ASSIGNED
PACIFIC CITY WATER DISTRICT

P. O. Box 88
Pacific City, OR 97135

06025

d May 3, 1972
May 3, 1972
ispended until S.U.F.

o applicant
approval July 27, 1973

CONSTRUCTION

beginning July 27, 1974
completion October 1, 1975
ded to 10-1-80 10-1-85 10-1-90

application of water October 1, 1976
ded to 10-1-80 10-1-85 10-1-90
12025

PROSECUTION OF WORK

" filed started
" filed
" filed

FINAL PROOF

iled
eived
ificate issued

Application No. 49201
Permit No. 36881
Certificate No.

Stream Index, Page No. 1-16H

FEES PAID

Date	Amount	Receipt No.
5-3-72	2700	28250
9-18-98	25.00	24694
12/17/00	350.00	90969
	$1 Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.

ASSIGNMENTS

Date	To Whom	Address	Volume	Page
9/18/98	Pacific City JTWSA-PO Box 520 ph. 965-4636	Pacific City, OR 97135-0520	8	245

REMARKS

2.0 cfs from Horn Creek for quasi municipal
CARD FOR BC OCT 27 1980
CARD FOR C OCT 25 1990
JAN 24 1991 Form 100 Sent
T-11450 ΔPOU APOD V. 88 Pg. 744-747

SP*45873-119

IMPORTANT—This form is a notice to the State Engineer that permittee is ready to make final proof to the extent to which the water has actually been applied to the intended use under the terms of the permit. Permittee is cautioned that Certificate of Water Right will be issued based on the extent of the quantity and use as determined by the **final proof** inspection and survey which will be made in response to the filing of this Form C.

NOTE: In the case of an irrigation permit, this Form C should not be mailed to the State Engineer until all of the land described in the permit, which it is intended to irrigate under this permit at any time, has actually been irrigated.

Fill out, detach and mail to the State Engineer, Salem, Oregon 97310, when all of the water has been applied.

Application No. .....

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

I, Pacific City Water District, the holder of Permit No. 36881

to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in accordance with the terms of said permit, on the 1 day of October, 1985

Remarks: Completed sometime before Oct 85 when all staff and board members were replaced.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of January, 1991

Vernon L Crawford
(Signature of Applicant)
President Board of Commissioners

PO Box 88, Pacific City, OR 97135
(Address)

OK LHM

Form B

Application No. .....

NOTICE OF COMPLETION OF CONSTRUCTION

I, Pacific City Water District, the holder of Permit No. 36881

to appropriate the public waters of the state of Oregon, completed the construction of the works described (sometime before)
therein on the 1 day of October, 1985

Remarks: Described work was completed sometime before Oct 85 when all staff and board members were replaced.

If the works have less capacity than described in the permit, or you have definitely abandoned part of the proposed development, you should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of January, 1991

Vernon L Crawford
(Signature of Applicant)
President Board of Commissioners

PO Box 88, Pacific CIty, OR 97135
(Address)

Fill out, detach and mail to the State Engineer, Salem, Oregon 97310, when construction work is completed.

OK LHM

Oregon
John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904
www.wrd.state.or.us

November 19, 2012

PACIFIC CITY JWSA
PO BOX 520
PACIFIC CITY, OR 97135-0520

REFERENCE: Permit Amendment Application T-11450

Enclosed is a copy of the order approving your Permit Amendment application.

Also enclosed is a superseding permit that incorporates the amendments approved by the final order contained herein. Please read this document and abide by the requirements.

If you have any questions related to the approval of this permit amendment, you may contact your caseworker by telephone at (503) 986-0886 or by e-mail at Patrick.K.Starnes @wrd.state.or.us

Sincerely,

C Holmes

Codi Holmes
Water Rights Services Support
Transfer and Conservation Section

cc: Greg Beaman, Watermaster Dist. # 1
Theodore Ressler, Agent

Enclosure

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Permit Amendment T-11450, Tillamook County	)	**FINAL ORDER** APPROVING AN ADDITIONAL POINT OF DIVERSION AND A CHANGE IN PLACE OF USE

Authority

ORS 537.211 establishes the process in which a water right permit holder may submit a request to change the point of diversion and/or place of use authorized under an existing water right permit.

Applicant

PACIFIC CITY JOINT WATER-SANITARY AUTHORITY
ATTN TONY OWEN
PO BOX 520
PACIFIC CITY OR 97135-0520

Findings of Fact

Background

1. On July 24, 2012, PACIFIC CITY JOINT WATER-SANITARY AUTHORITY filed an application for an additional point of diversion and to change in place of use under Permit S-36881. The Department assigned the application number T-11450.

2. On September 18, 1998, the Department approved an assignment of the permit to Pacific City Joint Water-Sanitary Authority.

3. On May 24, 1978, the Department approved an extension of time for complete application of water to October 1, 1980.

4. On August 27, 1981, the Department approved an extension of time for complete application of water to October 1, 1985.

5. On March 21, 1986, the Department approved an extension of time for complete application of water to October 1, 1990.

6. On May 14, 2012, the Department approved an extension of time for complete application of water to October 1, 2025.

This is a final order in other than 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 137-004-080 and OAR 690-01-005 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.

7. On October 1, 2012, the Department approved a Water Management and Conservation Plan submitted by the Pacific City Joint Water-Sanitary Authority. The approval order was entered at Volume 88, Page 595.

8. Permit Amendment Application T-11450 proposes an additional point of diversion approximately 60 feet upstream from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 W	WM	20	NE SW	2450 FEET NORTH AND 2575 FEET EAST FROM THE SW CORNER OF SECTION 20

9. Permit Amendment Application T-11450 proposes to change the place of use of the permit to:

QUASI-MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	18	SW SE
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SW NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE
4 S	10 W	WM	19	SE SE
4 S	10 W	WM	30	NE NE
4 S	10 W	WM	30	NW NE
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW
4 S	10 W	WM	30	NW SW
4 S	10 W	WM	30	NE SE
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	10 W	WM	30	SE SE
4 S	10 W	WM	31	NW NE
4 S	10 W	WM	31	SW NE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SW SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	24	NE NE

QUASI-MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	11 W	WM	24	NW NE
4 S	11 W	WM	24	SW NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	NW SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE
4 S	11 W	WM	25	NE SE

10. Notice of the application for the permit amendment was published in the Department's weekly notice on July 31, 2012 pursuant to ORS 540.520(5). No comments were filed in response to the notice.

11. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

Permit Amendment Review Criteria

12. The changes would not result in injury to other water rights.

13. The proposed place of use is controlled by the permit holder.

14. The changes do not enlarge the permit.

15. The changes do not alter any other terms of the permit.

16. The proposed place of use is contiguous to the authorized place of use.

Conclusions of Law

The additional point of diversion and change in place of use proposed by Permit Amendment Application T-11450 is consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

1. The additional point of diversion and change in place of use proposed by Permit Amendment Application T-11450 are approved.

2. Permit S-54783, in the name of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY, is issued to replace Permit S-36881, and incorporates the amendments approved by this order, the extensions of time, and the Water Management and Conservation Plan. Permit S-36881, in the name of PACIFIC CITY JOINT WATER-SANITARY AUTHORITY, is no longer of any force or effect.

3. The combined quantity of water diverted at the new additional 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.

4. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

5. Water shall be acquired from the same surface water source as the original point of diversion.

6. All other terms and conditions of Permit S-54783 remain the same.

Dated at Salem, Oregon this 19 day of November, 2012.

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: NOV 20 2012

STATE OF OREGON, |
County of Marion, |ss.

This superseding permit is issued to describe an amendment for a change in point of diversion proposed under Permit Amendment Application T-11450 and approved by Special Order Vol. 86, Page 744, entered NOV 19, 2012, and to describe extensions of time for complete application of water approved May 24, 1978, August 27, 1981, March 21, 1986, and May 14, 2012, an assignment to a new permittee approved September 18, 1998, and a Water Management and Conservation Plan approved October 1, 2012. This permit supersedes Permit S-36881.

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS and the following limitations and conditions:

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 2.0 *cubic feet per second measured at the point of diversion from the stream, or its equivalent in case of rotation with other water users, from* Horn Creek.....

The use to which water is to be applied is quasi-municipal.....

.....

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 W	WM	20	NE SW	2445 FEET NORTH AND 2514 FEET EAST FROM THE SE CORNER OF SECTION 19
4 S	10 W	WM	20	NE SW	2450 FEET NORTH AND 2575 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	18	SW SE
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SW NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE
4 S	10 W	WM	19	SE SE
4 S	10 W	WM	30	NE NE

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	30	NW NE
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW
4 S	10 W	WM	30	NW SW
4 S	10 W	WM	30	NE SE
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	10 W	WM	30	SE SE
4 S	10 W	WM	31	NW NE
4 S	10 W	WM	31	SW NE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SW SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	24	NE NE
4 S	11 W	WM	24	NW NE
4 S	11 W	WM	24	SW NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	NW SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE
4 S	11 W	WM	25	NE SE

Permit Amendment T-11450 Conditions

The combined quantity of water diverted at the new additional 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.

The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Water shall be acquired from the same surface water source (Horn Creek) as the original point of diversion.

Extension of Time Conditions

1. Development Limitations

Diversion of any water beyond 1.35 cfs under Permit S-36881 (superseded by Permit S-54783) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit S-54783 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The deadline established by the Extension of Time 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 Extension of Time Final Order may also meet the WMCP requirements of other Department orders.

2. Settlement Conditions

The following three conditions are added pursuant to the Settlement Agreement:

2.a. Total surface water withdrawals from any of the points of diversion authorized under Certificates 86807 and 86808, under Transfer T-11126 and Permit S-54783 and any subsequent certificates issued thereunder, will be limited to a combined rate of 2.7 cfs.

2.b. Withdrawal of surface water from Horn Creek will not be allowed when stream flow is less than 2.0 cfs; however, for as long as Condition 3 of the Biological Opinion or the Corps Permit is in effect, the withdrawal of surface water will not be allowed when stream flow is less than 2.5 cfs. Condition 3 of Biological Opinion is copied below:

> 3. To implement reasonable and prudent #3 (instream flows) the Corps shall ensure that water withdrawals at the Horn Creek intake do not exceed 2.7 cfs, and minimum instream flows do not drop below 2.5 cfs.
>
> > a. When water withdrawals on Horn Creek reach 2.0 cfs, instream flows shall be measure[d] concurrently at two locations until water withdrawals drop below 2.0 cfs. The first location shall be located approximately 250 feet from the confluence of Horn Creek and the Nestucca River. The second location shall be located approximately 250 feet above the head of tide.
>
> Biological Opinion, Attachment 1, p. 31.

For as long as the Biological Opinion is in effect, stream flow measurements will be taken in accordance with Paragraph 3.a. of Attachment 1 (as shown above), except that if the requirements of Paragraph 3.a. are amended by agreement of NOAA and Pacific City, requirements as amended shall apply. Thereafter, stream flow measurement for purposes of complying with Condition **2.b.** shall be taken below the lowest PCJSWA point of diversion on Horn Creek. The permit holder shall be responsible for maintaining and operating a stream gage at such location.

2.c. The water right permit holder will provide copies to Oregon Water Resources Department ("OWRD") of all reports prepared pursuant to Conditions 4(d)-(g) of the Biological Opinion for as long as such reports are required under the Corps Permit. At such time as reports are no longer required under the Corps Permit, the water right permit holder will provide annual reports to the OWRD, or more frequently if requested by OWRD, of daily stream flow measurements and daily surface water withdrawals. Conditions 4(d)-(g) of the Biological Opinion are copied below:

> 4. To implement reasonable and prudent #4 (monitoring) the Corps shall:
>
> ***
>
> d. Annually, submit a report that details Pacific City's operation plan, including peak demand, Horn Creek withdrawals, and duration of peak withdrawals.
>
> e. Annually, for a period of 5 years, submit a report to NMFS that summarizes the results of the post-construction instream temperature monitoring, low flow habitat analysis, and the effectiveness of the installation of the large wood debris structures in creating pools and providing habitat and riparian planting survival.
>
> f. As required by term and condition #2[3], submit a monitoring report detailing instream flow measures collected during periods of peak withdrawals exceeding 2.0 cfs.
>
> ...
>
> Biological Opinion, Attachment 1, p. 32

Water Management and Conservation Plan Conditions

The Pacific City Joint Water-Sanitary Authority Water Management and Conservation Plan shall remain in effect until October 1, 2022, unless approval is rescinded pursuant to OAR 690-086-0920.

The limitation of the diversion of water under Permit S-36881 (superseded by Permit S-54783) established in Condition #1 (Developmental Limitations) in the Final Order Incorporating Settlement Agreement (Page 6 of 9) issued by the Oregon Water Resources Department on May 14, 2012, approving an extension of time for Permit S-36881 (superseded by Permit S-54783) is removed.

Subject to other limitations and/or conditions of the permit, as well as the Settlement Conditions set forth in the Extension of Time Final Order Incorporating Settlement Agreement issued by the Oregon Water Resources Department on May 14, 2012, the Pacific City Joint Water-Sanitary Authority is authorized to divert up to 2.0 cfs under Permit S-54783.

The Pacific City Joint Water-Sanitary Authority shall submit an updated plan meeting the requirements of OAR Chapter 690, Division 086 within 10 years (of the plan approval date) and no later than April 1, 2022.

The Pacific City Joint Water-Sanitary Authority shall submit a progress report containing the information required under OAR 690-086-0120(4) by October 1, 2017.

The deadline established herein for the submittal of an updated Water Management and Conservation Plan (consistent with OAR Chapter 690, Division 086) shall not relieve the Pacific City Joint Water-Sanitary Authority from any existing or future requirement(s) for submittal of a Water Management and Conservation Plan at an earlier date as established through other final orders of the Department.

The priority date of this permit is May 3, 1971.....

Actual construction work shall begin on or before July 27, 1974..... *and shall thereafter be prosecuted with reasonable diligence and be completed on or before* October 1, 2025.....

Complete application of the water to the proposed use shall be made on or before October 1, 2025.....

WITNESS my hand this.....19.....*day of* November, 2012.

.....

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Oregon
John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone: 503-986-0900
FAX: 503-986-0904
www.oregon.gov/owrd

October 2, 2012

Pacific City Joint Water-Sanitary Authority
Attn: Tony Owen, Manager
PO Box 520
Pacific City, OR 97135

Subject: Water Management and Conservation Plan

Dear Mr. Owen:

Enclosed, please find the final order approving the Pacific City Joint Water-Sanitary Authority's (PCJWSA) Water Management and Conservation Plan and authorizing the diversion of up to 2.0 cfs of water under Permit S-36881. We did not receive any appeals of the proposed final order that we issued on August 23, 2012.

The attached final order specifies that PCJWSA's plan shall remain in effect until October 1, 2022. Additionally, PCJWSA is required to submit a progress report to the Department by October 1, 2017, detailing progress made toward the implementation of conservation benchmarks scheduled in the plan. Finally, PCJWSA must submit an updated Water Management and Conservation Plan to the Department by April 1, 2022.

NOTE: *The deadline established in the attached final order for submittal of an updated water management and conservation plan (consistent with OAR Chapter 690, Division 086) shall not relieve PCJWSA from any existing or future requirement(s) for submittal of a water management and conservation plan at an earlier date as established through other final orders of the Department.*

We appreciate your cooperation in this effort. Please do not hesitate to contact us if we can provide any guidance or information as you update your plan.

Sincerely,

Lisa J. Jaramillo
Water Management and Conservation Analyst
Water Right Services Division

Enclosure

cc: WMCP file
Greg Beaman, District #01 Watermaster
Application S-49201 (Permit S-36881)
WaterWatch of Oregon, Attn: Lisa Brown, 213 SW Ash Street, Suite 208, Portland, OR 97204
Parametrix, Attn: Tom Nielsen, 700 NE Multnomah, Suite 1000, Portland, OR 97232
Schwabe, Williamson & Wyatt, Attn: Martha Pagel, 530 Center Street NE, Suite 400, Salem, OR 97301

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of the Proposed Water Management and Conservation Plan for Pacific City Joint Water-Sanitary Authority, Tillamook County	))))	FINAL ORDER APPROVING A WATER MANAGEMENT AND CONSERVATION PLAN

Authority

OAR Chapter 690, Division 086, establishes the process and criteria for approving water management and conservation plans required under the conditions of permits, permit extensions and other orders of the Department. An approved water management plan may authorize the diversion and use of water under a permit extended pursuant to OAR Chapter 690, Division 315.

Findings of Fact

1. On August 5, 2010, the Pacific City Joint Water-Sanitary Authority (PCJWSA) submitted a draft Water Management and Conservation Plan for review under OAR Chapter 690, Division 086.

2. The Oregon Water Resources Department (Department) published notice of receipt of the plan on August 10, 2010, as required under OAR Chapter 690, Division 086. Timely public comments were received on September 9, 2010, from WaterWatch of Oregon.

3. The Department provided comments on the plan to PCJWSA on October 28, 2010, and, in response, the City submitted draft revisions to the plan on July 17, 2012 and August 1, 2012. The final revised plan was submitted to the Department on August 20, 2012.

4. The Department reviewed PCJWSA's revised plan, as well as the public comments received, and finds that the revised plan contains all of the elements required under OAR 690-086-0125.

5. The projections of future water needs in the plan demonstrate a need for 2.0 cfs of water available under Permit S-36881 to help meet overall anticipated demands of 3.43 cfs for PCJWSA's 20-year planning horizon. These projections are reasonable and consistent with PCJWSA's land use plan.

6. The system is fully metered and unaccounted-for water is estimated at 31 percent. The rate structure includes a base rate and volumetric charge, and customers are billed on a monthly basis.

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 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.

7. The plan includes 5-year benchmarks to continue and/or initiate implementation of the following: perform an annual water audit; completely replace all old water meters by the year 2016; monitor billing records for discrepancies and test and/or repair customer meters, as necessary; calibrate and maintain source meters on a 4 to 5 year basis; perform acoustical leak detection; replace pipe in sections of the distribution system comprised of aging asbestos cement (AC) and galvanized steel pipes; distribute residential conservation kits; distribute low-flow shower heads/bathroom sink aerator nozzles; staff an information booth at local events to provide public outreach and educational materials related to water conservation; expand public outreach to include distribution of water conservation-related materials to hotels/motels, restaurants and rental homes in the area, thereby targeting the tourist population; provide technical assistance to homeowners related to home water audits and suggestions on water conservation practices; and provide technical assistance to commercial customers by working with hotels/motels to provide water conservation information in each guest room and with restaurants to start requiring customers to ask for water instead of automatically supplying it. The plan also includes a 5-year benchmark to perform a survey to evaluate public interest in PCJWSA offering rebates to customers who invest in water conserving fixtures/appliances.

8. The plan identifies Horn Creek, an Unnamed Stream (a tributary of Horn Creek), and ground water as the sources of PCJWSA's water rights. The plan accurately and completely describes the listed streamflow-dependent species that are present in PCJWSA's surface water sources, being Coho salmon (federally listed as threatened and state listed as sensitive), Chinook salmon (state listed as sensitive), Chum salmon (state listed as sensitive), Steelhead trout (federally listed as species of concern and state listed as sensitive), Western Brook lamprey (federally listed as species of concern and state listed as sensitive) and Pacific lamprey (federally listed as species of concern and state listed as sensitive). The plan also accurately and completely describes that Horn Creek is listed by the Oregon Department of Environment Quality as being water quality limited for temperature during summer months, and that PCJWSA's ground water sources are not located within a designated critical ground water area or a ground water management area.

9. The water curtailment element included in the plan satisfactorily promotes water curtailment practices and includes a list of three stages of alert with concurrent curtailment actions.

10. The diversion of water under Permit S-36881 will be expanded during the next 20 years and is consistent with OAR 690-086-0130(7), as follows:

    a. As evidenced by the 5-year conservation benchmarks and continuing conservation measures described in Findings of Fact #6 and 7 above, the plan includes a schedule for development of conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources;

b. Considering that PCJWSA's water supply capacity is limited during low streamflow, high demand periods; that accessing additional supply from ground water would likely be limited and generally a poor alternative supply source; and that PCJWSA's current and planned conservation measures cannot meet future demands alone, the use of surface water under PCJWSA's extended Permits S-36881 is the most feasible and appropriate water supply alternative available to PCJWSA; and

c. The plan identifies that PCJWSA is subject to conditions for maintaining a diversion structure that includes an intake and screen complying with the Oregon Department of Fish and Wildlife fish screening requirements. The plan also identifies that PCJWSA must maintain minimum streamflow levels in Horn Creek, as established by the National Marine Fisheries Service in its March 20, 2009 Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Horn Creek Municipal Water Intake which included a Biological Opinion, Incidental Take Statement and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation (for Corps No. NWP-2008-161), and as incorporated into the Final Order Incorporating Settlement Agreement issued by the Oregon Water Resources Department on May 14, 2012, approving an Extension of Time for Permit S-36881.

11. Based upon Findings of Fact #4 – #10, the Department issued a Proposed Final Order on August 23, 2012, proposing to approve PCJWSA's revised WMCP. In accordance with OAR 690-086-0915(10), the deadline for submittal of appeals to the Proposed Final Order was September 24, 2012. No timely appeals to the Proposed Final Order were received by the Department.

Conclusion of Law

The Water Management and Conservation Plan submitted by the Pacific City Joint Water-Sanitary Authority is consistent with the criteria in OAR Chapter 690, Division 086.

Now, therefore, it is ORDERED:

1. The Pacific City Joint Water-Sanitary Authority Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2022, unless this approval is rescinded pursuant to OAR 690-086-0920.

2. The limitation of the diversion of water under Permit S-36881 established in Condition #1 (Development Limitations) in the Final Order Incorporating Settlement Agreement (Page 6 of 9) issued by the Oregon Water Resources Department on May 14, 2012, approving an Extension of Time for Permit S-36881 is removed.

   Subject to other limitations and/or conditions of the permit, as well as the Settlement Conditions set forth in the Extension of Time Final Order Incorporating Settlement Agreement issued by the Oregon Water Resources Department on May 14, 2012, the Pacific City Joint Water-Sanitary Authority is authorized to divert up to 2.0 cfs under Permit S-36881.

3. The Pacific City Joint Water-Sanitary Authority shall submit an updated plan meeting the requirements of OAR Chapter 690, Division 086 (effective November 1, 2002) within 10 years and no later than April 1, 2022.

4. The Pacific City Joint Water-Sanitary Authority shall submit a progress report containing the information required under OAR 690-086-0120(4) by October 1, 2017.

5. The deadline established herein for the submittal of an updated Water Management and Conservation Plan (consistent with OAR Chapter 690, Division 086) shall not relieve the Pacific City Joint Water-Sanitary Authority from any existing or future requirement(s) for submittal of a Water Management and Conservation Plan at an earlier date as established through other final orders of the Department.

Dated at Salem, Oregon this 1 day of October, 2012.

Dwight French, Water Right Services Administrator *for*
PHILLIP C. WARD, DIRECTOR

Mailing date: Oct. 9 2012

Mailing List for Extension FO Incorporating Settlement Agreement Copies

Note: Include a copy of the "Important Notice" document along with the original copy of the Final Order Incorporating Settlement Agreement being sent to the permit holder.

FO Date: May 14, 2012

Copies Mailed

Application S-49201
Permit S-36881

By: Connie Vance
On: 5/22/2012

Original mailed to permit holder:

Pacific City Joint Water-Sanitary Authority
Attn: Tony Owen
P.O. Box 520
Pacific City, OR 97135

Copies sent to:

1. WRD - App. File S-49201/ Permit S-36881
2. WRD - Watermaster District 1, Greg Beaman
3. WRD – Lisa Jaramillo, Transfer and Conservation Services (for QM requiring Division 86 plan)
4. WRD - Support Staff, Salem...*Permit record update*

Fee paid as specified under ORS 536.050 to receive copy:

5. None

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

6. None

Other

7. Martha Pagel, Schwabe Williamson & Wyatt, 530 Center St, Ste. 400, Salem, OR 97301
8. WaterWatch of Oregon, 213 SW Ash St., Ste. 208, Portland, OR 97204

CASEWORKER: PM

file

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application for Extension of Time for Permit S-36881 in the name Pacific City Joint Water Sanitary Authority *Applicant* and WaterWatch of Oregon, Inc. *Protestant*	)	SETTLEMENT AGREEMENT

The Oregon Water Resources Department ("OWRD"), Pacific City Joint Water Sanitary Authority ("PCJWSA"), and WaterWatch of Oregon, Inc. ("WaterWatch") (collectively "the parties") do hereby stipulate and agree in this Settlement Agreement ("Agreement") as follows:

A. Background

1. On December 17, 2007, PCJWSA submitted an application for an extension of time, requesting that the time to complete construction of the water system and the time to perfect the right under the terms of Permit S-36881 be extended from October 1, 1990 to October 1, 2020.
2. On January 29, 2008, OWRD issued a Proposed Final Order ("PFO") recommending the extension be granted.
3. On March 14, 2008, WaterWatch filed a timely protest.
4. OWRD, applicant PCJWSA and protestant WaterWatch agree that all issues related to WaterWatch's protest to the Proposed Final Order on the application for extension of time for Permit S-36881 are resolved solely on the following terms.

B. Consent

1. Applicant PCJWSA and protestant WaterWatch each acknowledge that it has read and understands the terms of this Agreement, and the terms of the attached draft Final Order Incorporating Settlement Agreement granting Extension of Time for Permit Number S-36881, which are hereby incorporated by reference as if set forth fully herein.
2. PCJWSA and WaterWatch understand and agree that this Agreement and all documents incorporated by reference and the Final Order to be issued consistent with this Agreement set forth the entire Agreement of the parties.
3. PCJWSA and WaterWatch understand and agree that this Agreement and issuance of a Final Order Incorporating Settlement Agreement granting Extension of Time for Permit Number S-36881 that conforms to the attached draft Final Order will constitute the complete and final resolution of the WaterWatch protest.
4. PCJWSA and WaterWatch waive any and all right to petition for judicial review of this Agreement, waive any and all right to request reconsideration, petition for judicial review

or appeal the Final Order Incorporating Settlement Agreement Granting Extension of Time for Permit Number S-36881 unless the Final Order fails to conform to the attached draft Final Order in which case PCJWSA and WaterWatch may exercise any and all applicable rights including those described in this paragraph.

C. Terms of the Agreement

1. Within 45 days of the signing of this Agreement by all parties, OWRD will issue a Final Order Incorporating Settlement Agreement Granting Extension of Time for Permit Number S-36881 which conforms to this Agreement and the attached draft Final Order Incorporating Settlement Agreement Granting Extension of Time for Permit Number S-36881.
2. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
3. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
4. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement Granting Extension of Time for Permit Number S-36881, and understands and agrees with the contents thereof.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent. The parties recognize that nothing in this settlement purports to limit the authority of any federal agency to require, authorize or enforce a bypass flow greater than 2.0 cfs or any other conditions in connection with any federal permit or regulatory authorization that may be required for operation of the intake facilities.
6. This Settlement Agreement may be signed in counterparts.

Dwight French, Administrator,
Water Right Services Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

4-12-12
Date

Douglas H. Kellow, Board Chairman
Pacific City Joint Water-Sanitary Authority

05-01-2012
Date

Tony Owen, Manager
Pacific City Joint Water-Sanitary Authority

5-1-12
Date

John DeVoe
WaterWatch of Oregon, Inc.

4/12/12
Date

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number S-49201

Final Order Incorporating Settlement Agreement
Granting Extension of Time for Permit Number S-36881
Permit Holder: Pacific City Joint Water-Sanitary Authority

Permit Information

Application File S-49201/ Permit S-36881
Basin 18 – Mid Coast Basin / Watermaster District 1
Date of Priority: May 3, 1972

Authorized Use of Water

Source of Water:	Horn Creek, a Tributary to the Nestucca River
Purpose or Use:	Quasi-Municipal
Maximum Rate:	2.0 Cubic Feet per Second (cfs)

Appeal Rights

This is a final order in other than 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.

Application History

The Department issued Permit S-36881 on July 27, 1973. The permit called for completion of construction by October 1, 1975, and complete application of water to beneficial use by October 1, 1976. On December 17, 2007, Pacific City Joint Water-Sanitary Authority ("PCJWSA") submitted an application to the Department for an extension of time for Permit S-36881. In accordance with OAR 690-315-0050(2), on January 29, 2008 the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2020, and the time to fully apply water to beneficial use to October 1, 2020. The protest period closed March 14, 2008, in accordance with OAR 690-315-0060(1). WaterWatch of Oregon, Inc. ("WaterWatch") filed a timely protest. The Proposed Final Order dated January 29, 2008 is hereby incorporated in this Final Order as if set forth fully herein, except as modified by this Final Order.

Settlement Background

As of May 1, 2012 PCJWSA and WaterWatch signed a settlement agreement requiring the inclusion of additional conditions on the use of water under this permit and any subsequent certificate(s), and on use of surface water from Horn Creek. The Settlement Agreement between PCJWSA and WaterWatch is hereby incorporated in this final order as if set forth fully herein, and attached as part of this final order.

On May 20, 2009, the National Marine Fisheries Service issued Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Horn Creek Municipal Water Intake which included a Biological Opinion, Incidental Take Statement and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation (for Corps No. NWP-2008-161) ("Biological Opinion," included as Attachment 1).[1] The "Terms and Conditions" and "Reasonable and Prudent Measures" contained in the Biological Opinion were included as non-discretionary special conditions of a permit issued by the U.S. Army Corps of Engineers to PCJWSA on June 2, 2009 for construction and operation of a new water intake facility for PCJSWA (Corps No.: NWP-2008-161, "Corps Permit".) The "Terms and Conditions" and "Reasonable and Prudent Measures", required by the Corps Permit, are contained in the Biological Opinion attached to this Final Order as Attachment 1. A copy of the entire Corps Permit, which includes the Biological Opinion, is available in the Department's file for Permit S-36881.

PCJWSA has four authorized points of diversion on Horn Creek that authorize a combined total diversion of 2.7 cfs under various water rights, as listed below:

1. Upper Horn Creek: SESE, Section 8, Township 4 South, Range 10 West, W.M. Authorized point of diversion for Certificate 86807 for 0.01 cfs of water.

2. East Creek Intake, tributary to Horn Creek: 330 FEET NORTH & 50 FEET EAST FROM W ¼ CORNER, SECTION 16, BEING WITHIN THE SWNW, Section 16, Township 4 South, Range 10 West, W.M. Authorized point of diversion for Certificate 86808 for 0.01 cfs of water.

3. Original Intake on Lower Horn Creek: 2445 FEET NORTH & 2514 EAST FROM SE CORNER OF SECTION 19, BEING WITHIN THE NESW, Section 20, Township 4 South, Range 10 West, W.M. Authorized point of diversion for Permit 36881, 2.0 cfs of water.

4. Newly constructed intake, located near the Original Intake on Lower Horn Creek: 2450 FEET NORTH & 2575 FEET EAST FROM SW1/4 CORNER, SECTION 20, BEING WITHIN THE NESW, Section 20, Township 4 South, Range 10 West, MW. Authorized point of diversion under Transfer T-11126 for 0.68 cfs (0.19 + 0.49) of

[1] The cover page of the consultation document states an incorrect issue date of May 20, 2008.

water.

CONDITIONS FOR PERMIT S-36881

The following conditions are hereby added as conditions to permit S-36881 and will included as conditions to any certificate(s) subsequently issued for permit S-36881.

1. Development Limitations

Diversion of any water beyond 1.35 cfs under Permit S-36881 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within 3 years of an approved extension application. Use of water under Permit S-36881 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 this 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 order may also meet the WMCP submittal requirements of other Department orders.

2. Settlement Conditions

The following three conditions are added pursuant to the Settlement Agreement:

2.a. Total surface water withdrawals from any of the points of diversion authorized under Certificates 86807 and 86808, under Transfer T-11126 and Permit 36881 and any subsequent certificates issued thereunder, will be limited to a combined rate of 2.7 cfs.

2.b. Withdrawal of surface water from Horn Creek will not be allowed when stream flow is less than 2.0 cfs; however, for as long as Condition 3 of the Biological Opinion or the Corps Permit is in effect, the withdrawal of surface water will not be allowed when stream flow is less than 2.5 cfs. Condition 3 of Biological Opinion is copied below:

> 3. To implement reasonable and prudent #3 (instream flows) the Corps shall ensure that water withdrawals at the Horn Creek intake do not exceed 2.7 cfs, and minimum instream flows do not drop below 2.5 cfs.
>
> a. When water withdrawals on Horn Creek reach 2.0 cfs, instream flows shall be measure[d] concurrently at two locations until water withdrawals drop below 2.0 cfs. The first location shall be located approximately 250 feet from

the confluence of Horn Creek and the Nestucca River. The second location shall be located approximately 250 feet above the head of tide.

Biological Opinion, Attachment 1, p. 31.

For as long as the Biological Opinion is in effect, stream flow measurements will be taken in accordance with Paragraph 3.a. of Attachment 1 (as shown above), except that if the requirements of Paragraph 3.a are amended by agreement of NOAA and Pacific City, the requirements as amended shall apply. Thereafter, stream flow measurement for purposes of complying with Condition **2.b.** shall be taken below the lowest PCJSWA point of diversion on Horn Creek. The permit holder shall be responsible for maintaining and operating a stream gauge at such location.

2.c. The water right permit holder will provide copies to Oregon Water Resources Department ("OWRD") of all reports prepared pursuant to Conditions 4 (d)- (g) of the Biological Opinion for as long as such reports are required under the Corps Permit. At such time as reports are no longer required under the Corps Permit, the water right permit holder will provide annual reports to OWRD, or more frequently if requested by OWRD, of daily stream flow measurements and daily surface water withdrawals. Conditions 4(d) – (g) of the Biological Opinion are copied below:

4. To implement reasonable and prudent measure #4 (monitoring) the Corps shall:

***

d. Annually, submit a report that details Pacific City's operation plan, including peak demand, Horn Creek withdrawals, well field withdrawals, and duration of peak withdrawals.

e. Annually, for a period of 5 years, submit a report to NMFS that summarizes the results of the post-construction instream temperature monitoring, low flow habitat analysis, and the effectiveness of the installation of the large wood debris structures in creating pools and providing habitat and riparian planting survival.

f. As required by term and condition #2[3], submit a monitoring report detailing instream flow measures collected during periods of peak water withdrawals exceeding 2.0 cfs.

. . .

Biological Opinion, Attachment 1, p. 32

CONCLUSIONS

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

Based on the applicant's request, the Department has determined there is a reasonable basis to allow an additional five years for the extension period.

Order

The extension of time for Application S-49201, Permit S-36881, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1990 to October 1, 2025. The deadline for applying water to full beneficial use is extended from October 1, 1990 to October 1, 2025.

DATED: May 14, 2012

Dwight French, Water Right Services Division Administrator *for*
PHILLIP C. WARD, DIRECTOR

If you have any questions about statements contained in this document, please contact Ann Reece at (503) 986-0827.

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.

Mailing List for Extension FO Incorporating Settlement Agreement Copies

Note: Include a copy of the "Important Notice" document along with the original copy of the Final Order Incorporating Settlement Agreement being sent to the permit holder.

FO Date: May 14, 2012

Copies Mailed

Application S-49201
Permit S-36881

By: Connie Vance
On: 5/22/2012

Original mailed to permit holder:

Pacific City Joint Water-Sanitary Authority
Attn: Tony Owen
P.O. Box 520
Pacific City, OR 97135

Copies sent to:

1. WRD - App. File S-49201/ Permit S-36881
2. WRD - Watermaster District 1, Greg Beaman
3. WRD – Lisa Jaramillo, Transfer and Conservation Services (for QM requiring Division 86 plan)
4. WRD - Support Staff, Salem...*Permit record update*

Fee paid as specified under ORS 536.050 to receive copy:

5. None

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

6. None

Other

7. Martha Pagel, Schwabe Williamson & Wyatt, 530 Center St, Ste. 400, Salem, OR 97301
8. WaterWatch of Oregon, 213 SW Ash St., Ste. 208, Portland, OR 97204

CASEWORKER: PM

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No:
2008/02002

May 20, 2009

Erik S. Petersen
U.S. Army Corps of Engineers
Portland District
P.O. Box 2946
Portland, Oregon 97208-2946

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Horn Creek Municipal Water Intake (HUC: 171002030210), Tillamook County, Oregon (Corps No.: NWP-2008-161)

Dear Mr. Petersen:

The enclosed document contains a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act (ESA) regarding the effects of the proposed issuance of a Department of the Army permit by the U.S. Army Corps of Engineers (Corps) to Pacific City under section 404 of the Clean Water Act. In this Opinion, NMFS concludes that the proposed action is not likely to jeopardize the continued existence of Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*) or result in the destruction or adverse modification of designated critical habitat for OC coho salmon.

As required by section 7(b) of the ESA, NMFS is providing an incidental take statement with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize the impact of incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements that the Corps must comply with the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA's prohibition against the take of listed species.

This document also includes the results of our analysis of the action's likely effects on EFH pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Since NMFS provided no conservation recommendations, a response is not required.

If you have questions regarding this consultation, please contact Robert Anderson, Fisheries Biologist in the Oregon Coast/Lower Columbia Branch of the Oregon State Habitat Office, at 503.231.2226.

Sincerely,

for Barry A. Thom
Regional Administrator

Endangered Species Act Section 7 Consultation Biological Opinion

and

Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

Horn Creek Municipal Water Intake
(HUC: 171002030210)
Tillamook County, Oregon
(Corps No.: NWP-2008-161)

Lead Action Agency:	U.S. Army Corps of Engineers
Consultation Conducted By:	National Marine Fisheries Service Northwest Region
Date Issued:	May 20, 2008
Issued by:	for Barry A. Thom Regional Administrator
NMFS No.:	**2008/02002**

TABLE OF CONTENTS

INTRODUCTION

This document contains a biological opinion (Opinion) and incidental take statement prepared in accordance with section 7(b) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), and implementing regulations at 50 CFR 402. With respect to critical habitat, the following analysis relied only on the statutory provisions of the ESA, and not on the regulatory definition of "destruction or adverse modification" at 50 CFR 402.02.

The National Marine Fisheries Service (NMFS) also completed an essential fish habitat (EFH) consultation, prepared in accordance with section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801, *et seq.*) and implementing regulations at 50 CFR 600.

The docket for this consultation is on file at the Oregon State Habitat Office in Portland, Oregon.

Background and Consultation History

On September 18, 2007, NMFS staff participated in a pre-project design and operations meeting and field visit on Pacific City's proposed water intake on Horn Creek.

On April 8, 2008, NMFS received a letter and biological assessment from the U.S. Army Corps of Engineers (Corps) requesting formal consultation pursuant to section 7(a)(2) of the ESA and EFH consultation pursuant to section 305(b)(2) of the MSA to issue a Department of the Army permit to Pacific City under section 404 of the Clean Water Act to authorize construction of a new municipal water intake on Horn Creek. In the letter, the Corps determined the proposed action was likely to adversely affect Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*) and designated critical habitat for OC coho salmon.

On May 22, 2008, NMFS contacted the applicant's representative (Parametrix) to discuss Pacific City's operational plan.

On May 27, 2008, NMFS staff was notified by the applicant's representative that construction was postponed until summer 2009 and they will be providing NMFS a revised operations plan.

Between July 17, 2008 and August 21, 2008, NMFS and the applicant's representative worked on the development of a low-flow study design.

On July 28, 2008, the applicant's representative notified NMFS that the Pacific City Joint Water-Sanitary Authority Board approved a plan to modify the operations plan and implement the low-flow study.

On November 5, 2008, NMFS received a copy of the Horn Creek low-flow habitat analysis based on the modified operations plan.

On November 13, 2008, NMFS and the applicant's representative discussed the results of the Horn Creek low-flow habitat analysis. The NMFS and the applicant agreed to replace

extrapolated flow data with field-generated data and implement the operations plan based on that data.

On November 24, 2008, NMFS received a copy of the final Horn Creek low-flow habitat analysis, and began preparation of its Opinion.

Purpose and Need. Population growth in Pacific City is currently about 4.2% per year and projected to double by 2023 (biological assessment). Continued growth will require Pacific City to redevelop its current water supply system's source, treatment, and transmission capacity. Based on projected future growth, the existing water supply source (a series of well fields plus three existing intake structures on Horn Creek) cannot meet future peak demands as existing infrastructure is outdated and in disrepair.

Pacific City currently has three intake diversion structures on Horn Creek with water rights totaling 2.7 cubic feet $^{sec\text{-}1}$ (cfs). The East intake diversion structure has a water right of 0.5 cfs and is located approximately 1.75 miles upstream of the new intake. The Main intake diversion structure has a water right of 0.2 cfs and is located approximately 2.25 miles upstream of the new intake. The existing Horn Creek infilitration intake has a water right of 2.0 cfs and is located near the new intake structure. The three water diversion structures have an existing water withdrawal capability of 2.7 cfs. Pacific City is proposing a maximum peak (daily peak) withdrawal of 1.9 cfs at the Horn Creek intake.

In addition to increasing capacity, a primary reason for this project is to provide a water source that is not susceptible to saltwater intrusion or to tsunamis. This also creates the need for two transmission pipelines to connect the new water supply/treatment system to Pacific City.

Description of the Proposed Action

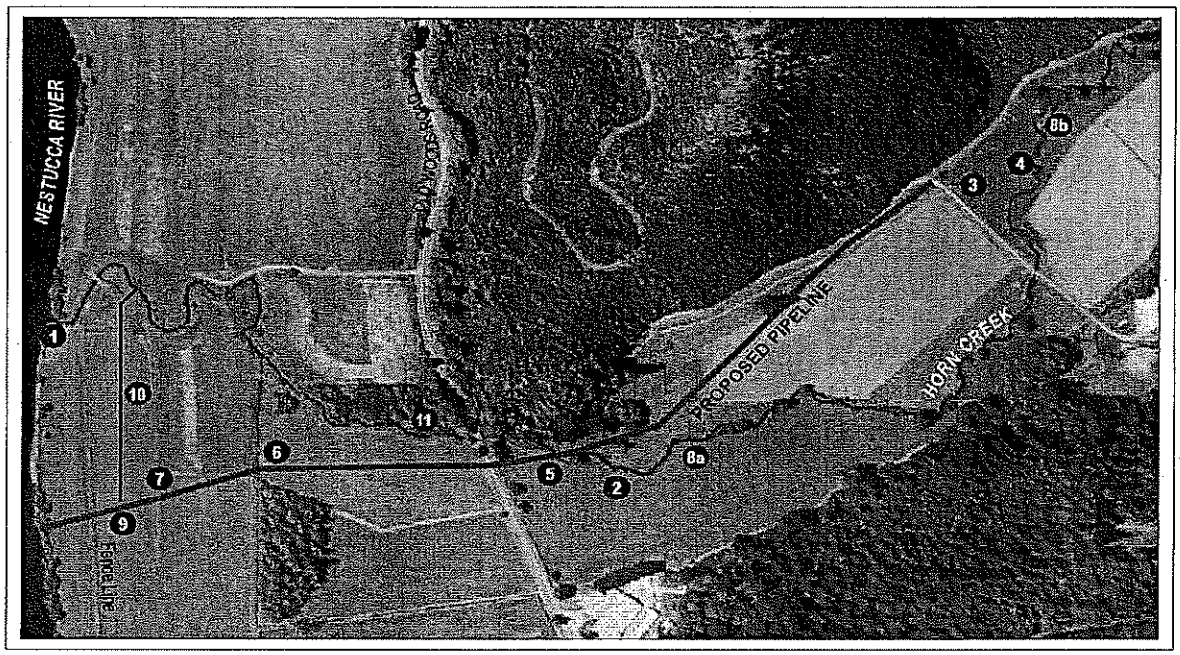
The proposed action is the issuance of a Department of the Army permit by the Corps under section 404 of the Clean Water Act authorizing Pacific City to construct a municipal water intake in Horn Creek, a tributary to the Nestucca River, in Pacific City, Tillamook County, Oregon.

Project Overview. Pacific City has water rights and existing intake structures on the surface water source Horn Creek that total 2.7 cfs. Pacific City proposes to consolidate these existing water rights so that a maximum withdrawal of 2.4 cfs could occur at the proposed Horn Creek intake. Pacific City also has water rights of 1.3 cfs that can be drawn from its well field as an alternative water source.

Intake Structure and Rock Weirs. The proposed intake structure will be located approximately 1.0 mile upstream from Horn Creek's confluence with the Nestucca River (Figure 1). The proposed structure will consist of a concrete box, approximately 8 feet long by 10 feet wide by 13 feet high that will house a passive drum screen (51 inches long by 16 inches in diameter connected to a 24-inch diameter PVC intake pipe. The intake screen will be an *active screen* (Johnson Model T-16 HCE intake screen) that will utilize compressed air from the treatment plant to automatically clean the screen on a regular interval (once daily). NMFS' maximum approach velocity criteria for this type of screen is 0.4 feet second^{-1}. This corresponds

to a minimum effective screen area of 6.7 feet squared for 1,200 gallons minute^{-1} (the maximum flow rate for the Horn Creek intake). The calculated effective screen area for this screen will be 7.0 square feet with a maximum approach velocity of 0.38 feet second^{-1}.

Figure 1. Overview of lower Horn Creek and project features.



LEGEND

1. Nestucca/Horn Creek confluence
2. Limits of tidal influence (Horn Creek)
3. Treatment facility location
4. Intake location
5. Horn Creek crossing
6. Canal crossing
7. Ditch crossing
8a. In-stream large wood (3 structures)
8b. In-stream large wood (2 structures)
9. Nestucca River boring
10. Temporary construction access road
11. Mitigation reference site

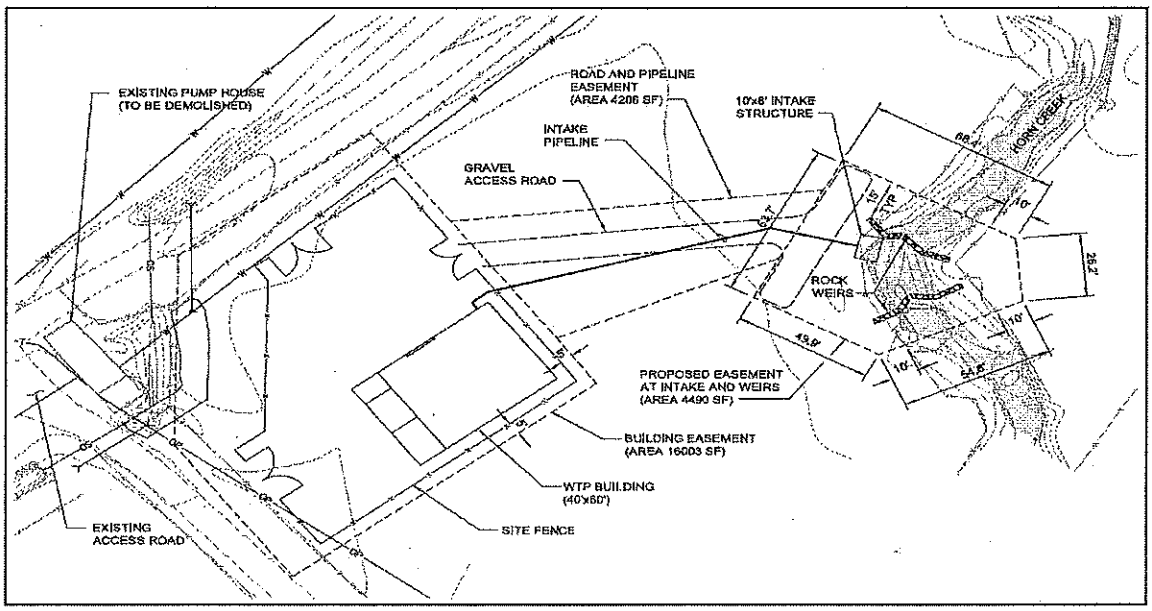
Installation of the concrete structure will occur along the west streambed/bank at an elevation that maintains a minimum water depth of 2.5 feet over the intake screen at 1.0 cfs. Approximately 1 foot of the intake structure will be above grade. The passive drum screen consists of a fine screen that excludes fish and other items greater than 0.06 inch in size. It also will have a weir and bar rack that excludes larger stream debris from entering the concrete structure. The buried intake pipe will run approximately 150 feet from the intake structure to the treatment/pumping facility.

The location proposed for this intake structure is within a right-bank scour pool. To maintain pool geometry, Pacific City will install two "v-shaped" rock weirs. The weirs will be comprised of hand-selected quarry boulders that are individually placed.

Construction of the intake will require permanent modification of approximately 15 linear feet of streambank on the west bank of Horn Creek. The intake structure will be placed on a pre-cast concrete pad and recessed into the streambank so that it extends a maximum of 1 foot into the existing stream channel. As a result, up to 15 square feet of the existing streambed will be permanently affected by the structure, and approximately 70 square feet of streambed will be affected by the weirs. A minimal amount of bank armoring, a maximum of 10 linear feet, will occur within the vicinity of the intake structure.

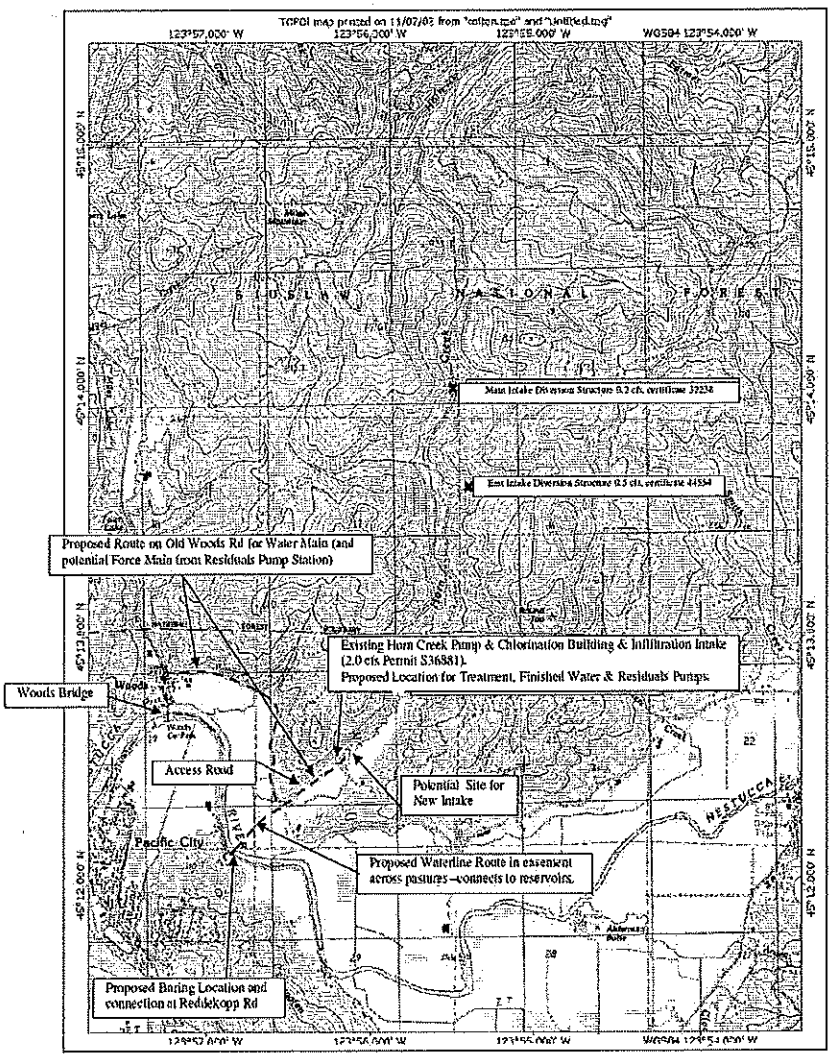
Treatment Facility/Pump Station. The new water treatment plant (WTP) will be built approximately 150 feet from Horn Creek, and includes a new 2,400 square foot building on a 16,000 square foot, fenced and graveled site to house the WTP and pumping systems (Figure 2). All stormwater generated by the new facility will infiltrate on site.

Figure 2. Site plan for the water treatment plant and intake.



Transmission Pipelines. To carry treated water from the Horn Creek WTP to Pacific City's existing distribution system, Pacific City will install two 12-inch diameter transmission pipelines. The proposed pipelines begin as one pipe that runs through pastureland (Figure 1 and Figure 3). The pipe crosses Horn Creek approximately 50 yards upstream from Old Woods Road within an existing easement and adjacent to the existing pipeline, and will be installed via an open trench and buried 4 feet below the creek bottom, or installed using horizontal directional drilling (HDD).

Figure 3. Topographic map showing existing water intake structures, the proposed new water intake, and proposed transmission lines.

