location of which will be specified in consultation with the Water Resources Department (WRD) and the Department of Fish and Wildlife (ODFW). The device shall be installed prior to any diversions or use of water under this permit, placed so as to accurately measure stream flows needed to meet instream water rights Cert. 59739, Cert 59608 and Cert. 73161, and be accessible to WRD and ODFW staff at all times. Maintenance of the measuring device and associated rating curve shall substantially comply with the applicable provisions of OAR 690-085-015 (4) (methods for measuring open channels) so an estimate of flow can be made at any time. Flow shall be determined prior to and during diversions under this permit, and the City shall maintain a record of flow measurements and observations.
3. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the volume and instantaneous rate of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where

the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

1. When streamflow on the Yachats River, measured at the device described in #2 above, exceeds senior and junior instream rights (Cert. 59739, Cert. 59608 and Cert. 73161) the City may exercise this permit (both [points of diversion and the full 2.0 cfs) without restriction beyond the existing terms of the permit as amended.
2. When streamflows measured at the device described above drop below the flows identified in the junior instream water right (Cert. 73161) or senior instream water rights (Cert. 59739 or Cert. 69608), use of the Yachats River under this permit may be made only in emergencies or when population growth exceeds other sources of supply. Future use due to population growth exceeding supply shall be limited by the City's compliance with its approved water management and conservation plan.
3. "Emergencies" are limited to sustained drought, accompanied by the institution of curtailment measures described in the City's water management plan that include curtailment triggers linked to streamflows; supply line breakage; firefighting; outdoor events within the City's service area which place an abnormally high demand on water supply (e.g. Cycle Oregon, outdoor festivals); catastrophic loss of use of primary water supply sources; and threats to public health, not attributable to inefficiency or chronic conditions as may be approved jointly by ODFW and WRD.

Population growth will be deemed to have "exceeded other sources of supply" only if the City : (1) is in compliance with its approved water management plan which includes the elements specified in the Stipulated Final Order and Agreement on Reconsideration (T-7589), and (2) (a) prior to 15 years from the date of approval of the management plan, whichever comes first, is either meeting the plan schedule or has reached the goal of 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources; or (b) after 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first has reached or exceeded 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources.

4. Addition of the lower diversion point shall be a permanent change.
5. In the event streamflows measured at the device described in #2 above are insufficient to satisfy the junior instream water right (Cert. 73161) or the senior instream water rights (Cert. 59739 and Cert. 69608), and the Yachats River is utilized under this permit, diversions shall not exceed 1cfs, and those diversions shall be made at a rate not to exceed 0.50 cfs at the upper point of diversion and 0.50 cfs at the lower point of diversion.
6. Water may not be diverted at any point of diversion authorized under this permit until all applicable conditions of the permit have been met, including compliance with state-wide land-use goals and any local acknowledged land-use plans.
7. Water shall be acquired from the same surface water source as the original point of diversion.
- 8.
9. All other terms and conditions of the permit shall remain the same.

Permit 51190, in the name of the City of Yachats, is amended as described herein and a superceding permit, consistent with the attached draft permit shall be issued. Permit 51190 is of no further force or effect.

WITNESS the signature of the Water Resources Director, affixed _____.

Martha O. Pagel, Director

STATE OF OREGON

COUNTY OF LINCOLN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

CITY OF YACHATS

PO BOX 345

YACHATS, OREGON 97498

To use the waters of YACHATS RIVER, a tributary of PACIFIC OCEAN, for MUNICIPAL USE.

This permit is issued approving Application 69856. The date of priority is March 20, 1989. The use is limited to not more than 2.0 CUBIC FOOT PER SECOND (CFS), OF WHICH 1.0 CFS IS NOT SUBJECT TO INSTREAM WATER RIGHT Certificate 59608 OR MINIMUM STREAM FLOWS WITH A DATE OF PRIORITY OF MARCH 26, 1974, or its equivalent in cases of rotation, measured at the point of diversion from the source. The use of water under this permit is further limited as described below.

The points of diversion are located as follows:

POD 1 – NE ¼, SW ¼, SECTION 31, T14S, R11W, WM; 1740 FEET SOUTH AND 2550 FEET EAST FROM THE NW CORNER OF THE SW ¼ NW ¼, SECTION 31. POD 2 – NW ¼ SE ¼, SECTION 26, T14S, R12W, WM; 295 FEET NORTH AND 420 FEET EAST FROM THE NW CORNER OF THE SW ¼ SE ¼, SECTION 26.