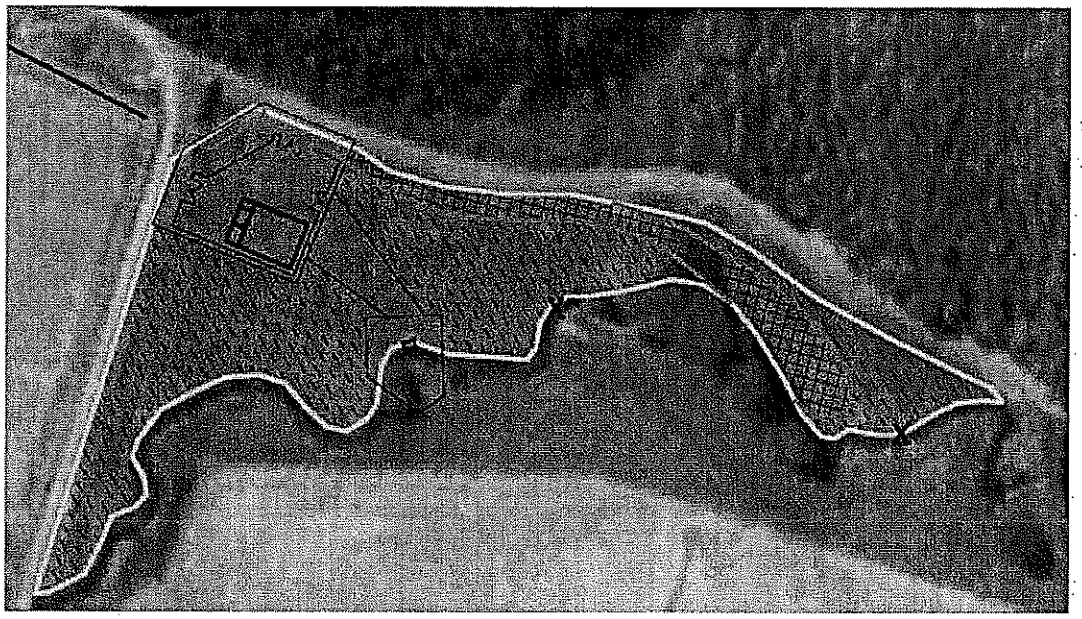


Upon reaching Old Woods Road (Figure 3), the pipe splits with one branch (South Pipeline) continuing southwest across another dairy pasture, crossing two drainage ditches located in the Nestucca River floodplain, crossing beneath the river, and connecting to the existing water system on the west side of the river. The South Pipeline's construction crossing of the Nestucca River will occur via HDD for a distance of approximately 300 feet at a depth of 30 feet below the river bottom. Using HDD will allow the crossing to occur without any work below the Nestucca River's ordinary high water elevation. The pipeline crossings of the two drainage ditches (no fish usage) will be by open trench.

The second pipe (West Pipeline) will run within the pavement/shoulder of Old Woods Road west to the town of Woods (Figure 3), then turn south to cross the Nestucca River by attaching the pipeline to the existing Woods Bridge. The West Pipeline will then connect into an existing transmission pipe in Brooten Road. The total length of the West Pipeline is approximately 1.6 miles. In addition to crossing the Nestucca River, the West Pipeline also will cross two small, unnamed Nestucca River tributaries. The pipeline will cross these streams embedded in the road; therefore, work outside of the existing road footprint or below the creeks' ordinary high water elevation will not be required. No in-water work will be required to cross the Nestucca River via the existing bridge.

Access/Storage Areas. Site location access will occur via existing paved and graveled roads within the project area. Staging areas for material storage will occur within disturbed, upland locations only. Maintenance, refueling, and vehicle storage will occur only on paved or graveled surfaces. All such areas will be fully contained via equipment diapers or other methods if located within 150 feet from riparian, aquatic, or wetland habitats (Figure 4).

Figure 4. Overview of the wetland and upland mitigation sites. The area in yellow is the wetland mitigation area. The area in green is the upland mitigation area.



Intake Operation and Management Plan. Based on the low-flow habitat analysis, Horn Creek has a minimum instream flow of 5.2 cfs (week of September 19, 2008). The Horn Creek WTP initially will withdraw a maximum of 1.5 cfs from Horn Creek (in 2009). However, the WTP's maximum design capacity will be 2.7 cfs, and ultimately, withdrawals on Horn Creek will increase to 2.7 cfs to meet future peak daily demand (Table 1). To meet peak daily demand during low flows, Pacific City will manage water supply demands by withdrawing water from both the Horn Creek water intake and its well field (its current water supply) which has a maximum capacity of 1.3 cfs. Tables 2 and 3 show how Pacific City proposes to use its two

sources to meet its municipal water demand over the next 9 years. Pacific City did not provide an operations plan for water withdrawals at the Horn Creek intake beyond 2018.

Table 1. Future municipal water demand estimates (biological assessment).

Year	Annual Max Daily Demand (cfs)
2008	1.5
2013	2.0
2018	2.4
2023	3.0
2028	3.5

Table 2. Horn Creek operations plan for 2009.

Month	Peak Demand	Horn Creek Withdrawal	Well Field Withdrawal	Observed Average Monthly Flow 2008
Jan	0.7	0.7	0	
Feb	0.7	0.7	0	
Mar	0.8	0.8	0	
Apr	0.9	0.9	0	
May	0.9	0.9	0	
Jun	1.0	1.0	0	
Jul	1.5	1.5	0	13.1
Aug	1.5	1.0	0.5	10.7
Sep	1.1	0.6	0.5	5.9
Oct	0.8	0.8	0	
Nov	0.6	0.6	0	
Dec	0.6	0.6	0	

Table 3. Horn Creek operations plan for 2018.

Month	Peak Demand	Horn Creek Withdrawal	Well Field Withdrawal	Observed Average Monthly Flow 2008
Jan	1.1	1.1	0	
Feb	1.0	1.0	0	
Mar	1.3	1.3	0	
Apr	1.4	1.4	0	
May	1.4	1.4	0	
Jun	1.6	1.6	0	
Jul	2.4	1.9	0.5	13.1
Aug	2.4	1.0	1.4	10.7
Sep	1.7	0.6	1.1	5.9
Oct	1.3	1.3	0	
Nov	1.0	1.0	0	
Dec	1.0	1.0	0	

Future habitat monitoring efforts will occur for 5 years post-construction to assess instream depth and temperature at a variety of flow rates, refine hydraulic model results, and calibrate the hydraulic model for future efforts.

A programmable logic controller (PLC) will automatically operate all aspects of the WTP, including the pumps that are fed by the intake. The water elevation of Horn Creek will be monitored continuously by a level sensor at the intake structure. The level sensor will send signals to both the PLC that controls the WTP (and intake pumps) and to computers and alarms at the Pacific City administration building. The PLC at the WTP will instantaneously stop the intake pumps if levels in Horn Creek fall below an elevation corresponding to the 2.5 cfs low-flow threshold. This will allow closer monitoring of the creek, the watershed, and the WTP system. Management actions might include reductions in withdrawals from Horn Creek, start-up of the well field, and notification of regulatory agencies.

Discharge of Treatment Backwash. Based on information from the applicant, the microfiltration system to be used to treat water requires that the filters be cleaned on a routine basis. The water resulting from these cleaning cycles is called backwash. There are three types of backwash that will be treated and neutralized before being discharged to the vegetated ditch (no fish usage).

The first type of treatment involves routine backwashes occurring about every 20 minutes, does not involve the use of chemicals, and is treated in a settling tank to remove any settable solids prior to discharge.

The second type of treatment is enhanced maintenance. This occurs once per day and involves cleaning the membranes with hypochlorite and hot water. This water is treated with sodium bisulfite for dechlorination and sodium carbonate to adjust the pH in a neutralization tank. Because the volume of water produced in this stage is about 5% of the total volume of the

routine backwashing, the water is diluted and temperature-equalized. Then it is transferred into the settling tank prior to discharge.

The third type of treatment occurs approximately once per month and requires extensive cleaning of the filters. This involves a multi-step process using sodium hypochlorite, citric acid, calcium bisulfate, and sodium hydroxide. The water produced from this treatment will run through a neutralization tank to be dechlorinated and to adjust the pH to background. The water is then transferred to a settling tank prior to discharge to a 1,500 foot-long vegetated ditch that eventually connects to Horn Creek. Average backwash at peak water demand will be 0.12 cfs.

The vegetated ditch receives drainage from the hills to the west. The ditch travels south along the access road for 1,500 feet from the proposed treatment plant to Horn Creek. In practical terms, the volume of water discharged into this ditch will infiltrate into ground before it travels the 1,500 feet in the vegetated ditch and reaches Horn Creek, as the ditch would act like a bioswale and provide added natural treatment: swales provide solids removal, organic removal, nutrient removal, and inorganics adsorb onto the soil and grasses.

Calcium bisulfate will be used for dechlorination. Calcium bisulfate is a reducing agent added proportionally to remove chlorine (an oxidizing agent). The two combine and neutralize each other, *i.e.*, deionize and dissipate and will be diluted to undetectable levels. There is also 28 hours of detention time in the neutralization tank and 3.5 hours in settling tank on an average day.

All chemical properties/by-products from chemical treatment is dealt with in the tanks settling tank and by-products are not discharged but remain in the tank. Pacific City is proposing a zero concentration target for chlorine. On-line analyzers will trigger an alarm if chlorine is detected in the discharge and discharge to the vegetated drainage ditch will stop.

Maintenance. Maintenance activities at the Horn Creek WTP intake will include:

1. Cleaning of the passive intake screen will occur daily by air-sparging using pressurized air.
2. Sediment accumulating in the intake structure will require periodic removal. The intake structure will be isolated by installing stop logs and dewatered using a portable pump with appropriately screened intake to exclude fish.
3. As the water is drawn down within the intake, fish will be periodically removed using nets. All fish will be removed prior to complete dewatering.

Impact Minimization Measures -- Short-term (Construction). The applicant proposes the following measures to minimize environmental impacts:

In-Water Work. All in-water work will occur during the ODFW-approved in-water work period of July 1 through September 15. The active work area will be isolated and dewatered, to the greatest extent possible, from the flowing stream with sandbags, cofferdams, a diversion pipe, pumps, and/or similar structures (Figure 5). The work area will be isolated primarily using gravity flow. However, intermittent pumping will be required to remove water that seeps into

the work area and when the gravity diversion structure is being readjusted and/or during rock weir construction. All pumps will be appropriately screened to exclude fish and will be manned continuously during operation. Machinery will be operated below the OHW elevation only within isolated portions of the stream. Machinery will not be operated within actively flowing portions of the channel.

Experienced biologists will perform all fish salvage and isolation activities. Fish salvage methods will be chosen based on site-specific conditions and may include such techniques as electrofishing, seining, and/or dip netting.

After completion of the project, permanent stabilization methods (to address alterations of the streambank during project work) will include seeding and mulching, protection with river rock (boulders), and/or bioengineered slope stabilization.

Rock will be placed individually and not end dumped. Placement will occur in the dry as much as possible. Rock placed within the bank or streambed will be clean of soil and other pit-run type sediments.

The contractor will measure for turbidity every 4 hours and will limit increases to 10% above background levels as observed 100 feet below the project.

Large woody debris will be installed in summer 2009 and will occur during the July 1 through September 15 in-water work period.

Sediment and Erosion Control. Soils that are temporarily exposed and disturbed during construction-related activities will be treated to minimize sediment mobilization using various methods (*e.g.*, silt fencing, straw bales, temporary seeding and/or mulching) and the erosion control methods will remain in place until the disturbed soils are stabilized, as determined by the project engineer.

Temporary sediment controls, such as sediment mats, filter bags, erosion blankets, sediment traps, staked sediment barriers, water bladderdams, and/or "dirt bags," will be constructed and used as necessary to limit sediment inputs to Horn Creek, the Nestucca River (if necessary), and surrounding wetlands.

Monitoring of erosion and sediment control measures will take place weekly by the construction contractor and the project engineer. It also will occur during major storms (during active construction periods only).

Any excess material will be removed from channels after operations are completed. No material that could contribute sediment to downstream habitats will be deposited below the bank or in waterways or wetlands.

Spill Prevention. The spill prevention plan will include the following items: Notification procedures; specific cleanup and disposal instructions for different products, quick response

containment and cleanup measures that will be available on site, and employee training for spill containment.

Prior to operating within the streams or wetlands, all equipment will be cleaned of external oil, grease, dirt, or caked mud. Any washing of equipment will be conducted in a location that will not contribute untreated wastewater to any flowing stream or wetland. On a daily basis, vehicles will be examined for fluid leaks prior to entering work areas near/within streams and wetlands. Staging areas will be located in areas that will prevent the potential contamination of any wetland or waterbody. Maintenance, refueling, and vehicle storage will occur only on paved or graveled surfaces. All such areas will be fully contained via diapers or other methods if not located at least 150 feet from riparian, aquatic, or wetland habitats.

If equipment leaks occur during in-water work, the equipment will be removed from the stream and/or wetland immediately to a location where pollutants cannot enter any waterway. The equipment will not be allowed within the stream and/or wetland until all leaks have been corrected and the equipment cleaned. Upland areas where the leaking equipment is stored also will be cleaned/remediated prior to project completion.

Temporary Work Access. Temporary work access areas will be limited to essential vehicles and personnel to minimize ground disturbance and soil erosion. Although site access for construction equipment primarily will occur during summer when access routes are dry and vegetated, should damage to these routes occur (in the form of ruts), they will be protected using appropriate materials (*e.g.*, geo-textile fabric and clean aggregate), which will be removed upon completion of the maintenance activities.

Upon completion of construction, all access areas not required for long-term maintenance will be blocked from all vehicular traffic and replanted with native species.

Clearing and Grubbing. Removal of native vegetation 4 inches or greater in diameter at breast height within riparian areas will not be allowed.

Impact Minimization Measures — Long-term (Operation and Maintenance).

Sediment Removal. When sediment accumulates in the intake structure to the point that it requires removal, the intake structure will be isolated by installing stop logs and dewatered using a portable pump with an appropriately screened intake to exclude fish. As the water is drawn down within the intake, fish will be periodically removed using nets. All fish will be removed and placed either upstream or downstream prior to complete dewatering.

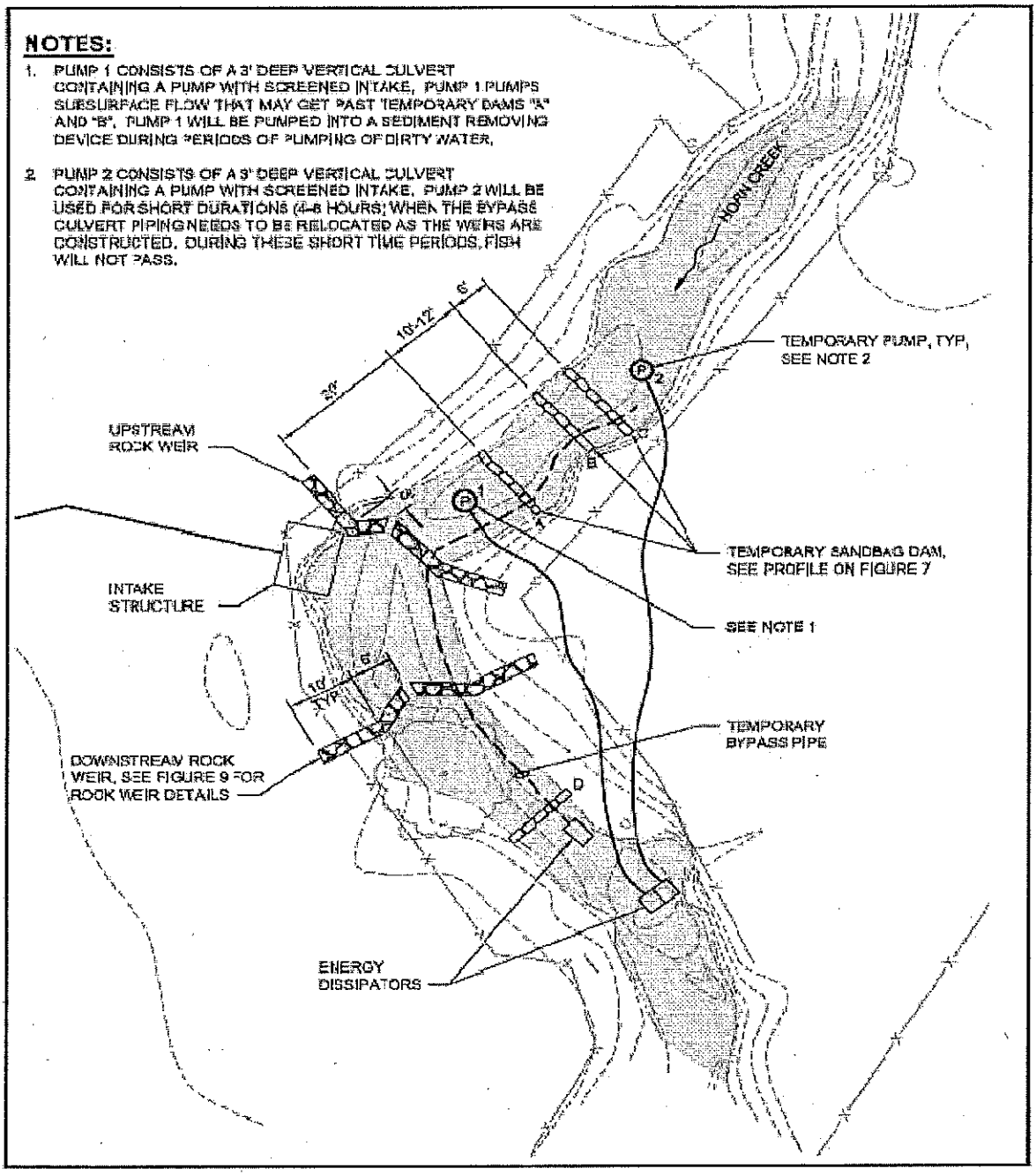
Fish Entrapment in the Intake Structure. Fish may become trapped in the intake structure if the water surface in Horn Creek drops below the elevation of the intake. The intake's elevation will be adjusted (using stop logs) in response to stream levels. However, the minimum elevation of the intake will be lower than the streambed, therefore minimizing the likelihood for entrapment.

Fish may become trapped in the intake under two scenarios:

Scenario 1. If water levels dropped below the level of the highest stop log, fish may become trapped. However, this situation will be detected immediately by a continuously operating ultrasonic level sensor at the intake which monitors water levels. When stream levels fall below a set elevation, the pumping system will automatically shut down (to protect equipment). Pacific City staff will immediately remove a stop log and resume pumping. To prevent this from occurring when the system is not active, if flows drop below the minimum instream flow threshold of 2.5 cfs the Pacific City will not withdraw water from Horn Creek until creek levels rise and instream flows exceed 2.5 cfs.

Scenario 2. Fish could become trapped during extremely low flows. However, this is unlikely to occur, because during extreme low flows, the system will have been shut down, all stop logs will have been removed, and the inlet weir (which will be lower than the elevation of the stream when all stop logs are removed) will be the controlling intake elevation. Therefore, the portion of the channel located adjacent to the intake will have to go dry in order to strand fish in the intake. This is unlikely to occur as the thalweg is very close to the intake and likely will remain so due to construction of the rock weir, which will help maintain the pool's current geometry. Therefore, surface flow in Horn Creek will have to drop very close to zero cfs in order to completely disconnect the intake from active stream flow. To prevent this from occurring, when flows drop below the specified threshold of 2.5 cfs (minimum instream flow with maximum water withdrawal) Pacific City will monitor instream water levels daily to ensure they do not drop below the intake. Should surface flow in the creek become disconnected from the intake, Pacific City agrees to contact NMFS and ODFW to determine the appropriate course of action.

Figure 5. Stream dewatering plan for Horn Creek.



Temperature Monitoring. Pacific City proposes to repeat the stream temperature monitoring (refer to Low Flow Habitat Analysis for methodology) for the first five years of operation to assess effects of flow reductions in Horn Creek.

Mitigation. Pacific City proposes to partner with the Nestucca Watershed Council to install five large woody debris (LWD) structures in Horn Creek with two structures immediately upstream of the new intake and three structures downstream of the new intake and above head of tide (see mitigation plan). Each LWD structure will have 2 to 5 logs per structure. The LWD structures will be installed in summer 2010. Large woody debris will be conifers (most likely Douglas-fir and spruce) with a minimum diameter at breast height of 18 inches and a minimum length of 20 feet, with attached root wads. Due to potential presence of chum salmon, the structures will not span more than 50% of the channel, but rather will extend 3 feet to 6 feet from the bank into the stream, providing edge effect and creating scour pools, and perhaps plunge pools as well. The average size of pools created will be in the range of 10 feet long by 5 feet wide by 3 feet deep.

Pacific City also proposes to replant approximately 11,400 square feet of riparian forest along approximately 500 linear feet of Horn Creek (see mitigation plan). The entire replanted area will be located within the action area, immediately downstream from the proposed intake. These plantings will provide shade to the creek, which is currently lacking in most of the action area, therefore helping to moderate instream temperatures.

To offset wetland and upland impacts, Pacific City proposes to enhance 65,859 square feet of wetland habitat and 13,640 square feet of upland habitat (Figure 4 and Table 8).

NMFS relied on the foregoing description of the proposed action, including all minimization and mitigation measures, to complete this consultation. To ensure that this consultation remains valid, the Corps should keep NMFS informed of any changes to the proposed action.

Construction and Monitoring Schedule. Table 4 shows the proposed schedule for construction, maintenance, and monitoring over the next 5 years.

Table 4. Proposed schedule for construction and monitoring.

YEAR	SEASON	ACTIVITY
1 (2009)	Summer	Intake and pipeline construction
1	Fall-Winter	Weed control as necessary
1	Fall - Winter	Tree and shrub plantings
2 (2010)	Spring - Fall	Site maintenance (including weed control) as necessary
2	Late Spring	1st annual monitoring
2	Early Summer	Instream structure construction; as-built report preparation
2	Summer	Site maintenance (including weed control) as necessary
2	Fall	Replanting/corrective action as necessary
2	Early winter	1st annual monitoring report
3 (2011)	Late spring	2nd annual monitoring
3	Summer	Site maintenance (including weed control) as necessary
3	Fall	Replanting/corrective action as necessary
3	Early winter	2nd annual monitoring report

YEAR	SEASON	ACTIVITY
4 (2012)	Late spring	3rd annual monitoring
4	Summer	Site maintenance (including weed control) as necessary
4	Fall	Corrective action as necessary
4	Early Winter	3rd annual monitoring report
6 (2013)	Late spring	4th annual monitoring
6	Summer	Site maintenance (including weed control) as necessary
6	Fall	Corrective action as necessary
6	Early winter	4th annual monitoring report
8 (2014)	Late Spring	5th (final) annual monitoring
8	Summer	Site maintenance (including weed control) as necessary
8	Fall	Corrective action as necessary
8	Early winter	5th (final)annual monitoring report

Action Area

'Action area' means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The action area for the project serves as a migration corridor for both adult and juvenile anadromous salmonid fishes, and as rearing habitat for juvenile anadromous salmonid fishes.

The proposed action occurs in Township 4 south, Range 10 west, Section 20, southwest 1/4 of the northeast 1/4) (Figure 2). The action area is defined as Horn Creek from its confluence with the Nestucca River to stream mile 1.25, including a 150-foot area measured out from top-of-bank; the Nestucca River at river mile 2.75 from bank-to-bank; and a 100-foot wide area, measured from centerline, of the proposed routes of the transmission lines (Figure 2).

ENDANGERED SPECIES ACT

Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify or destroy their designated critical habitat. The Opinion that follows records the results of the interagency consultation for this proposed action. An incidental take statement (ITS) is provided after the Opinion that specifies the impact of any taking of threatened or endangered species that will be incidental to the proposed action, reasonable and prudent measures that NMFS considers necessary and appropriate to minimize such impact, and nondiscretionary terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency to carry out the reasonable and prudent measures.

Biological Opinion

To complete the jeopardy analysis presented in this Opinion, NMFS reviewed the status of the listed species[1] of Pacific salmon considered in this consultation (Oregon coastal coho salmon), the environmental baseline in the action area, the effects of the action, and cumulative effects (50 CFR 402.14(g)). The NMFS determined whether effects of the action were likely, in view of existing risks, to appreciably reduce the likelihood of both the survival and recovery of the affected listed species.

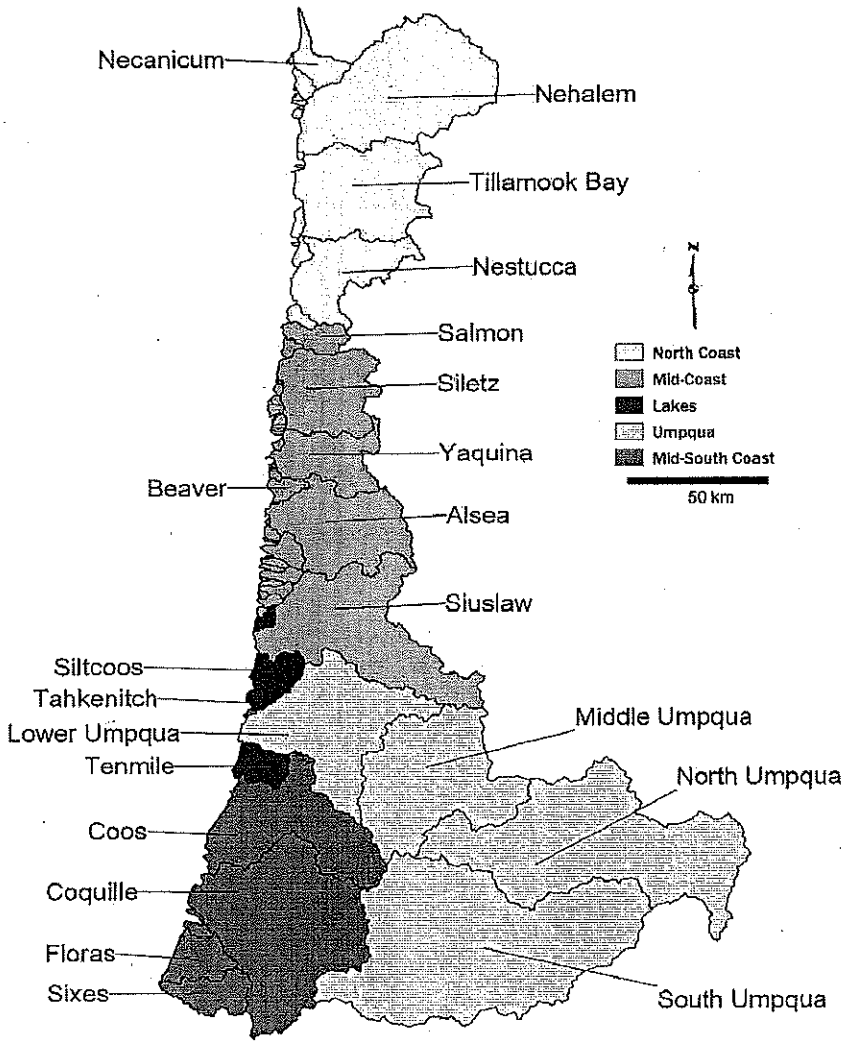
For the critical habitat adverse modification analysis, NMFS considered the status of the entire designated area of the critical habitat considered in this consultation, the environmental baseline in the action area, the likely effects of the action on the function and conservation role of the affected critical habitat, and cumulative effects. The NMFS used this assessment to determine whether, with implementation of the proposed action, critical habitat (entire designation) will remain functional, or retain the current ability for the primary constituent elements (PCEs) to become functionally established, to serve the intended conservation role for the species (Hogarth 2005).

Status of the Species and Critical Habitat

Status of the Species. OC coho salmon includes all naturally-spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, and the progeny of five artificial propagation programs. The OC coho salmon Technical Recovery Team (OC-TRT) identified 56 historical populations, grouped into five major "biogeographic strata," based on consideration of historical distribution, geographic isolation, dispersal rates, genetic data, life history information, population dynamics, and environmental and ecological diversity (Figure 6) (Lawson *et al.* 2007).

[1] An "evolutionarily significant unit" (ESU) of Pacific salmon (Waples 1991) and a "distinct population segment" (DPS) of steelhead (71 FR 834; January 5, 2006) are both "species" as defined in Section 3 of the ESA.

Figure 6. Biogeographic strata and independent populations of the OC coho salmon ESU.



Historical populations can be classified based on their ability to persist in isolation over time McElhaney *et al.* 2000). Historical populations of OC coho salmon were separated into three categories by Lawson *et al.* (2007) based on their relative persistence and degree of isolation. The definitions for these three categories are as follows:

> **Functionally independent populations:** high-persistence populations whose population dynamics or extinction risk over a 100-year time frame is not substantially altered by exchanges of individuals with other populations. These populations are net "donor" populations that may provide migrants for other types of populations.
>
> **Potentially independent populations:** high-persistence populations whose population dynamics may be substantially influenced by periodic immigration from other populations. In the event of the decline or disappearance of migrants from other

populations, a potentially independent population could become a functionally independent population.

Dependent populations: low-persistence populations that rely upon immigration from other populations. Without these inputs, dependent populations will have a lower likelihood of persisting over 100 years. They are "receiving" populations that are dependent on sufficient immigration from surrounding populations to persist.

The Nestucca population is the only population occurring in the action area. This population occurs within the North Coast biogeographic strata of the ESU (Table 5). The Nestucca population is a functionally independent population (Lawson *et al.* 2007).

Table 5. OC coho salmon populations in North-Coast stratum in Oregon based on Lawson *et al* (2007). The highlighted population occurs in the action area.

	Population Type		
Population Name	**Functionally Independent**	**Potentially Independent**	**Dependent**
North Coast Stratum			
Necanicum		X	
Ecola			X
Arch Cape			X
Short Sands			X
Nehalem	X		
Spring			X
Watseco			X
Tillamook	X		
Netarts			X
Rover			X
Sand			X
Nestucca	X		
Neskowin			X

The OC-TRT concluded that, if recent past conditions continue into the future, OC coho salmon are moderately to highly certain to persist over a 100-year period without artificial support, but have a low to moderate certainty of being able to sustain their genetic legacy and long-term adaptive potential for the foreseeable future (Wainwright *et al.* 2008). The weakest biogeographic strata in the OC-TRT assessment were the North Coast and Mid-Coast, which had only a low certainty of being persistent and sustainable. The factors limiting recovery of OC coho salmon include altered stream morphology, reduced habitat complexity, loss of overwintering habitat, excessive sediment, high water temperature, and variation in ocean conditions (NMFS 2006).

Status of Critical Habitat. The NMFS reviews the status of designated critical habitat affected by the proposed action by examining the condition and trends of primary constituent elements (PCEs) of critical habitat that are present throughout the designated area. The PCEs consist of the physical and biological features identified as essential to the conservation of the

listed species in the documents that designate critical habitat (50 CFR 424.12(b)). The PCEs present in the action area are displayed in Table 6.

Table 6. Primary constituent elements of critical habitat designated for OC coho salmon within the action area and corresponding life history events.

Primary Constituent Elements		**Species Life History Event**
Site Type	***Site Attribute***	
Freshwater rearing	Floodplain connectivity Forage Natural cover Water quality Water quantity	Fry emergence Fry/parr growth and development
Freshwater migration	Free of artificial obstructions Natural cover Water quality Water quantity	Adult sexual maturation Adult upstream migration Fry/parr seaward migration

Climate Change. Climate change is likely to have negative implications for the conservation value of designated critical habitats in the Pacific Northwest (CIG 2004, Scheuerell and Williams 2005, Zabel *et al.* 2006, ISAB 2007). Average annual Northwest air temperatures have increased by approximately 1°C since 1900, or about 50% more than the global average warming over the same period (ISAB 2007). The latest climate models project a warming of 0.1 to 0.6°C per decade over the next century. According to the ISAB, these effects may have the following physical impacts within the next forty or so years:

> Warmer air temperatures will result in a shift to more winter/spring rain and runoff, rather than snow that is stored until the spring/summer melt season.
>
> With a shift to more rain and less snow, the snowpacks will diminish in those areas that typically accumulate and store water until the spring freshet.
>
> With a smaller snowpack, these watersheds will see their runoff diminished and exhausted earlier in the season, resulting in lower streamflows in the June through September period.
>
> River flows in general and peak river flows are likely to increase during the winter due to more precipitation falling as rain rather than snow.
>
> Water temperatures will continue to rise, especially during the summer months when lower streamflow and warmer air temperatures will contribute to the warming regional waters.

These changes will not be spatially homogeneous across the entire Columbia River basin. Areas with elevations high enough to maintain temperatures well below freezing for most of the winter and early spring would be less affected. Low-lying areas that historically have received scant precipitation contribute little to total streamflow and are likely to be more affected. The ISAB also identified the likely effects of projected climate changes on Columbia basin salmon. These long-term effects may include, but are not limited to, depletion of cold water habitat, variation in quality and quantity of tributary rearing habitat, alterations to migration patterns, accelerated embryo development, premature emergence of fry, and increased competition among species.

Areas, such as the watersheds along the Oregon coast, are less likely to be subject to some of these projected climate changes as stream along the Oregon coast are not snowpack-dependent. Some areas, however, may experience changes in sea level or become subjected to more frequent and intense flooding.

Environmental Baseline for the Action Area

The 'environmental baseline' includes the past and present impacts of all Federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impacts of state or private action which area contemporaneous with the consultation in process (50 CFR 402.02).

Pacific City currently has three intake diversion structures on Horn Creek with water rights totaling 2.7 cfs. The East intake diversion structure has a water right of 0.5 cfs and is located approximately 1.75 miles upstream of the new intake. The Main intake diversion structure has a water right of 0.2 cfs and is located approximately 2.25 miles upstream of the new intake. The existing Horn Creek infilitration intake has a water right of 2.0 cfs and is located near the new intake structure. The three water diversion structures have an existing water withdrawal capability of 2.7 cfs. Pacific City is proposing a maximum peak (daily peak) withdrawal of 2.7 cfs at the Horn Creek intake.

The biological assessment uses habitat indicators to describe the baseline condition of components of most of the PCEs; ratings for these habitat indicators are provided in Table 7.

Table 7. Environmental baseline conditions for the action area.

Habitat Indicator	Environmental Baseline Condition Category[1]		
	PF	FAR	NPF
Non-Watershed Indicators			
Temperature	X		
Sediment/Turbidity			X
Chemicals/Nutrients	X		
Physical Barriers	X		
Substrate Character			X
Large Woody Material			X
Pool Frequency and Quality		X	
Large Pools			X
Off-channel Habitat			X
Refugia			X
Width:Depth Ratio	X		
Streambank Condition			X
Floodplain Connectivity		X	
Change in Peak/Base Flows		X	
Drainage Network Increase		X	
Watershed Condition Indicators			
Road Density & Location		X	
Disturbance History			X
Riparian Reserves			X

PF = Properly functioning, FAR = functioning at risk, and NPF = not properly functioning

Low-Flow Habitat Analysis. In the summer of 2008, Parametrix conducted a low-flow habitat analysis of Horn Creek's physical habitat and thermal regime to provide information on existing conditions, and to provide a baseline to assess potential future effects associated with Pacific City's water withdrawals in Horn Creek.

Based on the steam temperature data provided in Appendix A, NMFS calculated the equivalent-constant stream temperatures, a derivation of the 7 day average of the daily maxima and the weekly mean high temperature, for Horn Creek of 15°C (intake) and 15.7°C (downstream), respectively.

NMFS also assessed the stream profile data in the low flow habitat analysis to determine effects on instream habitat (Appendix A).

Effects of the Action

'Effects of the action' means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline (50 CFR 402.02). Effects of

the action that appreciably reduce the ability of a listed species to meet its biological requirements may increase the likelihood that the proposed action will result in jeopardy to that listed species or in destruction or adverse modification of a designated critical habitat.

Effects on Habitat. NMFS expects construction-associated effects (*i.e.*, construction of the intake structure and rock weirs; treatment facility/pump station; transmission pipelines; short-term impact minimization measures; wetland impacts; wetland mitigation; and installation of large woody debris structures and riparian planting) on instream and upland habitats to be insignificant. Likewise, NMFS expects discharge of treatment backwash and post-construction, water withdrawals to be insignificant, and therefore are not likely to adversely affect OC coho salmon. The following is a discussion of each project element and the rationales supporting our effects determinations.

Intake Structure and Rock Weirs. NMFS expects effects from installation of the intake structure and rock weirs to be insignificant as all work below top-of-bank will take place within a temporary cofferdam. By confining in-water work within the cofferdam, disturbance to the stream channel as a whole is likely to be minimal. Effects on water quality, such as suspended sediment, will be minor as impacts will not go beyond the confines of the cofferdam. Post construction, the intake structure or rock weirs will not meaningfully alter channel geometry. The intake structure will have minimal impact on the channel area, and the engineering of the rock weirs will maintain channel geometry and streambed stability minimizing head-cutting or down-cutting.

Treatment Facility/Pump Station. NMFS expects effects from construction of the treatment facility/pump station to be insignificant as these features are located in an upland area approximately 150 feet from top-of-bank. The topography in this area is flat, and proposed impact minimization measures for construction will reduce the likelihood for sediment to enter Horn Creek.

Installation of Transmission Pipelines. NMFS expects effects from installation of the transmission pipelines to be insignificant as transmission pipelines will be installed mostly in pastureland and along and within the road prism of Old Woods Road with little chance of stream disturbance. Where the transmission pipelines intersect waterways, they will be installed underneath the Nestucca River using directional boring avoiding impacts to channel morphology and the waterway substrates. For Horn Creek, transmission pipelines will be installed via open trench or directional boring. If the transmission pipelines are installed via open trench in Horn Creek, NMFS expects habitat-related effects to be similar to those described above under *Intake Structure and Rock Weirs.*

Short-term Impact Minimization Measures and Installation of Large Woody Debris and Riparian Planting. Instream flow will be routed around the construction area and discharged immediately downstream of the cofferdam as to minimize disruption of downstream flows. Although, installation of large woody debris into the stream channel and streambanks of Horn Creek will cause localized disturbance, effects such as increased sediment yields and associated increases in turbidity will be minor in duration and magnitude. In the long term, installation of large woody debris and riparian plantings will improve localized, instream and

riparian functions, *e.g.*, creation of pools, sediment retention, streambank stability, and canopy cover. Therefore, NMFS expects effects from impact minimization measures and installation of large woody debris and riparian plantings to be insignificant.

Wetland Impacts and Wetland Mitigation. NMFS expects effects to wetland impacts (Table 8) to be insignificant on stream functions as the wetlands are not within the channel prism of Horn Creek. Although these wetlands are connected hydrologically to Horn Creek, they are not likely to negatively alter groundwater-stream exchange or hyporheic flow because wetland impacts will be temporary. In the long term, the proposed wetland mitigation will increase the overall square footage of wetlands potentially improving wetland-stream hydrologic functions in Horn Creek. Pacific City proposes to use no herbicides within 100 feet of Horn Creek or the Nestucca River. If Pacific City applies herbicides outside this 100 foot zone. The NMSF does not expect effects on instream or riparian function. Listed in Table 8 are the impacts associated with construction of the Horn Creek intake.

Table 8. Summary of wetland and instream impacts associated with the Horn Creek intake and proposed mitigation.

Permanent Impacts

Wetlands	Acres	Removal/Fill (cy)	Cause
Submitted	0.56	1906/2106	
Change	*0.004*	*28/28*	Utility vaults
Change	*0.034*	*0/140*	Facility footprint recalculation
Revised Final	**0.598**	**1934/2274**	

Temporary Impacts

Wetlands	Acres	Removal/Fill (cy)	Cause
Submitted	0.74	1,963/1,963	
Change	*0.15*	*725/725*	Increased trench width
Revised Final	**0.89**	**2,688/2,688**	

Mitigation

Wetlands	Enhancement (ac)	Restoration (ac)	Cause
Submitted	1.7*	0.31	
Change	*(-0.24)*		Northern lobe not affected by drain tile decomm.
Change	*(-0.28)*		Horn Creek plantings discounted from mitigation
Change		*(-0.03)*	Retain culverts and associated upland areas
Revised Final	**1.18**	**0.28**	
Mitigation Credit Ratio	3:01	1:01	
Mitigation Credit	*0.39*	*0.28*	

Total Mitigation Credit 0.67 acre

Treatment Backwash. Based on the description in the *Proposed Action*, discharge of 0.12 cfs from treatment backwash will not affect stream chemistry as the backwash will be chemically neutralized and pH-adjusted prior to discharge into the vegetated ditch.

Water Withdrawals. NMFS considered the most relevant potential effects on instream habitat from water withdrawals to be increased water temperature, during late summer, instream habitat connectivity and pool quality. NMFS expects effects associated with water withdrawals to be minor based on the following interpretation of the low-flow habitat analysis.

If Pacific City withdrawals its projected peak daily demand of 2.7 cfs at the Horn Creek intake, water elevations downstream, to the head of tide, will decrease between 1.2 and 3.9 inches, depending on location. Instream flows will decrease to a minimum of 3.3 cfs. Residual pool depths will decrease 3.4 inches on average, riffle/glide habitat residual depths will decrease by 2.4 inches on average, and pool cross-sectional area would decrease by 1.5 feet, on average. These changes will occur episodically for less than 24 hours, typically in July and August, over periods lasting no longer than 3 to 4 days in a given year (biological assessment). However, during periods of peak daily water demand, Pacific City plans to use its well fields, which will reduce water withdrawals in Horn Creek by 1.3 cfs minimizing effects on instream habitat. Since these peak water withdrawals are daily peak demands that only last for 3 to 4 days, and can be augmented with water withdrawals from Pacific City's well field, NMFS does not expect the changes described above in water depth and surface area to pose significant risk to instream and riparian functions, or habitat availability or connectivity (Appendix A). The above conclusions are based on the assumption that peak water withdrawals are not sustained demands, but are peak daily demands that will not last for more than 3 to 4 days. Furthermore, since Pacific City did not submit an operations plan to NMFS for water withdrawals for 2019 through 2028, it is our assumption that instream flows will not drop below 2.5 cfs. Should these assumption change, NMFS is likely to reach a different conclusion regarding effects to instream habitat associated with water withdrawals.

Effects on Listed Species.

Timing of Salmon in the Action Area. Based on migratory and residence time, listed salmon will be present in the action area during the proposed period of construction and water withdrawal operations (Table 9).

Table 9. Timing of adult and juvenile coho salmon life history in the Nestucca watershed.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
Adult Upstream Migration												
Spawning												
Adult Holding												
Incubation												
Rearing												
Juvenile Migration												
In-water Construction												

Based on data provided by ODFW, adult coho salmon migrate through but do not spawn in the action area. The arrival of adult salmon in Horn Creek is highly dependent upon the onset of fall rains to trigger upstream migration of adults to spawning areas in the upper watershed. Juvenile coho salmon likely are highest in the action area from late fall through spring due to higher flows and deeper pool habitat, and densities likely decrease in the summer as flows decline and the availability of pool habitat becomes limited.

Water Withdrawals. As determined earlier, NMFS calculated the equivalent-constant stream temperatures under existing conditions in Horn Creek to be 15°C (at intake) and 15.7°C (downstream), respectively. These existing water temperatures provide preferential habitat conditions for rearing juvenile anadromous salmonid fishes as described in EPA 2001. While surface water elevations will decrease on an intermittent basis, NMFS does not expect water withdrawals to affect water temperatures in Horn Creek in a manner that would result in physiological stress or increased risk to disease described in EPA 2001. Furthermore, NMFS does not expect water withdrawals to affect instream habitat connectivity and pool quality in Horn Creek in a manner that will result in a loss of available high quality pool habitat based on information on preferred pool habitat conditions described in Bjornn and Reiser (2001). The above conclusions are based on the assumption that peak water withdrawals are not sustained demands, but are peak daily demands that will not last for more than 3 to 4 days. Should these assumption change, NMFS would likely reach a different conclusion on effects to fish associated with water withdrawals.

The intake screen will be an *active screen* (Johnson Model T-16 HCE intake screen) that will utilize compressed air from the treatment plant to automatically clean the screen on a regular interval (once daily). NMFS' maximum approach velocity criteria for this type of screen is 0.4 feet second^{-1}. This corresponds to a minimum effective screen area of 6.7 feet squared for 1,200 gallons minute^{-1} (the maximum flow rate for the Horn Creek intake). The calculated effective screen area for this screen will be 7.0 square feet with a maximum approach velocity of 0.38 feet second^{-1}.

Effects on Migrating and Rearing Fish from Construction. As discussed in the *Effects on Habitat* section, NMFS expects construction-associated effects (*i.e.*, construction of the intake structure and rock weirs, treatment facility/pump station, and transmission pipelines; short-term impact minimization measures; wetland impacts; wetland mitigation; and installation of large woody debris structures and riparian planting) to instream and riparian habitat functions to be insignificant. Therefore, habitat-associated effects will not cause adverse effects, such as physiological stress, to juvenile or adult OC coho salmon. Effects to fish from fish salvage are discussed below.

Effects on Migrating and Rearing Fish. Fish salvage is required to ensure juvenile OC coho salmon are not trapped in the isolation areas prior to dewatering. Likewise, periodic maintenance of the water intake screens to remove sediment will require work area isolation and may require the capture and relocation (upstream of the cofferdam) of juvenile OC coho salmon.

Experienced biologists, *i.e.*, staff biologists with Parametrix or ODFW, will perform all fish salvage work. The salvage methods proposed include electrofishing, seining, and/or dip netting. Electrofishing will cause physiological stress and require recovery before fish are released.

Harmful effects of electrofishing can include internal and external hemorrhaging, fractured spines, and death if not conducted by an experienced biologist. A small number of fish, estimated by NMFS to be less than 5% of the number of fish captured, are likely to die from electrofishing. Seining and/or dip netting is unlikely to kill any juvenile OC coho salmon.

Based on information in the biological assessment, the total area of Horn Creek that will be isolated and where fish will be captured and relocated upstream during construction at the intake is 1,350 square feet (figure 5). If transmission lines are installed via open trench at the lower crossing on Horn Creek, the total area of Horn Creek that will be isolated and where fish will be captured and relocated upstream during construction is 450 square feet. The total area of Horn Creek that will be isolated and where fish will be captured and relocated upstream during maintenance is 100 square feet.

Escapement data collected by ODFW from 1992 through 2005 identified only one adult coho salmon in lower Horn Creek in 1996. The ODFW surveyed juvenile salmon approximately 0.5 miles upstream of the proposed intake by snorkeling in 2004 and 2005, covering reaches measuring 1,000 and 968 meters, respectively. The surveys found 0.18 and 0.30 fish per pool in 2004 and 2005, respectively.

Based on snorkeling data from ODFW, NMFS used the higher of the two fish density indices of 0.30 fish per pool to estimate capture associated with construction activities. Using the total area to be dewatered for the Horn Creek intake and the lower crossing, 1,800 square feet, the ODFW fish density index of 0.30 fish per pool, NMFS estimates that 56 juvenile OC coho salmon are likely to be captured and relocated upstream during construction.

Based on snorkeling data from ODFW, and the total area of habitat to be dewatered during yearly maintenance (100 square feet), NMFS used the higher of the two fish density indices of 0.30 fish per pool to estimate capture associated with maintenance activities. Using the total area to be dewatered for maintenance at the Horn Creek intake, 100 square feet, the ODFW fish density of 0.30 fish per pool, NMFS estimates that 3 juvenile OC coho salmon are likely to be captured and relocated upstream during maintenance activities.

The NMFS expects that 56 juvenile OC coho salmon will be captured and relocated upstream during construction, and 3 fish per year during maintenance will be captured and relocated upstream.

The most recent escapement estimate (2004) for the Nestucca population was 6,402 adult fish. To estimate annual juvenile production in the Nestucca River basin as a means to assess the significance of likely mortalities associated with the proposed action, NMFS calculated a smolt production index based on the OC coho salmon fecundity index of 1,983 eggs female $^{-1}$ in Groot and Margolis (1991). Using this information results in 4,627,388 eggs (based on a mean egg survival-to-emergence rate of 27.1%, Groot and Margolis 1991) and 46,274 and 92,547 smolts being produced annually, based on an egg-to-smolt survival rate of 1% and 2%, respectively.

Based on the Nestucca River basin annual smolt production estimate, losing up to 56 juvenile fish for the 2009 brood stock year will have no meaningful affect on OC coho salmon VSP

attributes at the population level. Likewise, the loss of up to 3 juvenile fish per year as a result of maintenance activities will have no meaningful affect on OC coho salmon VSP attributes at the population level.

Effects on Critical Habitat

The potential effects of the proposed action on freshwater rearing sites, freshwater migration corridors, and their essential physical and biological features (listed in Table 6) are discussed below.

Freshwater Rearing Sites.
Floodplain connectivity – No effects are likely to occur.

Forage/Food – Insignificant, localized negative effects on macroinvertebrate abundance are likely to occur within the cofferdam, but affected populations are likely to re-establish after the end of construction.

Natural Cover – Installation of large woody debris and riparian plantings will provide localized improvements for cover and organic inputs over time.

Water Quality – Minor effects, *e.g.*, intermittent increases in suspended sediment, are likely due to occur construction and to installation of LWD structures. Minor effects, *i.e.*, short-term increases in temperatures, are likely to occur in association with peak period water withdrawals. These minor effects are likely to attenuate as new riparian plantings mature.

As determined earlier, NMFS calculated the equivalent-constant stream temperatures under existing conditions in Horn Creek to be 15°C (at intake) and 15.7°C (downstream), respectively. These existing water temperatures provide preferential habitat conditions for rearing juvenile anadromous salmonid fishes as described in EPA 2001. While surface water elevations will decrease on an intermittent basis, NMFS does not expect water withdrawals to affect water temperatures in Horn Creek in a manner that would result in physiological stress or increased risk to disease described in EPA 2001. Furthermore, NMFS does not expect water withdrawals to affect instream habitat connectivity and pool quality in Horn Creek in a manner that will result in a loss of available high quality pool habitat based on information on preferred pool habitat conditions described in Bjornn and Reiser (2001).

Water quantity – NMFS considered the most relevant potential effects on instream habitat from water withdrawals to be increased water temperature, during late summer, instream habitat connectivity and pool quality. NMFS expects effects associated with water withdrawals to be insignificant based on the following interpretation of the low-flow habitat analysis.

If Pacific City withdrawals its projected peak daily demand of 2.7 cfs at the Horn Creek intake, water elevations downstream, to the head of tide, will decrease between 1.2 and 3.9 inches, depending on location. Instream flows will decrease to a minimum of 2.5 cfs. Residual pool depths will decrease 3.4 inches on average, riffle/glide habitat residual depths will decrease by 2.4 inches on average, and pool cross-sectional area would decrease by 1.5 feet, on average.

These changes will occur episodically for less than 24 hours, typically in July and August, over periods lasting no longer than 3 to 4 days in a given year (biological assessment). However, during periods of peak daily water demand, Pacific City plans to use its well fields, which will reduce water withdrawals in Horn Creek by 1.3 cfs minimizing effects on instream habitat. Since these peak water withdrawals are daily peak demands that only last for 3 to 4 days, and can be augmented with water withdrawals from Pacific City's well field, NMFS does not expect the changes described above in water depth and surface area to pose significant risk to instream and riparian functions, or habitat availability or connectivity (Appendix A). The above conclusions are based on the assumption that peak water withdrawals are not sustained demands, but are peak daily demands that will not last for more than 3 to 4 days. Furthermore, since Pacific City did not submit an operations plan to NMFS for water withdrawals for 2019 through 2028, it is our assumption that instream flows will not drop below 2.5 cfs. Should these assumption change, NMFS is likely reach a different conclusion regarding effects to instream habitat associated with water withdrawals.

Freshwater Migration Corridors.
Free of Artificial Obstructions – Passage routes of juvenile salmon will be impaired during construction, due to work area isolation, but will be restored post-construction.

Natural Cover/Cover-Shelter – Installation of large woody debris and riparian plantings will provide localized improvements for cover and organic inputs over time.

Water Quality – Minor effects, *e.g.*, intermittent increases in turbidity levels, are likely to occur in associated with construction activities and installation of LWD structures. Minor effects, *i.e.*, short-term increases in temperatures, are likely to occur in association with peak water withdrawals. These minor effects are likely to attenuate as new riparian plantings mature.

As determined earlier, NMFS calculated the equivalent-constant stream temperatures under existing conditions in Horn Creek to be 15°C (at intake) and 15.7°C (downstream), respectively. These existing water temperatures provide preferential habitat conditions for rearing juvenile anadromous salmonid fishes as described in EPA 2001. While surface water elevations will decrease on an intermittent basis, NMFS does not expect water withdrawals to affect water temperatures in Horn Creek in a manner that would result in physiological stress or increased risk to disease described in EPA 2001. Furthermore, NMFS does not expect water withdrawals to affect instream habitat connectivity and pool quality in Horn Creek in a manner that will result in a loss of available high quality pool habitat based on information on preferred pool habitat conditions described in Bjornn and Reiser (2001).

Water Quantity – NMFS considered the most relevant potential effects on instream habitat from water withdrawals to be increased water temperature, during late summer, instream habitat connectivity and pool quality. NMFS expects effects associated with water withdrawals to be insignificant based on the following interpretation of the low-flow habitat analysis (Appendix A).

If Pacific City withdrawals its projected peak daily demand of 2.7 cfs at the Horn Creek intake, water elevations downstream, to the head of tide, will decrease between 1.2 and 3.9 inches,

depending on location. Instream flows will decrease to a minimum of 2.5 cfs. Residual pool depths will decrease 3.4 inches on average, riffle/glide habitat residual depths will decrease by 2.4 inches on average, and pool cross-sectional area would decrease by 1.5 feet, on average. These changes will occur episodically for less than 24 hours, typically in July and August, over periods lasting no longer than 3 to 4 days in a given year (biological assessment). However, during periods of peak daily water demand, Pacific City plans to use its well fields, which will reduce water withdrawals in Horn Creek by 1.3 cfs minimizing effects on instream habitat. Since these peak water withdrawals are daily peak demands that only last for 3 to 4 days, and can be augmented with water withdrawals from Pacific City's well field, NMFS does not expect the changes described above in water depth and surface area to pose significant risk to instream and riparian functions, or habitat availability or connectivity (Appendix A). The above conclusions are based on the assumption that peak water withdrawals are not sustained demands, but are peak daily demands that will not last for more than 3 to 4 days. Furthermore, since Pacific City did not submit an operations plan to NMFS for water withdrawals for 2019 through 2028, it is our assumption that instream flows will not drop below 2.5 cfs. Should these assumption change, NMFS is likely reach a different conclusion regarding effects to instream habitat associated with water withdrawals.

Information presented in the status and baseline sections of this Opinion demonstrates that conditions for freshwater rearing and migration are factors limiting the survival and recovery of the listed species. The proposed action will slightly lower the conservation value of Horn Creek in the action area with respect to the water quantity PCE during peak water withdrawals. These effects will be localized and therefore will not be significant at the scale of the watershed or designation of critical habitat. The other PCEs will not be significantly affected.

Cumulative Effects

Population growth in Pacific City is currently about 4.2% per year and is projected to double by 2023 (biological assessment).

The NMFS assumes that future private and state actions will continue within the action area. Upstream agricultural practices and timber harvest are likely to continue to maintain sediment yields and have a negative effect on water quality and delivery of fertilizer and pesticides to surface water that degrade water quality. The NMFS is not aware of any specific future non-Federal activities within the action area that will cause greater effects to OC coho salmon or their designated critical habitat than presently occurs.

Conclusion

After reviewing the status of OC coho salmon and designated critical habitat, the environmental baseline for the action area, the effects of the proposed action and cumulative effects, NMFS concludes that the proposed action is not likely to jeopardize the continued existence of OC coho salmon and is not likely to destroy or adversely modify designated critical habitat. These conclusions are based on the following considerations.

The analysis of effects demonstrates that the proposed action will not affect any of the VSP attributes at the population scale. Therefore, the likelihood of survival and recovery for this species will not be appreciably reduced by the proposed action. The analysis of effects demonstrates that the proposed action is not likely to lower the conservation value of any of the PCEs at the scale of the watershed or designation of critical habitat. Therefore, the action is not likely to destroy or adversely modify critical habitat.

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. The following recommendation is a discretionary measure that is consistent with this obligation and therefore should be carried out by the Corps.

1. The Corps should encourage Pacific City, via special permit requirements, to ensure that as part of the City's overall water management plan, the City's well fields are managed in a manner that ensures that the 1.3 cfs of water these well fields hold are fully utilized prior to or in conjunction with the Horn Creek intake to minimize water withdrawals on Horn Creek during periods of peak water demand to minimize effects to instream habitat.

Reinitiation of Consultation

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that has an effect to the listed species or designated critical habitat that was not considered in the biological opinion; (d) if a new species is listed or critical habitat is designated that may be affected by the identified action (50 CFR 402.16); or if instream flows fall below 2.5 cfs. To reinitiate consultation, contact the Oregon State Habitat Office of NMFS, and refer to NMFS Number 2008/02002.

Incidental Take Statement

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harassment applies to actions that create the potential for injury by significantly disrupting normal behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering. To be significant, harassment must be capable of resulting in the death or injury of fish or wildlife. Harm applies to actions that result in actual injury or death, including actions that cause environmental damage leading to injury or death. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Section 7(o)(2) provides that taking that is incidental to an otherwise

legal agency action is not considered to be prohibited taking under the ESA, if that action is performed in compliance with the terms and conditions of this incidental take statement.

Amount or Extent of Take

Juvenile OC coho salmon are reasonably certain to co-occur in time and space with effects of the proposed action that could cause take. The action will occur during the summer: therefore, adult OC coho salmon will not be present or exposed to the direct construction effects, nor will they be exposed to long-term effects that could cause take. The distribution and abundance of fish that occur within an action area are affected by an array of ecological interactions that influence genetic, population, and environmental characteristics. These biotic and environmental processes interact in ways that may be random or directional, and may operate across far broader temporal and spatial scales than are affected by the proposed action.

Incidental take caused by the proposed action will include capture and handling of juvenile fish during work area isolation and dewatering activities. This take will occur only within the isolated work area(s). Incidental take within that area that meets the terms and conditions of this incidental take statement will be exempt from the taking prohibition.

For construction, NMFS expects no more than 56 fish to be captured or trapped. For maintenance, NMFS expects that no more than 3 juvenile fish will be captured or trapped per year.

Reasonable and Prudent Measures

The following measures are necessary and appropriate to minimize the impact of incidental take of listed species from the proposed action:

The Corps shall:

1. Avoid or minimize the amount and extent of take resulting from fish salvage.
2. Ensure that impact minimization and mitigation measures are fully implemented.
3. Ensure take is minimized by maintaining minimum instream flows.
4. Ensure completion of a monitoring and reporting program to confirm that the take exemption for the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing the impact of incidental take.

Terms and Conditions

The measures described below are non-discretionary, and must be undertaken by the Corps or, if an applicant is involved, must become binding conditions of any permit or grant issued to the applicant, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require an applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the

impact of incidental take, the Corps must report the progress of the action and its impact on the species to NMFS as specified in the incidental take statement.

1. To implement reasonable and prudent measure #1, the Corps shall ensure that fish salvage operations are limited to using seines and/or dip nets. Electrofishing is not authorized under this Opinion.

2. To implement reasonable and prudent measure #2, the Corps shall ensure that all impact minimization and mitigation measures are fully implemented as proposed.

3. To implement reasonable and prudent #3 (instream flows), the Corps shall ensure that water withdrawals at the Horn Creek intake do not exceed 2.7 cfs, and minimum instream flows do not drop below 2.5 cfs.

    a. When water withdrawals on Horn Creek reach 2.0 cfs, instream flows shall be measure concurrently at two locations until water withdrawals drop below 2.0 cfs. The first location shall be located approximately 250 feet from the confluence of Horn Creek and the Nestucca River. The second location shall be located approximately 250 feet above the head of tide.

4. To implement reasonable and prudent measure #4 (monitoring), the Corps shall:

    a. Provide NMFS with a post-construction report detailing the number, by species and age class, of fish captured by fish salvage operations. The condition of each fish captured shall be identified in the report and noted if the fish were killed, injured, released/not released, or specimen preserved and submitted to law enforcement.
    b. Annually, for maintenance, submit a report to NMFS detailing the number, by species and age class, of fish captured by fish salvage operations. The condition of each fish captured shall be identified in the report and noted if the fish were killed, injured, released/not released, or specimen preserved and submitted to law enforcement.
    c. NOTICE: If a sick, injured or dead specimen of a threatened or endangered salmon or steelhead species found in the project area, the finder must notify NMFS through the contact person identified in the transmittal letter for this Opinion (CRCIP), or through the NMFS Office of Law Enforcement at 1-800-853-1964, and follow any instructions. If the proposed action may worsen the fish's condition before NMFS can be contacted, the finder should attempt to move the fish to a suitable location near the capture site while keeping the fish in the water and reducing its stress as much as possible. Do not disturb the fish after it has been moved. If the fish is dead, or dies while being captured or moved, report the following information: (1) NMFS consultation number; (2) the date, time, and location of discovery; (3) a brief description of circumstances and any information that may show the cause of death; and (4) photographs of the fish and where it was found. The NMFS also suggests that the finder coordinate with local biologists to recover any tags or other relevant research information. If the

specimen is not needed by local biologists for tag recovery or by NMFS for analysis, the specimen should be returned to the water in which it was found, or otherwise discarded.

d. Annually, submit a report that details Pacific City's operation plan, including peak demand, Horn Creek withdrawals, well field withdrawals, and duration of peak withdrawals.

e. Annually, for a period of 5 years, submit a report to NMFS that summarizes the results of the post-construction instream temperature monitoring, low flow habitat analysis, and the effectiveness of the installation of the large woody debris structures in creating pools and providing habitat and riparian planting survival.

f. As required by term and condition #2, submit a monitoring report detailing instream flow measurements collected during periods of peak water withdrawals exceeding 2.0 cfs

g. Submit a copy of the report(s) to the Oregon Habitat State Office of NMFS.

Oregon State Habitat Office
National Marine Fisheries Service
Attn: 2008/02002
1201 NE Lloyd Blvd., Ste. 1100
Portland, Oregon 97232-1274

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

The consultation requirement of section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions, or proposed actions that may adversely affect EFH. Adverse effects include the direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside EFH, and may include site-specific or EFH-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) also requires NMFS to recommend measures that may be taken by the action agency to conserve EFH.

The Pacific Fishery Management Council (PFMC) designated EFH for groundfish (PFMC 2006), coastal pelagic species (PFMC 1998), and Chinook salmon, coho salmon, (PFMC 1999). The proposed action and action area for this consultation are described in the Introduction to this document. The action area includes areas designated as EFH for coho salmon.

Based on information provided in the biological assessment and the analysis of effects presented in the ESA portion of this document, NMFS concludes that proposed action will have intermittent effects affects on water quantity on EFH designated for coho salmon.

EFH Conservation Recommendations

The NMFS provides no conservation measures to avoid, mitigate, or offset the impact that the proposed action has on EFH.

Statutory Response Requirement

Federal agencies are required to provide a detailed written response to NMFS' EFH conservation recommendations within 30 days of receipt of these recommendations [50 CFR 600.920(j) (1)]. Since NMFS provided no conservation recommendations, a response is not required.

Supplemental Consultation

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations [50 CFR 600.920(k)].

DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW

Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554) (Data Quality Act) specifies three components contributing to the quality of a document. They are utility, integrity, and objectivity. This section of the Opinion addresses these Data Quality Act (DQA) components, documents compliance with the DQA, and certifies that this Opinion has undergone pre-dissemination review.

Utility: Utility principally refers to ensuring that the information contained in this consultation is helpful, serviceable, and beneficial to the intended users.

This ESA consultation concludes that the proposed activities in Horn Creek will not jeopardize the affected species. Therefore, the Corps can proceed with this action in accordance with its authority under the Clean Water Act. The intended user is the Corps and Pacific City.

Individual copies were provided to the above-listed entities. This consultation will be posted on the NMFS Northwest Region website (http://www.nwr.noaa.gov). The format and naming adheres to conventional standards for style.

Integrity: This consultation was completed on a computer system managed by NMFS in accordance with relevant information technology security policies and standards set out in Appendix III, 'Security of Automated Information Resources,' Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.

Objectivity:

Information Product Category: Natural Resource Plan.

Standards: This consultation and supporting documents are clear, concise, complete, and unbiased; and were developed using commonly accepted scientific research methods. They adhere to published standards including the NMFS ESA Consultation Handbook, ESA Regulations, 50 CFR 402.01, *et seq.*, and the MSA implementing regulations regarding EFH, 50 CFR 600.920(j).

Best Available Information: This consultation and supporting documents use the best available information, as referenced in the Literature Cited section. The analyses in this Opinion/EFH consultation contain more background on information sources and quality.

Referencing: All supporting materials, information, data and analyses are properly referenced, consistent with standard scientific referencing style.

Review Process: This consultation was drafted by NMFS staff with training in ESA and MSA implementation, and reviewed in accordance with Northwest Region ESA quality control and assurance processes.

LITERATURE CITED

Bjornn, T.C. and D.W. Reiser. 1991. Habitat requirements of salmonids in streams – Influences of forest and rangeland management on salmonid fishes and their habitats. Pp. 83-138. American Fisheries Society Special Publication #19.

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Appendix A. Temperature Data and Cross-Sectional Profiles for Horn Creek (Existing Conditions)

Figure 1. Horn Creek study area.

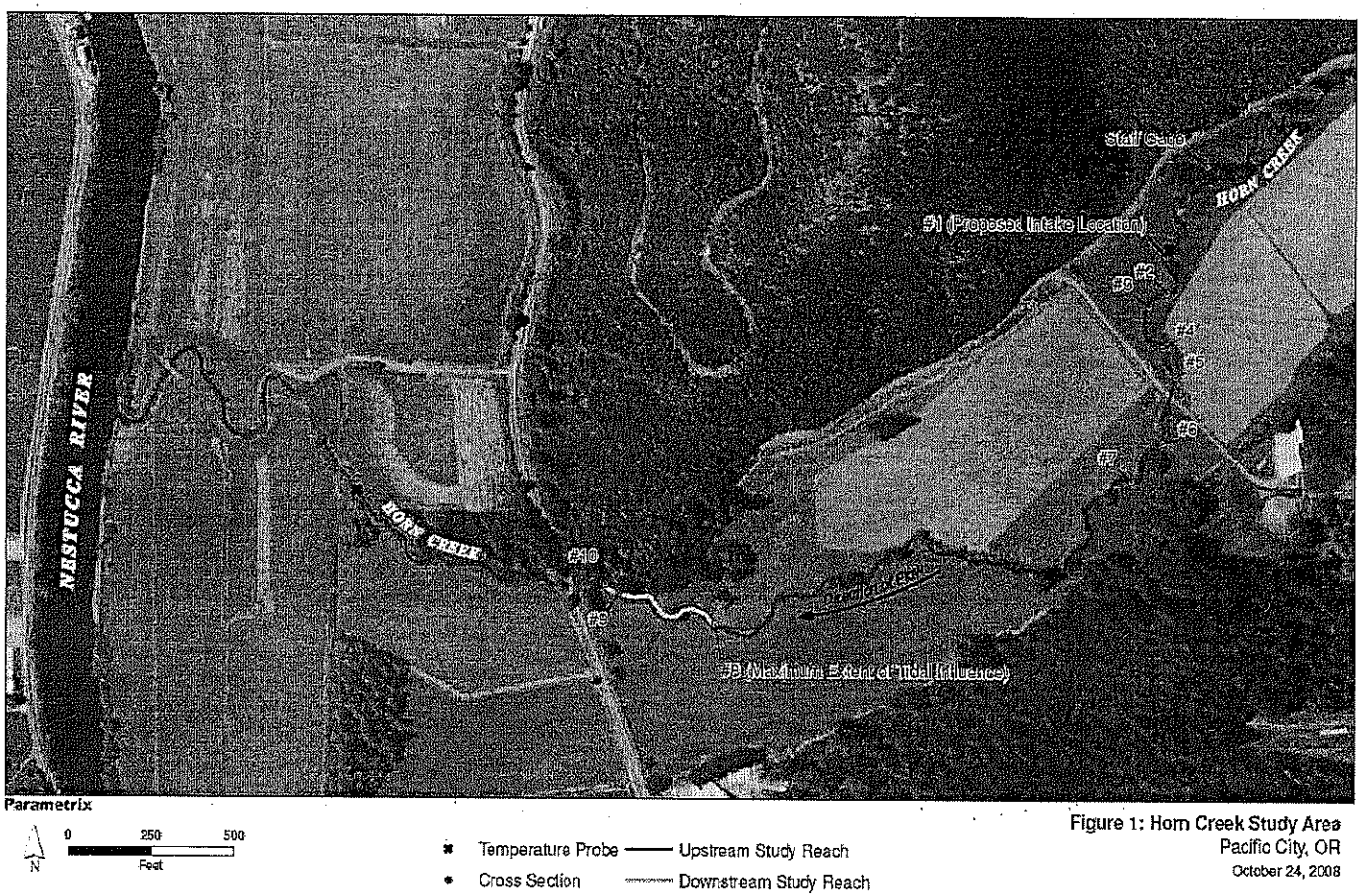


Figure 1: Horn Creek Study Area
Pacific City, OR
October 24, 2008

Table 1. Horn Creek (Intake) temperature profile from July 19, 2008 through September 15, 2008.

Min Temp	Max Temp	Hours Below 14°C	Hours b/t 14-18°C	Hours Above 18°C	Min Temp	Max Temp	Hours Below 14°C	Hours b/t 14-18°C	Hours Above 18°C
10.8	15.7	16.5	7.5	0	13	14.8	18	6	0
9.9	16	15.5	8.5	0	12.9	14.3	20	4	0
10.6	15.7	17	7	0	13.2	14.2	18.5	5.5	0
11.2	15.5	17.5	6.5	0	12.7	16.6	14.5	9.5	0
10.5	15.9	16.5	7.5	0	11.2	16.5	14	10	0
9.8	15.9	16	8	0	11.5	16.3	12.5	11.5	0
11.1	14.6	20.5	3.5	0	12	13.8	24	0	0
10.9	14.2	22	2	0	12.1	16.5	14	10	0
12	16.2	15	9	0	11.4	16	14.5	9.5	0
10.6	16.5	15	9	0	12.6	16.3	13	11	0
11.5	13.2	24	0	0	11.4	16.9	11.5	12.5	0
11.8	15.7	17	7	0	12.6	15.5	12.5	11.5	0
10.2	16.3	14.5	9.5	0	11.4	15.7	17	7	0
12.4	14.9	18.5	5.5	0	10.5	15.1	18.5	5.5	0
12	16.3	15.5	8.5	0	11.4	14.8	19	5	0
10.3	16.3	15	9	0	10.5	15.5	17.5	6.5	0
11.4	16.6	14	10	0	10.9	15.7	16.5	7.5	0
12.1	15.2	16	8	0	10.6	15.9	16	8	0
12.4	15.7	15.5	8.5	0	10.6	16.2	15.5	8.5	0
12.6	14.2	20	4	0	12	16.9	13.5	10.5	0
12.1	14.6	19.5	4.5	0	12.1	17.2	12	12	0
12.1	15.9	16	8	0	11.7	17.4	12.5	11.5	0
12.4	16.6	12.5	11.5	0	12.3	15.9	16.5	7.5	0
12.6	18.1	9.5	12.5	2	10.6	15.7	17	7	0
13.3	16.3	10.5	13.5	0	10.5	16.3	15.5	8.5	0
12.1	18	10	14	0	11.4	16.2	16	8	0
12.4	18.1	9	13.5	1.5	10.2	15.4	18.5	5.5	0
13	16.8	10.5	13.5	0	10.1	15.7	16.5	7.5	0
13.2	17.1	9.5	14.5	0	10.8	15.7	17	7	0
13	14.2	22	2	0					

Table 2. Horn Creek (downstream location) temperature profile from July 19, 2008 through September 15, 2008.

Min Temp	Max Temp	Hours Below 14°C	Hours b/t 14-18°C	Hours Above 18°C	Min Temp	Max Temp	Hours Below 14°C	Hours b/t 14-18°C	Hours Above 18°C
11.1	16.6	16	8	0	13.2	15.4	14.5	9.5	0
10.2	16.9	14.5	9.5	0	13.2	14.8	16.5	7.5	0
10.9	16.6	15.5	8.5	0	13.5	14.5	14.5	9.5	0
11.5	16.6	16	8	0	13.2	17.1	13	11	0
10.8	16.8	15	9	0	11.5	17.4	12.5	11.5	0
10.1	16.8	15	9	0	12	17.4	11.5	12.5	0
11.7	15.4	18.5	5.5	0	12.3	14.2	18.5	5.5	0
11.2	14.8	18	6	0	12.6	16.5	12.5	11.5	0
12.1	17.2	13.5	10.5	0	12.4	15.7	13	11	0
11.1	17.4	13	11	0	13.3	16.2	9.5	14.5	0
12	13.5	24	0	0	12.3	16.6	11	13	0
12.1	16	14	10	0	13.6	15.5	5	19	0
10.9	16.8	12	12	0	12.6	15.2	11.5	12.5	0
12.9	16	13.5	10.5	0	11.7	14.6	18.5	5.5	0
12.4	16.9	14	10	0	12.1	14.8	18	6	0
10.8	16.9	13.5	10.5	0	11.2	15.4	16.5	7.5	0
11.7	17.4	13	11	0	11.8	15.7	15.5	8.5	0
12.6	15.4	13.5	10.5	0	11.7	16	15.5	8.5	0
12.7	16	13.5	10.5	0	11.5	16.3	14	10	0
12.9	14.8	16	8	0	12.6	16.8	13.5	10.5	0
12.4	15.1	16.5	7.5	0	12.9	17.4	10	14	0
12.3	16.3	13	11	0	12.6	17.1	9	15	0
12.7	17.4	11.5	12.5	0	13.2	15.7	11	13	0
13	19.4	9.5	9	5.5	11.7	15.5	15	9	0
13.8	16.6	5	19	0	11.5	16	14.5	9.5	0
12.7	18.9	8	12	4	12.3	15.7	14.5	9.5	0
12.9	19.2	7	12	5	11.4	15.1	17.5	6.5	0
13.5	17.4	7.5	16.5	0	11.2	15.4	17	7	0
13.5	17.8	6.5	17.5	0	11.8	15.1	17.5	6.5	0
13.5	14.9	11	13	0					

Figure 2. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

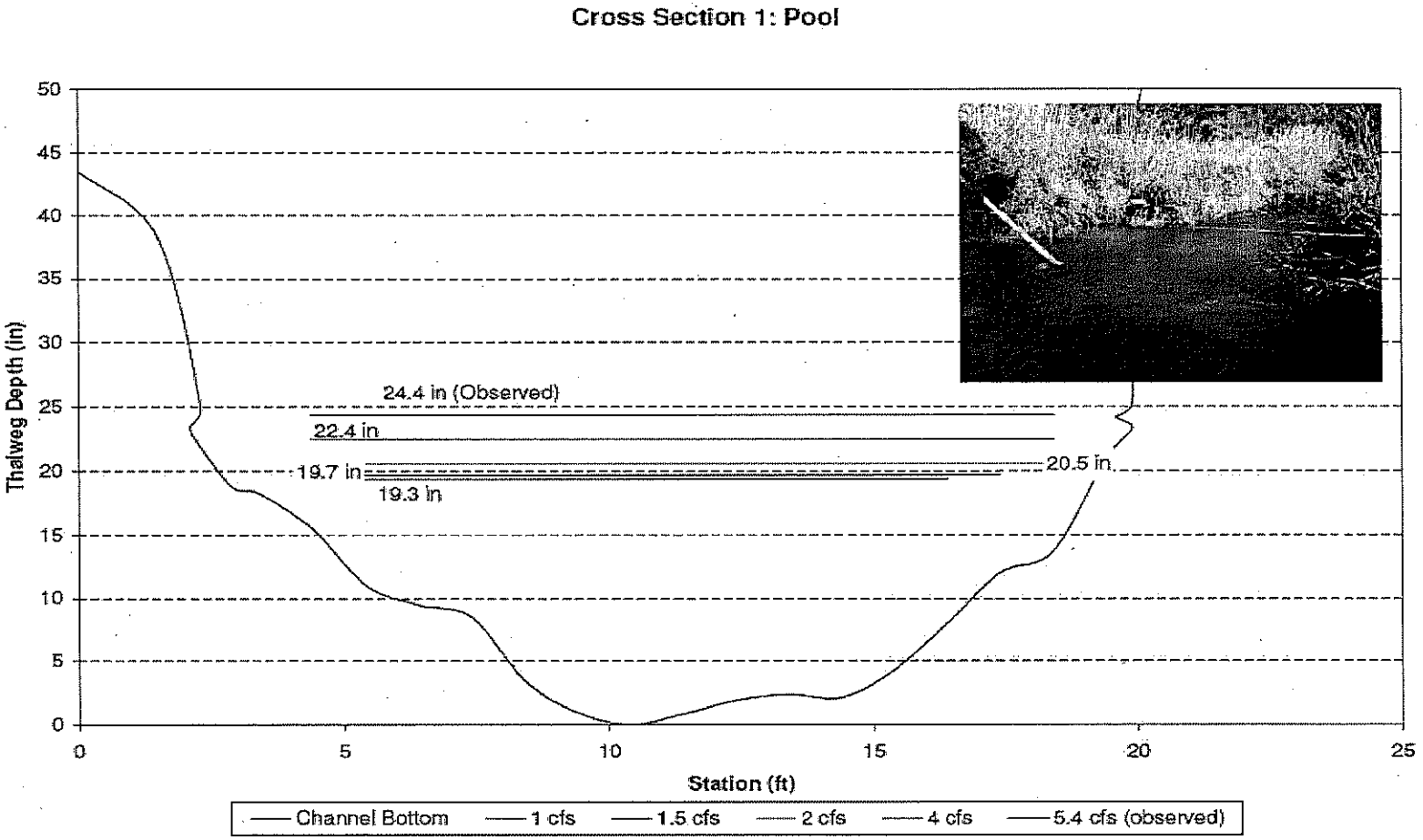


Figure 3. **Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.**

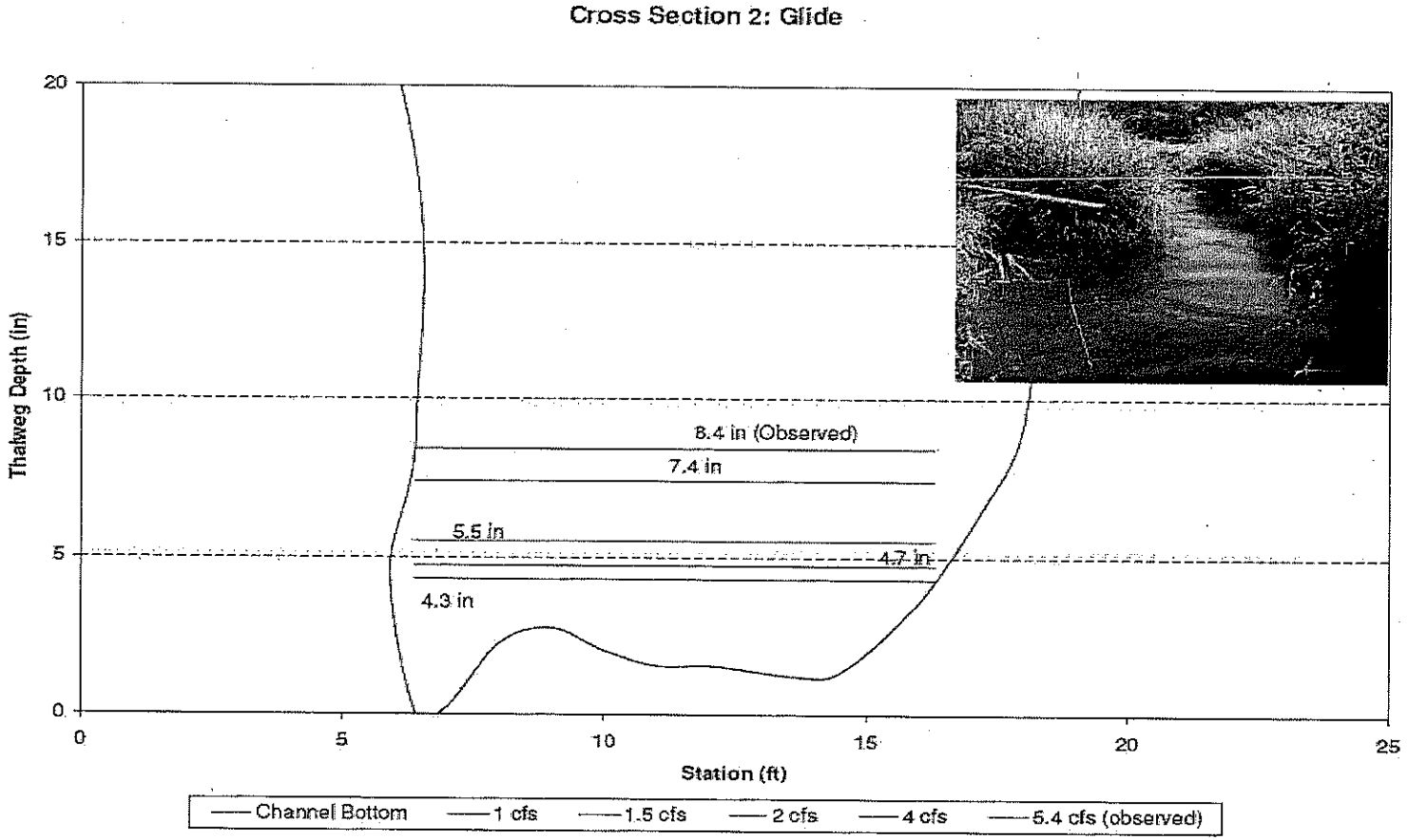


Figure 4. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

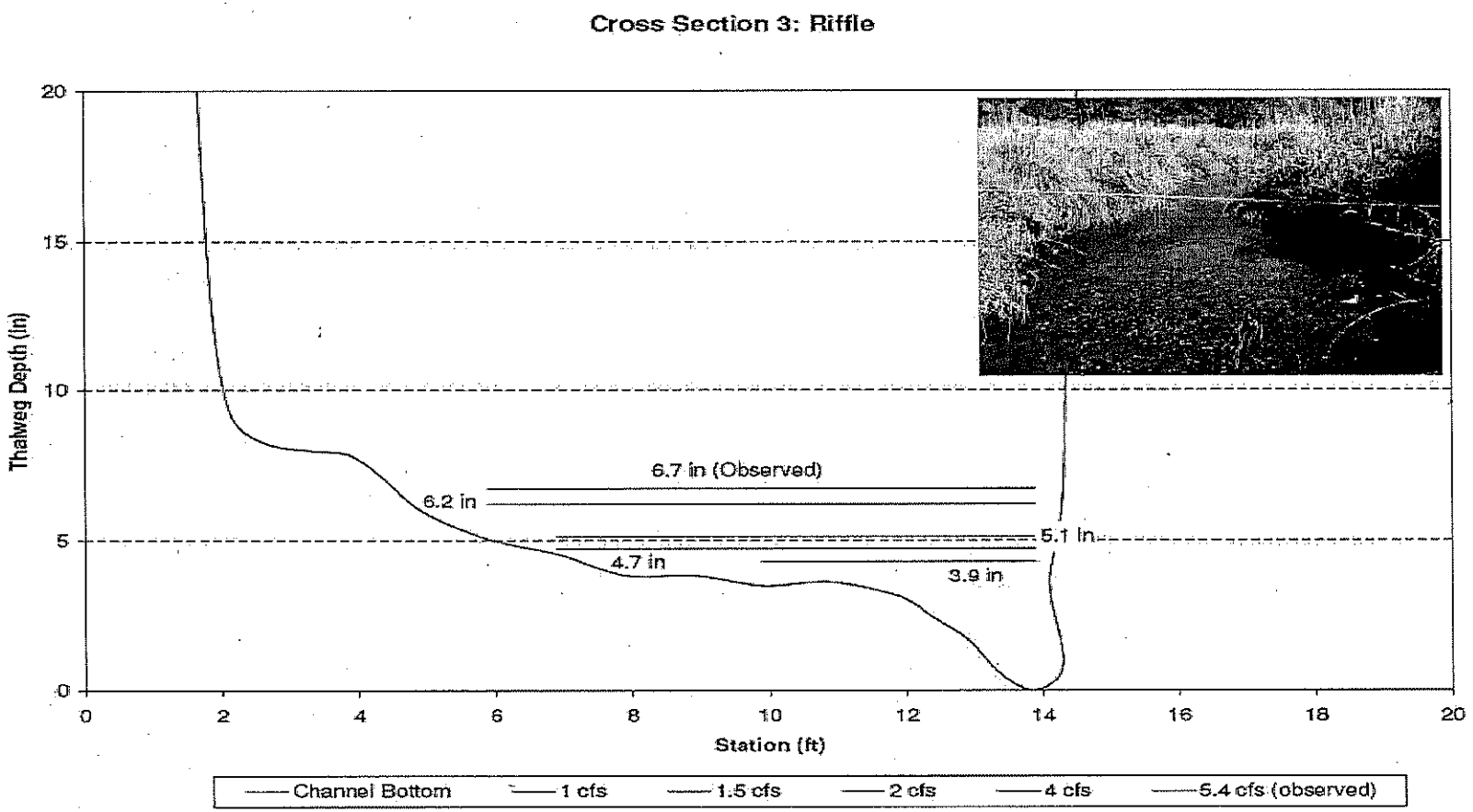


Figure 5. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

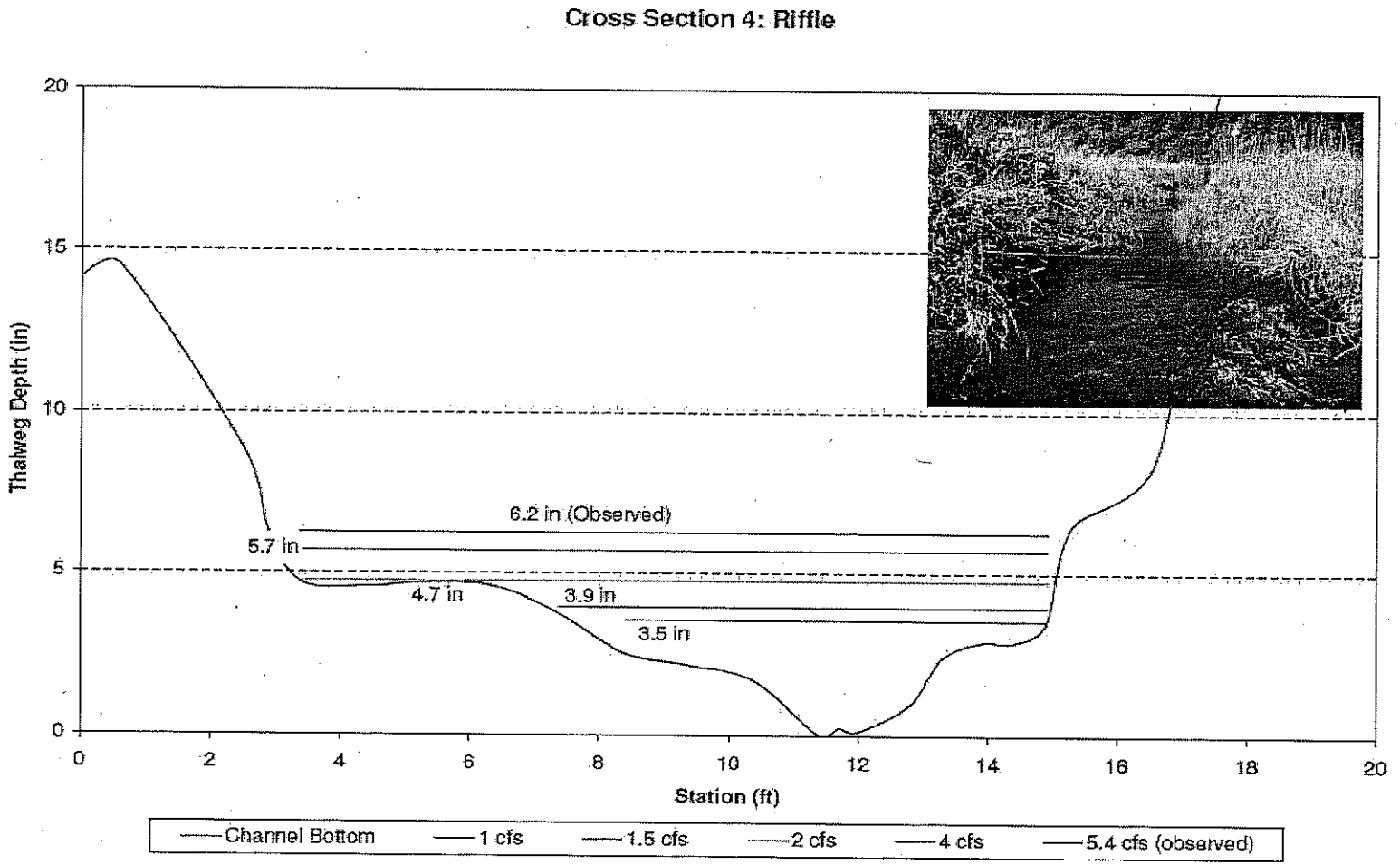


Figure 6. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

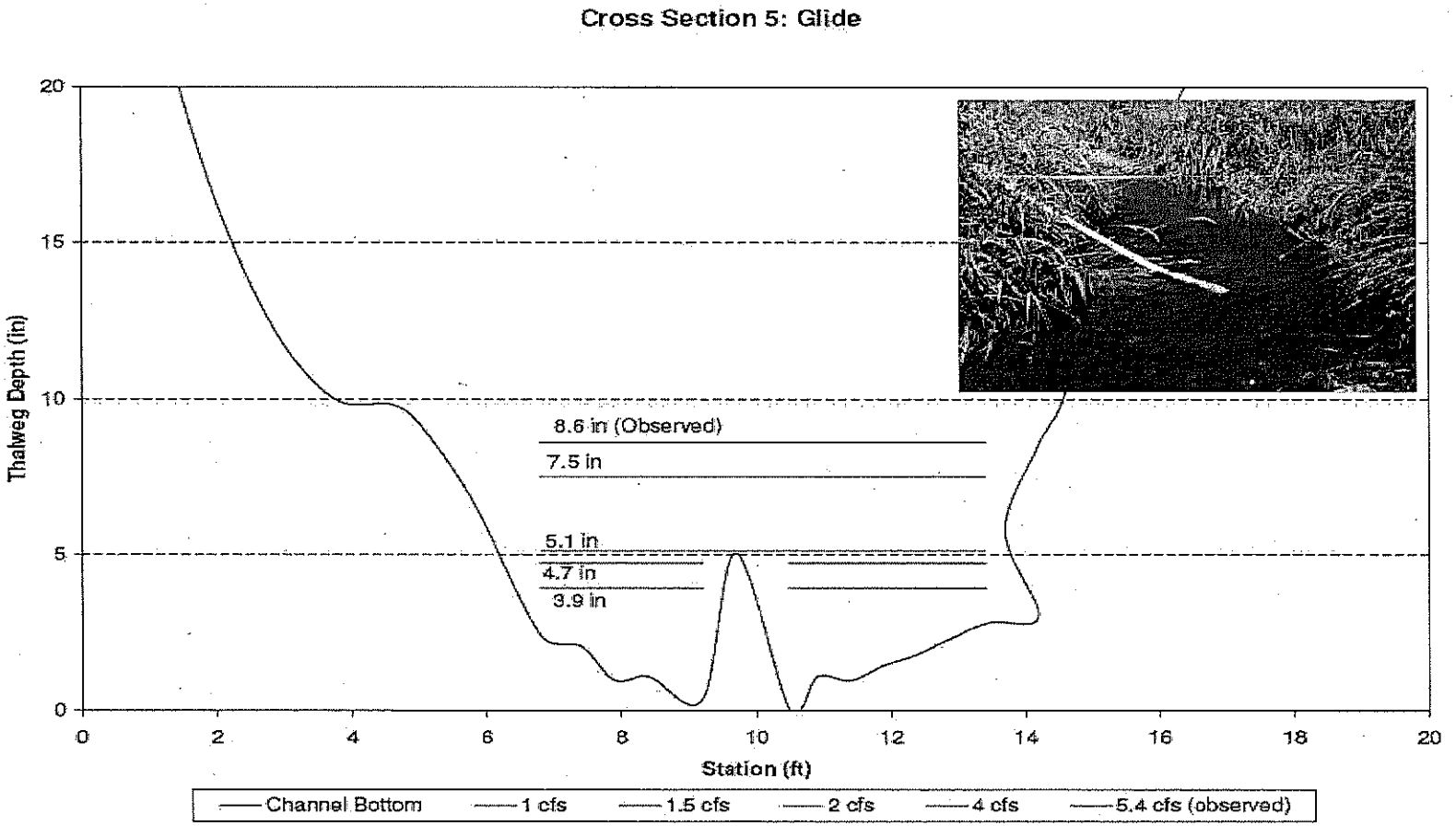


Figure 7. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

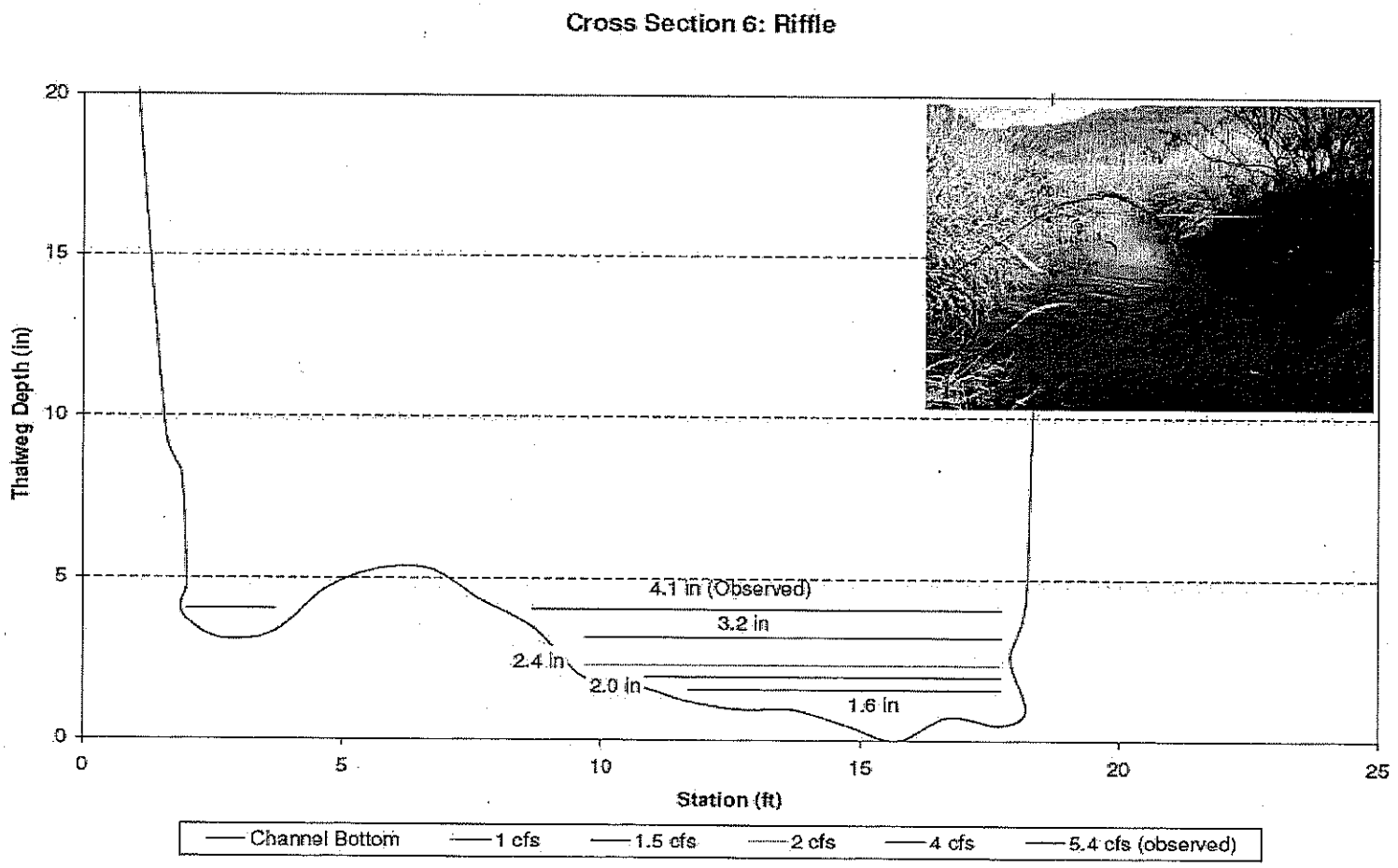


Figure 8. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

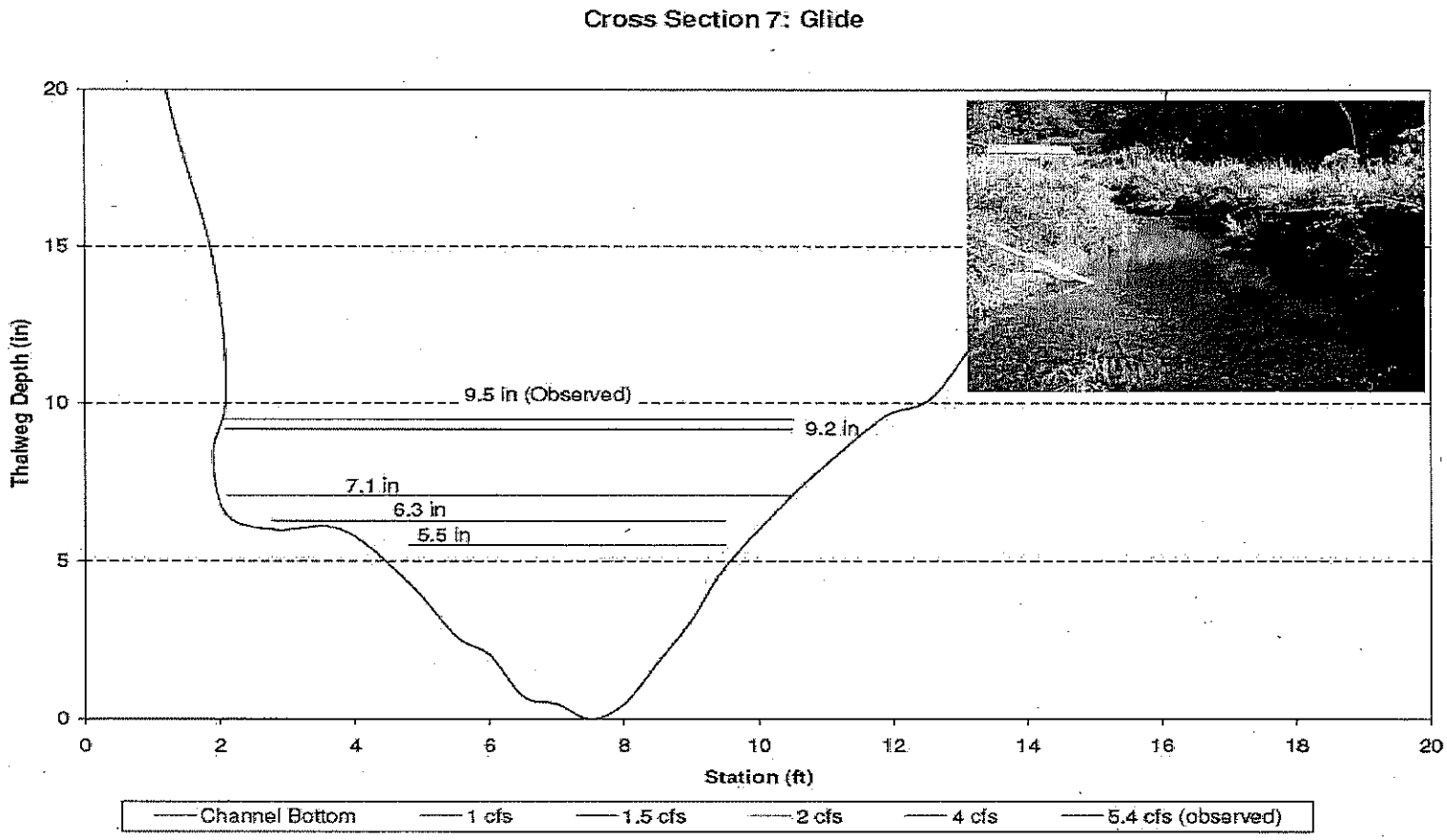


Figure 9. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

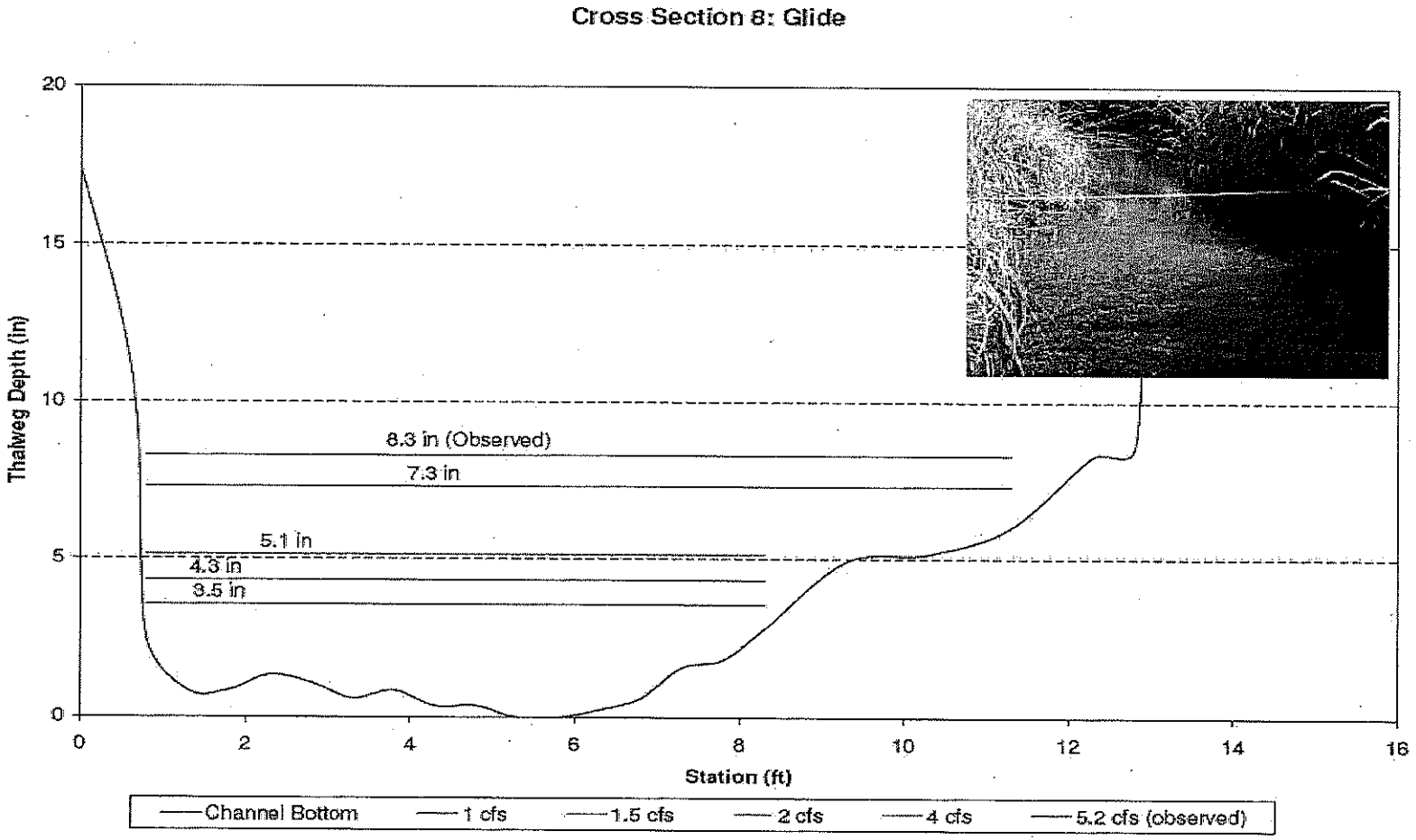


Figure 10. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.