Within 1 year from the date this permit is issued, the permittee shall submit a revised water management and conservation plan consistent with the Agreement and Stipulated Final Order on Reconsideration issued on September 3, 1998, and OAR Chapter 690, Division 86.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

- NE ¼ SE ¼
- S ½ SE ¼
- SECTION 22
- SW ¼ SW ¼
- SECTION 23
- W ½ W ½
- SE ¼ SW ¼
- SECTION 26
- NE ¼
- N ½ SE ¼
- SE ¼ SE ¼
- SECTION 27
- NE ¼
- SECTION 34
- TOWNSHIP 14 SOUTH, RANGE 12 WEST W.M.

The City shall install and maintain a permanent recording measuring device on the Yachats River, the design and location of which will be specified in consultation with the Water Resources Department (WRD) and the Department of Fish and Wildlife (ODFW). The device shall be installed prior to any diversions or use of water under this permit, placed so as to accurately measure stream flows needed to meet instream water rights Cert. 599739, Cert 59608 and Cert. 73161, and be accessible to WRD and ODFW staff at all times. Maintenance of the measuring device and associated rating curve shall substantially comply with the applicable provisions of OAR 690-085-015 (4) (methods for measuring open channels) so an estimate of flow can be made at any time. Flow shall

be determined prior to and during diversions under this permit, and the City shall maintain a record of flow measurements and observations.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the volume and instantaneous rate of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

When streamflow on the Yachats River, measured at the device described above, exceeds senior and junior instream rights (Cert. 59739, Cert. 59708, and Cert. 73161) the City may exercise this permit (both points of diversion and the full 2.0 cfs) without restriction beyond the existing terms of the permit.

When streamflows measured at the device described above drop below the flows identified in the junior instream water rights (Cert. 73161) or senior instream water rights (Cert. 59739 or Cert. 69608), use of the Yachats River under this permit may be made only in emergencies or when population growth exceeds other sources of supply. Future use due to population growth exceeding supply shall be limited by the city's compliance with its approved water management and conservation plan.

"Emergencies" are limited to: sustained drought, accompanied by the institution of curtailment measures described in the City's water management plan that include curtailment triggers linked to streamflows; supply line breakage; firefighting; outdoor events held within the City's service area which place an abnormally high demand on water supply (e.g. Cycle Oregon, outdoor festivals); catastrophic loss of use of primary water supply sources; and threats to public health, not attributable to inefficiency or chronic conditions, as may be approved jointly by ODFW and WRD.

Population growth will be deemed to have "exceeded other sources of supply" only if the City: (1) is in compliance with its approved water management plan which includes the elements specified in The Stipulated Final Order and Agreement on Reconsideration (T-7589), and (2) (a) prior to 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first, is either meeting the plan schedule or has reached the goal of 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources; or (b) after 15 years from the date of this agreement or 10 years from the date of approval of the management plan, whichever comes first has reached or exceeded 85% water use efficiency, yet remains unable to meet the requirements of the City's resident population using other developed sources.

In the event streamflows measured at the device described above are insufficient to satisfy the junior instream water right (Cert. 73161) or the senior instream water rights (Cert. 59739 and Cert. 69608), and the Yachats River is utilized under this permit, diversions shall not exceed 1 cfs and those diversions shall be made at a rate not to exceed 0.50 cfs at the upper point of diversion (POD 1) and 0.50 cfs at the lower point of diversion (POD 2).

Addition of the lower diversion point (POD 2) shall be a permanent change.

Water may not be diverted at any point of diversion authorized under this permit until all applicable conditions of the permit have been met, including compliance with state-wide land-use goals and any local acknowledged land-use plans.

Actual construction shall begin on or before November 19, 1991, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1998 (See Special Order Volume 46, page 534 and Special Order Volume 49, page 208).

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

This permit is issued to supercede permit 51190. Permit 51190 is superceded in order to incorporate the relevant portions of the Stipulated Final Order and Agreement on Reconsideration issued on September 3, 1998, by Administrative Law Judge Weisha Mize and to incorporate the conditions contained in the Order Approving An Additional Point of Diversion recorded in Special Order Volume 52, pages 767 – 771. Permit 51190 is superceded by this instrument and is of no further force or effect.

Issued September 15, 1998

Martha O. Pagel, Director

Water Resources Department

◆ [City of Yachats](#) ◆ [City Council and Commission Minutes](#)
City Council, Commission members, and City Hall: cityhall@ci.yachats.or.us