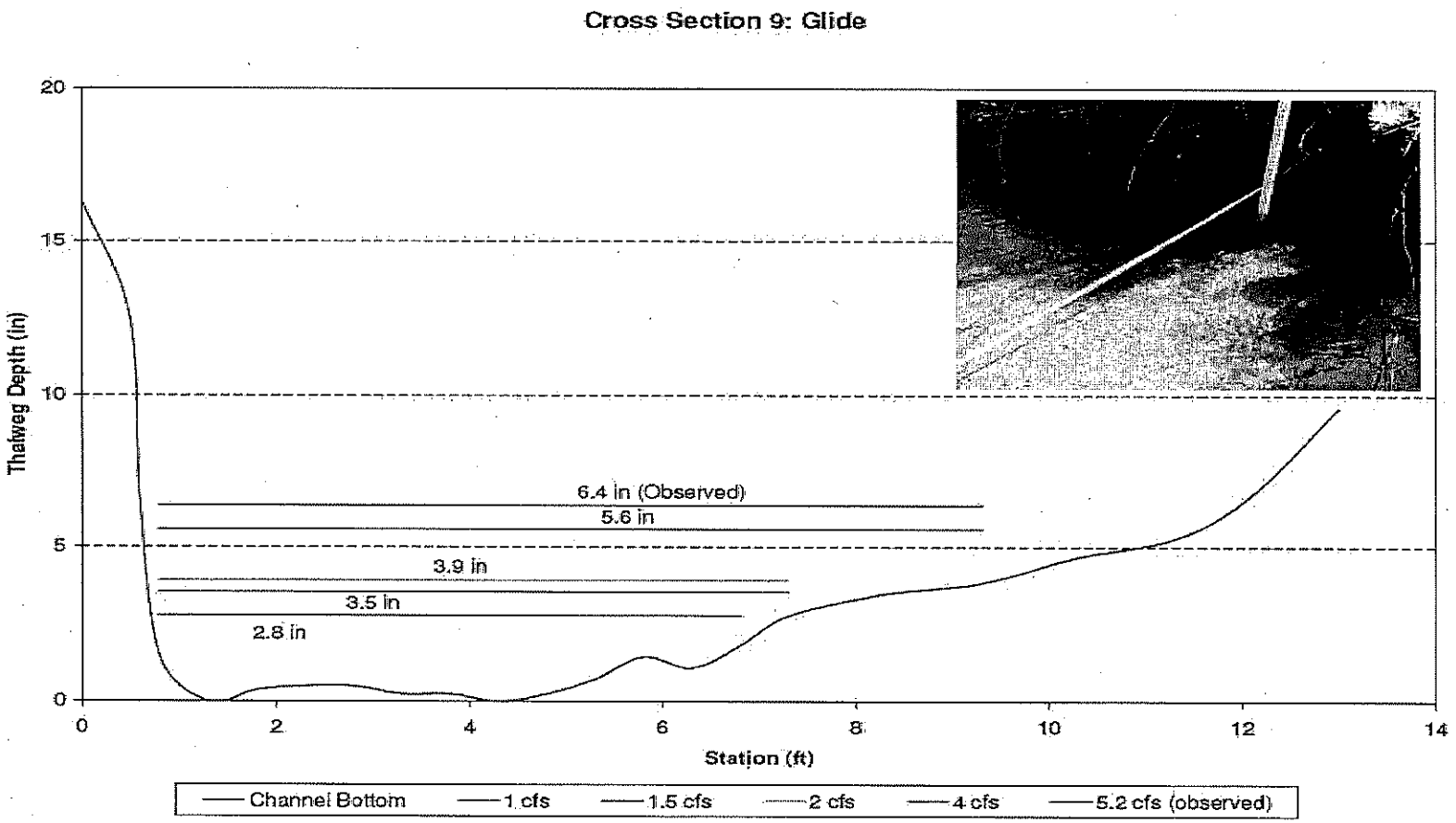
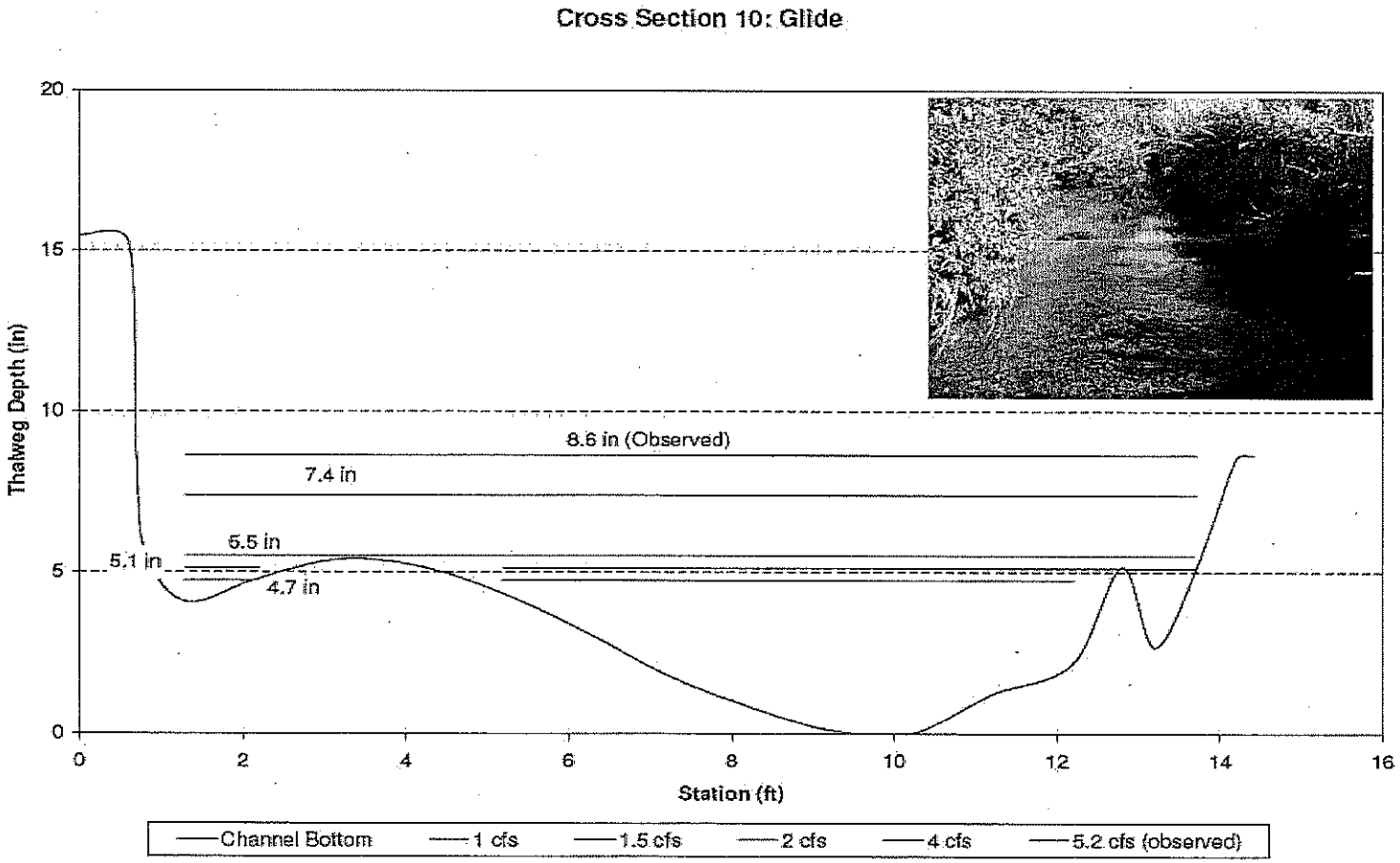


Figure 11. Cross-section profile of Horn Creek and extrapolated water elevations based on multiple water withdrawal scenarios.



Patricia McCarty

From: Pagel, Martha <MPagel@SCHWABE.com>
Sent: Thursday, May 03, 2012 11:29 AM
To: Patricia McCarty; Lisa Brown
Subject: Pacific City

Patricia and Lisa:

The PCJWSA Board met on Tuesday night and approved the settlement. I will forward a copy of the signature page to you when I get it from Tony Owen.

Congratulations to all of us!
Martha

MARTHA O. PAGEL | Attorney at Law
SCHWABE, WILLIAMSON & WYATT
530 Center St. NE, Ste. 400, Salem, OR 97301
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com
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Assistant: Karen Donohue| Direct: 503-540-4262 | kdonohue@schwabe.com
Legal advisors for the future of your business®
www.schwabe.com

Patricia McCarty

From: Pagel, Martha <MPagel@SCHWABE.com>
Sent: Thursday, April 26, 2012 3:53 PM
To: Patricia McCarty; Lisa Brown
Subject: RE: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1

The Board is meeting on Tuesday night (May 1), so I'm expecting we will have the signed agreement soon after that.

Martha

-----Original Message-----
From: Patricia McCarty [mailto:patricia.e.mccarty@state.or.us]
Sent: Thursday, April 26, 2012 3:44 PM
To: Lisa Brown; Patricia McCarty
Cc: Pagel, Martha
Subject: RE: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1

Thank you, Lisa. Martha, any estimate on when PCJWSA will be signing?

Patricia
-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Tuesday, April 24, 2012 3:40 PM
To: Patricia McCarty
Cc: MPagel@SCHWABE.com
Subject: Re: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1

Patricia and Martha -
Attached is a pdf of the full PCJWSA settlement and related documents with WaterWatch's (and OWRD's) signature. I am also putting this in the mail to Patricia - it will go out tomorrow.

Best,
Lisa

----- Original Message -----
From: "Patricia McCarty" <patricia.e.mccarty@state.or.us>
To: MPagel@SCHWABE.com, "Lisa Brown" <lisa@waterwatch.org>
Sent: Thursday, April 12, 2012 9:48:46 AM
Subject: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1

Hello,

Attached are the settlement documents for your signatures. Please get the settlement agreement with your client's signature to me and each other by any means. You can send me a scan and mail the original signature, or a copy. I will be sending a copy of the fully signed agreement with attachments after I receive signed copies from you. As agreed in the SA, OWRD will issue the Final Order within 45 days of receiving the signed agreement. It should be more like 2 weeks, but fair warning, we are very short on staff that actually know how to complete the issuance of an extension final order. We have one person that does know and we are slowing learning the steps from her. It may take a little longer to complete the process than normal.

Thanks for your work on this.

Patricia McCarty

Protest Program Coordinator

Oregon Water Resources Department

(503) 986-0820

--
Lisa Brown
Staff Attorney
WaterWatch of Oregon * 213 SW Ash St, STE 208 Portland, OR 97204 *
www.waterwatch.org
503.295.4039 x4

Patricia McCarty

From: Lisa Brown <lisa@waterwatch.org>
Sent: Tuesday, April 24, 2012 3:40 PM
To: Patricia McCarty
Cc: MPagel@SCHWABE.com
Subject: Re: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1
Attachments: Permit S-36881 Ext Sett Agr draft FO w Att 1 OWRD_WW sig.pdf

Patricia and Martha -
Attached is a pdf of the full PCJWSA settlement and related documents with WaterWatch's (and OWRD's) signature. I am also putting this in the mail to Patricia - it will go out tomorrow.

Best,
Lisa

----- Original Message -----
From: "Patricia McCarty" <patricia.e.mccarty@state.or.us>
To: MPagel@SCHWABE.com, "Lisa Brown" <lisa@waterwatch.org>
Sent: Thursday, April 12, 2012 9:48:46 AM
Subject: Pacific City Permit S-39881 Ext. OWRD signed SA w draft FO w Att 1

Hello,

Attached are the settlement documents for your signatures. Please get the settlement agreement with your client's signature to me and each other by any means. You can send me a scan and mail the original signature, or a copy. I will be sending a copy of the fully signed agreement with attachments after I receive signed copies from you. As agreed in the SA, OWRD will issue the Final Order within 45 days of receiving the signed agreement. It should be more like 2 weeks, but fair warning, we are very short on staff that actually know how to complete the issuance of an extension final order. We have one person that does know and we are slowing learning the steps from her. It may take a little longer to complete the process than normal.

Thanks for your work on this.

Patricia McCarty

Protest Program Coordinator

Oregon Water Resources Department

(503) 986-0820

--

Lisa Brown
Staff Attorney
WaterWatch of Oregon * 213 SW Ash St, STE 208 Portland, OR 97204 * www.waterwatch.org
503.295.4039 x4

Patricia McCarty

From: Pagel, Martha <MPagel@SCHWABE.com>
Sent: Wednesday, April 11, 2012 11:52 AM
To: Patricia McCarty
Cc: Lisa Brown; Patricia McCarty
Subject: Re: PCJWSA final settlement doc

Hi Patricia

Thanks for checking -- I agree with Lisa's changes. OK to final (however I still need to submit it to the PCJWSA board for final approval.)

Sent from my iPhone

On Apr 11, 2012, at 11:24 AM, "Patricia McCarty" <patricia.e.mccarty@state.or.us> wrote:

> Martha,
> I have the documents prepared and am ready to get Dwight's signature on the Settlement Agreement and send it and the draft final order, with attachment 1, to you and WaterWatch. As soon as I hear from you that Lisa's #1 below looks right to you, I'll get a signature and get it out the door.
>
> Thanks,
> Patricia
> -----Original Message-----
> From: Lisa Brown [mailto:lisa@waterwatch.org]
> Sent: Tuesday, April 10, 2012 12:20 PM
> To: Martha Pagel; Patricia McCarty
> Subject: PCJWSA final settlement doc
>
> Hi Patricia and Martha,
> I finally addressed the one remaining edit to the Pacific City settlement regarding the measurement conditions requirements in the Bi-Op. I am attaching two documents:
> 1. ending in Final 4-10-2012, in which that edit has been accepted.
> 2. ending in 4-9-2012, in which that edit is shown in track edit mode.
>
> Martha is ok with that last edit which means that document #1 is an acceptable final for WaterWatch and PCJWSA. I apologize for taking so long to finalize that one little piece and look forward to getting this signed.
>
> Let me know if there are any questions.
>
> thanks,
> Lisa
>
>
> --
> Lisa Brown
> Staff Attorney
> WaterWatch of Oregon

> 503.295.4039 x4
>
> www.waterwatch.org
>

Patricia McCarty

From: Lisa Brown <lisa@waterwatch.org>
Sent: Friday, November 11, 2011 12:07 PM
To: Martha Pagel
Cc: Patricia McCarty
Subject: Re: Revised Draft Agreement for PCJWSA

Martha,
Thanks for the update and the updated document. I wanted to let you know that based on other work, I will not be able to get to this until late next week. I will put it at the top of the list at that time as I know we would all like to wrap this one up.

thanks,
Lisa
----- Original Message -----
From: "Martha Pagel" <MPagel@SCHWABE.com>
To: "Lisa Brown" <lisa@waterwatch.org>, "Patricia McCarty" <patricia.e.mccarty@state.or.us>
Sent: Wednesday, November 9, 2011 10:24:12 AM
Subject: Revised Draft Agreement for PCJWSA

Hi Lisa and Patricia:

It was nice to see both of you at the Water Law Conference last week.

I had a chance to talk with Tony Owen this morning to confirm that the draft agreement we have been working on is consistent with his understanding of the conceptual agreement. I made a few changes in the attached draft to reflect Tony's comments -- nothing substantive, just corrections and clarifications.

For this version, I "accepted" all changes proposed by Lisa in her draft dated September 30, 2011, so that you will be able to easily find my new changes.

1) On page 2 of the Final Order, I added wording to clarify/confirm that PCJWSA is authorized for a combined withdrawal of 2.7 cfs under the several water rights that are affected by the order.

2) On p. 4 of the Final Order, I corrected a couple of typos.

3) On p. 4 of the Settlement Agreement, I added another signature line for PCJWSA to include both the Board Chairman and Manager.

If these changes are acceptable, I think we are ready to finalize the agreement.

Thank you,
Martha

<<S-49201-ext-fo with settlement agreement- approve_Pacific City_WW

Patricia McCarty

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Friday, July 22, 2011 8:54 AM
To: Patricia McCarty; Lisa Brown; Ann Reece
Subject: RE: Pacific City/WaterWatch settlement documents

It's fine with me to wait until Wednesday so that Ann can join us.

How about 10 on Wednesday, 7/27? We can use the same call-in information.

Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

---

From: Patricia McCarty [mailto:mccartpe@wrd.state.or.us]
Sent: Friday, July 22, 2011 8:45 AM
To: Pagel, Martha; Lisa Brown; Ann Reece
Subject: RE: Pacific City/WaterWatch settlement documents

11 am is OK, although Ann will not be able to join us. WaterWatch's deletion of some required language in the agency's final order may stem from a lack of understanding of what the rules require and I wanted Ann to be able to answer any of Lisa's questions about the rules. If we have remaining questions for Ann we will need to wait until Wednesday as she is working on a deadline on another project.

Thanks,
Patricia

From: Pagel, Martha [mailto:MPagel@SCHWABE.com]
Sent: Friday, July 22, 2011 8:22 AM
To: Lisa Brown; Patricia McCarty
Cc: Ann Reece
Subject: RE: Pacific City/WaterWatch settlement documents

How about 11 this morning?

We can use our conference call line:

866-844-1494
Pass code: 523 862

Thanks,
Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Friday, July 22, 2011 7:59 AM
To: Patricia McCarty
Cc: Ann Reece; Pagel, Martha
Subject: Re: Pacific City/WaterWatch settlement documents

Regarding this morning, I will not be available until 10:30 am. I am still available at the other times.

----- Original Message -----
From: "Patricia McCarty" <mccartpe@wrd.state.or.us>
To: "Martha Pagel" <MPagel@SCHWABE.com>, "Lisa Brown" <lisa@waterwatch.org>
Cc: "Ann Reece" <reeceal@wrd.state.or.us>
Sent: Thursday, July 21, 2011 4:48:19 PM
Subject: RE: Pacific City/WaterWatch settlement documents

I am available all the times listed by Martha.

Patricia

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Thursday, July 21, 2011 4:21 PM
To: Lisa Brown
Cc: Ann Reece; Patricia McCarty
Subject: RE: Pacific City/WaterWatch settlement documents

Lisa (and all):

Thanks for your comments.

Rather than go back and forth with marked-up drafts, I think it would be most efficient at this point if we could schedule a conference call soon for you, me, Patricia and Ann to go over the documents; clarify the points of diversion and formatting issues; and hopefully reach agreement on the wording of the conditions.

I think we are all still in agreement on the concepts, but it appears we need more work on the wording.

My own schedule is pretty open for the next few days -- any of the following would work:

Friday 7/22 - before noon

Monday 7/25 -- anytime except 12 - 1 p.m.
Tuesday 7/26 -- anytime after 10 a.m.
Wednesday 7/27 -- before noon

If those days/times won't work, please give us some other options.

Thanks,
Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com<mailto:mpagel@schwabe.com>

-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Thursday, July 21, 2011 2:04 PM
To: Pagel, Martha
Cc: Ann Reece; Patricia McCarty
Subject: Re: Pacific City/WaterWatch settlement documents

Martha, Patricia and Ann,

I am attaching WaterWatch's edits and also a few comments/questions on the draft settlement documents. Let me know if you have any questions or concerns.

Thanks,
Lisa

----- Original Message -----
From: "Martha Pagel" <MPagel@SCHWABE.com<mailto:MPagel@SCHWABE.com>>
To: "Patricia McCarty"
<mccartpe@wrd.state.or.us<mailto:mccartpe@wrd.state.or.us>>
Cc: "Lisa Brown" <lisa@waterwatch.org>, "Ann Reece"
<reeceal@wrd.state.or.us<mailto:reeceal@wrd.state.or.us>>
Sent: Monday, July 18, 2011 2:58:17 PM
Subject: Pacific City/WaterWatch settlement documents

Patricia (and all):

Thanks to you and Ann for putting together the draft settlement documents -- I think you've done a good job.

I have attached a copy showing a few changes I would suggest to clarify the intent of the agreement. Please let me know if you have questions or concerns about the proposed changes.

Thank you,
Martha

<<S-49201-ext-fo with settlement agreement- approve_Pacific City.doc>>

--
Lisa Brown
Staff Attorney
WaterWatch of Oregon
503.295.4039 x4

www.waterwatch.org<http://www.waterwatch.org>

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--
Lisa Brown
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Patricia McCarty

From: Ann Reece
Sent: Tuesday, May 17, 2011 12:09 PM
To: Patricia McCarty
Subject: RE: PCJWSA/WaterWatch Settlement S-49201
Attachments: S-49201-ext-fo with settlement agreement- approve_Pacific City.doc

Here is a start on the FO. I can work on draft condition language that is consistent with the settlement points if you need me to.

Best Regards,
Ann Reece

Water Rights Services Division
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
503-986-0827
reeceal@wrd.state.or.us

From: Patricia McCarty
Sent: Tuesday, May 17, 2011 11:54 AM
To: Pagel, Martha; Ann Reece; Bill Fujii; Lisa Jaramillo
Cc: Lisa Brown
Subject: RE: PCJWSA/WaterWatch Settlement S-49201

Hi Martha,
That all sounds good. Let me get together with other staff to make sure I start off using the latest and greatest settlement agreement/Final Order templates as I draft up an agreement. Unfortunately, several staff will be out of the office next week so I may not be able to get something to you for your review until the first week in June or shortly thereafter. As soon as I do I will send it out to you and Lisa.

Congratulations and I hope this continues smoothly until final resolution.

Thanks,
Patricia

From: Pagel, Martha [mailto:MPagel@SCHWABE.com]
Sent: Tuesday, May 17, 2011 11:46 AM
To: Patricia McCarty
Cc: Lisa Brown
Subject: PCJWSA/WaterWatch Settlement

Patricia:

As I mentioned to you briefly on the phone last week, Lisa Brown and I have reached conceptual agreement on settlement of the protested permit extension for Pacific City Joint Water and Sanitary Authority (PCJWSA).

The key settlement points are as follows:

1. Total Withdrawal: Total surface water withdrawals from both points of diversion (not just the new intake) will be limited to 2.7 cfs.

2. By-Pass Flows: Use of surface water will not be allowed when stream flow drops below 2.0 cfs minimum by-pass flow. (This will be a condition of the water right, not tied to the Corps permit; however, for as long as the Corps permit is in effect, PCJWSA will be required to comply with the 2.5 cfs by-pass condition in that permit.)

3. Measuring and Reporting: PCJWSA will provide copies to OWRD of all reports prepared pursuant to Condition 4.d.-g of the Corps permit for as long as such reports are required under the Corps permit. At such time as the reports are no longer required by the Corps, PCJWSA will provide annual reports to OWRD of daily stream flow measurements and surface water withdrawals. (

4. PCJWSA will have an approved Water Management and Conservation Plan before using the 0.65 cfs of undeveloped water under the permit extension.

Lisa and I are hoping that you can take the lead in incorporating these conceptual agreements into the department's format for a stipulated settlement agreement. We are both available to assist as needed.

Thanks for your help -- please let us know if you need more from Lisa or me.

Martha

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---

any action based on it, is strictly prohibited. Thank you.

Patricia McCarty

From: Lisa Brown [lisa@waterwatch.org]
Sent: Friday, April 15, 2011 12:31 PM
To: Martha Pagel
Cc: Patricia McCarty
Subject: Re: PCJSWA Permit Extension

At this point, Martha's suggested times on Wed. or Thursday next week work for me. Patricia, do you plan to join the discussion and do those times work for you?

----- Original Message -----
From: "Martha Pagel" <MPagel@SCHWABE.com>
To: "Lisa Brown" <lisa@waterwatch.org>
Cc: "Patricia McCarty" <mccartpe@wrd.state.or.us>, "john" <john@waterwatch.org>, "kjp" <kjp@waterwatch.org>
Sent: Wednesday, April 13, 2011 4:45:09 PM
Subject: RE: PCJSWA Permit Extension

Lisa:

Thanks for the fast response. I should clarify that PCJSWA is definitely willing to agree to the 2.5 cfs by-pass flow as a condition of the permit extension, along with a re-opener allowing it to be changed if the Corps permit is changed. What I was trying to say below is that they are not willing to have two different by-pass flow requirements -- one that might be imposed by the federal agencies through the Corps permit and a different one set in the water right. If there is no change in the Corps permit, the minimum/by-pass would remain
2.5 cfs in the water right.

Let's set a time for a phone call to talk this through in more detail. How about next Wednesday or Thursday? Anytime before 3 on Wednesday 4/20, or before 4 on Thursday 4/21 would work for me. (My schedule is also pretty flexible so if there are other days/times that work better for you or Patricia, just let me know.)

Thanks,
Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Wednesday, April 13, 2011 4:06 PM
To: Pagel, Martha
Cc: Patricia McCarty; john; kjp

Subject: Re: PCJSWA Permit Extension

Hi Martha,
Thanks for the update. Unfortunately, if Pacific City is not able to agree to a permit condition requiring a bypass flow (#6) that will be a stumbling block to meeting WaterWatch's interests. A permit condition requiring a bypass flow would be consistent with the operation of ORS 537.230(2)(c) and is an important component from our perspective. Also, as I discussed with you and Patricia at our November meeting, we have seen some bad outcomes where a permit condition relies for its operation on a third-party document. Let's find a time to talk and see if we can work something out on this issue. My schedule is quite flexible next week if you want to suggest a time that works for you. If not next week, I could talk May 5 or 6.

Thanks,
Lisa

----- Original Message -----
From: "Martha Pagel" < MPagel@SCHWABE.com >
To: "Lisa Brown" < lisa@waterwatch.org >
Cc: "Patricia McCarty" < mccartpe@wrd.state.or.us >
Sent: Wednesday, April 13, 2011 3:04:22 PM
Subject: PCJSWA Permit Extension

Hi Lisa:

I finally had a chance to talk with PCJSWA regarding the settlement issues we discussed during our last phone conference.

I presented the following issues for feedback/approval -- the PCJSWA response is indicated for each:

1. Clarify/limit total surface water withdrawals from both points of diversion (not just the new intake) to 2.7 cfs.

Agreed.

2. Clarify use of surface water under all three water rights will not be allowed when stream flow drops below 2.5 -- to make the water right extension consistent with the Corps permit.

Agreed.

3. Include more details in the permit extension conditions regarding measurement and reporting to more closely mirror the Corps permit requirements and to clarify that there will be a continuing measurement and reporting condition for the water right after the end of the five-year period required under the Corps permit.

Agreed. We propose something like: " PCJSWA will provide copies to OWRD of all reports prepared pursuant to Condition 4.d.-g of the Corps permit

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Assistant: Karen Donohue| Direct: 503-540-4262 | kdonohue@schwabe.com
Legal advisors for the future of your business(r)
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--
Lisa Brown
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for as long as such reports are required under the Corps permit. At such time as the reports are no longer required by the Corps, PCJSWA will provide annual reports to OWRD of stream flow measurements and surface water withdrawals." We are open to further discussion on the wording.

4. Add a specific condition requiring conjunctive use of surface and ground water during the peak demand period.

PCJSWA cannot agree to add this specific condition. It is important for PCJSWA to maintain as much flexibility as possible for operating the surface and ground water systems, consistent with the requirements of the Corps permit. We believe the by-pass flow condition provides the needed level of protection for stream flow -- so how they achieve that requirement should be left to their own management plans.

5. Modification of the re-opener provision to include specific reference to species protected under the Magnuson-Stevenson Act in addition to ESA.

Agreed.

6. Modification of the re-opener provision to include a "floor" by-pass flow even if the Corps permit is changed to reduce or eliminate the by-pass flow in the future.

PCJSWA does not believe this additional provision is necessary. As a practical matter, we think it is highly unlikely that the Corps permit would be modified to reduce or eliminate the by-pass flow; but if such a change were to occur, we think it would have to be based on a biological reason that would be reviewed in a public process. Given those safeguards, we think it makes sense to keep the water right in line with the Corps permit. We understand that stream flow protection is a core issue for WaterWatch, but we think that the framework we have already discussed (of requiring the by-pass and allowing a re-opener) provides strong protection and requires PCJSWA to accept the risk that the by-pass flow could be increased in the future. We hope this will not become a stumbling block to an agreement.

7. Clarification that PCJSWA will have an approved Water Management and Conservation Plan before using the 1.35 cfs of undeveloped water.

Agreed.

Next Steps:

If WaterWatch is OK with the above responses, then I think we have a conceptual agreement and we can begin preparing a form of stipulation. If not, let's schedule a phone conference soon to figure out how to proceed.

Thank you,
Martha

MARTHA O. PAGEL | Attorney at Law

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--
Lisa Brown
Staff Attorney
WaterWatch of Oregon
503.295.4039 x4

www.waterwatch.org

Patricia McCarty

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Wednesday, February 16, 2011 5:54 PM
To: Lisa Brown; Patricia McCarty
Cc: Patricia McCarty
Subject: PCJWSA -- Confidential Settlement Proposal

Lisa and Patricia,

As a follow-up to our meeting last November, I have been working with PCJWSA to develop a proposal for possible permit conditions. The proposal addresses key points/concerns raised by Water Watch concerning flow and habitat protection in Horn Creek. Although the Water Watch protest originally filed with OWRD raises a number of issues pertaining to the permit extension process, it was my understanding from or meeting that we may be able to reach agreement by focusing on the flow/habitat issues, with the expectation that many of the other issues would fall then away.

With that concept in mind, I have worked with PCJWSA and its consultants to develop the following conceptual framework for permit conditions. The proposal is offered confidentially, for settlement purposes only:

PCJWSA Proposed Conditions
1. Total surface water withdrawal at the Horn Creek Intake will be limited to 2.7 cfs.
2. Use of surface water will not be allowed when stream flow drops below 2.5 cfs.
3. When water withdrawals on Horn Creek reach 2.0 cfs, instream flows will be measured concurrently at two locations until water withdrawals drop below 2.0 cfs.
4. PCJWSA will implement conjunctive use of surface and ground water rights during the peak demand period of July, August and September, as needed to ensure compliance with the minimum stream flow requirement of Condition #2.
5. The above water use conditions in the water right permit are intended to be consistent with similar provisions of Corps Permit No. NWP-NWP-2008-161 issued June 2, 2009; therefore, if the Corps permit is reevaluated and modified in order to address new or different information relating to the impact of water use during peak demand periods on species protected under the federal Endangered Species Act, PCJWSA will consent to similar modification of the permit extension to ensure consistency with water use conditions.
6. PCJWSA will have an approved Water Management and Conservation Plan before using the 1.35 cfs of undeveloped water.
Comments/Explanation

Conditions 1-3 reflect similar provisions in the Corps permit.

Condition 4 is intended to confirm the intention to rely on conjunctive management as needed to provide for municipal supply while meeting the minimum stream flow requirement.

Condition 5 is intended to respond to the specific concern relating to assumptions on which the biological opinion and Corps permit were based. Specifically, Lisa noted that the biological opinion assumed only 3-4 days per year of peak use and wanted PCJWSA to address what would happen if the assumption proves to be wrong, over time. Our proposal is intended to keep the

water right in sync with the Corps permit by referencing the "re-opener" provision that is contained in the Corps permit. If the Corps permit is reopened and modified to deal with changes in facts on which the biological opinion was based, then the water right condition would be modified accordingly.

Condition 6 just restates what is already expected -- that the Water Management and Conservation Plan must be approved before further development under the permit.

We would also expect all other standard OWRD conditions for permit extensions to be included.

I'm hoping we can schedule a meeting or phone conference soon, after you have had a chance to consider these concepts. In the meantime, please let me know if you have questions or need further clarification regarding any of the proposed conditions.

Thank you,
Martha

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Patricia McCarty

From: Lisa Brown [lisa@waterwatch.org]
Sent: Friday, February 18, 2011 4:16 PM
To: Martha Pagel
Cc: Patricia McCarty
Subject: Re: Protest on Application R-87630

Hi Martha,
Thanks for the email. An informational meeting on the Dayspring issues seems like a good idea. I need to check with some others here on scheduling and have been unable to do that yet, but will get back to you with some possible dates early next week.

I'll also take a look at the PCJWSA proposal and suggest some dates to meet on that one.

Have a great weekend.

Lisa

----- Original Message -----
From: "Martha Pagel" <MPagel@SCHWABE.com>
To: "Lisa Brown" <lisa@waterwatch.org>
Cc: "Patricia McCarty" <mccartpe@wrd.state.or.us>
Sent: Thursday, February 17, 2011 10:39:39 AM
Subject: Protest on Application R-87630

Lisa:

I just wanted to check in to let you know that I am representing the applicant, Dayspring Partners, on this application and the protest.

We would welcome an opportunity to meet with you and Patricia to provide more background information about the project and discuss whether there will be a way to address WaterWatch's concerns without the need for a hearing.

I know from our work on PCJWSA that you are pretty busy right now -- and looking at my own schedule I'm thinking that we should aim for at least 3 or 4 weeks out - -perhaps mid-March if that would work for you and Patricia.

At this point, I just wanted to touch bases to let you know that we would like to try to work with you on this.

Please let me know your availability for a meeting. Perhaps we can coordinate with a meeting on the PCJWSA project as well.

Thank you,
Martha

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--

Lisa Brown
Staff Attorney
WaterWatch of Oregon
503.295.4039 x4

www.waterwatch.org

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Tuesday, November 09, 2010 1:24 PM
To: Patricia McCarty
Cc: Lisa Brown; MCCARTY Patricia E
Subject: RE: Pacific City settlement meeting

Thanks Patricia.

From my end, I can't think of anything that needs to be done in advance. I'm thinking that we will work from the list of issues we discussed when we first met on this (some time ago). The key issue at that time was the amount of by-pass flow that would be required. I'm hoping that has been resolved with issuance of the state and federal permits for the new diversion point.

We would then need to review other issues that had been of concern to WaterWatch to see if we can form a framework for settlement.

Lisa -- please let us know if you have other thoughts on how to approach this.

Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

---

From: Patricia McCarty [mailto:mccartpe@wrd.state.or.us]
Sent: Tuesday, November 09, 2010 1:17 PM
To: Pagel, Martha
Cc: Lisa Brown; MCCARTY Patricia E
Subject: Pacific City settlement meeting

Martha and Lisa,

I have a room reserved for 10:00 am on November 30th, 2010 here at OWRD. Please let me know as soon as possible if anything is needed to prepare for the meeting.

Thanks,
Patricia

From: Pagel, Martha [mailto:MPagel@SCHWABE.com]
Sent: Tuesday, November 09, 2010 1:10 PM
To: Patricia McCarty
Cc: Lisa Brown
Subject: FW: Meeting?

Patricia: the 30th is OK for me too, at either 10 or 1 p.m. If this works for you, too, please confirm the time and get back to us. I assume we would meet at OWRD, but if there is any problem getting a meeting

room, we could do it at my office.

Thanks!
Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Tuesday, November 09, 2010 12:55 PM
To: Pagel, Martha
Cc: Patricia McCarty
Subject: Re: Meeting?

The week before Thanksgiving doesn't work on my end, but I am available anytime on the 30th. 10 am or 1 pm in Salem?

----- Original Message -----
From: "Martha Pagel" <MPagel@SCHWABE.com>
To: "Lisa Brown" <lisa@waterwatch.org>, "Patricia McCarty" <mccartpe@wrd.state.or.us>
Sent: Monday, November 8, 2010 5:07:53 PM
Subject: RE: Meeting?

Would it work to meet before Thanksgiving -- say the 22nd, 23rd or 24th?

If not, I could meet on Nov. 29 or 30, during the week after Thanksgiving.

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

-----Original Message-----
From: Lisa Brown [mailto:lisa@waterwatch.org]
Sent: Monday, November 08, 2010 4:35 PM
To: Patricia McCarty; Pagel, Martha
Subject: Re: Meeting?

I think it is unlikely we can be ready for a meeting on the 17th. What about a day during the week after Thanksgiving? That week is open for me

so far.

----- Original Message -----
From: "Lisa Brown" < lisa@waterwatch.org >
To: "Patricia McCarty" < mccartpe@wrd.state.or.us >
Cc: "Martha Pagel" < MPagel@schwabe.com >
Sent: Monday, November 8, 2010 8:38:15 AM
Subject: Re: Meeting?

Hi Martha and Patricia,
I'm not available to meet this week. Let me check on schedules today to see if we can complete our review of the 404/BiOp by the 17th, in which case I could meet in the afternoon of the 17th. I'll get back to you regarding the 17th this afternoon.

thanks,
Lisa

----- Original Message -----
From: "Patricia McCarty" < mccartpe@wrd.state.or.us >
To: "Martha Pagel" <MPagel@schwabe.com>, lisa@waterwatch.org
Sent: Friday, November 5, 2010 4:43:05 PM
Subject: RE: Meeting?

Martha and Lisa,

All those times I can make work. Lisa, it sounds like it is up to you.

Thanks,

Patricia

From: Pagel, Martha [mailto:MPagel@SCHWABE.com]
Sent: Friday, November 05, 2010 4:02 PM
To: Patricia McCarty; lisa@waterwatch.org
Subject: Meeting?

Are we ready to schedule a meeting?

To get the ball rolling -- how about any of the following days:

Tuesday, Nov. 9 -- morning or afternoon Wed., Nov. 10 -- morning or afternoon Friday, Nov. 12 -- morning Wed., Nov. 17 -- morning or afternoon

If those days don't work, let me know others that would be better for you.

Thanks,
Martha

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of any action based on it, is strictly prohibited. Thank you.

--
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--
Lisa Brown
Staff Attorney
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Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

December 25, 2007

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Rights Section has received your application for an extension of time for **APPLICATION FILE #** S-49201 (**PERMIT #** S-36881). Your application will be reviewed in the near future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

If you have questions concerning your extension of time application, please contact Kim French at (503) 986-0813. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's Internet home page at: "**www.wrd.state.or.us**".

Application # S-49201 / **Permit #** S-36881

Permit Holder: PACIFIC CITY, SWSA

Place a (✓) in the box if the item is satisfied	**Division 315 - Municipal/Quasi-Municipal Extension of Time - Completeness Checklist OAR 690-315-0070(3)**
✓	*1. [OAR 690-315-0070(3)]* The appropriate extension of time fee (as specified in ORS 536.050). $350 - applications received on or after July 1, 2007
✓	* *[OAR 690-315-0070(3)(a)]* The name and mailing address of the water right permit holder(s);
✓	* *[OAR 690-315-0070(3)(b)]* The application number and the permit number for which an extension is requested;
✓	*2-A. [OAR 690-315-0070(3)(c)]* For ***Quasi-Municipal*** water use permit holders, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d), if required under the applicable statute; • "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence; • "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying. Date permit issued: 7-27-73 ***(NOTE: Municipal and QM permits issued after 11/2/98 are also subject to review under 692-315-0080(5)… See PFO Checklist)*** "A" date: 7-27-74 "B"date: 1975 "C" date: 1976 "A" date met? (YES) or NO
	2-B. [OAR 690-315-0070(3)(d)] For ***Municipal*** water use permits issued after June 29, 2005, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d); • "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence; • "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying. Date permit issued:_____ ***(NOTE: Municipal and QM permits issued after 11/2/98 are also subject to review under 692-315-0080(5)… See PFO Checklist)*** "A" date:_____ "B"date:_____ "C" date:_____
✓	*3. [OAR 690-315-0070(3)(e)]* – This is extension request # 4 Evidence of actions taken to develop the right within the permitted time period and/or time period OR, during the most recent extension period from 1985 to 1990.
✓	*4. [OAR 690-315-0070(3)(f)]* Evidence of compliance with conditions contained in the permit and any previous extension(s) or the reason the condition was not satisfied;
✓	*5. [OAR 690-315-0070(3)(g)]* Evidence of the maximum INSTANTANEOUS rate (or duty, if applicable) of diversion for beneficial water use, if any, made to date; 1.35CFS
✓	*6. [OAR 690-315-0070(3)(h)]* An estimate of the population served and a description of the methodology(ies) used to make the estimate; 2309 - 2067
✓	*7. [OAR 690-315-0070(3)(i)]* A description of financial expenditures made toward completion of the water development; $175,400
✓	*8. [OAR 690-315-0070(3)(j)]* An estimate of the cost to complete the water development; $4 mil

Place a (✓) in the box if the item is satisfied	**Division 315 - Municipal/Quasi-Municipal Extension of Time - Completeness Checklist OAR 690-315-0070(3)**
✓	*9. [OAR 690-315-0070(3)(k)]* A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right;
✓	*10. [OAR 690-315-0070(3)(l)]* **PART A;** An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. Current Peak Water Demand: 1.34 CFS Projected Population: 3611 - 2020 Population Growth Rate: 3.5% Projected Peak Water Demand: 2.31 CFS - 2020 ✓ Inventory of Water Rights held:
	PART B: Extension requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.
✓	*11. [OAR 690-315-0070(3)(m)]* A summary of the applicant's plan and schedule to complete construction and/or perfect the water right
✓	*12. [OAR 690-315-0070(3)(n)]* Justification for the time requested to complete the project and/or apply the water to full beneficial use;
	13. [OAR 690-315-0070(3)(o)] Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules;
	14. [OAR 690-315-0070(3)(p)] Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements
	15. [OAR 690-315-007(3)(q)] For Municipal water use permit issued on or before November 2, 1998: for the first extension issued after June 29, 2005, the completed application must include a copy of any agreements regarding the use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.
✓	*16.* Signature(s) of the water right permit holder(s).

Name of Reviewer: Kim Fraczek **Date:** 12/18/07

Water Rights Information Query Results

	Contacts	Application	Permit	Certificate	Claim	Decree	Transfers	Status	
Select	PACIFIC CITY JWSA PO BOX 520 PACIFIC CITY, OR 97135-0520	S49201	S36881	5/3/72 SUBJECT	signed 73	No indication in file why changed to →		NC QM	1.35CFS
Select	PACIFIC CITY WATER DISTRICT PO BOX 88 PACIFIC CITY, OR 97135 green card FPS Project ~~IF~~	S33272	S26793	32238 8/3/59.	0.20CFS NESTUCCA RIVER			NC m	FULL Q
Select	PACIFIC CITY WATER DISTRICT PO BOX 88 PACIFIC CITY, OR 97135	S40432	S30792	44554 7/8/65	0.50 CFS HORN CREEK			NC m	FULL Q
Select	PACIFIC CITY JOINT WATER SANITARY AUTHORITY 34005 CAPE KIWANDA DR PO BOX 520 PACIFIC CITY, OR 97135	G10215	G9388	0.457 CFS 3/16/81 2 WELLS			T9607 (Confirming) 1/13/05 NESTUCCA RIVER BASIN	NC QM	FULL Q
Select	PACIFIC CITY JWSA PO BOX 520 PACIFIC CITY, OR 97135-0520	G11754	G10798	80489 11/27 87	300GPM (0.67 CFS) 3 WELLS (4,5+6) NESTUCCA			NC QM	FULL Q
Select	PACIFIC CITY JWSA PO BOX 520 PACIFIC CITY, OR 97135-0520	G11260	G10392	80488 14/11/84	0.3 CFS 1 WELL NESTUCCA RIVER			NC QM	FULL Q
Select	PACIFIC CITY JOINT WATER SANITARY AUTHORITY PO BOX 520 PACIFIC CITY, OR 97135	G16188	G15760	2/17/04	0.334 CFS 2 WELLS (7A & 7B) NESTUCCA			NC M	∅

Help understanding and working with the Water Rights Information System

Download: Point of diversion data, Place of use data, Stakeholder data

Return to WRIS Query

65 → 73 m → Qm

1 5+ → 04 Qm → m

Oregon
John A. Kitzhaber, M.D., Governor

Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

September 29, 1998

PACIFIC CITY JWSA
PO BOX 520
PACIFIC CITY OR 97135-0520

REFERENCE: Files 49201, G-11260, & G-11754

The assignments of Permits 36881, G-10392, and G-10798 from Pacific City Water District to you have been recorded in the records of the Water Resources Department.

Our records have been changed accordingly and the originals are enclosed along with our receipts number 24694, 24835, and 24836 covering the recording fee of $75 you submitted.

Sincerely,

DALLAS S. MILLER
Water Rights Specialist

DSM:jh

Enclosure

cc: Greg Beaman, Watermaster
Data Center, OWRD
Kelly Starnes, NW Region Field Office
James Schuette, CWRE
Pacific City Water District- PO Box 88, Pacific City, OR 97135

REQUEST FOR ASSIGNMENT

I, (permit holder, applicant) PACIFIC CITY WATER DISTRICT

PO BOX 88 PACIFIC CITY OR 97135 503-965-6636
(mailing address) (city) (state) (zip) (phone)

CHECK ONE

[X] - hereby assign all my interest in and to application/permit

[ ] - hereby assign all my interest in and to a portion of application/permit (include a map showing portion of application assigned);

[ ] - hereby assign a portion of my interest in and to the entire application/permit;

RECEIVED
SEP 18 1998
WATER RESOURCES DEPT.
SALEM, OREGON

Application # S49201, Permit # S36881 (Horn Creek, 1972, 20CFS)
OR GR Statement # _____, GR Certificate of Registration # _____
as filed in the office of the Water Resources Director, to:

PACIFIC CITY JWSA
P.O. BOX 520
~~34005 CAPE KIWANDA DRIVE~~
PACIFIC CITY, OR 97135-0520
(name of new owner)

503-965-6636
(address) (city) (state) (zip) (phone)

(Note: If there are other owners of the property described in this Application, Permit of Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

I hereby certify that I have notified all other owners of the property described in this Application, Permit or Certificate of Registration of this request for assignment.

Witness my hand this 16 day of Oct, 1998.

applicant/(permit holder) Douglas McKay

(applicant)/permit holder Tony Owen

DO NOT WRITE IN THIS BOX

STATE OF OREGON,)
) ss
County of Marion.)

I certify that the within was received by me on the 18th day of Sept., 1998 at 8 o'clock A. m., and was recorded in the Miscellaneous Records, Vol. 8 Page 243

Water Resources Director

The completed assignment must be submitted to the Water Resources Department together with a recording fee of $25. Additional pages will cost $5 per page.

WATER RESOURCES DEPARTMENT
158 12TH STREET NE
SALEM, OREGON 97310-0210

OK DSM

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

March 17, 2008

Lisa Brown
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204

RE: S-36881 Pacific City Joint Water-Sanitary Authority

Dear Ms. Brown,

This letter is to confirm that on March 14, 2008 the Department of Water Resources received your protest of the Proposed Final Order on the Application for Extension of Time for Permit # S-36881in the name of Pacific City Joint Water-Sanitary Authority. Enclosed is your copy of the receipt for payment of the protest filing fee of $350.00 per application. Receipt # 91754, Application for Extension of Time for Permit # S-36881, for check # 3357.

I will review the file and contact you to discuss your concerns.

Sincerely,

Patricia McCarty

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Oregon Water Resources Department
503-986-0820

WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

Lisa Brown
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204

March 14, 2008

Dwight French
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Dear Mr. French:

Please find enclosed a protest of the Proposed Final Order for extension of Permit S-36881 (Pacific City Joint Water-Sanitary Authority) accompanied by a certificate of service and a $350 check

Sincerely,

Lisa Brown
Staff Attorney

cc: Pacific City Joint Water-Sanitary Authority

RECEIVED

MAR 14 2008

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE

OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Application for an Extension of Permit S-36881, Water Right Application S-49201 (Pacific City Joint Water-Sanitary Authority)	)))))	Protest and Request for a Contested Case Hearing

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WaterWatch of Oregon files this protest to the Proposed Final Order (PFO) proposing to grant an extension to Pacific City Joint Water-Sanitary Authority (PCJWSA) both of time to complete construction of a water system and to apply water to full beneficial use, subject to certain conditions, for permit S-36881, application S-49201. This protest, with a check for $350, has been filed pursuant to OAR 690-315-0100(1), OAR 690-315-0060, the PFO at 8-9, and ORS 536.050(1)(j). WaterWatch requests that the Water Resources Department (WRD) deny the extension for the reasons described below. Failing that, WaterWatch requests that the WRD hold a contested case to address the issues raised in this protest.

A. Name, mailing address and telephone number of protestant

WaterWatch of Oregon, Inc.
213 SW Ash, Suite 208
Portland, OR 97204
503.295.4039
contact: Lisa Brown, lisa@waterwatch.org, 503.295.4039 x2

B. Description of the protestant's interest

Protestant WaterWatch is a non-profit river conservation group founded in 1985 that has invested time and money in protecting and restoring instream flows in rivers in streams across Oregon, including in the North Coast Basin. WaterWatch has individual and organizational members across the state who care deeply about protecting and restoring Oregon's streamflows. Many of WaterWatch's members, board members and staff use and enjoy Oregon's North Coast streams, including those in the Nestucca River watershed and Horn Creek, for activities including but not limited to boating, fishing, conducting ecological surveys, bird watching and hiking. In Oregon, water is a publicly owned resource. ORS 537.110. WaterWatch works across Oregon, including on Oregon's coastal streams, to protect streamflows and the public interest in the development and implementation of water policy and statute at the state and federal level, and by protecting Oregon's waterways through legislative, administrative and judicial proceedings. Since its inception, WaterWatch has dedicated staff and monetary resources towards the protection

and restoration of streamflows of Oregon's coastal streams, as well as on other rivers and streams around the state. WaterWatch's efforts to protect streamflows both statewide and in the coastal basins include but are not limited to:

- Playing a key role in the drafting and passage of the Oregon Instream Water Rights Act;
- Playing a key role in the 1995 amendments to the Scenic Waterway Act that established standards for ground water development within protected river systems;
- Since its inception WaterWatch has worked on water allocation issues on Oregon's coastal streams. WaterWatch's efforts include, but are not limited to:
    - Participating in the proceedings that led to the adoption of Division 33 rules relating the sensitive, threatened and endangered species in coastal streams and throughout the state;
    - Commenting on and challenging permit amendments, new permits, water conservation plans, and extension requests on coastal streams;
    - Participating in the WRD-convened community water supply work group regarding municipal water development;
    - Securing a ruling from the Oregon Court of Appeals that Oregon's five-year construction requirement for new water rights applies to municipalities;
    - Negotiating on House Bill 3038 (2005), which provides the fish standard under which this extension should have been evaluated, participating in the rules advisory committee for HB 3038, and testifying before the Oregon Water Resources Commission and the legislature regarding the bill.

WaterWatch has a direct and personal stake in the outcome of this proceeding including because of WaterWatch's past and ongoing investment of staff resources and money on water use issues generally; on municipal water supply issues specifically, in the North Coast Basin and statewide; and on other water issues in the North Coast Basin. WaterWatch has expended significant staff and money resources working to protect flows in the North Coast Basin, and in working to ensure that municipal water development in the North Coast Basin and statewide is done in a reasonable and lawful way and one that protects Oregon's rivers. WaterWatch has an interest in ensuring that the extension will not harm the fish and wildlife resources in the basin, result in speculation of water not allowed under Oregon law, or encourage or facilitate wasteful or inefficient use of water. WaterWatch also has an interest in ensuring that water allocation decisions will ensure that environmentally sensitive sources will be protected from further development and that water conservation will be an important source of water for meeting future water supply needs.

WaterWatch represents both its members and the public interest in the North Coast Basin, and across the Oregon. Those interests include:

- The interest in ensuring that streamflows and water quality needed for fish, wildlife, recreational and wild and scenic resources in Horn Creek and the Nestucca River watershed are protected and where necessary, restored;

- The interest in ensuring that this and other proposed diversions do not diminish flows needed for fish in Horn Creek;

- The interest in ensuring a balance between instream and out-of-stream uses in the basin;

- The interest in ensuring that municipal water development occurs in a manner that does not harm fish, does not encourage waste or allow water speculation, and is consistent with Oregon law;

- The interest in ensuring that the agency has the tools and mechanisms in place to manage and regulate water use in the basin, including the tools to ensure protection of fish protected under the state and federal Endangered Species Acts;

- The interest in ensuring that the agency properly implements water laws and policies and does so in a manner that manages and allocates the water resource so as to maintain the ecological integrity of the Horn Creek system and its associated lands;

- The interest in ensuring that WRD not allow an action that will destroy habitat needed for native fish, wildlife and plant species in Horn Creek including the sensitive, threatened or endangered species.

Protestant has dedicated significant resources toward protecting the public instream values of coastal streams in order to prevent harm to public uses such as recreation, conservation, maintenance, and enhancement of aquatic and fishlife, wildlife, fish an and other ecological values. Quasi doesn't get persistence cond.

C. How the PFO will impair or be detrimental to the protestant's

The PFO as currently drafted will be detrimental to WaterWatch's inter following ways:

1. The extension PFO fails to adequately eva[illegible] or condition the permit to maintain the persistence of listed fish. WaterWatch [illegible] nents of resources in the courts, legislature, rules ac[illegible] Water Resources Commission and in public outre[illegible] protection standard and to ensure that it is [illegible]r, the PFO is detrimental to WaterWatch's interest an[illegible]g that fish are not harmed by new water withdrawals. NMFS BO, Corps Permit ASL Permit

2. The extension PFO also fails to condition the permit under other statutes and rules to protect fish, wildlife, recreation, scenic and water quality values of Horn Creek, and thus is detrimental to WaterWatch's interest and the public interest in ensuring that these resources and values are not harmed by new water withdrawals.

3. The PFO's conclusions regarding the ability of the applicant to put the water to beneficial use and complete construction by the end of the extension period are in error. Issuing a PFO in this way is contrary to WaterWatch's interest and the public's interest in equitable distribution of Oregon's waters, which belong to the public.

4. The PFO incorrectly finds good cause, good faith and reasonable diligence, including because the applicant cannot put the water to use by the end of the extension period, which creates unfair results to intervening water users, new water users, and the fishery resource. Issuing an extension where good cause, good faith and reasonable diligence are lacking is contrary to WaterWatch's interest and the public's interest, in equitable distribution of Oregon's waters, which belong to the public.

WaterWatch has made and continues to make investments of time, staff resources and money on streamflow restoration, development of sound water law and policy, and municipal water rights issues in this basin and statewide which give it a direct and personal stake in the outcome of this proceeding. Additionally, Many of WaterWatch's members, board members and staff use and enjoy Oregon's North Coast streams, including those in the Nestucca River watershed and Horn Creek, for activities including boating, fishing, bird watching and hiking. Given these interests, WaterWatch is entitled to be a party in this matter and requests to be named as a party whether or not a contested case is scheduled.

D. The Errors and deficiencies of the PFO

1. WRD erred by failing to evaluate this extension pursuant to ORS 537.630(2)(c) and OAR 690-315-0080(1)(f).

WRD erred by not evaluating and conditioning, if appropriate, this extension pursuant to the fish protection standard found at ORS 537.630(2)(c) and OAR 690-315-0080(1)(f) ("fish persistence standard"). Because PCJWSA's permit is for municipal use (see #2 below) and this is the first extension on this permit issued after June 29, 2005, use of the undeveloped portion of the permit must be evaluated by ODFW and conditioned under the fish persistence standard.

2. Diversion and delivery of quasi-municipal water by PCJWSA constitutes an illegal use.

Any water use that has occurred, is occurring, or will occur under this permit is illegal because PCJWSA is a municipal corporation under the WRD's extension rules (OAR 690-315-0010(6)(b)) and as such cannot - by definition – hold a permit for quasi-municipal use.

3. The PFO's determination of good cause is in error.

Extensions of time for municipal permits can only be granted for good cause shown. ORS 537.630(2)(a); OAR 690-315-0080(1)(e), (3)(a-g) and (4). For reasons including but not limited to those presented below, the PFO is in error in concluding that there is good cause to issue this extension.

a) The PFO is unlawful because PCJWSA has not demonstrated reasonable diligence with regards to previous performance under this permit.

The PFO's conclusions and supporting findings regarding the reasonable diligence of the appropriator pursuant to OAR 690-315-0080(3)(a) are in error. Construction has not proceeded with reasonable diligence as required by ORS 537.630(2). The ratio of time-to-inaction clearly shows a lack of diligence. For example, no work has been done on this permit in 23 years, the last extension expired in 1990, and the permit has not been actively used (if at all) since the early 1990's. Reasonable diligence has not occurred.

b) The PFO's findings and conclusions of law regarding the market and present demand for the water are in error.

WRD has failed to adequately evaluate the market and present demand for the water as required by OAR 690-315-0080(3)(d) and ORS 537.630(2)(a), citing ORS 539.010(5), for reasons including but not limited to those listed below.

i. WRD has erred in finding the PCJWSA must rely on full development of this permit.

WRD's own numbers show that PCJWSA does not need this full permit to meet its demand by the end of the extension period in 2020.

ii. The PFO is unlawful because it failed to evaluate the present demand of Horn Creek for fish

Pursuant to OAR 690-315-0080(3)(d), WRD should have evaluated the market and present of the water that the applicant hopes to divert under this extension in light of important and well-known fish resources of Horn Creek.

Horn Creek is inhabited by Oregon coastal coho, which are protected as a threatened species under the federal Endangered Species Act. Horn Creek is also inhabited by steelhead (state listed as a species of concern), cutthroat (resident and sea run) (state listed as a species of concern), chum (in the lower reach), and likely also Chinook and lamprey. These fisheries resources are well known and yet there is no evidence that WRD contacted any fisheries experts regarding this extension.

If the full amount of this permit were to be diverted in the summer months, it would almost certainly completely dewater Horn Creek. It would also significantly deplete flows in Horn Creek in other months. Additionally, PCJWSA also holds certificates totaling .7 cfs higher up on Horn Creek and on an unnamed tributary to Horn Creek.

The good cause analysis in the PFO fails because it does not include any analysis of demand of for the creek for fish.

iii. The PFO is unlawful because it failed to evaluate the present demand of Horn Creek for wildlife, recreation, scenic values, and water quality maintenance.

Pursuant to OAR 690-315-0080(3)(d), the good cause analysis in the PFO fails because it does not include any analysis of the demand for the river for wildlife, recreation, scenic or water quality maintenance. For example, there is no discussion of how this diversion would affect water temperature in the Nestucca River, which is on the Clean Water Act 303(d) list for, among other things, summer rearing temperature problems. There is similarly no discussion of any other public interest values of the stream, including recreation.

iv. The PFO failed to consider the impacts of climate change on the availability of water in Horn Creek over the duration of this extension and beyond.

Even though WRD is aware of projected impacts of climate change on Oregon rivers, including coastal streams, the PFO is devoid of any analysis of climate change impacts or any attempt to factor climate change impacts into its good cause analysis, including analysis of the market and present demands for the water.

c) The PFO is in error in its evaluation of the good faith of the appropriator.

PCJWSA has not demonstrated good faith with regards to this permit. For example, PCJWSA has essentially abandoned this permit, has not had a functioning diversion structure for approximately 15 years, and its last extension expired 18 years ago.

d) PCJWSA's demand projections fail to include even modest levels of assumed increased efficiency based on conservation measures.

Beneficial use is the basis, measure and limit of all rights to the use of water in Oregon. ORS 537.525(3), 540.610(1). "Beneficial use" in Oregon is essentially the efficient use of water without waste for a purpose consistent with the laws and best interests of the people of this state. OAR 690-300-010(5). Oregon law calls for the state to "aggressively promote" water conservation and places a "high priority" on eliminating waste and improving the efficiency of water use. ORS 537.460(2)(a), OAR 690-410-060(1).

Thus, under this statutory structure, the "good cause" determination necessarily includes consideration of whether the water will be put to beneficial use without waste. Here, there is no sign that PCJWSA's demand projection accounts for conservation measures into the future. Further, conditioning the permit to require future submission and approval of a revised/updated Division 86 Water Conservation and Management Plan does not ensure efficiency because the rules guiding those plans lack conservation standards and deadlines for achieving water use efficiency.

4. The PFO's findings and conclusions regarding the reasonableness of the duration of the extension are in error.

WRD erred in finding that "[c]ompletion of construction and full application of water to beneficial use can be completed by October 1, 2020, as required by OAR 690-315-0080(1(d)." PFO at 7 (#6) (footnote omitted).

a) The PFO's findings and conclusions regarding PCJWSA's ability to put the water to beneficial use by 2020 are in error.

WRD's analysis shows that PCJWSA's cannot put the water under this permit to beneficial use by 2020. The projected peak demand in 2020 is 2.31 cfs (PFO at 4 (#12)), yet PCJWSA holds rights and permits for 4.461 cfs, most of it aside from this permit certificated.

b) The PFO's findings and conclusions regarding PCJWSA's completion of construction and the project for this permit by 2020 are in error.

There is no analysis to support the findings and conclusions that PCJWSA can complete construction of this project, including building a new intake and raising all the necessary funds, in the next 12 years.

5. WRD cannot authorize an action that results in take of a species listed under the federal Endangered Species Act.

Oregon coastal coho inhabit Horn Creek and are listed as threatened under the federal Endangered Species Act (ESA). Other listed species may also occur there, or species may occur that are listed in the future. The director of WRD has a duty to ensure that WRD's actions comply with the federal ESA's prohibition against take of listed species.

a) The ESA prohibition against take of listed species.

The ESA prohibits all actions that cause a "take" of an endangered species. 16 U.S.C. § 1538(a)(1)(B). The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Section 3(19), 16 U.S.C. § 1532(19). Congress intended the term "take" to be defined in the "broadest possible manner to include every conceivable way" in which a person could harm or kill

fish or wildlife. S. Rep. No. 307, 93rd Cong., 1st Sess. 1, reprinted in 1973 U.S. Code Cong. & Admin. News 2989, 2995.

The take prohibition applies only to endangered species but under § 4(d), 16 U.S.C. § 1533(d), may be extended to threatened species by regulation. National Marine Fisheries Service promulgates 4(d) rules on a species by species basis and adopted a 4(d) rule making the take prohibition applicable to several evolutionarily significant units of west coast salmon and steelhead that became effective in January of 2001. 65 Fed. Reg. 42,422 (July 10, 2000). The Fish and Wildlife Service (FWS) has extended the take prohibition by regulation to all threatened species under its jurisdiction.

NMFS, responsible for ESA listed marine species and ocean going fish including salmon, has defined "harm" by regulation to include:

> significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

50 C.F.R. § 222.102.

FWS has similarly defined harm as including:

> significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

50 CFR § 17.3.

"Take" is also defined to include harassment of listed species. FWS regulations define "harass" as

> an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

50 C.F.R. § 17.3.

b) The water withdrawals authorized by this extension PFO are likely to cause take of listed fish.

The PFO authorizes water withdrawals, and will result in associated activities, that are likely to result in the take of listed fish. For example, the significant streamflow reductions and dewatering of the stream resulting from the authorized water withdrawal is likely to result in "significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding,

spawning, rearing, migrating, feeding or sheltering." 50 C.F.R. § 222.102. Further, other activities associated with the diversions could also violate the ESA's prohibition against take.

c) WRD cannot authorize actions that result in the take of listed fish.

A long line of cases supports the Federal District Court ruling in Pacific Rivers Council v. Brown, Civ. No. 02-0243-BR, Opinion and Order (D. Or. Dec. 23, 2002) that the Oregon State Forester can be found liable for take if the activities authorized by him harm or harass a listed species. Plaintiffs there alleged that the Oregon State Forester was violating § 9 of the ESA by authorizing clear cutting on private industrial forest lands on high risk sites that would cause take of threatened coho. The court found that plaintiffs' allegations were sufficient to state a claim against the State Forester for violation of the ESA. See also, Seattle Audubon Society, et al. v. Sutherland, Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction (W. Dist. Wa. Aug. 1, 2007) (2007 WL 2220256) (enjoining state authorized logging on private timber land in four Northern spotted owl circles based on ESA § 9). The same liability rests with the WRD here because its authorizations of the water withdrawal and associated activities that will result from the PFO are likely to result in the take of listed fish.

6. The PFO is unlawful because it fails to make the determinations required by law.

The PFO attempts to substitute much of the determination required under the extension statute with a requirement that increased use under the permit be based upon a subsequently developed and approved Water Conservation and Management Plans under the agency's Division 86 rules. This approach does not meet the requirements of the extension law for four reasons. First, WRD is required to find good cause at the time it approves an extension and can not put off the determination to a later date by conditioning an extension on a future plan. ORS 537.630(2)(a); 539.010(5). Second, even if it could do this, which it can not, the Division 86 rules do not require the kind of analysis and determination required under the extension statute. Third, the Division 86 rules do not require protection of competing demands including protection of fish and other instream values and as part of the approval process. Fourth, the standards for public review and challenge regarding Water Management and Conservation Plans are much more limited than those for water permit decisions including extensions. WRD cannot make determinations required by the extension statute in a future process which has reduced opportunity for the public to advocate for the public interest in Oregon's waterways. Thus the extension proposed in the PFO does not meet the requirements of the extension statute and must be denied.

7. The PFO is deficient because it fails to include findings or conclusions of law demonstrating that the agency evaluated the impacts of climate change on the resources at risk from additional water withdrawals from Horn Creek. Because of those impacts, the extension should be denied.

Oregon has a duty to evaluate the proposed permit extension and proposed allocation in light of the impacts of climate change. There is no evidence that the State evaluated the effects of the water withdrawal that the PFO authorizes in light of the effects of climate change. Further, given the predicted effects of climate change in the basin and the policies of the state set forth below, the state should deny the proposed extension and stop issuing decisions that permanently allocate more water from Horn Creek during periods when climate change will impact existing users, including instream uses.

This legal duty comes, in part, from the State's obligation to protect existing claims and rights to use water from the impacts of future development. The State also has a statutory mandate of formulating "an integrated, coordinated program for the use and control of all the water resources of this state" (ORS 536.300(2)) and must also act to protect water quality in the basin's rivers, streams, lakes and ground water, as well as fish listed under the state and federal Endangered Species Acts. Furthermore, protection of wildlife and fish, because of their historical, cultural, biological and economic significance, is necessary to protect the public interest.

In Oregon, all water from all sources of supply within the state belongs to the public. ORS 537.110, 537.334(2), 536.310(1) and 537.525. See, also, Lane Electric Coop. v. Federated Rural Electric, 114 Or. App. 156, 161 ("All waters within this state, which necessarily includes ground water, belongs to the public."). The State has a duty to consider climate change impacts in evaluating which uses of the public's water are appropriate.

The policy of the State of Oregon is to guarantee instream flows,[1] protect and restore native salmon and trout populations statewide,[2] protect wildlife,[3] and preserve the public interest.[4] Furthermore, protection of wildlife and fish, because of their historical, cultural,

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[1] The Commission has expressed the State's policy regarding instream flows as follows:
"Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state. The long term goal of this policy shall be to establish an instream water right on every stream, river and lake, which can provide significant public benefits . . . Where streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented." OAR 690-410-030(1).

[2] ORS 496.435 (". . . it is declared to be a goal of the people of the State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance."); ORS 506.109 ("It is the policy of the State of Oregon that food fish shall be managed to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of this state."); ORS 536.310(4) ("The fishery resource of this state is an important economic and recreational asset.")

[3] OAR 690-400-000(4) (When formulating basin programs and other directives the commission has the duty to consider protection of wildlife); ORS 536.300(1) (Recognizing wildlife as a beneficial use of water.)

[4] OAR 690-400-000(4) (When formulating its water management program the Commission must consider protection of wildlife, recreation, watershed management and other priorities outlined by the legislature.); OAR 690-410-010(2)(a) ("Groundwater and surface water shall be managed conjunctively where to do so

biological and economic significance, is necessary to protect the public interest. Failing to address the impacts of climate change in decisions to allow further extraction of water from Horn Creek are not consistent with these policies.

It is also the public policy of the State to "protect, maintain, and improve the quality of the waters of the state" and "to provide for the prevention, abatement and control of new or existing water pollution." ORS 468B.015(1) and (4). The laws under which the Water Resources Commission and WRD operate mandate that the WRD act in a fashion that is consistent with these legislative policies and directives.[5]

By failing to evaluate the impacts of climate change on Horn Creek streamflows over the duration of this extension and beyond and condition the PFO accordingly, WRD has failed to include required conditions "needed to . . . [m]itigate the effects of the subsequent development on competing demands on the resource . . .," as required by OAR 690-315-0050(5)(b).

Given the above, WRD was required to include findings and conclusions of law evaluating any additional withdrawals from Horn Creek of the undeveloped portion of this permit in light of climate change impacts. Further, WRD had a duty under Oregon law and in light of climate change to deny this additional water withdrawal from Horn Creek.

8. The PFO fails to address the Clean Water Act and Oregon Department of Environmental Quality Total Maximum Daily Load allocations.

The Nestucca River, into which Horn Creek flows, violates various Clean Water Act water quality standards, including temperature down to the mouth near where Horn Creek enters. The Oregon Department of Environmental Quality (DEQ) has issued the Nestucca Bay Total Maximum Daily Load (TMDL) allocation to address these problems. Despite this, the PFO is devoid of any analysis regarding the likely impact of the proposed withdrawal on water quality. The PFO should have included such an analysis regarding the potential impact of this withdrawal on temperature and other water quality parameters in the Nestucca River, and how it fits with the TMDL. WRD cannot authorize water withdrawals that further degrade the water quality of Horn Creek or the Nestucca River.

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will protect water resources, existing water rights, and the public interest."); OAR 690-400-000(2) ("Multiple water uses shall be preferred over single-purpose uses.")

[5] OAR 690-400-000(1) (When formulating its programs the commission must consider priorities outlined by the legislature); ORS 468B.160(2), 536.220(2)(b) and ORS 537.525(11) (Commission programs and rules must be consistent with the overall goal to prevent contamination of and conserve and restore the ground water resource); OAR 690-400-010(3) & 690-300-010(5) (Beneficial use is a use for a purpose consistent with the laws, rules and the best interests of the people of the state); OAR 690-310-120(3)(b), 690-310-130(3)(b)(C) (Public interest determination includes consideration of water quality and for surface waters special attention to water quality limited streams.); ORS 537.525(9), OAR 690-410-010(1) (Ground water shall be managed to prevent overdraft or contamination.)

9. The PFO's finding that 1.35 cfs has been beneficially applied under this permit appears to be in error.

Based on current peak demand, water use reporting and other factors, application of 1.35 cfs under this permit to beneficial use in the early 1990's appears to be in error. Further, it appears that this claimed use occurred after expiration of the last "C" date on 10/1/1990, which cannot form the basis of a water right certificate and should not be considered beneficial use under this permit.

10. The extension, if granted, should include a fish screening requirement.

Because of the important fisheries value of this stream, any extension issued for this permit must include a fish screen requirement developed in consultation with Oregon Department of Fish and Wildlife and any other appropriate agencies.

11. Reservation

WaterWatch reserves the right to raise other errors and deficiencies that may become apparent through discovery and further analysis.

E. Citation of legal authority: Applicable legal authorities are cited in the body of the document.

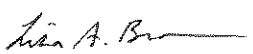
F. Proof of Service: Proof of service to the applicant and WRD is attached.

G. Protest fee: The required protest fee of $350 is included with this filing.

Request for Relief

For the reasons described above, the extension should be denied. Failing that, WaterWatch requests that the WRD hold a contested case to address the issues raised in this protest. WaterWatch also requests that the WRD name the organization as a party to this matter.As always, WaterWatch welcomes discussions with the applicant and WRD on this matter.

Respectfully submitted on this 14th day of March, 2008,



Lisa Brown
Staff Attorney
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204
Ph: 503.295.4039 x2
Fax: 503.295.2791
lisa@waterwatch.org

Certificate of Service

I certify that on this 14th day of March, 2008, a copy of the foregoing protest of the Proposed Final Order for extension of time for permit S-36881 was served on each of the following by the method indicated:

Dwight French
Water Resources Department
725 Summer Street NE, STE A
Salem, OR 97301
Served by messenger, hand delivery.

Pacific City JWSA
PO Box 520
Pacific City, OR 97135-0520
Sent by US Postal Service mail

Signed this 14th day of March, 2008,

Lisa A Brown

Lisa Brown
WaterWatch of Oregon

Patricia McCarty

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Monday, April 28, 2008 6:38 PM
To: Patricia McCarty
Subject: RE: Pacific City JWSA extension

Hi Patricia:

Thanks for following up on this. I will check with PCJWSA to see if they have any additional background on why the water rights were issued as quasi-municipal. I'm sure we can do some more digging into the background of the rules to save the department that burden -- but if Dwight is reluctant to treat this as a mistake that can be "corrected", we may just follow the path of least resistance and apply for transfers to change the use from q-m to "municipal" for the certificated water rights.

I'll let you know if I can find any additional background information.

Thanks,
Martha

Martha O. Pagel
SCHWABE, WILLIAMSON & WYATT
Direct: 503-540-4260 | Fax: 503-796-2900 | Cell: 503-507-7293 | Email: mpagel@schwabe.com

-----Original Message-----
From: Patricia McCarty [mailto:mccartpe@wrd.state.or.us]
Sent: Monday, April 28, 2008 11:21 AM
To: Pagel, Martha
Subject: Pacific City JWSA extension

Hello Martha,
I've had a chance to discuss Pacific City's interest in having Permit #36881 changed from quasi-municipal to municipal with Dwight and Tom Paul. Their first thoughts are that the issuance of the permit as a quasi-municipal was not likely to be a scrivener's error and is more likely the result of an understanding of what qualified as municipal or quasi at the time, and so they are not inclined to treat it as an error.
At their direction I looked for, but was not able to find, anything that indicated why the permit was issued as quasi-municipal, in the file or elsewhere. I also have been unable to determine if and when new rules were adopted that affected how the permit was issued. I was hoping I could quickly track down a rule change. Unfortunately, the department does not have copies of the rules and statutes before 1980. Other files seem to indicate that when the applicant was a municipal corporation, and the use was likely to be more than just domestic water supply, the Department issued municipal permits. For instance, when municipal corporations applied for "domestic supply for district customers", letters from the Department ask the applicant to amend the application to show the use as "municipal" because the applicant was a municipal corporation.

It seems possible that PCJWSA's two quasi-municipal permits should have been issued as municipal. Unfortunately, it would take some research to discover the governing rules or policies at that time to determine whether there was an error.

I don't yet know if Dwight is interested in having staff spend much time on it. I will ask. In the meantime, do you happen to know if Pacific City JWSA has anything in its own file that discusses the matter (letters from the Dept., etc.)? Do you think tracking down the rules to see if they were the basis is something that your firm would like to undertake?

Let me know what you think,

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
Phone: 503-986-0820
Fax: 503-986-0901

VICTOR ATIYEH
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-3066 or
1-800-452-7813

June 24, 1981

Cunningham Associates, Incorporated
9401 Southeast McLoughlin Boulevard
Milwaukie, OR 97222

REFERENCE: File G-10215

I have Application G-10215, in the name of Pacific City Water District, which is for a permit to use 205 gallons per minute of water from two wells for domestic water supply within the district.

As I discussed in my telephone conversation with Mr. Burdin on June 11, 1981, the application and the map must be completed so that they are in complete agreement.

Under Item 2, the wells are located by coordinates in respect to the W 1/4 Corner of Section 19, on the map showing the locations of the wells, they are located by distance and bearing. The coordinates locating the wells must also be shown on the map. That map would also appear to have an error, showing a quarter corner between Sections 19 and 21. I believe that this should be between 19 and 24.

Item 3 of the application should list the exact area of use down to the quarter-quarter section. In the case where a complete major part of a section is served within the district, that area can be listed. An example of this would be Section 19 which could be listed as all except the NE 1/4 NE 1/4. The service area would also appear to include part of Section 13. It should also be listed under Item 3 of the application. That section along with Sections 24 and 25 should be listed as 4 South, 11 West.

Because the water is used for more than just household use and is most likely used for all of the purposes found within the municipality and because the Pacific City Water District is a municipal corporation, the use of water should be listed under Items 3 and 7 as quasi-municipal use.

Item 6 of the application requests .5 cfs, or 205 gpm; .5 cfs is approximately 225 gpm. Both parts of that item should be in agreement.

I am returning the application and the maps for correction and completion. The application is endorsed so that it must be received in this office on or before August 24, 1981 to retain the priority date.

Sincerely,

DONALD R. BUELL
Water Rights Engineer

DRB:wpc
enclosures: application and map
cc: Pacific City Water District

H.S. BURDIN
R.D. KENNEDY
J. L. HELTON

PHONE: 653-0753
9401 S.E. MCLOUGHLIN
MILWAUKIE, OREGON 97222

CUNNINGHAM ASSOCIATES, INC.

CONSULTING ENGINEERS

REGISTERED PROFESSIONAL ENGINEERS
OREGON WASHINGTON

FILE 922

June 17, 1981

Water Rights Division
Water Resources Dept.
555 13th St. NE
Salem, Oregon 97310

Re: Application No. 10215 for
Pacific City Water District

Gentlemen:

In response to your telephoned instructions we are enclosing a revised application for permit to appropriate ground water. The revisions are as follows:

Page 1, Item 2, 4th line. Printed words "¼ of the" should not have been struck out.

Page 1, Item 3. Service area extends into both Ranges 10 and 11 west. Word "domestic" changed to "municipal". Although the community of Pacific City is not incorporated, the Pacific City Water District is a municipal corporation.

Page 2, Item 6. Nominal installed pump capacity will be 205 gpm which may be expected to fluctuate as much as 10% plus or minus. Expressed in cubic feet per second, the flow could vary from 0.412 to 0.501 cfs with the nominal pumping capacity equal to 0.457 cfs rather than 0.5 cfs.

Page 4, 5th line. Amount of water changed from 0.5 cfs to 0.457 cfs.

Page 4, 7th line. Word "domestic" dropped and words "a municipal corporation" added following Pacific City Water District.

We hope that these changes are satisfactory and will assist in approval of this application, No. G-10215 which was first submitted in April 1981.

Yours very truly,

H.S. Burdin

H.S. Burdin
Cunningham Associates, Inc.

cc: Pacific City Water District

Application No. G - 10215 Permit No.

STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIVED
MAR 16 1981
WATER RESOURCES DEP
SALEM, OREGON

Application for a Permit to Appropriate Ground Water

Superseded

I, Pacific City Water District
(Name of Applicant)

of P. O. Box 88, Pacific City
(Mailing Address) (City)

State of Oregon, 97135 Phone No. 965-6491 do hereby
(Zip Code)

make application for a permit to appropriate the following described ground waters of the State of Oregon:

1. The development will consist of two wells, each
(Give number of wells, tile lines, infiltration galleries, etc.)

having a diameter of 10 inches and an estimated depth of 75 feet.

2. The well or other source is to be located #1: 850.7 N. 255.7 E.
#2: 1465.2 ft. N. and 167.4 ft. E.
(N. or S.) (E. or W.)

from the West 1/4 corner of Section 19
(Public Land Survey Corner)

(If there is more than one well, each must be described)

being within the NW/SW 1/4 of the NW 1/4 of

Sec. 19 Tp. 4 S R. 10 W, W. M., in the county of Tillamook.

3. Location of area to be irrigated, or place of use if use other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
4 S	10 W	19,30,25,24	see map	domestic water supply

4. It is estimated that #1-30 / #2-20 feet of the well will require 8"-0.20" slot casing.
(Kind)

5. Depth to water table is estimated 7 (Feet) Well drilled by A. M. Jannsen Well Drilling Co.

Form 690-3-0-1-77

6. *The amount of water which the applicant intends to apply to beneficial use is* 0.5 *cubic feet per second or* 205 *gallons per minute.* Well #1: 125 g.p.m. Well #2: 80 g.p.m.

7. *The use to which the water is to be applied is* domestic water supply for water district consumers

8. *If the flow to be utilized is artesian, the works to be used for the control and conservation of the supply when not in use must be described.*

N/A

9. *If the location of the well, or other development work is less than one-fourth mile from a natural stream channel, give the distance to the channel and the difference in elevation between the stream bed and the ground surface at the source of development.*

N/A

10. *DESCRIPTION OF WORKS*

Include length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

Wells No. 1 and No. 2 are cased 10" with 8"-0.020" slot stainless steel screens and # 16 Monterey sand pack filling 14" rotary drilled hole Well No. 1 has 30' screen length (75' to 45' below ground surface). Screen in Well No, 2 is 20' long, from 65' to 45' below ground surface. Pump capacities for Wells No. 1 and No. 2 will be 125 gpm and 80 gpm respectively. Pipe will be P.V.C., 4" diameter from well No. 2 to Well No. 1, and 6" diameter from Well No. 1 to a connection with an existing Water District main on Cape Kiwanda Drive.

11. *Construction work will begin on or before....* September 1981

12. *Construction work will be completed on or before.....* November 1981

13. *The water will be completely applied to the proposed use on or before.....* November 1981

14. *If the ground water supply is supplemental to an existing supply, identify the supply and existing water right.* Horn Creek

Application No..... G-10215 *Permit No.....*

Application No. G-10215 Permit No. G 9388

STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIVED
JUN 19 1981
WATER RESOURCES DEP
SALEM, OREGON

Application for a Permit to Appropriate Ground Water

I, Pacific City Water District (Name of Applicant)

of P.O. Box 88 (Mailing Address), Pacific City (City)

State of Oregon, 97135 (Zip Code) Phone No. 965-6491 do hereby make application for a permit to appropriate the following described ground waters of the State of Oregon:

1. The development will consist of Two wells (Give number of wells, tile lines, infiltration galleries, etc.), each having a diameter of 10 inches and an estimated depth of 75 feet.

2. The well or other source is to be located #1:850.7 ft. N (N. or S.) and 255.7 ft. E (E. or W.) #2:1465.2 ft. N and 167.4 ft. E from the West 1/4 corner of Section 19 (Public Land Survey Corner)

(If there is more than one well, each must be described) ¼ of the NW ¼ being within the SW ¼ of the NW ¼ of Sec. 19 Tp. 4 S R. 10 W, W. M., in the county of Tillamook

3. Location of area to be irrigated, or place of use if use other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
4 S	10 W	19	All except NE¼NE¼	Quasi-Municipal
		30	N½	" "
			NE¼SW¼	" "
			NE¼SE¼	" "
			W½SE¼	" "
	11 W	13	SE¼	" "
		24	NE¼	" "
			E½SE¼	" "
		25	E½NE¼	" "

4. It is estimated that #1-30 #2-20 feet of the well will require 8"-0.20" slot (Kind) casing.

5. Depth to water table is estimated 7 (Feet). Well drilled by A.M. Janssen Well Drilling Co.

Form 690-3-0-1-77

Inspection 11-3-83 MG

Application No. G-10215 Permit No. G 9388

Permit to Appropriate the Public Waters of the State of Oregon

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS INCLUDING THE EXISTING MINIMUM FLOW POLICIES ESTABLISHED BY THE WATER POLICY REVIEW BOARD and the following limitations and conditions:

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 0.457 *cubic feet per second measured at the point of diversion from the well or source of appropriation, or its equivalent in case of rotation with other water users, from* two wells, being 125 gallons per minute from Well 1 and 80 gpm from Well 2

The use to which this water is to be applied is quasi-municipal

If for irrigation, this appropriation shall be limited to ..... of one cubic foot per second or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed ..... acre feet per acre for each acre irrigated during the irrigation season of each year;

and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.

The works constructed shall include an air line and pressure gauge or an access port for measuring line, adequate to determine water level elevation in the well at all times.

The permittee shall install and maintain a weir, meter, or other suitable measuring device, and shall keep a complete record of the amount of ground water withdrawn.

The priority date of this permit is March 16, 1981

Actual construction work shall begin on or before August 20, 1982 *and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1,* 1982

Complete application of the water to the proposed use shall be made on or before October 1, 1983

WITNESS my hand this 20th *day of* August, 1981

James E. Sexson

Water Resources Director

Oregon Water Resources Department
Water Rights Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-36881,Water Right Application S-49201,) PROPOSED FINAL ORDER
in the name of Pacific City Joint Water-Sanitary Authority)

Permit Information

Application File S-49201/ Permit S-36881
Basin 18 – Mid Coast Basin / Watermaster District 1
Date of Priority: May 3, 1972

Authorized Use of Water

Source of Water:	Horn Creek, a Tributary to the Nestucca River
Purpose or Use:	Quasi-Municipal
Maximum Rate:	2.0 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315.

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

This Proposed Final Order applies only to Permit S-36881, water right Application S-49201. A copy of Permit S-36881 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant an extension of time to complete construction of the water system from October 1, 1990 to October 1, 2020;
- grant an extension of time to apply water to full beneficial use from October 1, 1990 to October 1, 2020; and
- make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure
cfs – cubic feet per second
gpm – gallons per minute

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit S-36881 was granted to Pacific City Water District by the Department on July 27, 1973. On September 18, 1998, the permit was assigned to Pacific City Joint Water-Sanitary Authority (PCJWSA) The permit authorizes the use of up to 2.0 cfs of water from Horn Creek, a tributary to the Nestucca River for quasi-municipal use. It specified that construction of the water development project was to be completed by October 1, 1975, and complete application of water was to be made on or before October 1, 1976.

2. Three prior permit extensions have been granted for Permit S-36881. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1990.

3. The permit holder submitted an "Application for Extension of Time" to the Department on December 17, 2007, requesting the time to complete construction of the water system and the time to apply water to full beneficial use under the terms of Permit S-36881 be extended from October 1, 1990 to October 1, 2020.

4. Notification of the Application for Extension of Time for Permit S-36881 was published in the Department's Public Notice dated December 25, 2007. No public comments were received regarding the extension application.

Review Criteria for Quasi-Municipal Water Use Permits *[OAR 690-315-0080(1)]*

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230[1], 537.248[2], 537.630[3] and/or 539.010(5)[4]

Complete Extension of Time Application *[OAR 690-315-0080(1)(a)]*

5. On December 17, 2007, the Department received a completed application for extension of time and the fee required by ORS 536.050 from the permit holder.

Start of Construction *[OAR 690-315-0080(1)(b)]*

6. Actual construction of the water system began within the time specified in the permit, being July 27, 1974.

Duration of Extension *[OAR 690-315-0080(1)(c)(d)]*

Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

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[1] ORS 537.230 applies to surface water permits only.

[2] ORS 537.248 applies to reservoir permits only.

[3] ORS 537.630 applies to ground water permits only.

[4] ORS 537.010(5) applies to surface water and ground water permits.

7. The remaining work to be accomplished under Permit S-36881 consists of completing construction of the water system and applying water to full beneficial use.

8. As of December 17, 2007, the permit holder has diverted 1.35 cfs of the 2.0 cfs of water authorized under Permit S-36881 for quasi-municipal purposes.

9. In addition to the 2.0 cfs of water authorized under Permit S-36881 from Horn Creek, a tributary to the Nestucca River, PCJWSA holds the following rights:

   - Certificate 32238 for 0.2 cfs of water from Horn Creek, tributary to the Nestucca River for municipal use;
   - Certificate 44554 for 0.5 cfs of water from Horn Creek, a tributary to the Nestucca River for municipal use;
   - Transfer T-9607 for 0.457 cfs of water from two wells within the Nestucca River Basin for quasi-municipal use;
   - Certificate 80489 for 300 gpm (0.67 cfs) of water from three wells (Wells 4, 5 & 6) within the Nestucca River Basin for quasi-municipal use;
   - Certificate 80488 for 0.3 cfs of water from one well within the Nestucca River Basin for quasi-municipal use; and
   - Permit G-15760 for 0.334 cfs of water from two wells (Wells 7A and 7B) within the Nestucca River Basin for municipal use.

   These water rights and permits total 4.461 cfs of water, being 2.7 cfs of live flow (surface) water and 1.761 cfs of groundwater. PCJWSA has ~~not yet~~ made beneficial use of ~~1.35~~ 0.65 cfs of water under Permits S-36881 and 0.334 cfs of water under Permit G-15760.

10. In 2007, PCJWSA utilized a peak demand of 1.48 cfs of water under Certificate 80489, Certificate 80488 and Transfer T-9607. Water diverted under Permit S-36881, Certificate 32238 and Certificate 44554 is being used for emergency backup supply and will be used to meet future demand.

11. In 2007, the PCJWSA served approximately 2,309 residential users. PCJWSA expects to serve 3,611 residents by the year 2020, a population growth rate of approximately 3.5 percent per year.

12. PCJWSA's projected peak demand is approximately 2.31 cfs of water by the year 2020.

13. Full development of Permit S-36881 is needed to meet the present and future water demands of PCJWSA.

14. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms of Permit S-36881 is both reasonable and necessary.

Good Cause ***[OAR 690-315-0080(1)(e) and (3)(a-g)]***

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator *[OAR 690-315-0080(3)(a) and (1)(c) and (4)]*

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

15. Actual construction of the water system began within the time specified in the permit, being July 27, 1974.

16. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit S-36881.

17. During the most recent extension period under Permit S-36881, being October 1, 1985 to October 1, 1990, no work was done by PCJWSA.

18. As of December 17, 2007, the permit holder has invested approximately $175,400, which is 4 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $4,000,000 investment is needed for the completion of this project.

19. Since the issuance of Permit S-36881 on July 27, 1973, approximately 1.35 cfs of the 2.0 cfs allowed has been diverted from the Horn Creek for beneficial quasi-municipal purposes under the terms of this permit.

20. In 1993, PCJWSA began using surface water diverted under Permit S-36881 for emergency supply rather than primary water supply because sedimentation of Horn Creek's infiltration gallery limited its function and reduced its capacity for withdrawal. Also, new and more stringent federal requirements for treatment of drinking water went into effect in the early 1990s, making the existing treatment facilities for the lower Horn Creek intake inadequate for supplying community water needs in compliance with regulatory standards..

21. The Department has considered permit holder's compliance with conditions, and did not identify any concerns.

Cost to Appropriate and Apply Water to a Beneficial Purpose *[OAR 690-315-0080(3)(b)]*

22. As of December 17, 2007, the permit holder has invested $175,400, which is 4 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $4,000,000 investment is needed for the completion of this project.

The Market and Present Demands for Water *[OAR 690-315-0080(3)(d)]*

23. As described in Findings 8 through 13 above, the permit holder has indicated, and the Department finds that the permit holder must rely on full development of their Permit S-36881.

24. PCJWSA projects a population increase of 3.5 percent per year over a thirteen year period, being 2007 to 2020.

25. Given the current water supply situation of PCJWSA, and as well as current and expected demands, there is a market and present demand for the water to be supplied under Permit S-36881.

26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 1.35 cfs under Permit S-36881 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. A "Development Limitation" condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

Fair Return Upon Investment ***[OAR 690-315-0080(3)(e)]***

27. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements ***[OAR 690-315-0080(3)(f)]***

28. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit ***[OAR 690-315-0080(3)(g)]***

29. According to PCJWSA, delay of development under Permit S-36881 was due, in part, to sedimentation of Horn Creek's infiltration gallery limiting its function and reducing its capacity for withdrawal, causing the need for PCJWSA to re-develop the infiltration intake. Also, new and more stringent federal requirements for treatment of drinking water went into effect in the early 1990s, making the existing treatment facilities for the lower Horn Creek intake inadequate for supplying community water needs in compliance with regulatory standards.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).

2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).

3. The applicant demonstrated that actual construction on the project began within the time specified in the permit, as required by OAR 690-315-0080(1)(b).

4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).

5. Completion of construction and full application of water to beneficial use can be

completed by October 1, 2020[5], as required by OAR 690-315-0080(1)(d).

6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to complete construction of the water system and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

7. As required by OAR 690-315-0090(3) and as described in Finding 25 above and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 1.35 cfs under Permit S-36881 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

extend the time to complete construction of the water system under Permit S-36881 from October 1, 1990 to October 1, 2020.

extend the time to apply the water to beneficial use under Permit S-36881 from October 1, 1990 to October 1, 2020.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Diversion of any water beyond 1.35 cfs under Permit S-36881 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86. The required WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit S-36881 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 that is on file with the Department.

The deadline established in this PFO for submittal of a WMCP shall not relieve a permit

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5 For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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 order may also meet the WMCP submittal requirements of other Department orders.

DATED: January 29, 2008

Dwight French, Administrator
Water Rights and Adjudications Division

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **March 14, 2008,** being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

2. A written protest shall include:
   a. The name, address and telephone number of the petitioner;
   b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
   c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
   d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
   e. Any citation of legal authority supporting the petitioner, if known;
   f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
   g. The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
   a. Issue a final order on the extension request; or
   b. Schedule a contested case hearing if a protest has been submitted, and:
      1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
      2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

- If you have any questions about statements contained in this document, please contact Kim R. French at 503-986-0813.
- If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
- If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
- Address any correspondence to: Water Rights and Adjudications Division
  725 Summer St NE, Suite A
- Fax: 503-986-0901 Salem, OR 97301-1266

Mailing List for Extension PFO Copies

January 29, 2008

Copies Mailed

Application S-49201
Permit S-36881

By: QJS
On: 1/29/08

Original mailed to:

Pacific City Joint Water-Sanitary Authority
Attn: Tony Owen
PO Box 520
Pacific City, OR 97135

Copies sent to:

1. WRD - App. File S- 49201/ Permit S-36881

2. WRD - Watermaster District: 1 - Greg Beaman

Fee paid as specified under ORS 536.050 to receive copy:

3. None

Receiving via e-mail (10 AM Tuesday of signature date)

4. None

CASEWORKER: KRF

Municipal or Quasi-Municipal

Extension PFO Checklist for Water Use Permits

issued on or prior to November 2, 1998

(OAR 690-315-0010 through OAR 690-315-0060)

Application: S- 49201 Permit: S- 36881 Permit Amendment? No ☒ Yes ☐ T- _____

Permit Holder's Name: Pacific City JWSA; Tony Owen

Permit Holder's Mailing Address: PO Box 520, Pacific City, OR 97135

Phone Number: 503 965-6636

POD Location: Township 4S Range 10W Section 20 ¼¼ NESW

Drainage Basin: 18 County: Tillamook Watermaster District: 1 Watermaster: Greg Beaman

Date Permit was issued: 7/27/1973 **Priority Date:** 5/3/1972 **Date of PN:** 12/25/2007

Source: Horn Creek, trib to Nestucca River

Use: ☐ Municipal ☒ Quasi Municipal _____

"Q": 2.0 cfs

Orig "A" Date: 7/27/1974 **Orig "B" Date:** 10/1/1975 **Orig "C" Date:** 10/1/1976

Extension request rec'd: 12/17/2007 **Last Authorized "B" Date:** 10/1/1990 **Last Authorized "C" Date:** 10/1/1990

Request Number (1, 2, 3...): 4 **Proposed "B" Date:** 10/1/2010 **Proposed C Date:** 10/1/2020

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
☐	☐	None
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]:

Yes No

☒ ☐ Work was accomplished within the time allowed in the permit or previous extension

☒ ☐ Water right permit holder conformed with the permit or previous extension conditions

☒ ☐ Beneficial use made of the water during the permit or previous extension time limits

- Permit holder has beneficially used **1.35** ☒cfs ☐gpm ☐af Undeveloped portion **0.65** ☒cfs ☐gpm ☐af

☒ ☐ Financial investments were made toward developing the beneficial water use.

- Amount Invested to date: $**175,400** Estimated Remaining Cost: $**4,000,000**

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes ☒ No ☐

Population 2309 (Year) 2007 As of ☐Growth 3.5% Population ☐Population 3611 by (Year) 2020 Projected Calculated? Yes ☐

Peak Demand 1.35 cfs (Year) 2007 As of ☐Peak Demand 2.31 cfs by (Year) 2020 Projected Calculated? Yes ☐

Application: -_____ Permit: -_____ Township _____ Range _____ Section _____

For MUNICIPAL permits ONLY.

Yes No

[ ] [X] Is this a Municipal use Permit (If **YES**, proceed. If **NO**, skip to "Good Cause")

[ ] [ ] Has full "Q" been beneficially used? (If YES, skip to "Good Cause")

[ ] [ ] Is this the first extension issued since 6/29/05? (If NO, skip to "Good Cause")

[ ] [ ] If GW permit, does it have PSI?

[ ] [ ] Does the permit holder have any existing fish protection agreements with a state or federal agency?

Date sent to ODFW for review _____

Date returned from ODFW _____

Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. ☒ Approval of Extension Request

No ... "Good Cause" *cannot* be found. ☐ Denial of Extension Request

Conditions to be included in Extension PFO (if applicable)? Yes ☒ No ☐

*(**NOTE:** Check the file record for documentation to add a condition(s) at the extension stage.)*

☒ Max "Q" Development Limitations and Div. 86 Water Management and Conservation Plan

☐ Other: _____

Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

☒ **COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987**

"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."

☐ **COBU Requirement - Surface Water - post July 9, 1987**

"Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use."

☐ **COBU Requirement - Ground Water - post July 9, 1987**

"Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Mailing / Issuance Date: _____ **Protest Deadline Date:** _____

Reviewer's Name: _____ **Date:** _____

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

A separate extension application must be submitted for <u>each</u> permit as per OAR 690-315-0070(2). This page, with an original signature by the permit holder of record, must accompany any application for extension of time.

This application and a summary of review criteria and procedures that are generally applicable to this application are available at http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml

I, PACIFIC CITY JOINT WATER-SANITARY AUTHORITY (NAME OF PERMIT HOLDER *[OAR 690-315-0070(1) and (3)(a)]*) TONY OWEN (NAME OF CONTACT)

PO BOX 520 (ADDRESS) PACIFIC CITY (CITY) OR (STATE) 97135 (ZIP)

503-965-6636 (PHONE) towen@pcjwsa.com (E-MAIL ADDRESS)

the permit holder of: Application Number S-49201

Permit Number S-36881 *[OAR 690-315-0070(3)(b)]*

do hereby request that the time in which to:

☑ complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, 1990, be extended to October 1, 2010,

and/or the time in which to:

☑ apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 1990, be extended to October 1, 2020.

I am the permittee, or have written authorization from the permittee, to apply for an extension of time under this permit. I certify that the information I have provided in this application is true and correct to the best of my knowledge.

Signature 12/13/07 Date

Application for Extension of Time for a Quasi-Municipal Water Use Permit

Permit No. S-36881
Lower Horn Creek

Pacific City Joint Water-Sanitary Authority
Pacific City, Oregon

December 2007

RECEIVED
DEC 17 2007
WATER RESOURCES DEPT
SALEM, OREGON

Application Contents

I. Signed Application Form and Fee

II. Application Narrative and Form Responses

III. Water Right Permit No. S-36881

IV. Proposed Certificate of Water Right

V. Pacific City Water Master Plan (Parametrix 2005)

SECTION I

Application Form and Fee

SECTION II

Application Narrative and Form Responses

INTRODUCTION

Background

The Pacific City Joint Water-Sanitary Authority (PCJWSA) is a publicly owned water and sewer district serving the communities of Pacific City and Woods in Tillamook County, Oregon. The PCJWA water system is currently served by six groundwater wells with three associated water rights and permits, all of which have been certified. The current capacity of the six groundwater wells is approximately 600 gallons per minute (gpm).

PCJWSA also holds surface water rights at three locations in the Horn Creek system. Horn Creek is a tributary to the Nestucca River. The three surface water rights on the Horn Creek system include the following diversion points:

- Main Intake on upper Horn Creek: water right certificate number 32238 for diversion of 0.2 cubic feet per second (cfs). Located in the SW ¼ of the SW ¼ of Section 8, Township 4 South, Range 10 West, W.M. Developed in 1959.
- East Creek, a tributary to Horn Creek: water right certificate number 44554 for diversion of 0.5 cfs. Located in the SW ¼ of the NW ¼ of Section 16, Township 4 South, Range 10 West, W.M. Developed in 1965.
- Infiltration Intake on lower Horn Creek: water right permit number S36881 for diversion of 2.0 cfs. Located in the ~~SW ¼ of the NE~~ NE ¼ of SW ¼ of Section 20, Township 4 South, Range 10 West, W.M. Developed in 1972.

The PCJWSA ceased using the Horn Creek system's intakes for its primary water supply in the early 1990s, choosing instead to rely entirely on groundwater wells for community water needs. Projections of population growth and water demand indicate that the six existing groundwater supply wells are not sufficient to meet future needs, however. In order to meet future demand, the PCJWA is planning to construct a new groundwater well (Well #7) and redevelop the surface water intake on lower Horn Creek (Permit No. S-36881).

Lower Horn Creek Surface Water Intake

OWRD Permit No. S-36881 authorizes the beneficial use of up to 2.0 cfs from this point on lower Horn Creek for quasi-municipal purposes. This permit has a priority date of May 3, 1972.

The OWRD prepared a proposed certificate of water right that was mailed to PCJWSA on August 25, 2006. This proposed certificate indicates a maximum rate of water use of 1.35 cfs, based on OWRD's Final Proof Survey performed in the early 1990s. However, PCJWSA was not finished developing its water usage when the Final Proof Survey was prepared for this water right. In 1993, when new federal regulatory requirements for surface water treatment went into effect, PCJWSA started using its groundwater wells as its primary source of water. At this time, PCJWSA designated Horn Creek as its backup water supply until the necessary upgrades could be made to ensure compliance with applicable drinking water quality standards.

PCJWSA has projected that it will need to utilize the full 2.0 cfs (the rate that was authorized in Permit S-36881) from this point of diversion to meet the future water demand of its service area. A bond measure was recently passed (Measure 29-107) to fund capital improvements for the PCJWSA system, including the upgrade of PCJWSA's water intake and treatment facilities along Horn Creek. This Application for an Extension of Time is submitted to OWRD to allow this water right to be fully developed. PCJWSA will submit a Final Proof Survey and/or documentation of water usage when the upgrades to the Horn Creek site are fully developed.

Further background information regarding PCJWSA's water supply system and demand can be found in the Pacific City Water Master Plan (Parametrix 2005), which is included in Section V of this application.

APPLICATION FORM RESPONSES

1. **Submit the appropriate extension of time fee ($350), as specified under ORS 536.050.**

A check payable to the Oregon Water Resources Department in the amount of $350 is included with this application.

2. **For <u>Quasi-Municipal</u> water use permit holders, provide evidence of the actions taken to begin actual construction on the project if required under the applicable statute.**

PCJWSA completed construction of the original improvements for the lower Horn Creek intake in the early 1970s. A 1971 design drawing for the infiltration intake is presented in the attached Pacific City Water Master Plan (Figure 3-11). This intake was utilized in conjunction with other surface water intakes and groundwater supply wells until 1993, at which time PCJWSA elected to rely on its groundwater supply wells for the primary water needs for the community. Although the lower Horn Creek intake was used for many years, it was never put to full beneficial use (2.0 cfs) due largely to the fact that sedimentation of the infiltration intake limited the amount of water that could be withdrawn from this diversion point over time.

The redevelopment of the lower Horn Creek site with a surface intake is currently in the "pre-design" phase, and actual construction of new facilities has not yet occurred. However, PCJWSA has taken a number of necessary steps toward constructing the new facilities, including the following: identifying the development of the lower Horn Creek intake as a priority project in its 2005 Water Master Plan and Capital Improvements list; obtaining funding for capital improvements through a recently passed bond measure (Measure 29-107, passed in November 2006); contracting with consulting engineers Parametrix and Vigil-Agrimis, Inc. for pre-design and permitting services for the redevelopment of the lower Horn Creek diversion; and initiating a September 18, 2007 meeting with local, state, and federal agencies to present preliminary concepts for the development and elicit agency feedback. (Agencies in attendance at this meeting included the National Marine Fisheries

Service, Oregon Department of Fish and Wildlife, and the Tillamook County Planning Department.)

These preliminary development measures are discussed in further detail in the subsequent sections of this application narrative.

3. For <u>Municipal</u> water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project.

Not applicable. The Quasi-Municipal permit associated with this extension of time request (Permit No. S-36881) has a May 3, 1972 priority date and was approved by OWRD on July 27, 1973.

4. Provide evidence of actions taken to develop the water right permit within the permitted time period and/or the time period of the previous extension.

Permit No. S-36881 included the requirement that the actual *construction* work for the lower Horn Creek intake begin on or before July 27, 1974 and that the construction be completed by October 1, 1975. Three subsequent 5-year extensions to the construction completion date were granted by OWRD, with "extended to" date stamps on the permit of October 1980, October 1985, and October 1990. The permit required the complete *application* of the water to the proposed use on or before October 1, 1976. Three subsequent extensions to this application date were also granted, also with October 1980, 1985 and 1990 date stamps on the permit.

PCJWSA completed construction of an infiltration intake and an associated pump and chlorination building in the early 1970s. Refer to Figure 3-11 of the attached Water Master Plan for a design drawing of the originally constructed infiltration intake. These facilities remain in place, although they have not been used for supplying community water needs since 1993, when PCJWSA began relying on it groundwater wells for its primary water supply and continued to utilize the infiltration intake for its emergency backup water supply.

5. Provide evidence of compliance with conditions contained in the original permit, and any previous extension(s), or the reason the condition was not satisfied.

Permit No. S-36881 for the lower Horn Creek intake does not include conditions outside of the required construction and application dates, as outlined in Item 4 above.

6. Provide evidence of the maximum rate, or duty if applicable, of water diverted for beneficial use under the permit and/or prior extensions of time, if any, made to date.

Multiple extensions of time have been granted previously for the development of Water Right Permit S-36881. This permit included the requirement that the actual *construction* work for the lower Horn Creek intake begin on or before July 27, 1974 and that the construction be completed by October 1, 1975. Three subsequent 5-year

extensions to the construction completion date were granted by OWRD, with "extended to" date stamps on the permit of October 1980, October 1985, and October 1990. The permit required the complete *application* of the water to the proposed use on or before October 1, 1976. Three subsequent extensions to this application date were also granted, also with October 1980, 1985 and 1990 date stamps on the permit. A copy of Permit S-36881 with the previous extension date stamps is provided in Section III of this application.

OWRD performed a proof survey in the 1990s to determine the extent that water was used within the terms of the permit. A Proposed Certificate of Water Right for Permit No. S-36881 was prepared specifying 1.35 cfs as the amount to which this right is entitled based on the amount actually used beneficially. A copy of the Proposed Certificate of Water Right is included with this application in Section IV.

7. Provide an estimate of the population served under this permit and a description of the methodology(ies) used to make the estimate.

Data from the 2000 U.S. Census indicates a population for Pacific City of 1,027, living in 485 households. The PCJWSA service area encompasses more households than this, however. Based on the Water Master Plan (March 2005), the number of water service connections served by the PCJWSA in 2003 was 1,109, of which 1,006 were residential. Population and service estimates presented in the Water Master Plan assumed 2.0 persons per household and used the number of residential service connections to represent the number of households. Based on these assumptions, the estimated population served by the PCJWSA (in 2003) was 2,012.

A summary of the methods used to estimate population, population growth, and projected water demand are provided in Section 2 of the Water Master Plan (2005) included with this application. Based on historic data tracking new service connections added per year, and based on project future growth, the PCJWSA board of directors recommended an annual population growth rate of 3.5 percent be used for the Water Master Plan. Using this growth rate, the estimated 2007 population served by the PCWJSA is approximately 2,309.

8. Provide a description of the financial expenditures made toward completion of the water development under this permit.

PCJWSA has recently secured and applied funds towards the re-development of the lower Horn Creek intake site as a surface water source for the community's water supply. In November 2006, Bond Measure 29-107 was passed authorizing PCJWSA to use general obligation bonds in an amount not exceeding $5,485,000 to finance the construction of capital improvements for the PCJWSA system. PCJWSA's Capital Improvements list includes the re-development of a surface water source (including treatment facilities) at the site of the lower Horn Creek intake.

PCJWSA has already allocated funds specifically for the re-development of the lower Horn Creek intake and associated treatment and distribution system. PCJWSA has retained Parametrix, an engineering consultant, to conduct pre-design reviews for the

ATTACHMENT A

PACIFIC CITY JOINT WATER-SANITARY AUTHORITY
EXISTING WATER RIGHTS AND PERMITS

GROUNDWATER

Application / Permit Number	Certificate Number	Source	Use	Prioirity Date	Authorized Amount of Water	Maximum Amount of Beneficial Water Use	Use Limitations
T-9607 / G-9388	61546	Two wells in the Nestucca River Basin	Quasi-Municipal	3/16/1981	0.457 cfs	0.457 cfs	None
G-11260 / G-10392	80488	One well in the Nestucca River Basin	Quasi-Municipal	4/11/1984	0.3 cfs	0.3 cfs	None
G-11754 / G-10798	80489	Wells 4, 5 and 6 in the Nestucca River Basin	Quasi-Municipal	11/27/1987	300 gpm	300 gpm	None
G-16188 / G-15760	N/A	Well # 7 in the Nestucca River Basin	Quasi-Municipal	2/17/2004	0.334 cfs	N/A	Not Constructed

SURFACE WATER

Application / Permit Number	Certificate Number	Source	Use	Prioirity Date	Authorized Amount of Water	Maximum Amount of Beneficial Water Use	Use Limitations
S-33272 / S-26793	32238	Horn Creek, tributary to Nestucca River	Municipal	8/3/1959	0.20 cfs	0.20 cfs	
S-40432 / S-30792	44554	Unnamed stream, tributary to Horn Creek	Municipal	7/8/1965	0.50 cfs	0.50 cfs	
S-36881 / S-49201	N/A	Horn Creek, tributary to Nestucca River	Quasi-Municipal	5/3/1972	2.0 cfs		

Section 2 of the attached Water Master Plan (2005) includes a detailed analysis of existing and projected future water demand for the PCJWSA service area. The information presented below is provided to address the specific items requested by OWRD in the application instructions. Much of this information is extracted and/or summarized from the Water Master Plan, which should be referenced for additional details.

Inventory of Water Rights Held

Please refer to **Attachment A** of this application for a tabular summary of all water rights currently held by PCJWSA. Water supply is currently provided entirely by six groundwater wells with a combined capacity of 600 gpm.

Water Supply Contracts and/or Agreements

PCJWSA does not have contracts or agreements with other jurisdictions related to providing water supply to other entities or relying on other entities for water supply.

Current Peak Water Demands

The existing demand placed on the PCJWSA is primarily classified as domestic and seasonal use with a significant portion used for commercial consumption. From 2001 to 2003, water use by commercial establishments accounted for typically between 15 and 27 percent, averaging about 20 percent of the total water produced by PCJWSA. The PCJWSA has few industrial customers, currently consisting of two dairies and one micro-brew pub. Future growth potential of industrial customers is expected to be small.

Water demands vary considerably based on seasonal and weekend population influx due to tourists and vacation home users. Water use in winter is approximately half that of July-August, when demand is at its highest. Based on direct observations by PCJWSA, peak water production in summer requires that all six groundwater supply wells operate during periods of peak demand, equating to a Maximum Daily Demand of nearly 600 gpm.

Projected Population and Future Peak Water Demands

The Water Master Plan (2005) included with this application provides a population and demand estimate for the PCJWSA service area through the year 2024. The following is excerpted from the Water Master Plan:

Population Estimate for 2024

Several sources of information and methods exist to estimate the rate of growth in Pacific City. The State Office of Economic Analysis, Department of Administrative Services has projections for each county in the state, and projected an average growth rate of 5.49 percent in Tillamook County from 2000 to 2025.

PCJWSA has historic records of the number of water/sewer connections added each year, which represents population growth specific to the PCJWSA. From the fiscal year 1994-1995 to 2003-2004, from 17 to 36 new water or sewer service

project. Parametrix is currently under contract (in the amount of $160,400) with PCJWSA for this work. PCJWSA has also contracted with another consultant, Vigil-Agrimis, Inc., in the amount of $15,000, specifically to handle water rights issues associated with the project.

9. Provide an estimate of the cost necessary to complete the water development.

PCJWSA currently estimates that the project will cost upwards of $4 million. The re-development of the lower Horn Creek intake site as a PCJWSA surface water source is still in the pre-design phase, and detailed cost estimates are not yet available. Costs for the full development of this water right depend on many factors that are being evaluated as part of the pre-design effort. Issues that will influence the total cost of the project include the design of the actual surface water intake and treatment facilities, access issues, return water discharge management, permitting and mitigation, etc.

10. Provide a summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements (if any), relating to the project that have significantly delayed completion of construction or perfection of the right.

Construction of the infiltration intake at the permitted lower Horn Creek site was completed in the early 1970s after issuance of Permit S-36881. This point of diversion was used in conjunction with two other previously constructed surface intakes on Horn Creek, and later in conjunction with PCJWSA's groundwater wells (constructed in the 1980s), until the early 1990s.

The full application of 2.0 cfs from the lower Horn Creek intake for beneficial use was never realized for two primary reasons:

1. Sedimentation of the infiltration gallery over time limited its function and reduced its capacity for withdrawal; and
2. New and more stringent federal requirements for treatment of drinking water went into effect in the early 1990s, making the existing treatment facilities for the lower Horn Creek intake inadequate for supplying community water needs in compliance with regulatory standards.

PCJWSA ceased using the surface intake on Horn Creek in 1993 as its primary water source and has relied on its 6 permitted groundwater supply wells since that time for its primary water supply. Since 1993, the intake on Horn Creek was maintained as an emergency backup water supply for the community.

11. Provide an estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use.

lines were added each year. The average connections per year (for both water and sewer) represents a growth rate of 2.56 percent. These were compared and discussed with the PCJWSA Board of Directors, who recommended a rate of 3.5 percent be used for this WMP. Using a starting population of 2,012, applying a 3.5 percent growth rate will produce a population of 4,144 in the year 2024.

The projected populations were used with maximum monthly per capita flow rates to estimate future monthly summer demands. Table 2-2 below from the Water Master Plan (2005) summarizes the yearly population projections and associated demands. The Water Master Plan should be referenced for additional information relating to demand assumptions.

Table 2-2 Projected Populations and Water Demands

Year	Population	Avg. Daily Demand	Max Month Avg. Daily Demand	Max. Daily Demand (gpd)	Max Daily Demand (gpm)	Peak Hourly Demand (gpm)
2003	2,012	221,320	416,484	832,968	578	868
2004	2,082	229,020	430,974	861,948	599	898
2005	2,155	237,050	446,085	892,170	620	929
2006	2,231	245,410	461,817	923,634	641	962
2007	2,309	253,990	477,963	955,926	664	996
2008	2,390	262,900	494,730	989,460	687	1,031
2009	2,473	272,030	511,911	1,023,822	711	1,066
2010	2,560	281,600	529,920	1,059,840	736	1,104
2011	2,649	291,390	548,343	1,096,686	762	1,142
2012	2,742	301,620	567,594	1,135,188	788	1,182
2013	2,838	312,180	587,466	1,174,932	816	1,224
2014	2,937	323,070	607,959	1,215,918	844	1,267
2015	3,040	334,400	629,280	1,258,560	874	1,311
2016	3,147	346,170	651,429	1,302,858	905	1,357
2017	3,257	358,270	674,199	1,348,398	936	1,405
2018	3,371	370,810	697,797	1,395,594	969	1,454
2019	3,489	383,790	722,223	1,444,446	1,003	1,505
2020	3,611	397,210	747,477	1,494,954	1,038	1,557
2021	3,737	411,070	773,559	1,547,118	1,074	1,612
2022	3,868	425,480	800,676	1,601,352	1,112	1,668
2023	4,003	440,330	828,621	1,657,242	1,151	1,726
2024	4,144	455,840	857,808	1,715,616	1,191	1,787

Notes:
Average Per Capita Demand is 110 gpcd
Maximum Month Average Daily Demand (MMADD) Per Capita is 207 gpcd
Average Daily Demand = Population x 110 gpcd
MMADD = Population x 207 gpcd
Maximum Daily Demand = MMADD x 2.0
Peak Hourly Demand = MDD x 1.5

As presented above, the PCJWSA has a projected service area population of 4,144 in the year 2024 and a corresponding maximum daily water demand of 1,191 gpm. PCJWSA's peak groundwater usage is currently nearing its 600 gpm wellfield capacity, and PCJWSA is concerned about the vulnerability of its wellfield to seismic events, salt water intrusion, and contamination. In order to meet the projected 2024 water demand and have adequate backup capacity, PCJWSA anticipates that it will need the full permitted 2.0 cfs (900 gpm) of water from the lower Horn Creek intake (Permit No. S-36881).

Potential Growth (Expansion) of Service Area

The boundaries of the PCJWSA service area are defined in the Pacific City/Woods Community Plan. As stated in the Water Master Plan (2005), if Pacific City incorporated and became a city rather than a "community", the city council could modify the service area. However, this would be a fairly lengthy process and incorporation would probably not be done solely to extend the service area boundaries.

Completion Date

PCJWSA is currently nearing completion of the Pre-Design Report for the proposed new intake and treatment facilities at the lower Horn Creek site. It is estimated that construction may begin as early as Spring 2008, with the new improvements becoming operational possibly as early as Fall 2008. PCJWSA is currently evaluating whether or not to install treatment facilities for the full 2.0 cfs with the initial construction or whether to construct for a lower capacity and upgrade at a later time. If the initial construction was for only a part of the 2.0 cfs, PCJWSA estimates that the expansion of the facilities to handle the full 2.0 cfs would occur within 5 years.

12. Provide a summary of the future plan and schedule to complete construction and/or perfect the water right.

PCJWSA is currently working with its consultant, Parametrix, to complete a Pre-Design Report for the development of the lower Horn Creek intake. The design under development involves the replacement of the existing infiltration intake with a direct surface water intake and the construction of new treatment facilities. PCJWSA plans to begin construction in Spring 2008, and the facilities may become operational as early as Fall 2008. As stated above, PCJWSA is currently evaluating whether or not to install treatment facilities for the full 2.0 cfs with the initial construction or whether to construct for a lower capacity and upgrade at a later time. If the initial construction was for only a part of the 2.0 cfs, PCJWSA estimates that the expansion of the facilities to handle the full 2.0 cfs would occur within 5 years. Development of the facilities for full beneficial use is expected to cost upwards of $4 million.

13. Justify the time requested to complete the project and/or apply the water to full beneficial use.

PCJWSA and Parametrix are currently working to finalize the Pre-Design Report for the project and will move forward with the design based on information and recommendations contained in this report. Prior to construction of the project, permits will need to be obtained from local, state, and federal agencies including (but not necessarily limited to) the Tillamook County Planning Department, the Oregon Department of State Lands, and the U.S. Army Corps of Engineers.

PCJWSA is targeting 2008 to begin construction of the improvements, although full development and application of the permitted 2.0 cfs for beneficial use may be several years out. A primary factor influencing the project schedule is the decision on whether to construct treatment facilities for the full 2.0 cfs with the initial construction, or whether to initially construct for a lesser capacity and further develop the facilities for the full 2.0 cfs at a later time. PCJWSA currently estimates that if initial construction is only partial (i.e., cannot provide treatment for 2.0 cfs), the facilities will be fully developed and able to treat 2.0 cfs within 5 to 10 years.

PCJWSA is asking for an extension of 30 years to allow enough time to complete all necessary activities associated with developing water right permit number S-36881 and applying the full 2.0 cfs to beneficial use.

14. Provide any other information you wish OWRD to consider while evaluating the Application for Extension of Time.

None

15. For Municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, provide a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

Not applicable. Extensions to Permit No. S-36881 have not been issued after June 29, 2005.

Attachment A

Pacific City Joint Water-Sanitary Authority
Existing Water Rights and Permits

SECTION III
Water Right Permit S-36881

SECTION IV

Proposed Certificate of Water Right
Permit S-36881

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mail Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MAILED: August 25, 2006

NOTICE

Reference: Permit S-36881 Application S-49201

Enclosed is a proposed certificate of water right and a map which illustrates the location of the right. The map and proposed certificate represent the extent water was used within the terms of the permit based upon a survey and inspection.

If you do not agree with the proposed certificate or the map, Oregon Administrative Rule 690-330-010 (2) allows the permittee or landowner 60 days from the mailing date of this notice to request the Department to reconsider the contents of the proposed certificate.

If you agree with the proposed certificate and map no response to this notice is required. Sometime after the 60 day period, the recorded certificate of water right will be mailed to the permittee.

If you have any questions please contact Gerry Clark at 503-986-0811.

Sincerely,

Dwight French
Administrator
Water Rights Division

S:\groupshw\certs\Resource Center\Forms_Checklists_Mailing Instructions\Cover letters\PROPOSED CERT Letter

STATE OF OREGON

COUNTY OF TILLAMOOK

PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

PACIFIC CITY JWSA
PO BOX 520
PACIFIC CITY OR 97135-0520

confirms the right to use the waters of HORN CREEK for QUASI-MUNICIPAL USES.

This right was perfected under Permit S-36881. The date of priority is MAY 3, 1972. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.35 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	10 W	WM	8	SE SE	330 FEET NORTH AND 750 FEET WEST FROM SE CORNER, SECTION 8

A description of the place of use to which this right is appurtenant is as follows:

Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	18	SW SE
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE

PROPOSED

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate.

Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	24	NE NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE

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

WITNESS the signature of the Water Resources Director, affixed

PROPOSED

Phillip C. Ward, Director

 Recorded in State Record of Water Right Certificates numbered PROPOSED.

SECTION V

Pacific City Water Master Plan
Parametrix, 2005

RECEIVED
MAY 3 1972
STATE ENGINEER
SALEM, OREGON

Permit No. 36381

*APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Oregon

I, PACIFIC CITY WATER DISTRICT (Name of applicant)

of P.O. Box 78, PACIFIC CITY, OREGON (Mailing address),

State of OREGON, do hereby make application for a permit to appropriate the following described public waters of the State of Oregon, SUBJECT TO EXISTING RIGHTS:

If the applicant is a corporation, give date and place of incorporation .....

1. The source of the proposed appropriation is HORN CREEK (Name of stream), a tributary of NESTUCCA RIVER

2. The amount of water which the applicant intends to apply to beneficial use is 2 cubic feet per second. (If water is to be used from more than one source, give quantity from each)

**3. The use to which the water is to be applied is MUNICIPAL WATER (Irrigation, power, mining, manufacturing, domestic supplies, etc.) SUPPLY

4. The point of diversion is located 2445 ft. N (N. or S.) and 2514 ft. E (E. or W.) from the corner of THE SOUTHEAST CORNER OF SECTION 12, (Section or subdivision) TOWNSHIP 4 SOUTH, RANGE 10 WEST, WILLAMETTE MERIDIAN

(If preferable, give distance and bearing to section corner)

(If there is more than one point of diversion, each must be described. Use separate sheet if necessary)

being within the NE 1/4 OF SW 1/4 (Give smallest legal subdivision) of Sec. 20, Tp. 4S (N. or S.), R. 10W (E. or W.), W. M., in the county of TILLAMOOK

5. The PIPELINE (Main ditch, canal or pipe line) to be 4966 FEET (Miles or feet) in length, terminating in the NW 1/4 OF NW 1/4 (Smallest legal subdivision) of Sec. 30, Tp. 4S (N. or S.), R. 10W (E. or W.), W. M., the proposed location being shown throughout on the accompanying map.

DESCRIPTION OF WORKS

Diversion Works—

6. (a) Height of dam NONE feet, length on top ..... feet, length at bottom ..... feet; material to be used and character of construction ..... (Loose rock, concrete, masonry, rock and brush, timber crib, etc., wasteway over or around dam)

(b) Description of headgate BURIED CONCRETE PIPE, 12 IN. (Timber, concrete, etc., number and size of openings) DIA. TO 4 INCH DIA. FLOWLINE TO 2 - 60" DIA. PUMP SUMPS

(c) If water is to be pumped give general description 2 VERTICAL TURBINE (Size and type of pump) PUMPS EACH DELIVERING 350 GPM @ 250 FT. TDH. (Size and type of engine or motor to be used, total head water is to be lifted, etc.) SUCTION LIFT = 0, DISCHARGE LIFT = 250 FT. PUMPS PERMANENTLY INSTALLED.

*A different form of application is provided where storage works are contemplated.

**Application for permits to appropriate water for the generation of electricity, with the exception of municipalities, must be made to the Hydroelectric Commission. Either of the above forms may be secured, without cost, together with instructions by addressing the State Engineer, Salem, Oregon.

RECEIVED
DEC 17 2007
WATER RESOURCES DEPT
SALEM, OREGON

Canal System or Pipe Line—

7. (a) Give dimensions at each point of canal where materially changed in size, stating miles from headgate. At headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(b) At ..... miles from headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(c) Length of pipe, 4960 ft.; size at intake, 8 & 6 (Parallel) in.; size at 3460 (To) ft. from intake 8 & 6 (Parallel) in.; size at place of use 10 in.; difference in elevation between intake and place of use, 5 ft. Is grade uniform? No Estimated capacity, 2.0 sec. ft. NOTE: THIS IS A PRESSURE PIPELINE

8. Location of area to be irrigated, or place of use PACIFIC CITY WATER DISTRICT

Township North or South	Range E. or W. of Willamette Meridian	Section	Forty-acre Tract	Number Acres To Be Irrigated
T 4S	R 10W	18	SE 1/4 SW 1/4	
T 4S	R 10W	18	SW 1/4 SE 1/4	
T 4S	R 10W	19	W 1/2 NE 1/4	
T 4S	R 10W	19	SE 1/4 NE 1/4	
T 4S	R 10W	19	E 1/2 NW 1/4	
T 4S	R 10W	19	SW 1/4	
T 4S	R 10W	19	W 1/2 SE 1/4	
T 4S	R 10W	19	NE 1/4 SE 1/4	
T 4S	R 10W	30	S 1/2 NE 1/4	
T 4S	R 10W	30	NW 1/4	
T 4S	R 10W	30	NE 1/4 SW 1/4	
T 4S	R 10W	30	W 1/2 SE 1/4	
T 4S	R 11W	13	E 1/2 SE 1/4	
T 4S	R 11W	24	E 1/2 NE 1/4	
T 4S	R 11W	24	E 1/2 SE 1/4	
T 4S	R 11W	25	E 1/2 NE 1/4	

(If more space required, attach separate sheet)

(a) Character of soil .....

(b) Kind of crops raised .....

Power or Mining Purposes—

9. (a) Total amount of power to be developed ..... theoretical horsepower.

(b) Quantity of water to be used for power ..... sec. ft.

(c) Total fall to be utilized ..... (Head) feet.

(d) The nature of the works by means of which the power is to be developed .....

.....

(e) Such works to be located in ..... (Legal subdivision) of Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(f) Is water to be returned to any stream? No (Yes or No)

(g) If so, name stream and locate point of return .....

....., Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(h) The use to which power is to be applied is .....

(i) The nature of the mines to be served .....

PERMIT

STATE OF OREGON, }
County of Marion, } ss.

ASSIGNED. See Misc. Rec., Vol. 8 Page 248

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS and the following limitations and conditions:

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 2.0 *cubic feet per second measured at the point of diversion from the stream, or its equivalent in case of rotation with other water users, from* Horn Creek

The use to which this water is to be applied is quasi-municipal

If for irrigation, this appropriation shall be limited to ..... *of one cubic foot per second or its equivalent for each acre irrigated* .....

and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

The priority date of this permit is May 3, 1972

Actual construction work shall begin on or before July 27, 1974 *and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1975*

Extended to Oct. 1985 Extended to October 1, 1990 Extended to Oct. 1 1990

Complete application of the water to the proposed use shall be made on or before October 1, 1976

Extended to Oct. 1985 Extended to October 1, 1990 Extended to Oct. 1 1990

WITNESS my hand this 27th *day of* July, 1973

STATE ENGINEER

PERMIT

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF OREGON

Application No. 42201

Permit No. 33881

This instrument was first received in the office of the State Engineer at Salem, Oregon, on the 3rd *day of* May, 19 72, *at* 11:17 *o'clock* P. M.

CHRIS L. WHEELER
STATE ENGINEER

Returned to applicant:

Approved:

July 27, 1973

Recorded in book No. ..... *of Permits on page* 33881

Drainage Basin No. 1 *page* 16H

Fees $20.00

State Printing 9137

Municipal or Domestic Supply—

10. (a) To supply the city of PACIFIC CITY (UNINCORPORATED)
Tillamook (Name of) County, having a present population of 700
and an estimated population of 900 Peak in 1990

(b) If for domestic use state number of families to be supplied 450

(Answer questions 11, 12, 13, and 14 in all cases)

11. Estimated cost of proposed works, $ 300,000

12. Construction work will begin on or before Nov. 1, 1971

13. Construction work will be completed on or before Aug 30, 1972

14. The water will be completely applied to the proposed use on or before Aug. 30, 1976

Campbell H. Steiwer Jr.
(Signature of applicant)
District Engineer

Remarks:

STATE OF OREGON, }
County of Marion, } ss.

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the State Engineer, with corrections on or before ....., 19.....

WITNESS my hand this ..... day of ....., 19.....

STATE ENGINEER

By .....
ASSISTANT

RECEIVED
MAY 3 1972
STATE ENGINEER
SALEM, OREGON

Permit No. 38881

*APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Oregon

I, PACIFIC CITY WATER DISTRICT (Name of applicant)

of P.O. BOX 78, PACIFIC CITY, OREGON (Mailing address),

State of OREGON, do hereby make application for a permit to appropriate the following described public waters of the State of Oregon, SUBJECT TO EXISTING RIGHTS:

If the applicant is a corporation, give date and place of incorporation .....

1. The source of the proposed appropriation is HORSE CREEK (Name of stream), a tributary of NESTUCCA RIVER.

2. The amount of water which the applicant intends to apply to beneficial use is 2 cubic feet per second. (If water is to be used from more than one source, give quantity from each)

**3. The use to which the water is to be applied is MUNICIPAL WATER (Irrigation, power, mining, manufacturing, domestic supplies, etc.) SUPPLY

4. The point of diversion is located 2445 ft. N (N. or S.) and 2514 ft. E (E. or W.) from the corner of THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 10 WEST, WILLAMETTE MERIDIAN (Section or subdivision)

(If preferable, give distance and bearing to section corner)

(If there is more than one point of diversion, each must be described. Use separate sheet if necessary)

being within the NE 1/4 OF SW 1/4 (Give smallest legal subdivision) of Sec. 20, Tp. 4S (N. or S.), R. 10W (E. or W.), W. M., in the county of TILLAMOOK.

5. The PIPELINE (Main ditch, canal or pipe line) to be 4960 FEET (Miles or feet) in length, terminating in the NW 1/4 OF NW 1/4 (Smallest legal subdivision) of Sec. 30, Tp. 4S (N. or S.), R. 10W (E. or W.), W. M., the proposed location being shown throughout on the accompanying map.

DESCRIPTION OF WORKS

Diversion Works—

6. (a) Height of dam NONE feet, length on top ..... feet, length at bottom ..... feet; material to be used and character of construction ..... (Loose rock, concrete, masonary, rock and brush, timber crib, etc., wasteway over or around dam)

(b) Description of headgate BURIED REINFORCED PIPE, 12 INCH DIA. TO 4 INCH DIA. FLOWING TO 2-60" DIA. PUMP SUMPS (Timber, concrete, etc., number and size of openings)

(c) If water is to be pumped give general description 2 VERTICAL TURBINE (Size and type of pump) PUMPS EACH DELIVERING 320 GPM @ 250 FT. TDH (Size and type of engine or motor to be used, total head water is to be lifted, etc.)

SUCTION LIFT = 0, DISCHARGE LIFT = 250 - FT.

PUMPS PERMANENTLY INSTALLED.

*A different form of application is provided where storage works are contemplated.

**Application for permits to appropriate water for the generation of electricity, with the exception of municipalities, must be made to the Hydroelectric Commission. Either of the above forms may be secured, without cost, together with instructions by addressing the State Engineer, Salem, Oregon.

Canal System or Pipe Line—

7. (a) Give dimensions at each point of canal where materially changed in size, stating miles from headgate. At headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(b) At ..... miles from headgate: width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(c) Length of pipe, 4960 ft.; size at intake, 8 & 6 Parallel in.; size at To 3460.0 ft. from intake 8 & 6 Parallel in.; size at place of use 10 in.; difference in elevation between intake and place of use, 5 ft. Is grade uniform? No Estimated capacity, 2.0 sec. ft. NOTE: THIS IS A PRESSURE PIPELINE

8. Location of area to be irrigated, or place of use PACIFIC CITY WATER DISTRICT

Township North or South	Range E. or W. of Willamette Meridian	Section	Forty-acre Tract	Number Acres To Be Irrigated
T 4S	R10W	18	SE 1/4 SW 1/4	
T4S	R10W	18	SW 1/4 SE 1/4	
T4S	R10W	19	W 1/2 NE 1/4	
T4S	R10W	19	SE 1/4 NE 1/4	
T4S	R10W	19	E 1/2 NW 1/4	
T4S	R10W	19	SW 1/4	
T4S	R10W	19	W 1/2 SE 1/4	
T4S	R10W	19	NE 1/4 SE 1/4	
T4S	R10W	30	S 1/2 NE 1/4	
T4S	R10W	30	NW 1/4	
T4S	R10W	30	NE 1/4 SW 1/4	
T4S	R10W	30	W 1/2 SE 1/4	
T4S	R11W	13	E 1/2 SE 1/4	
T4S	R11W	24	E 1/2 NE 1/4	
T4S	R11W	24	E 1/2 SE 1/4	
T4S	R11W	25	E 1/2 NE 1/4	

(If more space required, attach separate sheet)

(a) Character of soil .....

(b) Kind of crops raised .....

Power or Mining Purposes—

9. (a) Total amount of power to be developed ..... theoretical horsepower.

(b) Quantity of water to be used for power ..... sec. ft.

(c) Total fall to be utilized ..... (Head) feet.

(d) The nature of the works by means of which the power is to be developed .....

.....

(e) Such works to be located in ..... (Legal subdivision) of Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(f) Is water to be returned to any stream? No (Yes or No)

(g) If so, name stream and locate point of return .....

....., Sec. ....., Tp. ..... (No. N. or S.), R. ..... (No. E. or W.), W. M.

(h) The use to which power is to be applied is .....

(i) The nature of the mines to be served .....

Municipal or Domestic Supply—

10. (a) To supply the city of Pacific City (Unincorporated)

Tillamook (Name of) County, having a present population of 700

and an estimated population of 900 (300 Peak) in 1990

(b) If for domestic use state number of families to be supplied 450

(Answer questions 11, 12, 13, and 14 in all cases)

11. Estimated cost of proposed works, $ 300,000

12. Construction work will begin on or before Nov. 1, 1971

13. Construction work will be completed on or before Aug 30, 1977

14. The water will be completely applied to the proposed use on or before Aug. 30, 1976

Campbell H. Stiletto Jr.
(Signature of applicant)
District Engineer

Remarks:

STATE OF OREGON, }
County of Marion, } ss.

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the State Engineer, with corrections on or before , 19

WITNESS my hand this day of , 19

STATE ENGINEER

By

ASSISTANT

PERMIT

STATE OF OREGON, }
County of Marion, } ss.

ASSIGNED. See Misc. Rec., Vol. 8 Page 248

This is to certify that I have examined the foregoing application and do hereby grant the same, SUBJECT TO EXISTING RIGHTS and the following limitations and conditions:

The right herein granted is limited to the amount of water which can be applied to beneficial use and shall not exceed 2.0 *cubic feet per second measured at the point of diversion from the stream, or its equivalent in case of rotation with other water users, from* Horn Creek

The use to which this water is to be applied is quasi-municipal

If for irrigation, this appropriation shall be limited to ..... *of one cubic foot per second or its equivalent for each acre irrigated* .....

and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

The priority date of this permit is May 3, 1972

Actual construction work shall begin on or before July 27, 1974 *and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1975*

Extended to Oct. 1985 Extended to October 1, 1990 Extended to Oct. 1 1980

Complete application of the water to the proposed use shall be made on or before October 1, 1976

Extended to Oct. 1985 Extended to October 1, 1990 Extended to Oct. 1 1980

WITNESS my hand this 27th *day of* July, 1973.

STATE ENGINEER

Application No. 49201
Permit No. 33881

PERMIT
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF OREGON

This instrument was first received in the office of the State Engineer at Salem, Oregon, on the 3rd *day of* May, 19 73, *at* 11:17 *o'clock* A. M.

Returned to applicant:

Approved:
July 27, 1973

Recorded in book No. ..... *of Permits on page* 33881

CHRIS L. WHEELER
STATE ENGINEER

Drainage Basin No. 1 *page* 16H

Fees $210.00

State Printing 9137

STATE OF OREGON

COUNTY OF TILLAMOOK

CERTIFICATE OF WATER RIGHT

This Is to Certify, That PACIFIC CITY WATER DISTRICT

of P. O. Box 78, Pacific City, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Horn Creek

a tributary of Nestucca River for the purpose of Municipal

under Permit No. 26793 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from August 3, 1959

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.20 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SE¼ SE¼, Section 8, T. 4 S., R. 10 W., W. M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to - - - - - - - of one cubic foot per second per acre,

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

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

SW¼
Section 19
NW¼
Section 30
T. 4 S., R. 10 W., W. M.

Lot 1 (NE¼ NE¼)
Lot 2 (SE¼ NE¼)
Lot 3 (NE¼ SE¼)
Lot 4 (SE¼ SE¼)
Section 24
Lot 1 (NE¼ NE¼)
Lot 2 (SE¼ NE¼)
Section 25
T. 4 S., R. 11 W., W. M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed this date. May 24, 1965

CHRIS L. WHEELER
State Engineer

Recorded in State Record of Water Right Certificates, Volume 24, page 32238

Permit A—6M—1-78 SP-32956-090

STATE OF OREGON

COUNTY OF TILLAMOOK

CERTIFICATE OF WATER RIGHT

This Is to Certify, *That* PACIFIC CITY WATER DISTRICT

of P. O. Box 78, Pacific City *, State of* Oregon 97135 *, has made proof to the satisfaction of the Water Resources Director, of a right to the use of the waters of* Unnamed stream

a tributary of Horn Creek *for the purpose of* Municipal use

under Permit No. 30792 *and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from* July 8, 1965

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.50 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SW¼ NW¼, Section 16, T. 4 S., R. 10 W., W.M., 330 feet North and 50 feet East from W¼ Corner, Section 16.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ———— *of one cubic foot per second per acre,*

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

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

NE¼ SW¼	NE¼ SE¼
NW¼ SW¼	NW¼ SE¼
SW¼ SW¼	SW¼ SE¼
SE¼ SW¼	SE¼ SE¼
Section 19	Section 24
NE¼ NW¼	NE¼ NE¼
NW¼ NW¼	NW¼ NE¼
SW¼ NW¼	SW¼ NE¼
SE¼ NW¼	SE¼ NE¼
Section 30	Section 25
T. 4 S., R. 10 W., W.M.	T. 4 S., R. 11 W., W.M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described, and is subject to the existing minimum flow policies established by the Water Policy Review Board.

WITNESS the signature of the Water Resources Director, affixed this date. June 17, 1977

James E. Sexson
Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 36 *, page* 44554

Water Use Report

TONY OWEN
PACIFIC CITY JOINT WATER-SANITARY AUTH
PO BOX 520
PACIFIC CITY OR 97135-0520

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12929	DUNE WELL 1	61546	G 9388	G 10215		03/16/1981	4.0S	10.0W	19	QM	0.279		WELL 1	NESTUCCA R
12929	DUNE WELL 1		G 9388	G 10215		03/16/1981	4.0S	10.0W	19	QM	0.279		WELL 1	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	4.31763	2.66749	2.49624	2.57757	2.59629	3.77536	2.84609	3.69986	4.11232	5.94783	6.39343	4.31303
2004	AFT	2.59782	2.14148	2.1602	2.71751	2.03836	2.65091	2.33512	3.23769	3.49854	5.78303	3.69894	1.96017
2003	AFT	2.93048	2.28632	2.0847	1.90302	1.63111	2.07529	0.84456	2.12582	4.36734	5.92941	5.03022	3.74927
2002	AFT	2.06905	1.53667	2.48519	1.84043	1.18367	2.74113	2.67178	2.57664	2.97376	4.82614	4.67485	3.21651
2001	AFT	2.02255	1.74824	1.73168	2.44571	1.99631	2.04959	1.42212	2.10853	2.9643	4.48356	3.65752	2.97237
2000	AFT	2.80081	2.56352	2.25516	2.12608	2.21443	2.40641	1.85751	2.06433	2.15362	3.30305	3.53131	2.32749
1999	AFT	2.52027	1.86742	2.9534	2.69039	2.03559	2.49071	2.33041	2.89877	2.80118	4.01779	4.09196	3.68523
1998	AFT	1.97595	2.26157	2.11999	2.25972	1.92133	2.17103	2.18597	2.59025	2.30514	4.02209	4.29256	21.73668
1997	AFT	9.4436	8.4146	8.23323	7.48872	6.8375	8.59996	7.60902	8.56406	8.31376	11.50283	11.84716	8.19548
1996	AFT	3.55639	3.0537	3.04127	3.05232	3.30857	3.05477	2.91407	2.48856	4.0224	5.40985	4.83949	5.1585
1995	AFT	4.04173	3.84686	2.82537	3.11278	2.75985	2.5903	3.09129	3.79238	3.96486	5.12152	5.5102	4.1786
1994	AFT	3.84118	3.71014	3.44299	3.94951	5.47736	4.27972	4.03114	4.35921	4.4077	5.86051	5.75187	2.71515
1993	AFT	2.379	2.40309	3.7617	4.61408	4.31824	4.42197	3.4143	3.89381	5.0135	5.14101	6.14147	4.72257
1992	AFT	40.43271	8.57756	8.33144	7.49194	6.27512	7.05263	2.83243	6.89182	5.08301	5.84624	5.70016	3.58723
1991	AFT	13.83673	16.76108	14.64569	11.92849	13.19809	15.04526	15.26653	16.55516	18.20929	8.28264	1.27574	5.22479
1990	AFT	5.3098	6.75847	6.99125	6.74804	6.05585	7.31149	5.45189	5.56559	6.01841	5.81525	6.01427	3.733
1989	AFT	2.9845	6.47	6.65474	7.00092	6.69249	7.06828	7.76354	8.94399	4.71873	5.00383	4.15528	2.09574

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12930	DUNE WELL 3	61546	G 9388	G 10215		03/16/1981	4.0S	10.0W	19	QM	0.178		WELL 2	NESTUCCA R
12930	DUNE WELL 3		G 9388	G 10215		03/16/1981	4.0S	10.0W	19	QM	0.178		WELL 2	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	4.69142	2.91177	2.7261	2.87187	2.83627	3.65045	3.1536	3.73945	4.22802	6.40908	7.24352	0.41737
2004	AFT	2.78871	2.42873	2.29922	2.85008	2.15713	2.91791	2.62329	3.74528	4.08102	6.70339	6.25196	4.02492
2003	AFT	0.17216	1.22602	2.28172	2.13257	1.93892	2.46289	2.20377	2.4413	4.64293	6.20776	5.50897	3.98342
2002	AFT	3.71367	3.43731	3.20853	3.09924	2.3539	3.10517	3.13309	3.10952	3.72134	6.20653	6.26883	4.0193
2001	AFT	3.54979	3.18051	4.03271	2.95697	1.99631	33.83022	2.53429	3.32689	3.69053	4.82326	4.52198	4.09482
2000	AFT	4.68961	3.33512	2.83262	2.72895	3.3256	3.9992	3.23142	3.61875	4.06898	6.45082	5.21509	3.93392
1999	AFT	2.52027	1.86742	2.9534	2.69039	2.03559	2.49071	2.33041	2.89877	2.80118	4.01779	4.09196	3.68523
1998	AFT	1.97595	2.26157	2.11999	2.25972	1.92133	2.17103	2.18597	2.59025	2.30514	4.02209	4.29256	3.3233
1996	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1427
1995	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1994	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.71515
1993	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.77369	2.48641	0.0	0.0	0.0
1992	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1991	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1990	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1989	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12931	HORN CREEK		S 36881	S 49201		05/03/1972	4.0S	10.0W	20	QM	2.0		HORN CR	NESTUCCA R
12931	HORN CREEK	32238	S 26793	S 33272		08/03/1959	4.0S	10.0W	8	MU	0.2		HORN CR	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	0.01534	0.01534	0.0	0.0	0.0	0.01534	0.01534	0.0	0.01534	0.0	0.0	0.0
2004	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2003	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2001	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2000	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1996	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.03682	0.0	0.0	0.0
1995	AFT	0.09206	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1994	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.08592
1993	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.998	0.38364	0.0	0.0	0.0
1992	AFT	13.63357	0.0	0.0	0.0	0.0	0.0	0.0	1.95151	0.0	0.0	0.0	0.0
1991	AFT	6.29921	0.0	14.09482	7.07871	0.0	0.0	0.0	0.0	0.0	22.0669	29.95273	24.81233

1990	AFT	4.56713	0.0	0.0	0.0	0.0	0.0	4.54043	5.19809	0.78962	17.55807	16.66226	14.29123
1989	AFT	8.7264	0.0	0.0	0.0	5.93586	0.0	0.0	0.0	10.71628	16.92834	20.36397	26.00797
1988	AFT	17.49301	10.01012	0.0	0.0	0.0	0.0	0.0	0.75034	8.96885	15.83796	21.0735	9.83121

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12932	UNN STR / EAST CREEK	44554	S 30792	S 40432		07/08/1965	4.0S	10.0W	16	MU	0.5		UNN STR	HORN CR

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	0.01534	0.01534	0.0	0.0	0.0	0.01534	0.01534	0.0	0.01534	0.0	0.0	0.0
2004	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2003	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2001	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2000	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1997	AFT	17.2777	14.88905	14.10345	14.94761	13.83467	18.33607	13.9852	16.6231	17.79248	23.13859	24.02215	18.4022
1996	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.02455	0.0	0.0	0.0
1995	AFT	0.02946	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1994	AFT	0.0	0.0	0.0	0.0	0.0	0.03068	0.0	0.0	0.0	0.0	0.0	0.0
1993	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1992	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1991	AFT	0.22096	0.0	0.22096	0.22096	0.0	0.0	0.0	0.0	0.0	0.22096	0.22096	0.22096
1990	AFT	0.22096	0.0	0.0	0.0	0.0	0.0	0.22096	0.22096	0.22096	0.22096	0.22096	0.22096

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12933	DUNE WELL 2		G 10392	G 11260		04/11/1984	4.0S	10.0W	19	QM	0.3		A WELL	NESTUCCA R
12933	DUNE WELL 2	80488	G 10392	G 11260		04/11/1984	4.0S	10.0W	19	QM	0.3		A WELL	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	4.60365	2.78564	2.52079	2.56713	2.67516	3.35615	2.92006	3.57649	3.94077	5.72932	5.96256	3.78426
2004	AFT	3.08516	2.58309	2.55486	3.24628	2.51834	3.2782	2.9443	3.94967	4.21175	6.89244	6.31119	3.9571
2003	AFT	3.48043	2.78103	2.53582	2.40263	2.13503	2.62309	2.48826	2.89857	5.25118	7.1051	6.33205	4.29737
2002	AFT	2.06905	1.53667	2.48519	1.84043	2.29446	3.13549	3.1582	3.40616	3.74067	6.21083	6.09851	3.81371
2001	AFT	2.02255	1.74824	1.73168	2.44571	1.99631	2.04959	1.42212	2.10853	2.9643	4.48356	3.65752	2.96317
2000	AFT	2.80081	2.56352	2.25516	2.12636	2.21443	2.40641	1.85751	2.06433	2.15362	3.30305	3.53131	2.32749
1999	AFT	2.52027	1.86742	2.9534	2.69039	2.03559	2.49071	2.33041	2.89877	2.80118	4.01779	4.09196	3.68523

1998	AFT	1.97595	2.26157	2.11999	2.25972	1.92133	2.17103	2.18597	2.59025	2.30514	4.02209	4.29256	3.3233
1996	AFT	3.55639	3.0537	3.04127	3.05232	3.30857	3.05477	2.91407	2.48856	4.0224	5.40985	4.83949	5.1585
1995	AFT	4.04173	3.84686	2.82537	3.11278	2.75985	2.5903	3.09129	3.79238	3.96486	5.12152	5.5102	4.1786
1994	AFT	3.84118	3.71014	3.44299	3.94951	5.47736	4.27972	4.03114	4.35921	4.4077	5.86051	5.75187	2.71515
1993	AFT	2.379	2.40309	3.7617	4.61408	4.31824	4.42197	3.4143	3.89381	5.0135	5.14101	6.14147	4.72257
1992	AFT	4.04327	8.57756	8.33144	7.49194	6.27512	7.05263	2.83243	6.89182	5.08301	5.84624	5.70016	3.58723
1991	AFT	13.83673	16.76108	14.64569	11.92849	13.19809	15.04526	15.26653	16.55516	18.20929	8.28264	1.27574	5.22479
1990	AFT	5.3098	6.75847	6.99125	6.74804	6.05585	7.31149	5.45189	5.56559	8.01841	5.81525	6.01427	3.733
1989	AFT	2.9845	6.47	6.65474	7.00092	6.69249	7.06828	7.76354	8.94399	4.71873	5.00383	4.15528	2.09574
1988	AFT	0.51772	2.75157	13.33497	14.70185	14.05861	14.69725	13.69894	16.205	12.46555	13.31195	12.05953	12.14116

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
12934	WELL 5		G 10798	G 11754		11/27/1987	4.0S	10.0W	30	QM	0.4456		WELL 4	NESTUCCA R
12934	WELL 5	80489	G 10798	G 11754		11/27/1987	4.0S	10.0W	30	QM	0.6684		A WELL	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	3.19862	2.88811	2.64468	2.48762	2.46101	3.27365	2.84603	3.63152	4.13347	6.30066	6.89066	4.96471
2004	AFT	3.20737	2.39632	2.38779	2.81344	2.13614	0.40175	2.48713	3.65895	3.71542	6.14982	5.77186	4.59939
2003	AFT	6.80061	5.50148	5.07399	4.96452	4.42574	5.40889	4.63823	7.36449	9.86104	13.74963	12.92889	9.66994
2002	AFT	3.40362	2.99823	2.84894	2.52487	2.26638	2.96397	2.99192	2.84256	3.47009	5.67942	5.94988	3.81242
2001	AFT	7.5806	6.81543	7.41264	7.2436	5.86168	4.30857	3.23403	5.95936	6.87942	9.79582	9.39355	8.31315
2000	AFT	8.538	9.65201	5.11244	5.20948	4.53972	6.96854	5.90811	6.593	7.40331	11.56839	12.07791	8.37541
1999	AFT	5.21463	5.93454	10.02393	5.47168	4.45339	5.20702	4.99834	6.02406	6.37093	8.91677	9.09547	8.48792
1998	AFT	5.25471	4.75304	3.11741	4.78118	5.36709	5.71367	4.21466	4.97035	6.3075	8.03989	9.29961	6.93745
1997	AFT	7.44403	6.44376	5.77778	7.45889	7.78281	8.94623	7.99963	8.60162	9.96603	14.07208	14.85079	10.20672
1996	AFT	6.57059	6.2042	5.42458	6.76611	6.37001	7.1439	7.24698	9.81973	8.94568	11.53346	12.89958	7.4232
1995	AFT	3.06079	2.75427	3.81138	3.69706	3.14445	4.20988	3.50406	4.48003	4.61156	6.27334	6.26687	5.25401
1994	AFT	5.37182	4.80843	4.98585	4.78661	2.11069	4.79929	4.03449	4.37806	7.55589	11.39475	6.77854	7.83876
1993	AFT	6.95197	6.61519	6.74377	6.55537	4.98404	5.96704	4.93398	6.13819	6.87515	6.9934	7.23142	6.77195
1992	AFT	0.0	0.0	0.0	0.0	0.0	1.0398	5.099	5.16863	9.25628	10.90916	10.64867	7.04824
1991	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.07181	0.05063
1990	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.09206	0.0	0.0	0.0
1989	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.31962	0.0	0.0

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To

12935	WELL 4		G 10798	G 11754		11/27/1987	4.0S	10.0W	30	QM	0.2228		WELL 5	NESTUCCA R
12935	WELL 4	80489	G 10798	G 11754		11/27/1987	4.0S	10.0W	30	QM	0.6684		A WELL	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	3.21074	2.80571	2.59638	2.59868	2.54976	3.34663	2.91063	3.63336	4.07568	6.23581	7.13184	4.56903
2004	AFT	3.08507	2.55734	2.47279	2.83499	2.15139	2.92248	2.6367	3.64478	3.81065	6.29241	6.06739	4.70977
2003	AFT	3.46687	2.81552	2.42998	2.31551	2.0847	2.57925	2.2866	3.53696	4.73064	6.71864	6.19294	4.39849
2002	AFT	2.93997	3.19906	2.8038	2.49246	2.97867	3.10998	3.09703	2.98545	3.47282	5.73263	6.02191	3.76811
2001	AFT	3.03596	2.8174	3.34675	3.45247	2.74255	2.6499	8.05956	3.35381	4.44483	4.62504	3.71241	3.17633
2000	AFT	3.69341	2.81347	2.33447	2.45662	2.76578	3.05481	2.51858	2.79874	3.00641	4.69001	5.0042	3.39748
1999	AFT	2.62381	2.7082	4.48955	2.76805	2.20165	2.64634	2.5713	3.0851	2.47058	3.40758	3.97173	3.69458
1998	AFT	2.82307	2.4796	1.99094	2.51747	3.01687	2.78045	2.12475	2.51362	3.10609	3.91723	4.51336	3.4247
1996	AFT	3.76805	3.58348	3.84781	3.89648	3.29574	3.67546	3.6142	4.2058	4.77041	6.25787	6.9713	4.1295
1995	AFT	3.08003	3.26042	3.18155	3.5926	3.15942	4.30366	3.56231	4.66828	4.68229	6.62915	6.48332	5.13561
1994	AFT	2.90096	2.92352	3.13595	4.2216	1.84388	4.03071	3.49875	4.09123	3.83151	5.60573	5.21571	3.99625
1993	AFT	0.73365	6.7617	6.36489	7.03698	4.85932	4.31508	0.40567	4.07702	4.93871	4.87782	4.78539	4.43863
1992	AFT	0.0	0.0	0.0	0.0	0.0	1.07764	4.85309	6.69031	8.45241	9.43105	9.67104	6.79275
1991	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.06628	0.05585
1990	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.09206	0.0	0.0	0.0
1989	AFT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.31962	0.0	0.0

Pod Id	Facility	Cert	Permit	Appl	Claim	Priority	Township	Range	Sctn	Use	Rate	Acre Feet	Source	Tributary To
61662	WELL 6	80489	G 10798	G 11754		11/27/1897	4.0S	10.0W	30	QM	0.6684		A WELL	NESTUCCA R

Water Year	Unit	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
2005	AFT	1.87494	2.66543	2.38545	2.45791	2.44837	3.17372	2.72153	3.40196	3.81851	5.86795	6.16133	3.91112
2004	AFT	3.33522	2.62808	2.59392	3.10014	2.35725	3.26396	2.91407	0.71585	3.73212	5.96468	5.85794	4.56698

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3739

February 4, 1991

Pacific City Water District
P.O. Box 88
Pacific City, Oregon 97135

REFERENCE: File 49201

We have received your notice that complete application of water has been made under Permit 36881.

At a later date, a representative of this office will make an inspection and survey of your project.

You will then be mailed a proposed certificate of water right covering the actual use of water as found by our Inspector. Any use described in the permit that was not made will not be included in the certificate.

In the meantime, the permit you hold is valid evidence of your right so long as you continue to use the water.

If you have any questions, please contact the Water Rights Section at 378-3739.

LHN:cam
036

DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

REPLY TO
ATTENTION OF:

June 15, 2009

Operations Division
Regulatory Branch
Corps No. NWP-2008-161

Mr. Tony Owen
Pacific City Joint Water-Sanitary Authority
P.O. Box 520
34005 Cape Kiwanda Drive
Pacific City, Oregon

Dear Mr. Owen:

Enclosed is your fully executed Department of the Army Permit.

Please carefully read the permit and its conditions. In addition, if you have a contractor and/or agent, please review these conditions with them to ensure that the work is performed in accordance with the permit terms.

Also be aware that other authorizations from Federal, state, or local governments may be required by law. If the work is not completed prior to the permit expiration date, you may apply for a time extension. We recommend you apply for a time extension at least 90 days before the expiration date of the permit.

If you have any questions, please contact Mr. Dominic Yballe at the above letterhead address, by telephone at (503) 808-4392 or via email at dominic.p.yballe@usace.army.mil.

Sincerely,

for Erik S. Petersen
Chief, Regulatory Branch

Enclosure

DEPARTMENT OF THE ARMY PERMIT

Permittee: Pacific City Joint Water and Sanitary Authority

Permit No: NWP-2008-161

Issuing Office: U.S. Army Corps of Engineers, Portland District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The project involves the discharge of approximately 5,340 cubic yards of fill, temporarily and permanently impacting approximately 1.41 acres below the ordinary highwater mark (OWHM) of Horn Creek and adjacent wetland. The Pacific City Joint Water and Sanitary Authority (PCJWSA) will install a municipal water intake, construct a water treatment facility with attendant features, and construct a delivery pipeline.

An existing treatment facility is currently non-functioning and will be abandoned in place along with the existing delivery pipeline. The replacement facility will be built in the near vicinity with new delivery pipeline. The intake structure will draw from Horn Creek above saltwater intrusion. The worksite will be isolated from flowing waters using sand bag check dams as appropriate. Rock weirs will be constructed upstream and downstream in the channel to maintain pool depths for intake and fish passage. The intake will permanently impact approximately 0.01 acre below the OHWM of Horn Creek.

The treatment facility, pipeline, and maintenance access road will require temporary impacts to approximately 0.8 acre adjacent wetland and permanent impacts to approximately 0.59 acre of adjacent wetland. Where available, pipeline construction will follow existing fill prisms to minimize impacts to waters of the U.S. The pipeline will be directionally bored under a 50-foot wide section of the Nestucca River (a Section 10 Navigable Water of the U.S.) to minimize potential for impacts to aquatic resources. In the event of an accidental discharge of drilling fluids into flowing waters, the permittee will implement the "Horizontal Directional Drill Contingency Plan: Horn Creek Water Treatment Plant Project," dated February 25, 2008.

Purpose: Replace deficient water intake, treatment facility, and conveyance line.

Project Location: The project is located on Horn Creek, near the city of Pacific City, Tillamook County, Oregon. The site is in Section 20, Township 4 South, Range 10 West.

Drawings: Thirteen (13) drawings labeled Corps ID NWP-2008-161 (Enclosure 1).

General Conditions:

1. The time limit for completing the work authorized ends on April 30, 2015. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for

consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. You shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Tillamook County
P.O. Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

2. The permittee shall fully implement the *Draft - Horn Creek Water Treatment Plant Wetland Mitigation Plan* (Plan), dated February 2008. Excerpts of the plan have been included for your convenience (Enclosure 3). The planting components of the Plan shall be completed by the end of the first appropriate planting season following the first discharge of dredge or fill material into waters of the U.S. The estimated time for completion of the plantings is Fall, 2009.

3. The permittee shall submit an "as-built" report by December 1, 2009. The contents of the report shall include a narrative of the actions referenced in the Plan completed to date, and photographs showing conditions of the site before, during, and after construction. Photographs shall be dated and labeled on a site map showing location and orientation.

4. Monitoring shall begin immediately after the mitigation construction and continue for a period of at least 5 years or until the mitigation site meets the success criteria outlined in the Plan.

5. An annual monitoring report that summarizes the above documentation shall be submitted by December 1 of each monitoring year to the Corps. This monitoring report will primarily document the vegetation and the hydrology of the mitigation area. The monitoring report will include vegetation monitoring data (i.e., species plant counts), photo documentation, sample collection point or transect locations, and visual observations. The monitoring report shall include observations on invasive/noxious plant growth and wildlife usage, any actions (i.e., maintenance) that occurred since the last monitoring period, and any corrective actions proposed to meet the success criteria.

6. Your responsibility to complete the required compensatory mitigation as set forth in the above Special Conditions will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.

7. Horn Creek supports listed species protected under the Endangered Species Act and is designated Essential Fish Habitat for salmon species as designated under the Magnuson-Stevens Fishery Conservation and Management Act. Both of these Acts require the Corps to complete formal consultation with the National Marine Fisheries Service (NMFS). The NMFS has issued a Biological Opinion dated May 20, 2009 (Enclosure 4). The Terms and Conditions and Reasonable and Prudent Measures contained in the Opinion are Non-Discretionary special conditions of this DA Permit.

8. You shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure 5).

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

   ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
   (x) Section 404 of the Clean Water Act (33 U.S.C. 1344).
   ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

   a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

   b. This permit does not grant any property rights or exclusive privileges.

   c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

   a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

   b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

   c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

   d. Design or construction deficiencies associated with the permitted work.

   e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

   a. You fail to comply with the terms and conditions of this permit.

   b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

   c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

   Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Douglas Kellow, PCJWSA Board Chair — 6/5/09
(PERMITTEE SIGNATURE) (DATE)

DOUGLAS KELLOW, PCJWSA Board Chair — TONY OWEN MANAGER
(PRINTED NAME) (TITLE)

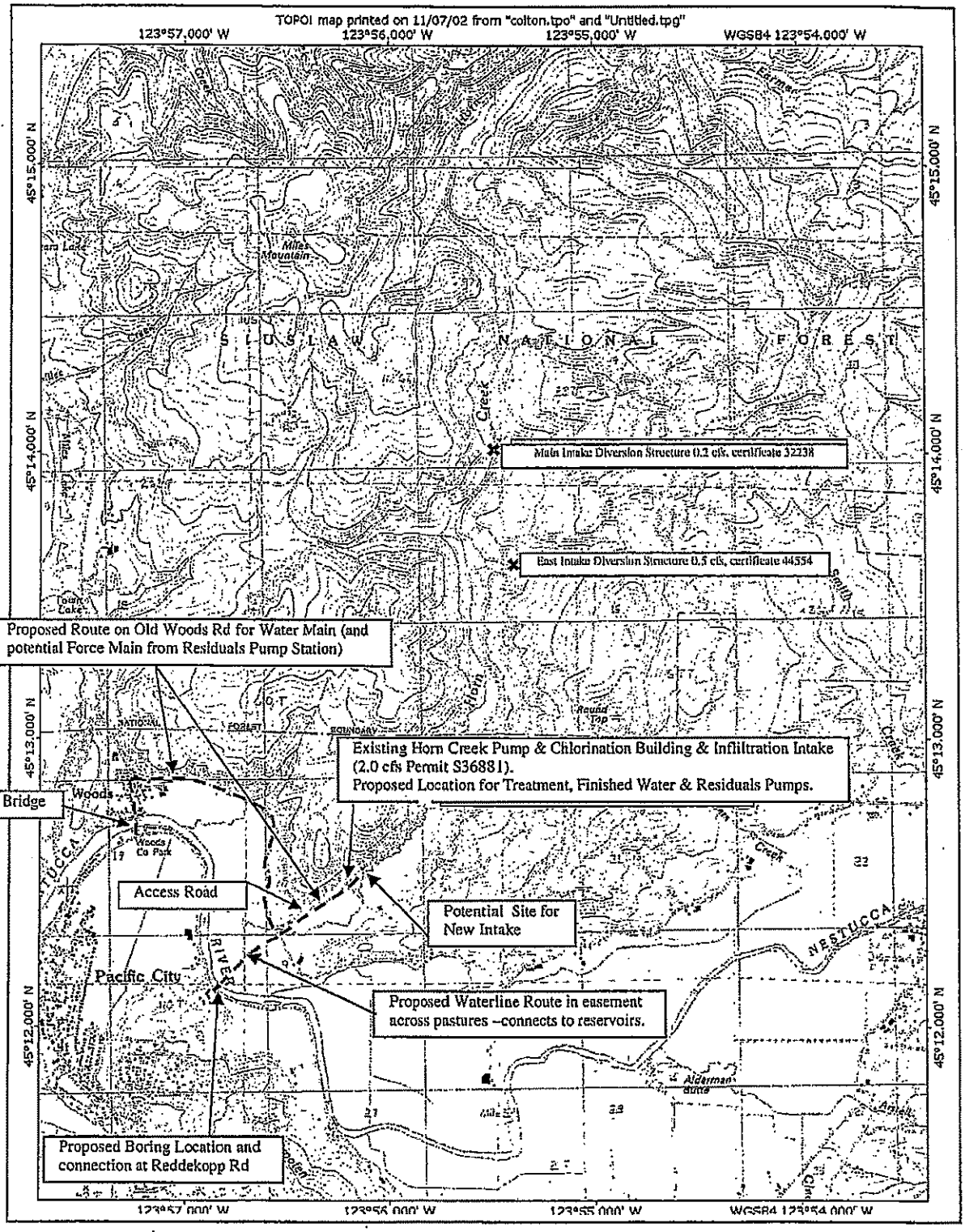
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for — 6/12/09
Steven R. Miles, P.E. (DATE)
Colonel, Corps of Engineers
District Commander

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

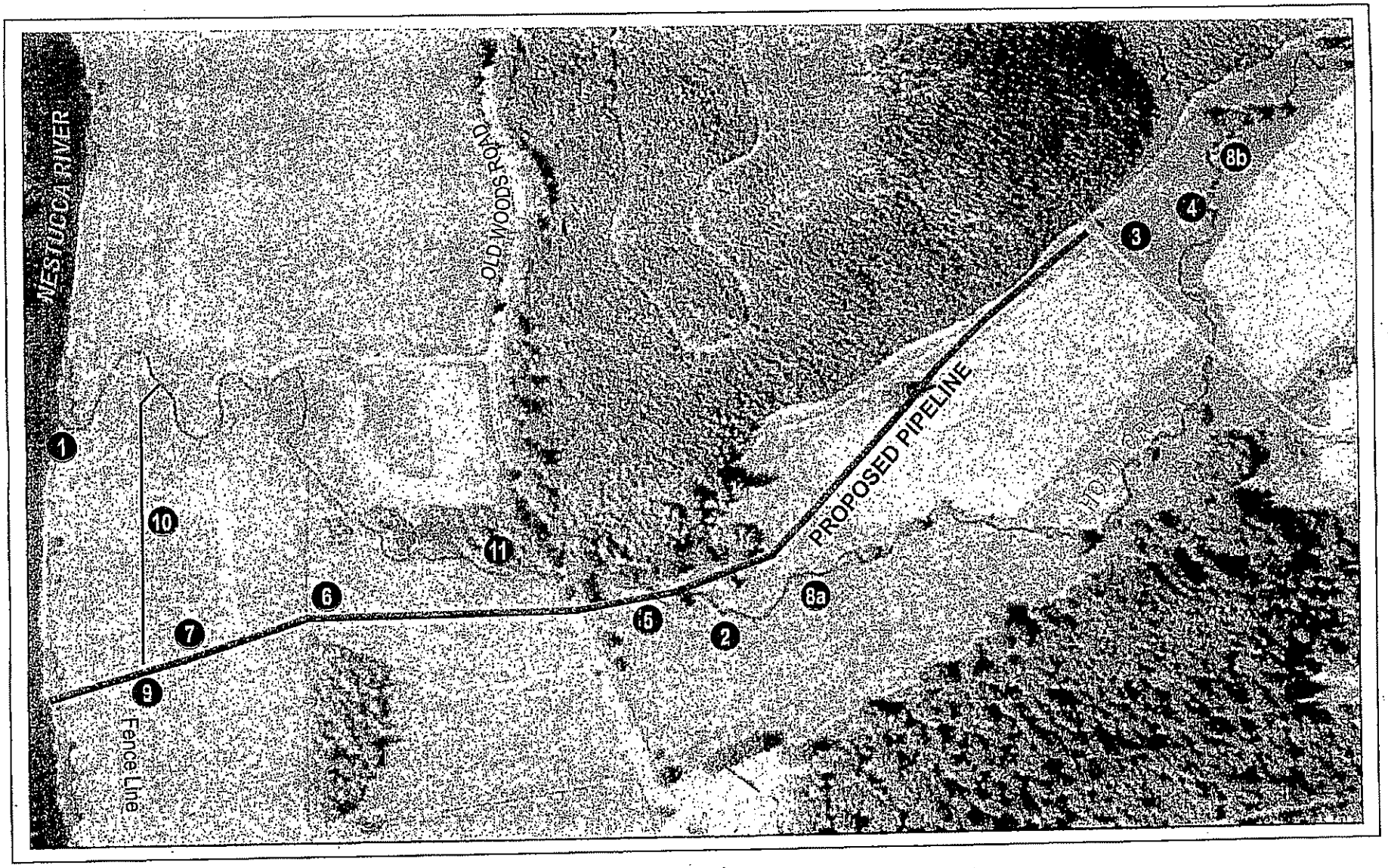
(TRANSFEREE) (DATE)

Figure 1. Project Location and Proposed and Existing Facilities



COE NWP-2008-161

Enclosure (1)



N

0 320

APPROXIMATE SCALE IN FEET

LEGEND

1. Nestucca/Horn Creek confluence
2. Limits of tidal influence (Horn Creek)
3. Treatment facility location
4. Intake location
5. Horn Creek crossing
6. Canal crossing
7. Ditch crossing

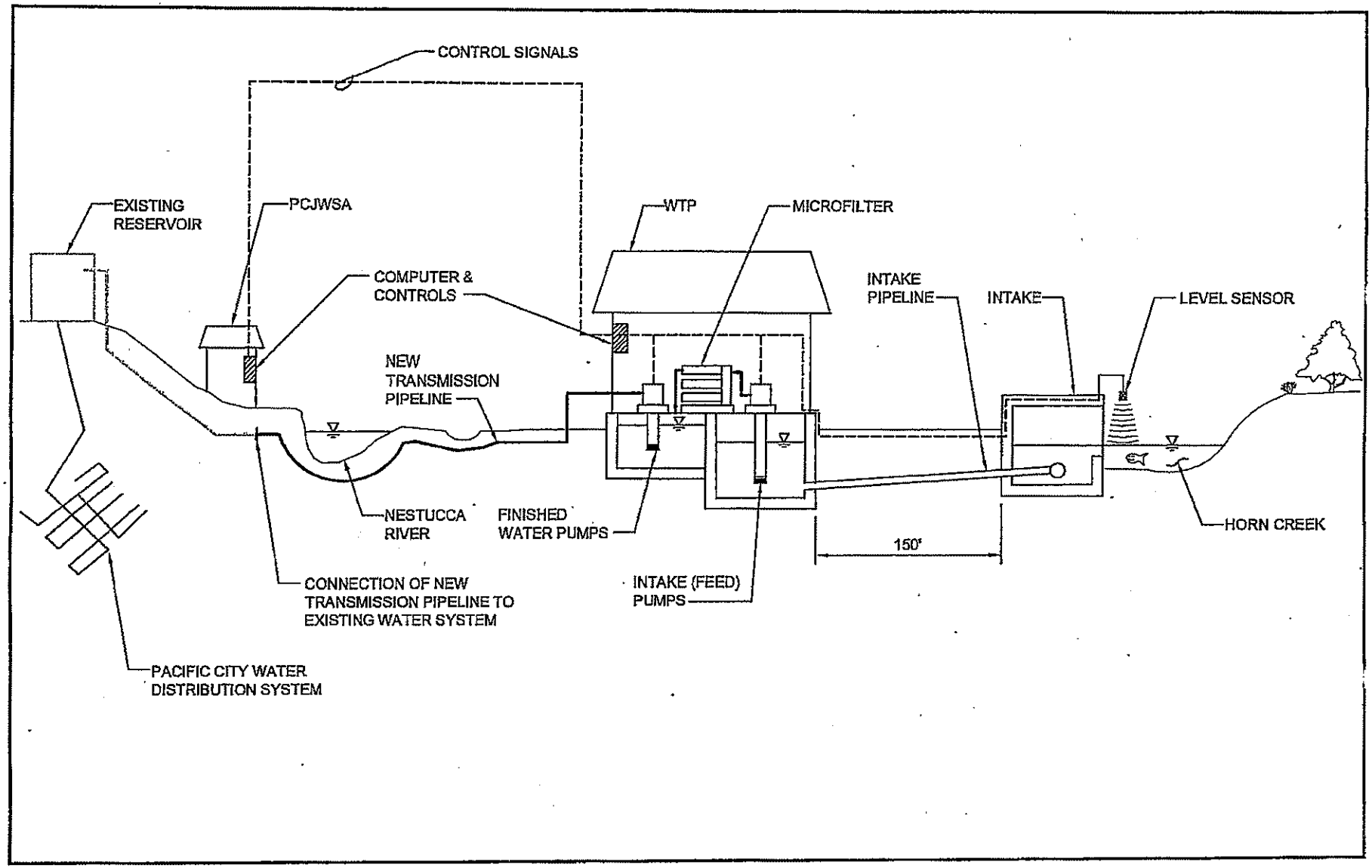
8a. In-stream large wood (3 structures)

8b. In-stream large wood (2 structures)

9. Nestucca River boring
10. Temporary construction access road
11. Mitigation reference site

Figure 2
Site Plan Layout
Horn Creek Water Treatment Plant
Wetland Mitigation Plan

COE NWP - 2008-161



Parametrix DATE: Feb 25, 2008 FILE: PC03000004P11F-23

NO SCALE

Figure 3
Conceptual WTP, Intake, and Control System
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

ACOE NWP-2002-161

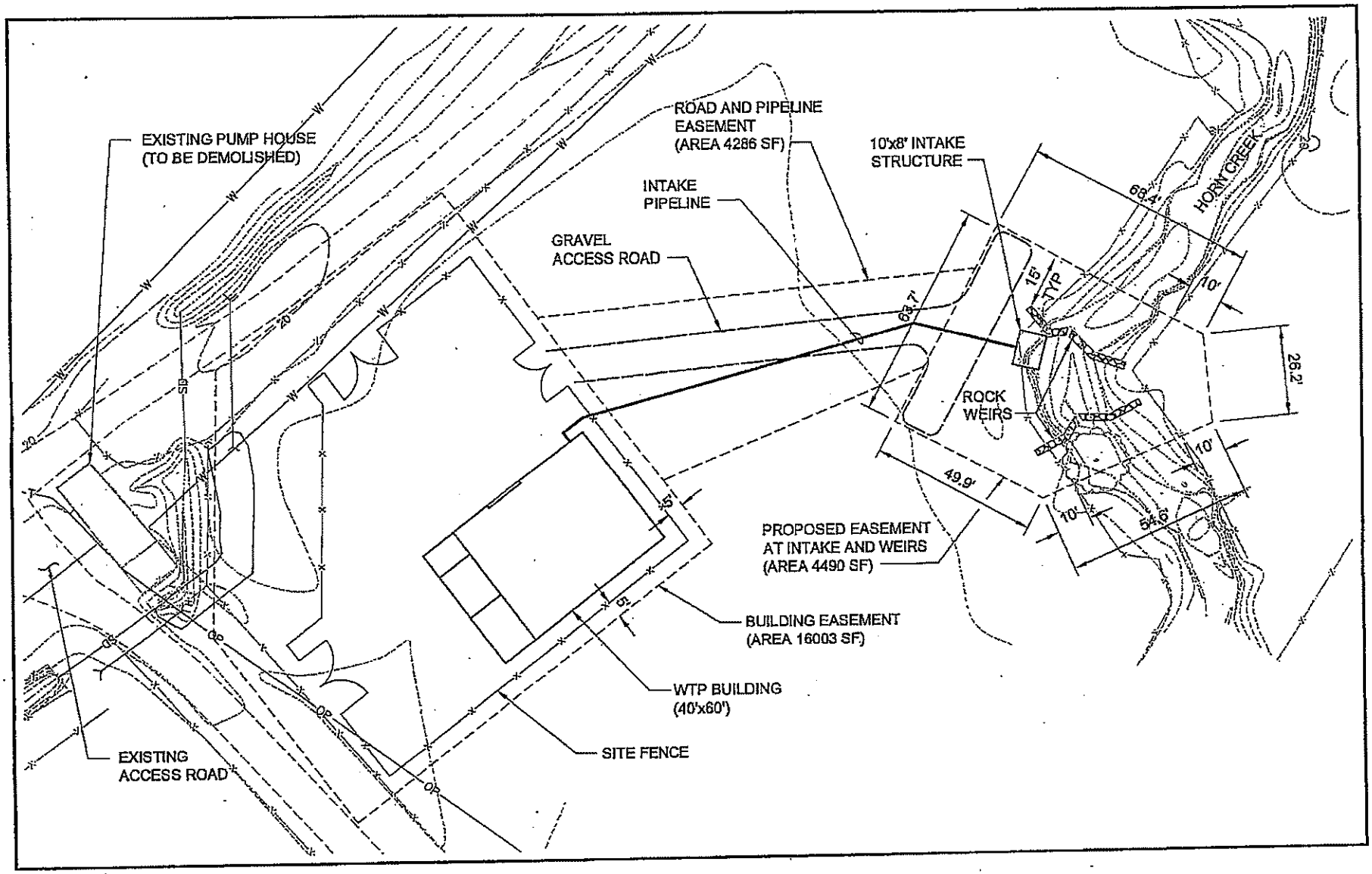
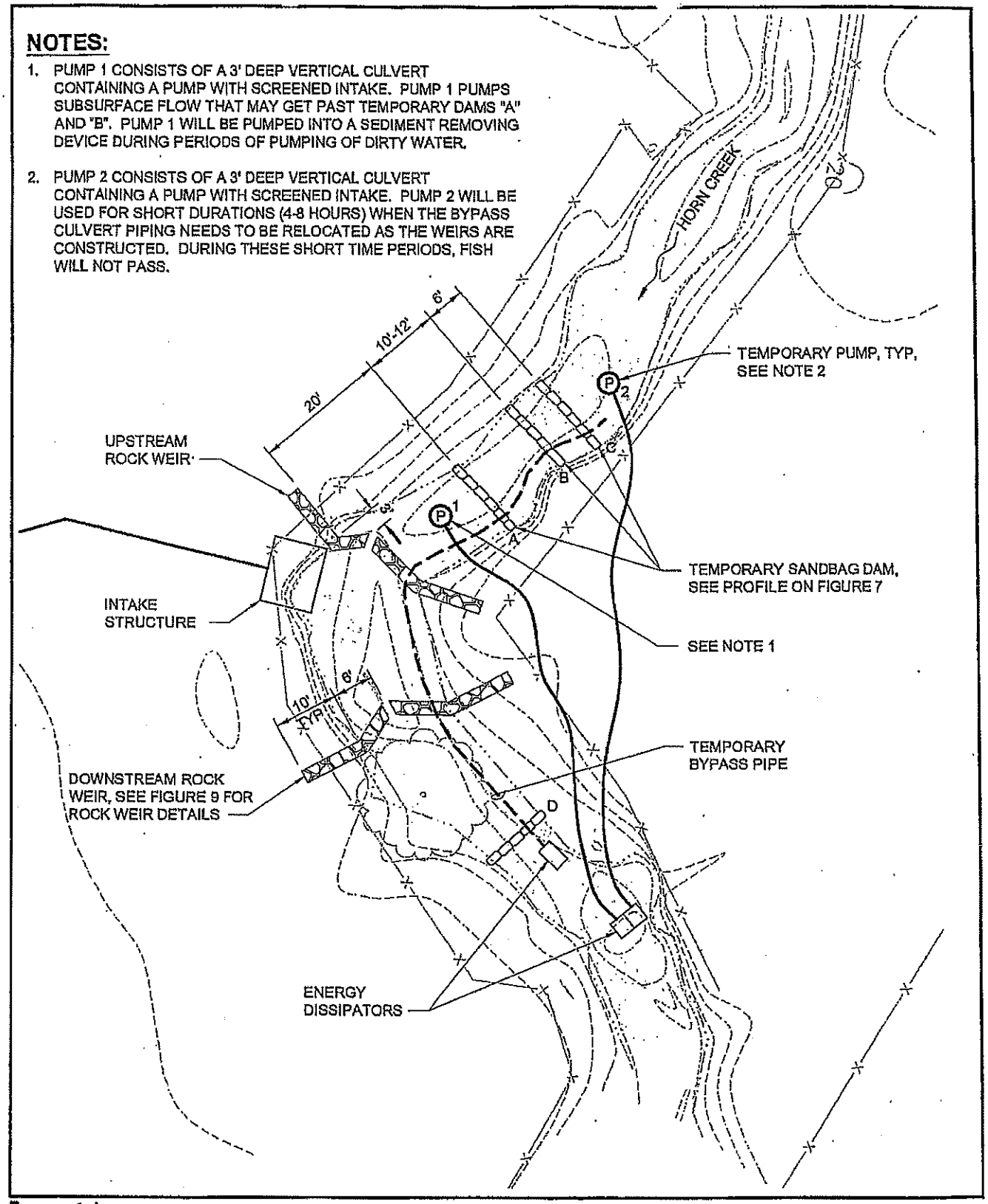


Figure 4
Site Plan at WTP and Intake
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

COE NWP-2008-761



Parametrix DATE: Feb 25, 2008 FILE: P03000004P11F-17

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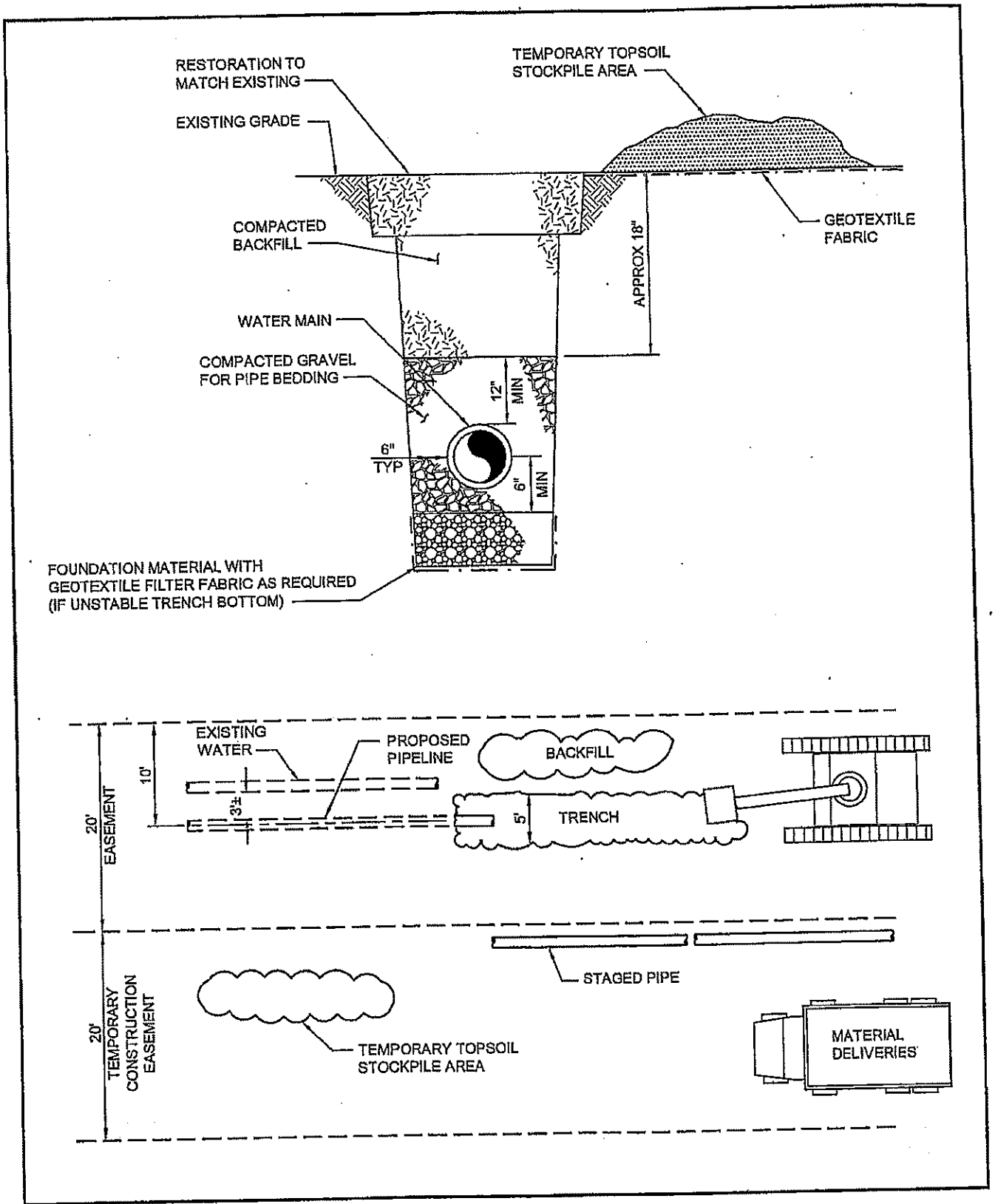
0 20'

SCALE IN FEET

Figure 5
Temporary Stream Dewatering
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

CCE NWP-2008-161

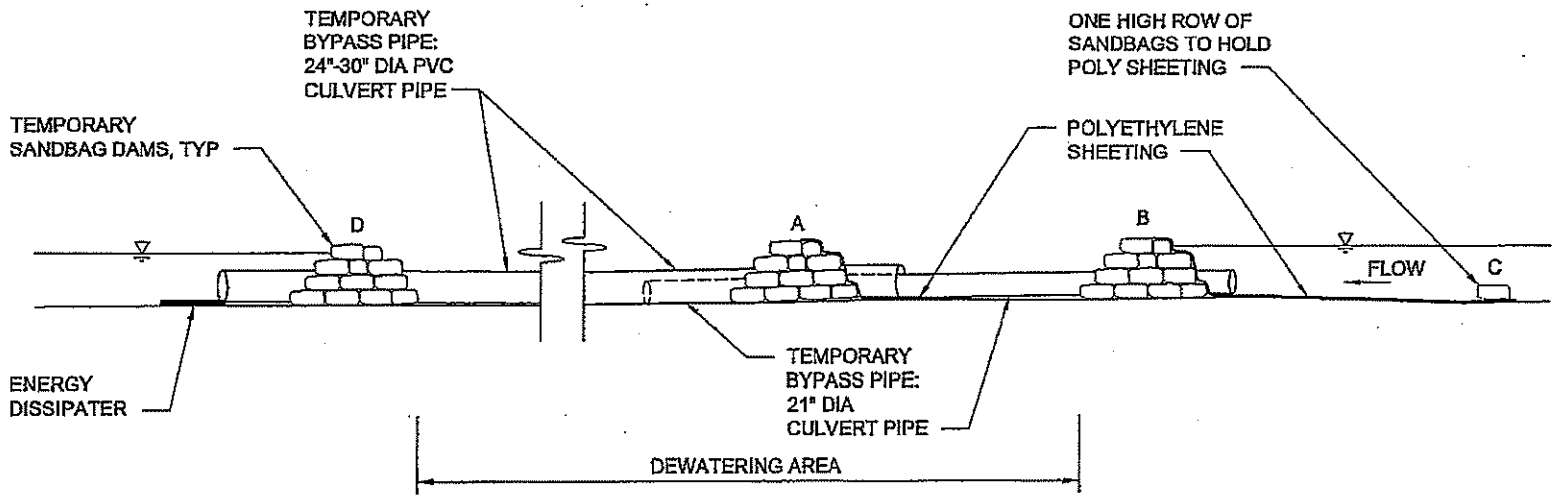


Parametrix DATE: Feb 25, 2008 FILE: P03100004P11F-18

Figure 6
Typical Pipe Trench
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

NO SCALE

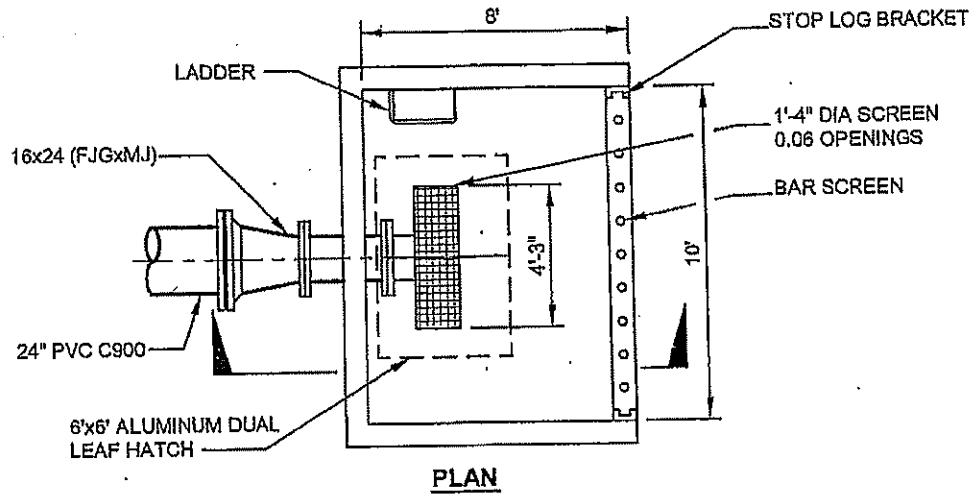
COE NWP - 2008 - 161



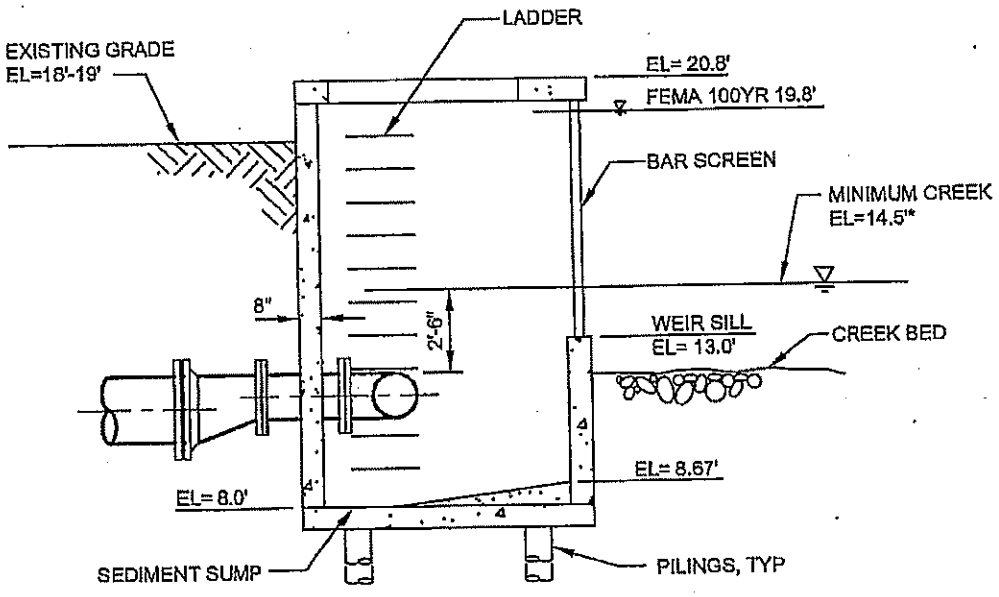
Parametrix DATE: Feb 25, 2008 FILE: P03300004P11F-20

NO SCALE

Figure 7
Temporary Dams And Pipe Profile
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN



PLAN



SECTION

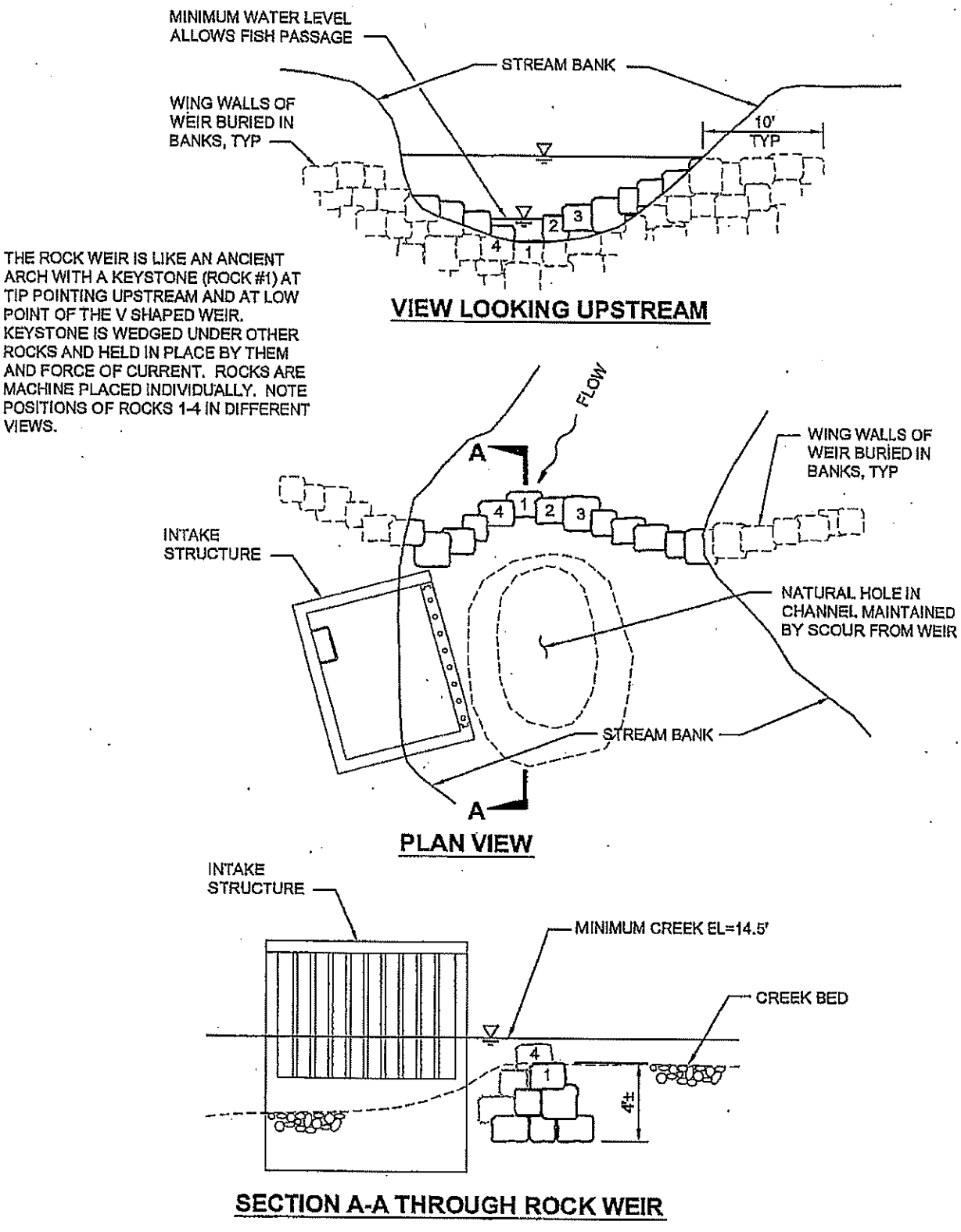
* FROM HEC-RAS MODEL AT 1 CFS

Parametrix DATE: Feb 25, 2008 FILE: P03300004P11F-21

SCALE: 3/16"=1'-0"

Figure 8
Intake Structure
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

COE NWP-2008-161

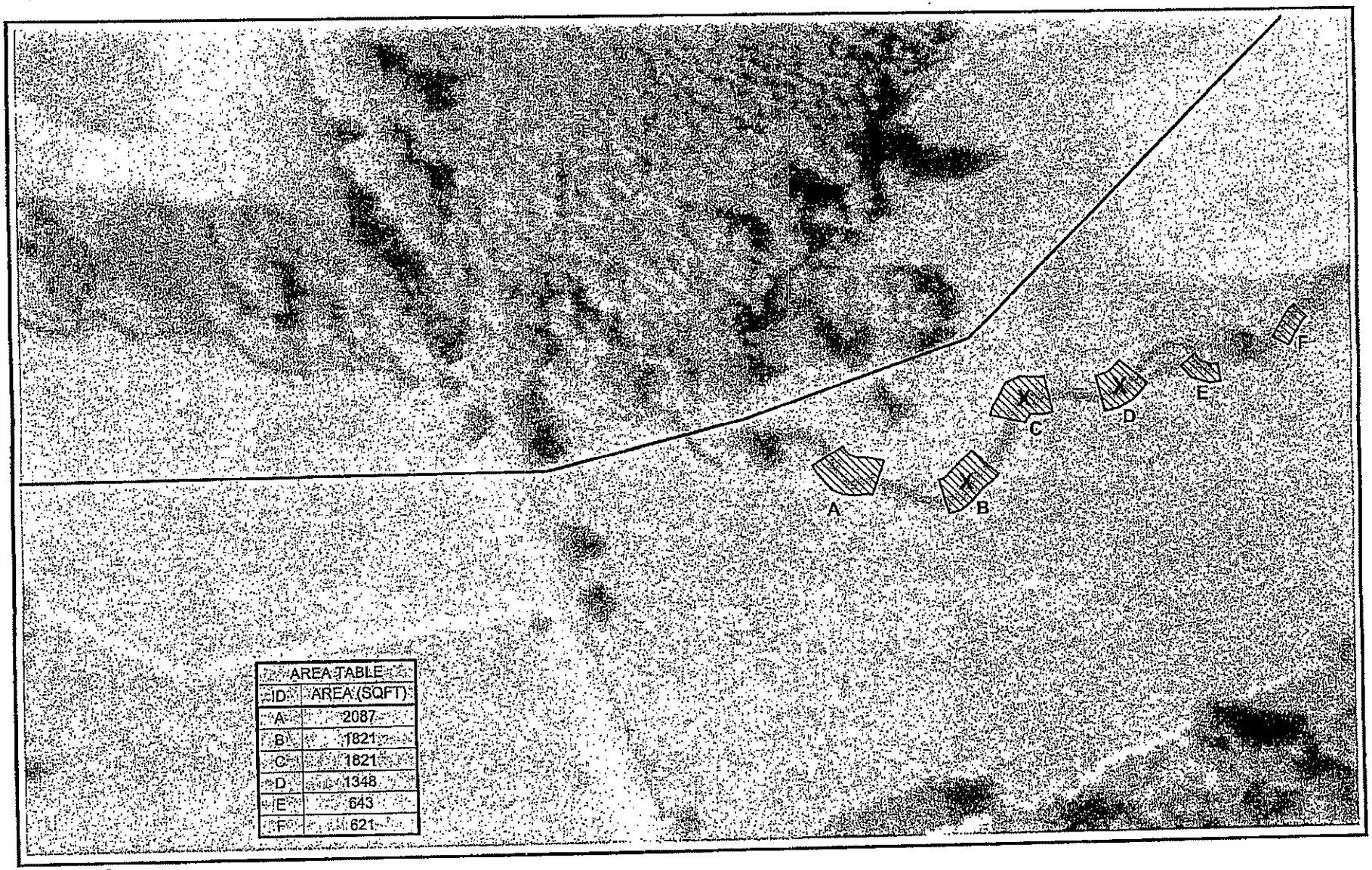


Parametrix DATE: Feb 25, 2009 FILE: P03300004P11F-22

NO SCALE

Figure 9
Rock Weir Details
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

COE NWP-2008-161



AREA TABLE	
ID	AREA (SQFT)
A	2087
B	1821
C	1821
D	1348
E	643
F	621

Parametrix DATE: Feb 22, 2008 FILE: PO3300004P11F-10

N

0 150'

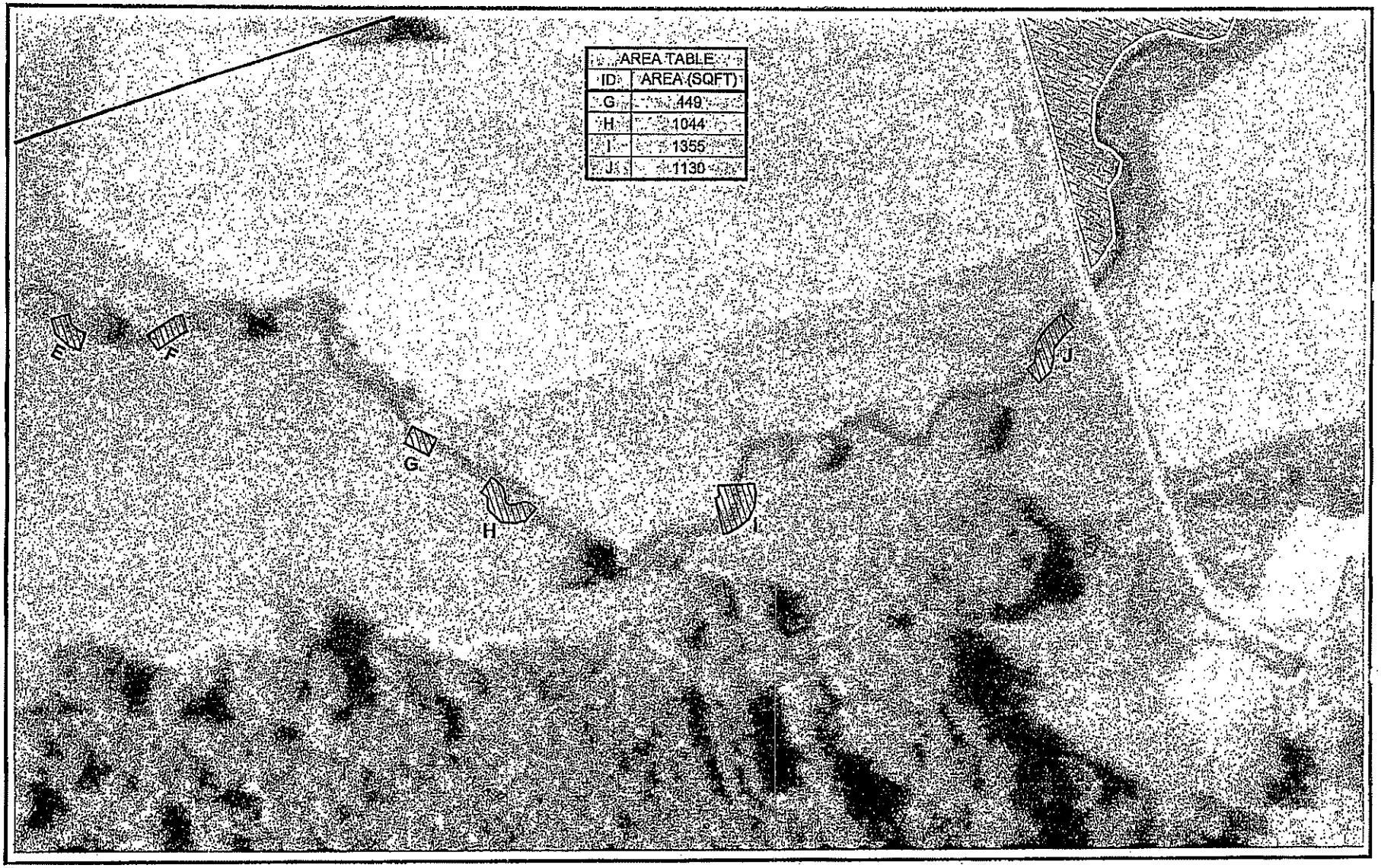
SCALE IN FEET

LEGEND

X IN-STREAM STRUCTURE

Figure 10A
Riparian Planting Plan
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

COE NWP-2008-161

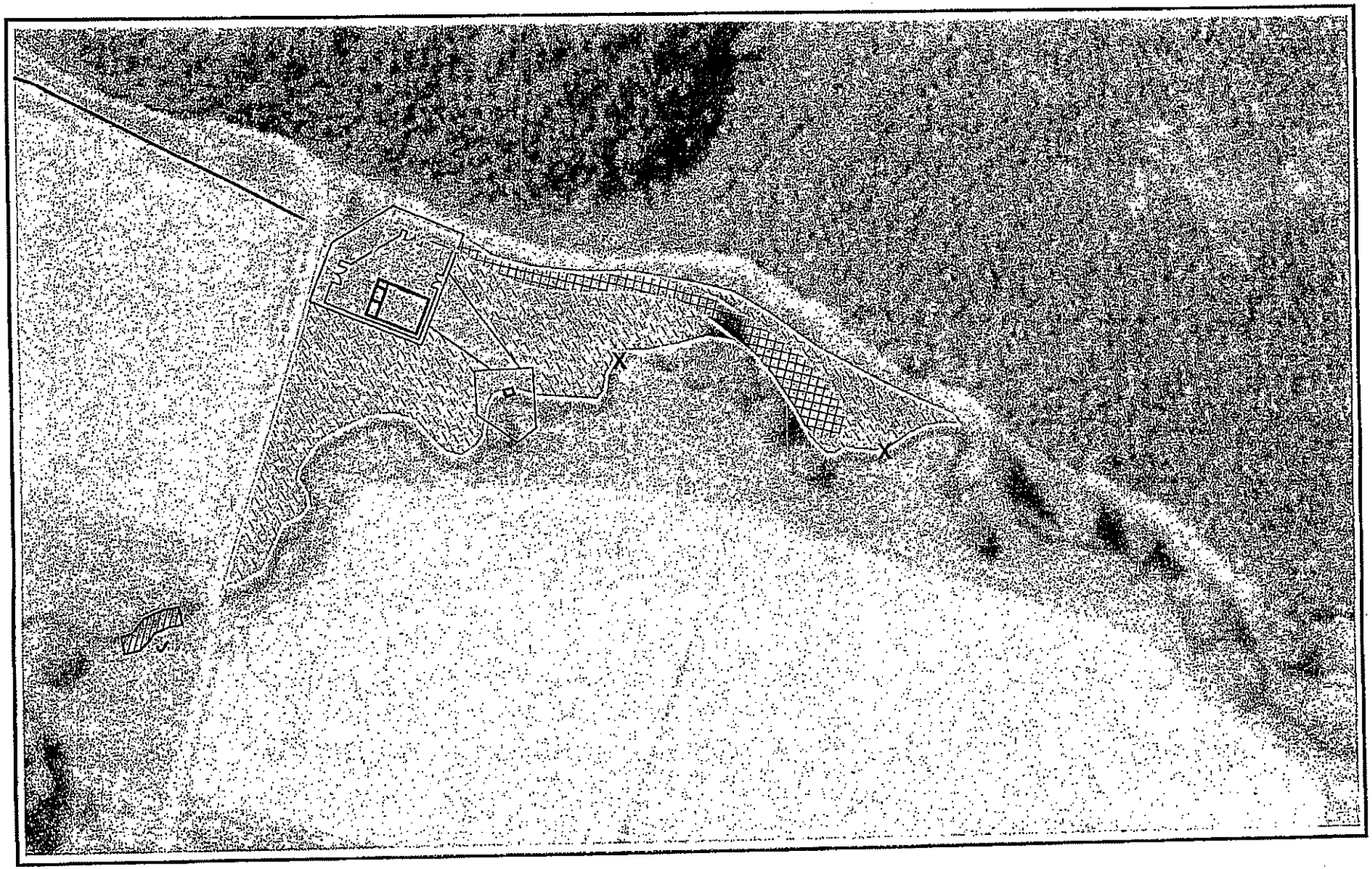


Parametrix DATE: Feb 22, 2008 FILE: PO3300004P11F-10

0 N 150'
SCALE IN FEET

Figure 10B
Riparian Planting Plan
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

CASE NWP-2008-114



Parametrix DATE: Feb 26, 2008 FILE: PO3300004P11F-10

0 N 150'
SCALE IN FEET

LEGEND

- WETLAND MITIGATION PLANTINGS (65,859 SQFT)
- UPLANDS (13,640 SQFT)
- X IN-STREAM STRUCTURE

Figure 10C
Riparian Planting Plan
HORN CREEK WATER TREATMENT PLANT
WETLAND MITIGATION PLAN

CoE NWP-2008-161

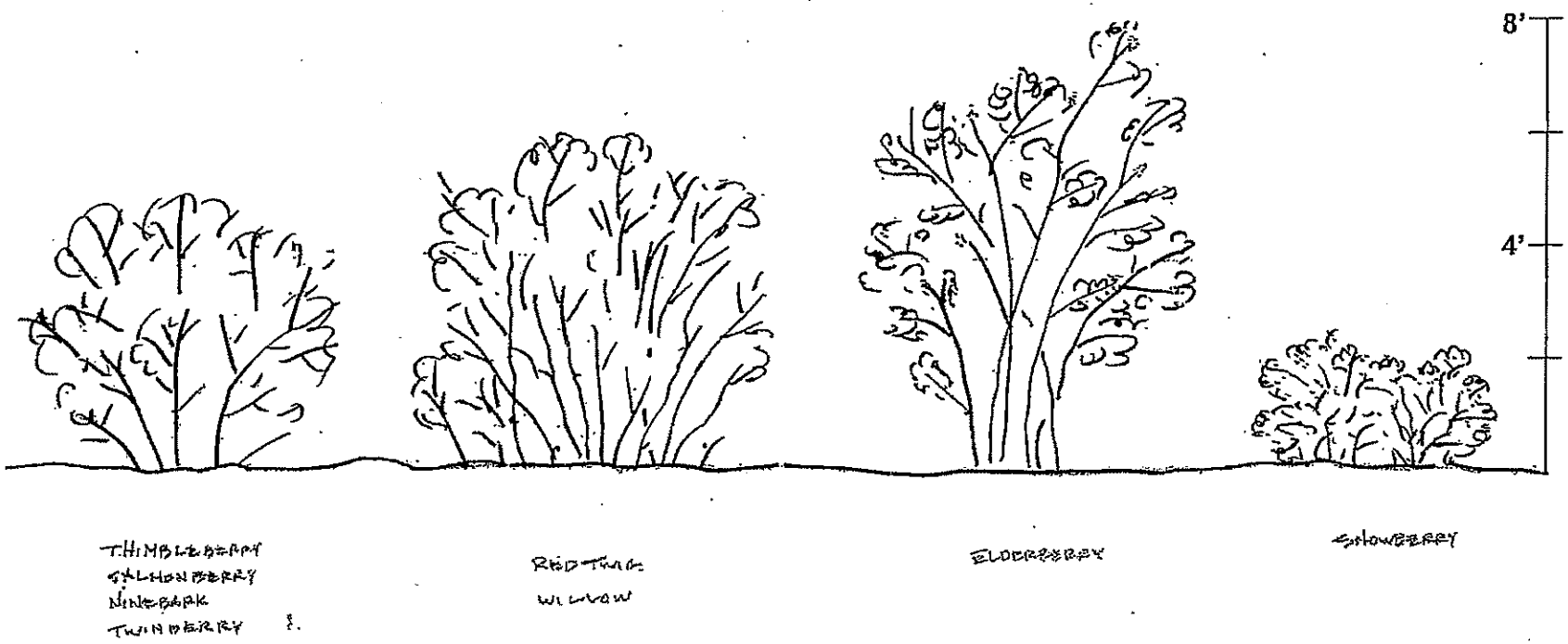


Figure 11
Typical Shrub Heights (Mature)
Horn Creek Water Treatment Plant
Wetland Mitigation Plan

COE NWP-2008-161

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
Northwest Region Portland Office
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987
(503) 229-5263
Fax: (503) 229-6945
TTY: (503) 229-5471

April 7, 2009

Mr. Dominic Yballe
U.S. Army Corps of Engineers
ATTN: CENWP-OD-GP
PO BOX 2946
Portland, OR 97208-2946

Dear Mr. Yballe:

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) permit application #2008-~~00464~~161 (Department of State Lands [DSL] permit # 40144 -RF). The applicant, Pacific City Joint Water and Sanitary Authority, proposes to impact wetlands and waters to install a water intake structure and water treatment and delivery system. The project is located amid wetlands and waters of Horn Creek, near the City of Woods, in Tillamook County, Oregon (Section 20, T4S/R10W).

Project Description: Project elements include: 1) dewatering and excavating in Horn Creek to construct a water intake structure and rock weirs located above and below the intake; 2) demolishing the existing treatment building and abandoning existing pump wells by filling with gravel; 3) constructing a new water treatment building and a graveled maintenance access road; 4) constructing temporary access roads and staging areas; 5) installing through open trench work and by directional drilling a new water pipeline that will be located near the existing pipeline, which is to be abandoned in place; 6) installing through open trench work and by directional drilling a electrical conduit line and constructing two electric vaults; and 6) completing compensatory mitigation requirements.

Approximately 0.59-acres of wetlands and 0.001-acres of waters will be permanently impacted due to the project. Compensatory mitigation for these permanent losses will be accomplished within the project area as follows: 1) enhancement of 0.3-acres wetlands; 2) installation of up to 5 in-stream structures to increase pool frequency; and, 3) enhancement of woody riparian vegetation through plantings and the establishment of a 15-foot wide buffer in select locations along Horn Creek.

Horn Creek is tributary to the Nestucca River. The Nestucca River is classified as water quality limited under the Clean Water Act for the parameters of: Flow Modification and Habitat Modification; has an Environmental Protection Agency approved Total Maximum Daily Load (TMDL) that has been developed for the parameters of: Bacteria; Sedimentation and Temperature; and is on Section 303(d) List of impaired waterbodies for the parameter of: Dissolved Oxygen. In addition, the Nestucca River is listed as potential concern for the parameter of: Alkalinity.

The above listed parameters impair the following beneficial uses in the Nestucca River: anadromous fish passage; aquatic life; resident fish and aquatic life; salmonid fish rearing and spawning; salmon and steelhead spawning; shellfish growing and water contact recreation.

NWP-2008-161

Enclosure (2)

This review is predicated on the applicant obtaining a National Pollutant Discharge Elimination System (NPDES) permit for proposed discharges from filtered backwash activities. Compliance with the appropriate permit requirements will avoid adverse impacts to water quality parameters in Horn Creek.

Based on the information provided by the applicant, DEQ does not anticipate any long-term violations of State Water Quality standards, including Oregon Administrative Rule (OAR) 340-041-0004, Antidegredation Policy for Surface Waters, provided the following conditions are incorporated into the permit.

CONDITIONS

1) **Duration of Certificate:** This 401 Water Quality Certification (WQC) expires upon closure of the in-water timing window (see Condition 2) of the fifth year after issuance of the USACE permit. A new 401 WQC must be obtained prior to any substantial modification of the USACE 404 permit.

2) **Fish protection/ODFW timing:** In-water work is allowed only within the ODFW preferred time window as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2008, or most current version. Exceptions to the timing window must be reviewed and approved by ODFW and the National Marine Fisheries Service (NMFS).

3) **Aquatic life movements:** Any activity that may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, is prohibited. Unobstructed fish passage must be provided at all times during any authorized activity.

4) **Isolation of in-water work areas:** Isolation of in-water work areas from the active flowing stream must be accomplished to the maximum extent practicable. Methods of isolation include, but are not limited to: timing work at low water so as to effectively work in the dry; using silt curtains; cofferdams; inflatable bags; geo blocks; sandbags; sheet pilings; or similar materials. ODOT and their contractors are referred to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, for isolation techniques. http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf

5) **Cessation of Work:** Cease project operations under high flow conditions that may result in inundation of the project area, except for efforts to avoid or minimize turbidity or other resource damage as a result of the exposed project area.

6) **Turbidity:** All practical Best Management Practices (BMPs) on disturbed banks and within the stream must be implemented to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below.

a. **Monitoring:** Turbidity monitoring shall be conducted and recorded as described below. Monitoring shall occur each day during daylight hours when in-water work is being conducted. An appropriately and regularly calibrated turbidimeter is recommended, however, visual gauging is acceptable. *Turbidity that is visible over background is considered an exceedance of the standard.*

   i. Representative Background Point: a sample or observation must be taken every two hours at a relatively undisturbed area approximately 100 feet upcurrent from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, date, and time must be recorded prior to monitoring downcurrent.
   ii. Compliance Point: Monitoring shall occur every two hours approximately 100 feet downcurrent from the disturbance and be compared against the background measurement or observation. The turbidity, location, date, and time must be recorded for each sample.

b. **Compliance:** Results from the compliance points should be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1ST MONITORING INTERVAL	ACTION REQUIRED AT 2ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 2 hours	Continue to monitor every 2 hours
5 to 29 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 4 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work
VISUAL MONITORING		
No plume observed	Continue to monitor every 2 hours	Continue to monitor every 2 hours
Plume observed	Modify BMPs & continue to monitor every 4 hours	Stop work after 4 hours with an observed plume

If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every two hours. **If an exceedance over the background level continues after the second monitoring interval, the activity must stop until the turbidity levels return to background.** If, however, turbidity levels return to background at or after second monitoring level due to implementation of BMPs or natural attenuation, work may continue with appropriate monitoring as above.

If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for 2 hours; or 5-29 NTU over back ground for 8 hours, the activity must stop immediately for the remainder of that 24-hour period.

c. **Reporting:** Copies of daily logs for turbidity monitoring shall be available to DEQ, USACE, NMFS, USFWS, and ODFW upon request. The log must include: background NTUs or observation, compliance point NTUs or observation, comparison of the points in NTUs or narrative, and location, date, time, and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.

d. **BMPs to Minimize In-stream Turbidity:**
   i. Sequence/Phasing of work – The applicant will schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
   ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket shall be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or by using a closed-lipped environmental bucket shall be implemented;
   iii. Limit the number and location of stream crossing events. Establish temporary crossing sites as necessary at the least impacting areas and supplement with clean gravel or other temporary methods as appropriate;
   iv. Machinery will not drive into the flowing channel;
   v. Excavated material will be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled; and,
   vi. Use of containment measures such as silt curtains, geotextile fabric, and silt fence will be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

7) **Erosion Control:** The following erosion control measures (and others as appropriate, the applicant is referred to DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 http://www.deq.state.or.us/wq/stormwater/escmanual.htm) or comparable measures as specified in an NPDES 1200-C permit (if required) must be implemented:

   a) Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination must be deployed to prevent movement of soil from uplands into waterways or wetlands;

b) An adequate supply of materials needed to control erosion must be maintained at the project construction site;
c) To prevent stockpile erosion, compost berms, impervious materials or other equally effective methods must be deployed during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
d) Erosion control measures must be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and must remain in place until all exposed soil is stabilized;
    i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
    ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
e) Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas must use removable pads or mats to prevent soil compaction.
f) Avoided wetlands and planted areas must be flagged or fenced off to protect from disturbance and/or erosion.
g) Dredged or other excavated material must be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
h) Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other BMPs such as truck or wheel washes if needed, must be used when earth moving equipment will be leaving the site and traveling on paved surfaces; and,
i) Projects which disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: http://www.deq.state.or.us/wq/).

8) **Deleterious waste materials**: Biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete may not be placed in or where they could enter waterways or wetlands.

a. Concrete, cement, or grout must be cured for at least 24 hours prior to any contact with flowing waters;
b. Only clean fill, free of waste and polluted substances, may be used;
c. BMPs must be employed to prevent discharges of spills of deleterious materials to surface or ground water;
d. An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project construction site and deployed as necessary; and
e. All foreign materials, refuse, and waste must be removed from the area.

9) **Spill Prevention:** Vehicles must be fueled, operated, maintained, and stored and construction materials must be stored in areas that minimize disturbance to habitat and prevent adverse effects from potential discharges. In addition, the following specific requirements apply:

a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance can be made if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
   i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
   ii. Natural resource features would be degraded as a result of this setback; or,
   iii. Equal or greater spill containment and effect avoidance if staging area is less than 150 feet of any waters of the state;
b. If staging areas are within 150 feet of any waters of the state as allowed by subsection (a) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate;
c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in the vehicle staging area must be repaired before the vehicle resumes operation;
d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminates are removed if the equipment will be used below bankfull elevations;
e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be diapered to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state; and,
f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.

10) **Spill & Incident Reporting:**

a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.
b. If the project operations causes a water quality problem which results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect

fish specimens and water samples; and notify DEQ, ODFW, NMFS and USFWS as appropriate.

11) **Vegetation Protection and Restoration:**
   a. Riparian, wetland, and shoreline vegetation in the authorized project area must be protected from disturbance to the maximum extent practicable through one or more of the following:
      i. Minimization of project and impact footprint;
      ii. Designation of staging areas and access points in open, upland areas;
      iii. Fencing and other barriers demarking construction areas; and,
      iv. Use of alternative equipment (e.g., spider hoe or crane).
   b. If authorized work results in unavoidable vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, riparian, wetland and shoreline vegetation must be successfully reestablished to a degree that it functions (for water quality purposes) at least as well as it did before the disturbance. The vegetation must be reestablished by the completion of authorized work.

12) A copy of this WQC letter must be kept on the job site and readily available for reference by applicant personnel and contractors, DEQ, USACE, NMFS, ODFW, and other appropriate state and local government inspectors.

13) DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.

14) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application.

15) DEQ is to have site access upon reasonable request.

16) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit.

The applicant shall notify the DEQ of any change in ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Corey Saxon at (503) 229-5051 or saxon.corey@deq.state.or.us.

Sincerely,

Sally Puent,
Water Quality Manager
Northwest Region

T:CZS.certybal.08-164.doc

cc: Applicant
Jay Charland, DLCD
Joy Vaughn, DSL

DRAFT - Horn Creek Water Treatment Plant Wetland Mitigation Plan

Prepared for

Pacific City Joint Water-Sanitary Authority
P.O. Box 520
34005 Cape Kiwanda Drive
Pacific City, OR 97135

Prepared by

Parametrix
700 NE Multnomah, Suite 1000
Portland, OR 97232-4110
T. 503.233.2400 F, 503.233.4825
www.parametrix.com

February 2008 | 276-3300-004

NWP-2008-161

Enclosure (8)

TABLE OF CONTENTS

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APPENDICES

INTRODUCTION AND BACKGROUND

This Pacific City Joint Water and Sanitary Authority (PCJWSA) Mitigation Plan details mitigation for unavoidable impacts to wetlands and waters of the State/U.S. associated with construction of a water intake structure, water treatment facility, and associated infrastructure such as pipelines and access roads (Figure 1).

The project is located primarily within the Horn Creek drainage basin, which is a minor coastal drainage basin located northeast of Pacific City, Oregon. The Horn Creek drainage supports an active dairy farm with approximately 80 head of livestock and utilizing approximately 160 acres. Adjacent valley walls are in timber production.

Horn Creek discharges to the Nestucca River at approximately river mile (RM) 2.5. The proposed water intake, treatment system and associated infrastructure are located approximately 1 mile upstream of the Horn Creek/Nestucca River confluence, adjacent to an outdated intake system. The proposed municipal water delivery pipeline will be installed parallel to an existing PCJWSA water line that crosses beneath Horn Creek at approximately RM 0.5 and beneath the Nestucca River at approximately RM 3.3 (Figures 2 and 3).

Construction of a second pipeline, a force main for pump residuals (silty wastewater) is proposed. This pipeline will parallel the water delivery pipeline from the treatment facility to Old Woods Rd., then run north and west along Old Woods Rd. to the town of Woods, then turn south to cross above the Nestucca River. The pipeline will be installed within the Old Woods Rd. roadway prism, and will be suspended by the Woods Bridge above the Nestucca channel. No impacts to wetlands or waters of the State/U.S. from construction of the pump-residuals pipeline will occur along Old Woods Rd. or the Nestucca River crossing.

PURPOSE AND NEED

Population growth in Pacific City is about 4.2 percent per year and is projected to double by 2023 (Parametrix 2007). Continued community growth requires the expansion of the water supply system's source, treatment, and transmission capacity.

Based on projected future growth, the existing water supply source (a series of well fields) cannot meet future demands. A previous study (Parametrix 2003) for potential groundwater sources in the region showed that no aquifers were available to provide water at the estimated rates required in the future. Because neither expanding existing sources nor developing a new groundwater source is feasible, PCJWSA seeks to use its existing water rights on lower Horn Creek by re-establishing its on-site intake, treatment and pumping system. An existing intake structure in the Horn Creek channel is flawed and unable to function as required.

In addition to increasing capacity, a primary driver for this project is to provide a water source that is not susceptible to salt water intrusion or to tsunamis. This also drives the need for two transmission pipelines to connect the new water supply/treatment system to Pacific City.

EXISTING CONDITIONS

Wetlands – Wetlands at the site are palustrine emergent (PEM), riverine impounding (RI), seasonally wet features used as forage for dairy farming. Broad areas of the site are seasonally flooded by poor surface drainage and by overbank flooding from Horn Creek, the Nestucca River, and drainages associated with Horn Creek. Predominant vegetation species are non-native grasses. A habitat analysis using the hydrogeomorphic method (HGM) for Willamette Valley wetlands is included in Appendix A. Table 1 summarizes HGM findings.

Table 1. HGM Analysis Summary

Function	Project Area Wetlands (Standardized Scores)	
	Highest Functioning Std.	Least Altered Std.
Water Storage and Delay	0.12	0.12
Sediment Stabilization & Phosphorous Retention	0.67	0.86
Nitrogen Removal	0.28	0.29
Thermoregulation	0.17	0.17
Primary Production	0.44	0.45
Resident Fish Habitat Support	0.51	0.53
Anadromous Fish Habitat Support	0.43	0.44
Invertebrate Habitat Support	0.54	0.56
Amphibian & Turtle Habitat Support	0.60	0.61
Breeding Waterbird Support	0.62	0.69
Wintering/Migratory Waterbird Support	0.93	1.33
Songbird Habitat Support	0.69	0.71
Support of Characteristic Vegetation	0.64	0.64

Table 2 is a list of observed plant species in the project area.

Table 2. List of Plant Species

Species	Indicator	Common Name
Herb/Forb		
Agrostis stolonifera	FAC+	creeping bentgrass
Alopecurus geniculatus	OBL	water foxtail
Alopecurus pratensis	FACW	meadow foxtail
Bromus mollis	NOL	soft brome
Chrysanthemum leucanthemum	UPL	oxeye daisy
Cirsium arvense	FACU+	Canada thistle
Cirsium vulgare	FACU+	bull thistle
Cynosurus cristatus	UPL	crested dog-tail grass
Dactylis glomerata	FACU	orchardgrass
Echinochloa crus-galli	FACW	barnyardgrass
Eleocharis palustris	OBL	common spikerush
Equisetum hyemale	FACW	rough horsetail
Festuca arundinacea	FAC-	tall fescue
Holcus lanatus	FACW-	velvetgrass
Hypochaeris radicata	NOL	hairy cat's ear
Juncus effusus	FACW	soft rush
Lolium perenne	FACU	perennial ryegrass
Lysichitum americanum	OBL	skunk cabbage
Mentha arvensis	FACW-	field mint
Phalaris arundinacea	FACW+	reed canarygrass
Phleum pratense	FAC-	timothy
Plantago lanceolata	FAC	narrowleaf plantain
Plantago major	FACU+	common plantain
Poa annua	FAC	annual bluegrass
Polygonum lapathifolium	FACW	curlytop knotweed
Polygonum aviculare	FACW-	prostrate knotweed
Ranunculus sp.	-	buttercup
Ranunculus repens	FACW	creeping buttercup
Rumex crispus	FAC+	curly dock
Scirpus microcarpus	OBL	small-fruited bulrush
Sonchius arvensis	FACU+	field sowthistle
Taraxacum officinale	FACU	common dandelion
Trifolium repens	FAC	white clover
Veronica sp.	-	veronica
Shrub/Woody Vine		
Rosa sp.	-	native rose
Sambucus racemosa	FACU	red elderberry
Tree		
Alnus rubra	FAC	Red alder
Picea sitchensis	FAC	Sitka spruce
Populus balsamifera var. *trichocarpa*	FAC	black cottonwood
Pseudotsuga menziesii	FACU	Douglas' fir

WATERS OF THE STATE/U.S.

The proposed project site lies in the lower portions of the Horn Creek and Nestucca River valleys. Horn Creek and the Nestucca River are perennial, tidally influenced streams. Horn Creek and the Nestucca River support Chinook (*Oncorhynchus tshawytscha*), coho (*O kisutch*), and chum (*O. keta*) salmon as well as cutthroat trout (*O. clarki*) and steelhead (*O mykiss*) (StreamNet 2007). The Oregon Coast Coho Salmon evolutionarily significant unit (ESU) was listed as threatened under the Endangered Species Act (ESA) on February 4, 2008. The National Marine Fisheries Service (NMFS) also designated critical habitat for the Oregon Coast Coho Salmon ESU on the same date.

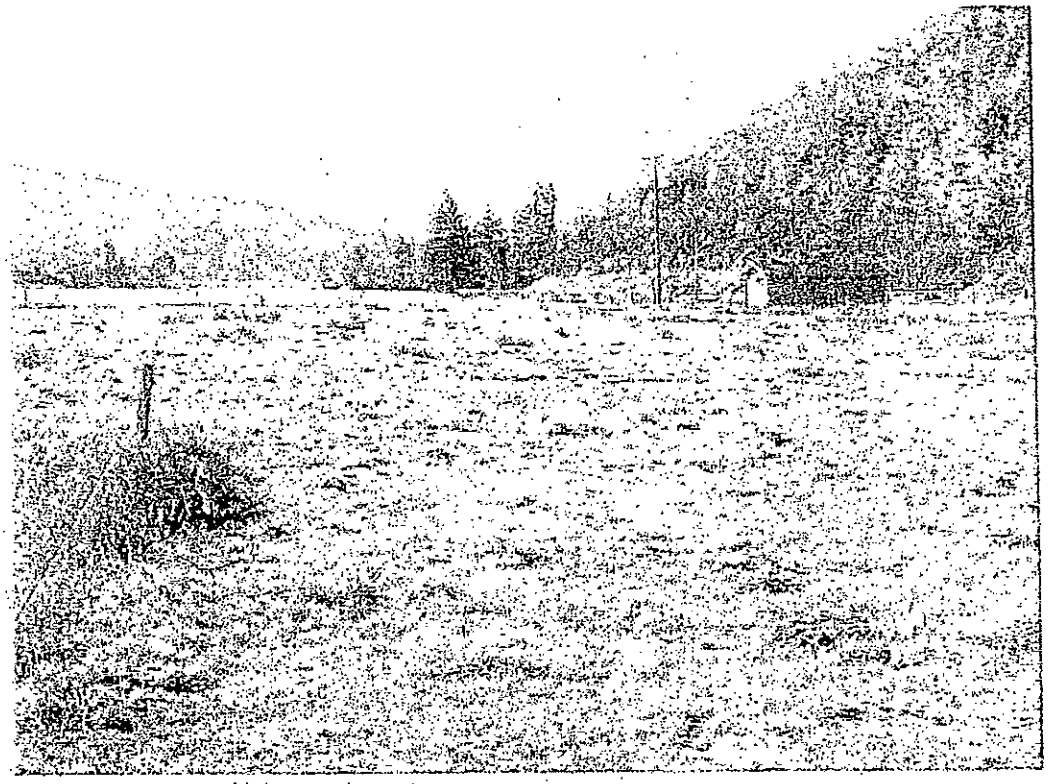
Horn Creek - The Horn Creek valley is a relatively flat narrow drainage basin oriented southwest to northeast and bordered by steep, wooded hillslopes. Flows in the lower sections of Horn Creek are subject to tidal influence, which extends approximately 0.5 miles upstream of its confluence with the Nestucca River (Figure 2). Although the riparian area is degraded by woody vegetation clearing, grazing, and bank instability, channel habitat itself is relatively diverse, consisting of pools, glides, and riffles. Substrate within lower portions of the creek is dominated by gravels and fines, with cobbles present with low frequency. Rip-rap has been placed along the outside of several bends to help prevent erosion and bank failure.

Horn Creek's riparian habitat varies in width and composition. Within the project area, ungrazed vegetative cover is very narrow (generally less than 10 feet) with areas beyond that width subject to grazing and silage production. Woody species in the riparian area are limited primarily to red alder (*Alnus rubra*) and willows (*Salix* spp.). The herbaceous community is dominated by invasive species, primarily reed canarygrass (*Phalaris arundinacea*).

Nestucca River -- The Nestucca River is a low gradient system that flows generally north and west through the project area. This portion of the river is tidally influenced, with well-defined banks, limited riparian vegetation, and a substrate dominated by fines. The channel is approximately 30 feet wide at the proposed pipeline crossing.

PROJECT IMPACTS

Wetland Impacts - Unavoidable permanent impacts to 0.56 acres of emergent wetland will occur due to construction of the water intake structure, treatment facility, and a maintenance road between the treatment facility and the intake structure (Figures 4, and 5, Photograph 1). Permanently lost wetlands are emergent, seasonally wet pasture with a predominance of non-native grasses.

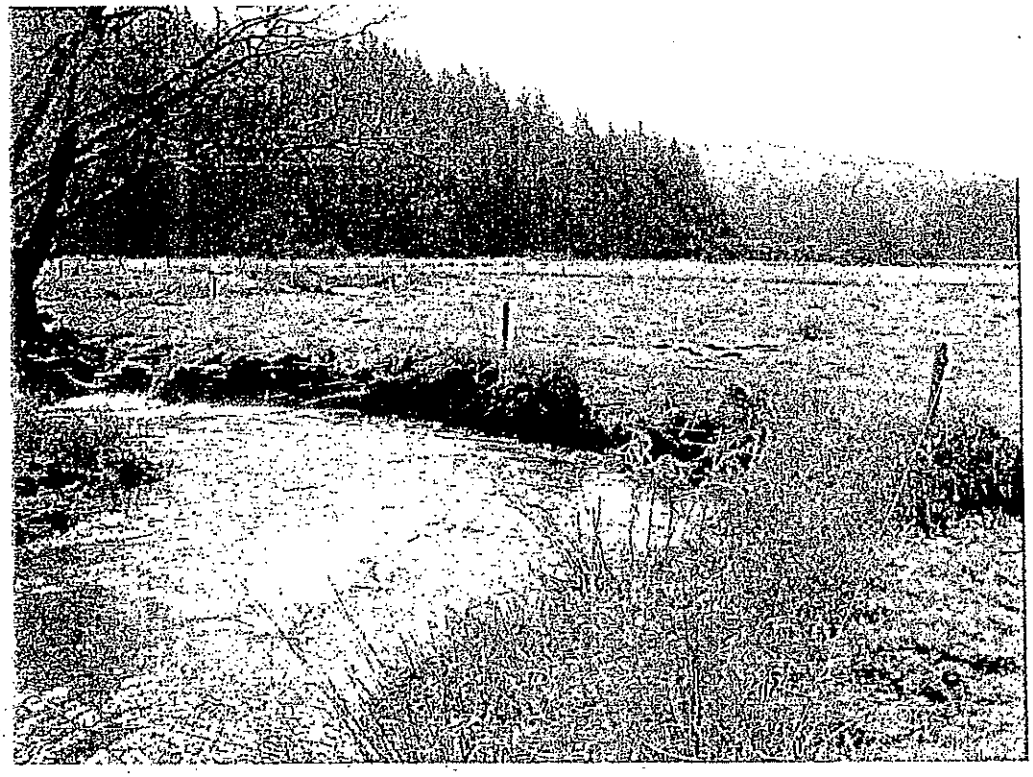


Photograph 1. Existing treatment facility (to be demolished) in upper right. New treatment facility to be constructed in center of image. Photograph taken facing downvalley (southwest). Edge of Horn Creek located on left edge of image.

Temporary wetland impacts to 0.60 acres of wetland will occur due to pipeline installation (Figures 2 and 6), and temporary sandbag dams necessary to dewater in-stream work areas (Figures 2, 5 and 7). Temporary impacts from pipeline installation consist of excavating and backfilling, on average, a 3-foot wide by 4-foot deep trench within wetlands, and temporarily stockpiling desirable topsoil along a 4-foot wide strip adjacent to the trench (Figure 6). It is not anticipated that the temporary stockpiling areas would be fully utilized, so it is likely that temporary impacts will cover a much smaller area than described above.

Temporary impacts also include a 500-square foot temporary work pad necessary for staging directional boring equipment on the north side of the Nestucca River crossing and, if conditions require, a 500-ft long heavy equipment access road measuring 10 ft wide by 0.5 ft thick would be constructed to the staging area (Figure 2). This temporary roadway would consist of gravel placed over geotextile fabric. Temporarily affected wetlands are emergent, seasonally wet pasture with a predominance of non-native grasses.

Impacts to Waters of the State/U.S. - Permanent impacts to 104 square feet of Horn Creek below ordinary high water will occur as a result of water intake construction (Figures 5 and 8, Photograph 2). This measurement includes two rock weirs (Figure 9) above and below the intake, and the face of the water intake structure.



Photograph 2. Water intake location – photo taken looking downstream, facing southwest

The weirs will help control channel geometry, which is necessary to maintain fish passage and a deep pool for the intake. These weirs will be sized to allow passage of chum salmon, which is the species least capable of navigating in-stream obstacles. A detailed discussion of design considerations undertaken for fish habitat, project impacts, and construction details are included in the Biological Assessment (Appendix B). Excavated natural substrate will be stockpiled and replaced over the pipeline bed material. The top-of-pipe depth will be a minimum of 4 feet below channel bottom.

Temporary impacts to waters of the State/U.S. will occur from dewatering and trenching of:

- Horn Creek at the water intake,
- Horn Creek at the downstream crossing,
- Two drainage canals located between Old Woods Rd. and the Nestucca River, and
- Installation of five large wood structures in two locations.

Dewatering will be achieved using temporary sand bag containment and flow diversion pipelines (Figures 5 and 7). Fish salvage will be conducted as detailed in the Biological Assessment (Appendix B).

Temporary impacts to Horn Creek will also occur during installation of in-stream structures (large wood) associated with fish habitat mitigation (Figures 2, 10a and 10c). The purpose of these structures is to increase deep pool habitat and high flow refugia. Five large wood structures are proposed. These structures will be strategically located in channel reaches with limited pool habitat. Proposed riparian plantings will occur in the same location as the

structures in order to provide shade, cover, and biomass inputs for the anticipated pool habitat.

The Nestucca River crossing will be via directional boring (Figures 2 and 3). No impacts to channel bed or banks below ordinary high water are anticipated. A contingency plan in the event that a release of drilling fluids (frac out) occurs is included in Appendix C.

A summary of all impacts is included in Table 3.

Table 3. Summary of Impacts

	Location	Wetland Impacts		Waters Impacts	
		Area	Volume	Area	Volume
Water delivery pipe	Pipeline alignment (3,260 linear feet)	*0.30 acres*	*1,450 cy removal/fill*	*92 sq ft*	*10 cy removal/fill*
	Staging areas/temporary soil stockpiling	*0.30 acres*	*240 cy removal/fill*	-	-
	Construction access for HDD equipment	*5,000 sq ft (0.11 ac)*	*98 cy removal/fill*	-	-
	Temporary check dams (16 tot)	-	-	*720 sq ft*	*90 cy removal/fill*
Intake and treatment facility	Intake structure	50 sq ft	32 cy removal / 9 cy fill	14 sq ft	20 cy removal / 20 cy fill
	In-channel control weirs (2)	30 sq ft total	8 cy removal/ 8 cy fill total	90 sq ft total	30 cy removal / 38 cy fill total
	Intake delivery pipeline	*0.03 acres*	*175 cy removal/fill*	-	-
	Treatment facility and maintenance roadway	**0.55 acres**	**1,866 cy removal / 2,106 cy fill**	-	-
TOTALS	Permanent	**0.58 acres**	**1,906 removal / 2,123 fill**	**104 sq ft**	**50 cy removal / 58 cy fill**
	Temporary	*0.74 acres*	*1,967 cy removal/fill*	*612 sq. ft.*	*100 cy removal/fill*

Italics=temporary impacts
bold=permanent impacts

AVOIDANCE AND MINIMIZATION

The intake structure, access maintenance road, and treatment facility are sized with the minimum footprint necessary to provide a structure for the water treatment system, equipment and maintenance vehicle access, and intake capacity. The proposed intake is located at the stream reach with both the appropriate channel geometry to support the intake and in proximity to the treatment facility. The new facility will be located adjacent to existing infrastructure (electricity, roadway access, pipeline easement). The footprint of the new treatment facility must increase, based on necessary equipment and access requirements.

The proposed municipal water pipeline alignment parallels an existing pipeline that will be abandoned in place. This alignment is already the most direct, shortest distance between the treatment facility and the municipal water system network. The proposed pump residuals pipeline will follow the footprint of the municipal water pipe as far as Old Woods Rd., then will run parallel in existing roadways to connect with the existing wastewater system. This alignment allows all construction to occur within the existing roadway-foundation prism and outside of all wetlands and waters of the State/U.S.

The work area for pipeline installation will be the minimum necessary to move equipment and temporarily stockpile desirable topsoil, and to store and stage construction equipment (Figure 2 and 5).

In-water work will be limited to the minimum area necessary for construction of weirs, the intake structure, and pipeline crossings of Horn Creek and two canals. Equipment and personnel will be assembled and ready to begin prior to dewatering activities to minimize the in-channel work period. Details for temporary dewatering and fish salvage activities are included in the Biological Assessment (Appendix B).

MITIGATION SITE

Site Ownership:

Ron Herlman

8725 Old Woods Road

Cloverdale, OR 97112

Current Mitigation Site Conditions – The proposed mitigation site is a palustrine emergent, riverine impounding wetland that is used for dairy farming.

Historical Conditions – Historically, the Horn Creek drainage likely supported a mix of evergreen- and deciduous-forested and scrub/shrub wetlands interspersed with beaver ponds that formed open water and wet meadow habitat.

MITIGATION APPROACH

Because project area wetlands are part of an active agricultural operation, affected habitat has limited function and value. However, the waters of the State/U.S. affected by the project (Horn Creek, Nestucca River) are essential salmonid habitat. Proposed mitigation, therefore, emphasizes riparian habit enhancement where feasible, with the balance of required mitigation acreage consisting of enhancing emergent wetland areas through plantings and protection from grazing.

Proposed mitigation for temporary impacts to wetlands will consist of reestablishment of emergent vegetative cover. Because the existing wetland pastures are used for livestock forage, a seed mix of grasses and/of forbs appropriate for grazing will be used.

Proposed mitigation for permanent impacts to wetlands and waters of the State/U.S. will consist of: 1) reestablishment of woody riparian vegetation, and 2) reestablishment of scrub-shrub and forested wetlands. The reestablishment of a 15-foot wide buffer of woody vegetation at select locations of Horn Creek will help buffer the channel from sheet flow, contribute biomass, and help shade and cool the water. In addition to shade, PCJWSA proposes to install five v-notch log weirs to increase pool frequency, in order to benefit fish during low flows (see Appendix B). The table below summarizes wetland impacts and proposed mitigation.

Table 4. Wetland Impacts and Mitigation

	Location	Wetland Impacts		Waters Impacts		Proposed Mitigation	
		Area	Volume	Area	Volume	Wetland Mitigation (area)	Waters Mitigation (area)
Water delivery pipe	Pipeline alignment (3,260 linear feet)	*0.30 acres*	*1,450 cy removal/fill*	*92 sq ft*	*10 cy removal/fill*	*0.30 acres restoration*	*92 sq ft restoration*
	Staging areas/temporary soil stockpiling	*0.30 acres*	*240 cy removal/fill*	-	-	*0.30 acres restoration*	-
	Construction access	*0.11 ac*	*98 cy*	-	-	*0.11 ac*	*98 cy*
	Temporary check dams (16 tot)	-	-	*720 sq ft*	*90 cy removal/fill*	-	*720 sq ft restoration*
Intake and treatment facility	Intake structure	50 sq ft	32 cy removal / 9 cy fill	14 sq ft	20 cy removal / 20 cy fill	150 sq ft enhancement (from in-stream structures)	5 in-stream structures
	In-channel control weirs (2)	30 sq ft total	8 cy removal/10 cy fill total	90 sq ft total	16 cy removal / 20 cy fill total	90 sq ft enhancement	
	Intake delivery pipeline	*0.03 acres*	*ac 175 cy removal/fill*	-	-		
	Treatment facility and maintenance roadway	0.56 acres	1,866 cy removal / 2,106 cy fill	-	-		
TOTALS	**PERMANENT**	**0.56 acres**	**1,906 removal / 2,123 fill**	**104 sq ft**	**50 cy removal / 58 cy fill**	**1.78 acres enhancement**	**5 in-stream structures**
	TEMPORARY	*0.74 acres*	*1,963 cy removal/fill*	*612 sq. ft.*	*100 cy removal/fill*	*0.74*	*612 sq. ft.*

MITIGATION SITE SELECTION

Riparian - Riparian planting locations were selected to provide intermittent refugia along reaches that lack woody vegetation downstream from the proposed intake (Figures 10a, 10b, 10c). Specific riparian planting areas will be located in conjunction with in-stream structures with the intent of establishing shade, cover, and biomass inputs where pools occur or are likely to form following installation of in-stream structures.

Wetland – The existing, emergent wetlands adjacent to the water intake structures will provide the balance of the area required for mitigation. These areas were selected due to their proximity to project impacts and degraded condition. These areas have the additional advantage of being easily isolated and protected from agricultural practices.

MITIGATION SITE CONSTRAINTS

Plant species selection and location is constrained by farming activity. Riparian plantings directly affect farming operations by taking land out of production, and potentially may indirectly affect production, for example, by shading hay fields and forage areas. Additionally, plants that obscure line-of-sight increase security and operation risks to farm operations. The layout of this particular farm affords up-valley monitoring of almost the entire operation from the dairyman's home. Plantings that diminish the ability to visually monitor the land from the farm's operations area will not be allowed by the property owner. For that reason, vegetation selected for riparian plantings consists of low-growing (up to 6 feet) shrub species. The proposed riparian planting pattern intentionally maintains open gaps so that line-of-sight is minimally impaired. Profiles of proposed species showing heights and growth patterns are included on Figure 11.

MITIGATION PLAN

The goal of the mitigation plan is to 1) improve riparian habitat through plantings and in-stream structures, and 2) enhance wetland habitat by reestablishing historic vegetation community complexity. This will be accomplished by:

- Creating wetland complexity by reestablishing scrub/shrub and forested wetland habitat.
- Utilizing one growing season of mechanical (plowing/discing/grading) and chemical (herbicide) controls to reduce the presence and potential for reestablishment of invasive plant species prior to reestablishing native vegetation.
- Creating shade to cool the stream flow through riparian plantings.
- Creating pools to increase stream habitat complexity.
- Fencing designated mitigation areas to protect them from inadvertent damage from agricultural activities.
- Utilizing adaptive management throughout the project to react quickly and effectively to unforeseen events.
- Utilizing a 5-year mitigation monitoring effort staggered over a 7-year span to allow for adequate characterization of mitigation performance.
- Utilizing a focused, stream field monitoring effort to precisely characterize stream flow dynamics during low-flow periods.

REVEGETATION

MITIGATION PLANTINGS

Riparian - Revegetation in riparian areas will focus on establishing shade and over-channel cover, buffering the stream from agricultural practices, and providing biomass inputs to the stream ecosystem. The following species were selected based on their habitat preferences, value as riparian vegetation, and desirable growth patterns.

- Pacific ninebark (*Physocarpos capitatus*)
- Red elderberry (*Sambucus racemosa*)
- Twinberry (*Lonicera involucrata*)
- Crabapple (*Malus fusca*)
- Red-osier dogwood (*Cornus stolonifera*)
- Salmonberry (*Rubus spectabilis*)
- Thimbleberry (*Rubus parviflorus*)

Riparian plantings will be densely distributed at 1,800 stems/acre (approximately 4-foot on center spacing). This density is proposed to help establish immediate riparian cover, to help compete with reed canarygrass, and to account for expected losses due to browsing by beaver and elk. Approximately 50% of total composition will be comprised of Pacific ninebark and red-osier dogwood, with the balance of remaining species composition distributed evenly. There will be a total of 490 plantings, distributed as shown in Table 5.

Table 5. Riparian Plantings

Species	Number	Species	Number
Physocarpos capitatus	120	*Lonicera involucrata*	50
Cornus stolonifera	120	*Malus fusca*	50
Sambucus racemosa	50	*Rubus spectabilis*	50
Rubus parviflorus	50		

Wetland – Revegetation in non-riparian wetlands will include the riparian species cited above, with the addition of:

- Red alder (*Alnus rubra*)
- Sitka spruce (*Picea sitchensis*)
- Hooker willow (*Salix hookeriana*)
- Sitka willow (*Salix sitchensis*)
- Snowberry (*Symphoricarpos albus*)

All non-riparian wetland shrub plantings will be 900 stems/acre (7-foot on center spacing). The area near an unnamed tributary to Horn Creek that outfalls upstream of the intake will be planted with a few red alder and Sitka spruce. There will be a total of 1,410 wetland plantings, distributed as shown in Table 6.

Table 6. Wetland Plantings

Species	Number	Species	Number
Physocarpos capitatus	138	*Lonicera involucrata*	138
Cornus stolonifera	138	*Malus fusca*	138
Sambucus racemosa	138	*Rubus spectabilis*	138
Rubus parviflorus	138	*Symphoricarpos albus*	138
Salix hookeriana	138	*Salix sitchensis*	138
Alnus rubra	15	*Picea sitchensis*	15

RESTORATION PLANTINGS

All areas temporarily impacted by construction equipment and staging will be reseeded with a seed mix appropriate for forage to support on-going dairy operations.

FUNCTIONAL ASSESSMENT

As discussed above, primary mitigation goals are to uplift riparian habitat values of Horn Creek via riparian plantings and in-stream structures. Based on proposed plantings and in-channel structures, 9 of 13 habitat functions assessed using HGM would improve following successful completion of the mitigation plan.

Table 7 summarizes the ecological uplift anticipated from these mitigation activities.

Table 7. Summary Comparison of HGM Scores (Standardized)

	Affected Wetlands and Mitigation Area		Mitigation Site Proposed Conditions for Successfully Completed Project
Function	Highest Functioning Std.	Least Altered Std.	Highest Functioning Std.
Water Storage and Delay	0.12	0.12	0.12
Sediment Stabilization & Phosphorous Retention	0.67	0.86	0.67
Nitrogen Removal	0.28	0.29	**0.31**
Thermoregulation	0.17	0.17	**0.30**
Primary Production	0.44	0.45	**0.46**
Resident Fish Habitat Support	0.51	0.56	**0.90**
Anadromous Fish Habitat Support	0.43	0.44	**0.80**
Invertebrate Habitat Support	0.54	0.54	**0.63**
Amphibian & Turtle Habitat Support	0.60	0.61	**0.63**
Breeding Waterbird Support	0.62	0.89	**0.69**
Wintering/Migratory Waterbird Support	0.93	1.33	0.93
Songbird Habitat Support	0.69	0.71	0.69
Support of Characteristic Vegetation	0.64	0.64	**0.76**

Bold = ecological uplift due to mitigation measures

SITE PREPARATION

Site preparation focuses on select control of weedy vegetation in proposed planting areas. Control of weeds is key to minimizing competition with desirable planted and naturally recruited vegetation species. The success of the mitigation project will rely heavily on successful weed control, primarily in dealing with reed canarygrass. Reed canarygrass is an invasive grass that is ubiquitous in Pacific Northwest wetlands. Its long growing season, wide hydrologic tolerance, and aggressive growth characteristics make it difficult to control.

The mitigation project will conduct 1 year of control measures prior to establishing native plant populations. The project will use an intense program of mechanical removal (mowing) and chemical applications (herbicide) to prepare the site for planting. Application of herbicide will be consistent with mandated agricultural practices; a herbicide approved for use in aquatic settings (e.g., Rodeo) will be employed. Two applications of herbicide will shall be undertaken as appropriate.

MITIGATION REFERENCE SITE

The reach of Horn Creek that straddles Old Woods Rd. is proposed as the mitigation reference site. This area supports mature native riparian cover, and is immediately adjacent to the wetland mitigation site. Permanent photomonitoring points will be established in this area to serve as reference for the mitigation monitoring effort.

AS-BUILT DOCUMENTATION

As-built conditions will be documented following completion of construction, including weed control, initial planting, and in-stream structures. This will identify any field-initiated revisions or modifications to this Mitigation Plan that may take place during construction due to unforeseen circumstances. An as-built report will be presented to the agencies within 90 days following the completion of construction. The report will include a site plan that shows resultant habitat areas, discussion of changes or modifications that took place, and representative photographic documentation of resultant site conditions.

PERFORMANCE STANDARDS

Performance standards have been developed in order to measure the performance of the site at strategic intervals. Two performance criteria will be measured annually to assess development of the site: vegetation and pool habitat. Table 8 summarizes vegetation and hydrology performance criteria for the mitigation's forested and emergent wetland habitats: Table 9 gives the monitoring schedule.

Table 8. Mitigation Wetland Habitat Performance Criteria[a]

Performance Criteria	Performance Criteria Benchmark	Time Period	Evaluation Method
Number of Native Tree/Shrub Species[b]	Minimum of 2 native tree and 4 native shrub species	Monitoring Years 1-5	Radius Plot Monitor
Density of Native Tree Species[b]	Minimum of 430 stems per acre	Monitoring Years 1-5	Radius Plot Monitor
Density of Native Shrub Species[b]	Minimum of 900 stems per acre	Monitoring Years 1-5	Radius Plot Monitor
Percent Cover Invasive Species[c]	<10% overall, except <20% reed canarygrass	Monitoring Years 1 and 2	Radius Plot Monitoring
	<5% overall, except <15% reed canarygrass	Monitoring Years 3-5	Radius Plot Monitoring

Vegetation – All vegetation criteria will be assessed at the time of annual monitoring by extrapolating data collected from habitat-specific monitoring plots to represent the overall site conditions. Additionally, the time period may vary for individual criteria to reflect succession-related changes of the respective habitats.

Invasive Species – The presence of invasive plant species will be determined at the time of monitoring on a basis of percent cover. Performance standards are designed to keep invasive species within manageable densities and to produce a downward trend in percent cover over the life of the project. Reed canarygrass is treated separately due to its initial abundance, aggressive nature, and anticipated presence within non-mitigation portions of the site and the site area in general.

SCHEDULE

The anticipated schedule for site preparation, maintenance, monitoring, and reporting is presented in Table 9. Activity periods may change due to unforeseen circumstances. Any changes in monitoring or reporting schedule will be discussed with the agencies prior to implementation.

Table 9. Conceptual Project Schedule

YEAR	SEASON	ACTIVITY
1 (2008)	Summer- Fall	Weed control as necessary; Prepare as-built report
1	Late Summer-Fall	Channel flow monitoring
1	Late fall	Seed cover crop
1	Fall - Winter	Tree and shrub native planting
2 (2009)	Winter - Fall	Channel structure monitoring (large wood/weir)
2	Spring - Fall	Site maintenance (including weed control) as necessary
2	Late spring	1st annual monitoring
2	Summer	Site maintenance (including weed control) as necessary
2	Fall	Replanting/corrective action as necessary
2	Early winter	1st annual monitoring report
3 (2010)	Late spring	2nd annual monitoring
3	Summer	Site maintenance (including weed control) as necessary
3	Fall	Replanting/corrective action as necessary
3	Early winter	2nd annual monitoring report
4 (2011)	Late spring	3rd annual monitoring
4	Summer	Site maintenance (including weed control) as necessary
4	Fall	Corrective action as necessary
4	Early Winter	3rd annual monitoring report
6 (2012)	Late spring	4th annual monitoring
6	Summer	Site maintenance (including weed control) as necessary
6	Fall	Corrective action as necessary
6	Early winter	4th annual monitoring report
8 (2014)	Late Spring	5th (final) annual monitoring
8	Summer	Site maintenance (including weed control) as necessary
8	Fall	Corrective action as necessary
8	Early winter	5th (final)annual monitoring report

MONITORING

Formal monitoring will include separate stream flow monitoring and vegetation monitoring. Stream flow monitoring will be continuous over the lifetime of the intake facility. A water data logger able to measure and transmit instantaneous water level and temperature measurements will be installed at the intake. During Year 1 monitoring, detailed field studies will be conducted during low flow periods to inform withdrawal management (discussed below).

Formal vegetation monitoring of riparian and emergent wetland plantings will occur annually for 5 years following completion of site construction. Vegetation monitoring will be staggered to occur in project years 2 (1st monitoring), 3 (2nd monitoring), 4 (3rd monitoring), 6 (4th monitoring), and 8 (5th and final monitoring).

In-Stream Flow Monitoring – Field studies will identify minimum flows necessary for fish habitat. Information collected during this period will be used to calibrate and manage withdrawal volumes to ensure that sufficient water is available for in-stream flows.

Vegetation Monitoring – Vegetation monitoring will occur in the spring season (April-May) to record plant composition, percent cover (herbaceous), and stem density count (woody plants). Permanent sample plots will be established, and revisited during each mitigation monitoring effort.

Photographic Documentation – Photographs will be taken during monitoring at permanent photo points for visual documentation. Photo points will be established following completion of construction. Photos will typically include views of the monitoring sample plots and areas of special interest such as in-stream structures. Random photos will also be taken during site visits for additional documentation.

MAINTENANCE AND MANAGEMENT

Maintenance and management of the mitigation site will occur for the duration of the mitigation project. Maintenance will include both regularly scheduled events such as seasonal weed control and periodic site visits to assess conditions, as well as corrective action activities for unanticipated events. Management of these and other site maintenance activities will be performed throughout the year and tabulated for inclusion into the annual monitoring reports.

It is anticipated that weed control will be implemented as appropriate throughout the life of the mitigation project. Control measures may include mechanical, manual, and chemical measures that target specific growth periods of the target plants. The intensity of control will be dictated by specific conditions, which are anticipated to be dynamic from season to season and year to year. Thresholds for select species will direct the response trigger to implement control and will be used in conjunction with adaptive management. Additional species may be added to the species list during the project as appropriate, and recommended controls may be modified as additional information becomes available. A weed control program is included as Appendix D.

It is anticipated that browse control will also be needed. Browsing by ungulates and livestock will be discouraged by fencing mitigation areas. Browsing by beaver and other rodents will be mitigated by overplanting. Should excessive browsing threaten the mitigation project, additional measures shall be undertaken as needed, and the effectiveness for each treatment will be discussed in the annual monitoring reports.

CONTINGENCY PLAN

A Contingency Plan addresses how project deficiencies or performance shortcomings will be corrected. Performance shortcomings will be identified through formal monitoring, while project deficiencies can be identified outside of monitoring. Project deficiencies will be acted on through adaptive management, with decisions formulated by, and corrective action implemented by the project team. Depending on the nature of the problem, the project team could include wetland scientists, fisheries scientists, fluvial geomorphologists, botanists, soil scientists, hydrologists, or engineers to develop recommendations to address the situation.

The Biological Assessment includes a specific Adaptive Management Program (AMP) that addresses fisheries-specific issues. The same AMP is included in the water right held by PCJWSA for the proposed intake. The AMP includes contingencies that restrict withdrawal volumes during specific drought or low-flow conditions.

SITE PROTECTION

PCJWSA and the landowner have agreed to provide appropriate long-term protection of the mitigation site in the form of a conservation easement. The final easement will be filed with Tillamook County.

FINANCIAL ASSURANCE

Because the applicant is a government entity, no financial security instrument will be presented to DSL.

ADJACENT PROPERTY OWNERS

Terry Learned
34900 Resort Drive
Cloverdale, OR 97112

Nick Hurliman
7150 Old Woods Road
Cloverdale, OR 97112

S & E Dairy
Stan Martella
34850 Resort Dr.
Cloverdale, OR 97112

Ron Hurliman
8725 Old Woods Road
Cloverdale, OR 97112

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1967-41
C-C

Abstract of Permit No. 36881

Application No. 49201 *Certificate No.*

Name	Pacific City Water District
Address	P. O. Box 78 Pacific City, Oregon
Source of water supply	Horn Creek
Use	quasi-municipal
Point of diversion	2445' N. & 2514' E. from the SE corner of Sec.19, being within the NE¼ SW¼ of Sec.20, T.4 S., R.10 W., W.M., in the county of Tillamook
Number of acres	

USE MAP ATTACHED PST

DESCRIPTION OF LAND TO BE IRRIGATED OR PLACE OF USE

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼
4S	10W	18												X			X	
		19		X	X	X	X			X	X	X	X	X	X	X	X	
		30			X	X	X	X	X	X	X					X	X	
4S	11W	13													X			X
		24	X			X									X			X
		25	X			X												

Priority date May 3, 1972

Amount of water ~~2.0 c.f.s.~~ 1.35

Time limit to begin construction July 27, 1974

Time limit to complete construction ~~10-1-75~~ *extended to* 10/1/80 *extended to*

Time limit to completely apply water ~~10-1-76~~ *extended to* 10/1/90 *extended to*

Remarks:

jrk

Basin 1, Vol.

330 N
750 E
SW COR 5

VIGIL AGRIMIS
design professionals

October 10, 2007

Jerry Gainey
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271

SUBJECT: SUBMITTAL TIMELINE FOR THE EXTENSION OF TIME APPLICATION
PERMIT S-36881, APPLICATION S-49201

Dear Mr. Gainey:

The purpose of this letter is to provide you an update of the submittal timeline for the extension of time application.

Pacific City Joint Water-Sanitary Authority (PCJWSA) recently passed a bond measure to finance improvements to the Horn Creek water system. Work related to this project had previously been delayed until this bond measure was approved by voters.

An agency coordination meeting occurred on September 18, 2007 to provide permitting and design direction for this project. As a result of this meeting, we are prepared to submit the Extension of Time application by the end of November 2007.

Please call me at 503-274-2010 if you have any questions or concerns.

Sincerely,

Adam Zucker, P.E., C.W.R.E.

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

April 16, 2007

Adam Zucker
Vigil Agrimis, Inc.
819 SE Morrison St., Ste. 310
Portland, OR 97214

RE: Permit S-36881, Application S-49201

Dear Mr. Zucker,

We received your request for reconsideration of the proposed certificate for the above referenced permit, mailed on October 10, 2006. As requested, the Department has reviewed and approved your request. The Department will not move toward issuance of the certificate.

Your letter indicated that the Pacific City Joint Water-Sanitary Authority (PCJWSA) was not finished developing the water usage at the time the Final Proof Survey was performed. In addition, you indicated the importance of fully developing the water use to meet future demands.

In your letter you indicated that the PCJWSA was prepared to submit an application for an extension of time within 90 days from the date the request for reconsideration was approved.

Please keep us informed as to the timeline of submittal of the extension of time request.

If you have any questions, please feel free to contact me at 503-986-0811.

Sincerely,

Gerry Clark
Water Rights Specialist

Pacific City JWSA
PO Box 520
Pacific City, OR 97135

VIGIL AGRIMIS
design professionals

PC Date 8/25/2006

October 10, 2006

Gerry Clark
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271

SUBJECT: REQUEST FOR RECONSIDERATION
PERMIT S-36881, APPLICATION S-49201

Dear Mr. Clark:

I am contacting you on behalf of the Pacific City Joint Water-Sanitary Authority (PCJWSA). PCJWSA has hired Vigil-Agrimis, Inc. to assist them with their water right issues.

PCJWSA would like the Oregon Department of Water Resources to reconsider the contents of the proposed certificate of water right that was mailed August 25, 2006. This proposed certificate indicates a maximum rate of water use of 1.35 cubic feet per second (cfs). However, PCJWSA has projected that it will need to utilize 2.0 cfs (the rate that was authorized in Permit S-36881) from this point of diversion to meet the future water demand of its service area.

PCJWSA was not finished developing its water usage when the Final Proof Survey was prepared for this water right. In 1993, when the Clean Water Act requirements for surface water treatment went into effect, PCJWSA started using its groundwater wells as its primary source of water. At this time, PCJWSA designated Horn Creek as its backup water supply until the necessary upgrades could be made to ensure drinking water quality and compliance with the current regulatory standards. PCJWSA is in the process of securing funding to upgrade its water intake and treatment facilities along Horn Creek.

A recently completed Water Master Plan (March 2005) for the PCJWSA service area projected a service area population of 4,144 in the year 2024 and a corresponding maximum daily water demand of 1,191 gallons per minute (gpm). PCJWSA's peak groundwater usage is currently nearing its 600 gpm wellfield capacity and PCJWSA is concerned about the vulnerability of its wellfield to seismic events, salt water intrusion, and contamination. In order to meet the projected 2024 water demand and have adequate backup capacity, PCJWSA anticipates that it will need 2.0 cfs (900 gpm) of water from the proposed certificate of water right for Horn Creek.

PCJWSA is prepared to submit a Water Right Extension of Time application within 90 days from the date when this Request For Reconsideration is approved and will submit a Final Proof Survey and/or documentation of water usage when the upgrades to the Horn Creek site are fully developed. Please call me at 503-274-2010 if you have any questions regarding this request or need additional information.

Sincerely,

Adam Zucker, P.E., C.W.R.E.

Cc: Tony Owen – Authority Manager
Pacific City Joint Water-Sanitary Authority

OREGON WATER RESOURCES DEPARTMENT

State of Oregon
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1266
Phone #: (503) 986-0900
Fax#: (503) 986-0901
www.wrd.state.or.us

FAX TRANSMITTAL

TO: Adam Zucker **FAX NUMBER: 503 274-2024**

DATE: 12/4/2007 **PAGES: 4 , INCLUDING COVER SHEET**

FROM: Kim French **PHONE: (503) 986-013**

COMMENTS:

Adam,
Here is the Final Proof Survey that was done on Permit S-36881 for Pacific City Water District. The Final Proof was done by the Department. Let me know if you have any questions!

Thanks, Kim

Water Right and Adjudications Division

Oregon Water Resources Department

Memo

To: Application File Number S-49201

From: Dwight French

Date: 6-7-2006

Re: Proof To The Satisfaction Documentation (Certificate Issuance)

Based on a review of the information in the file, proof to the satisfaction has been made. We should issue a proposed ____ or final ____ certificate in the amount of 1.35 cfs.

The place of use for the certificate shall be 1) as listed on the permit ____ 2) as described on the final proof map ____ 3) other: Draft cert

The POD(s) or POA(s) should be 1) as listed on the permit ____ 2) as described on the final proof map ____ 3) other: Draft cert

INFO: JASON GRAIN 965 6718 THE EXISTING WATER RIGHTS THEY HOLD FROM HORN CREEK & A TRIB OF HORN CREEK (PERMITS 26793, 30 792) ARE FOR 900 GPM. THE MAXIMUM OUTPUT OF THE SYSTEM THEY HAVE IS 700 GPM. BECAUSE OF REQUIREMENTS PLACED ON THEM BY OTHER AGENCYS THAT IS GOING TO GO DOWN TO 550 GPM. THE NEW POINT OF DIV IS NOT USED & IS NOT GOING TO BE USED. THE ONLY THING THIS PERMIT MAY BE RETAINED FOR IS POSSIBLY AN EXPANDED AREA OF USE.

Cert 33238

SOURCE: HORN CRK

DIV PT: SAME AS PERMIT 26793

MOTOR: GRAVITY → PUMPING STATION
(2) 30 HP ELECTRIC

PUMP: (2) DDC 4X5 (2)

PIPE: 8 → 6 DIV PT → PUMPS → 6"

USE: QUASI MUNICIPAL DOMS, PARKS, & BUSINESSES

THE: MAP SUPPLIED BY DIST ON REVERSE SIDE OF THIS SHEET & SEE 33272 FOR DIVERSION

WR I 7/20/93

$\frac{700}{448.8} = 1.55$ CFS
$- .20$ PERMIT 26793
1.35 ALLOW

NOTE: THE INFO SUPPLIED BY MR. GRAIN ABOUT OTHER RIGHTS WAS INCORRECT. CAN ALLOW 1.35 PER OUR RECORDS & ACTUAL USAGE

Mailing List for Certificate Scheduled Mailing Date:

Application: S-49201

Permit: S-36881

Certificate: PROPOSED

Copies Mailed

by: Connie Vance
(STAFF)

on: 8/25/2006
(DATE)

Permit/Certificate Holder:

PACIFIC CITY JWSA
PO BOX 520
PACIFIC CITY OR. 97135-0520

Copies of Final Certificate to be sent to:

1. Watermaster District 1, Greg Beaman
2. Data Center (include copy of map)
3. Water Availability
4. Vault

enlarged map

Other persons to receive copies: (include map):

1.

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MAILED: August 25, 2006

NOTICE

Reference: Permit S-36881 Application S-49201

Enclosed is a proposed certificate of water right and a map which illustrates the location of the right. The map and proposed certificate represent the extent water was used within the terms of the permit based upon a survey and inspection.

If you do not agree with the proposed certificate or the map, Oregon Administrative Rule 690-330-010 (2) allows the permittee or landowner 60 days from the mailing date of this notice to request the Department to reconsider the contents of the proposed certificate.

If you agree with the proposed certificate and map no response to this notice is required. Sometime after the 60 day period, the recorded certificate of water right will be mailed to the permittee.

If you have any questions please contact Gerry Clark at 503-986-0811.

Sincerely,

Dwight French
Administrator
Water Rights Division

S:\groups\wr\certs\Resource Center\Forms_Checklists_Mailing Instructions\Cover letters\PROPOSED CERT Letter

STATE OF OREGON

COUNTY OF TILLAMOOK

PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

PACIFIC CITY JWSA
PO BOX 520
PACIFIC CITY OR 97135-0520

confirms the right to use the waters of HORN CREEK for QUASI-MUNICIPAL USES.

This right was perfected under Permit S-36881. The date of priority is MAY 3, 1972. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.35 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	10 W	WM	8	SE SE	330 FEET NORTH AND 750 FEET WEST FROM SE CORNER, SECTION 8

A description of the place of use to which this right is appurtenant is as follows:

Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	18	SW SE
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE

PROPOSED

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate.

Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	24	NE NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE

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

WITNESS the signature of the Water Resources Director, affixed

PROPOSED

Phillip C. Ward, Director

App: S 49201 Permit: S 36881 Snapshot: 147696

Auditing checklist

___ Does the shape on the map generally match the shape on the screen?
___ Was the correct map/existing data used?
___ Is the geo-referenced map accurate to the layer the editor deemed to be the best?
___ Is the right digitized in the correct TRSQQ?
___ Are all the pou/pod id accounted for and do they correspond to the correct geometry?
___ Are tech initials, agency, date added, and feature quality code fields populated?
___ Are overages/underages accounted for in the delta size field?
___ Have appropriate remarks been entered?

Snapshot

SnapshotID	Type	Status	Expiration Date	Authority	License Nbr	License Type	Contract Nbr	Contract Type	Snapshot Origin	Snapshot Status	WRID	FamilyID
147696	SW	NC							CT	AC	45358	45358

Application

Application	Received	Additional Record	Scanned Image
S 49201		N	Image NOT linked Image NOT scanned

Permit

Permit	Signature	Drought Name	Begin Date	End Date	Additional Record	Scanned Image	Final Proof Image
S 36881	07/27/1973				N	Image linked Image scanned	Image linked Image scanned

Certificate

Claim

Decree

Orders

Transfer

Owner

First Name	Middle	Last Name	Company	Other Name	Entity Type	Street1	Street 2	City	State	Zip	County	Email	Home Phone	Company Phone	Fax	Inactive	Begin Date	End Date	Additional Record
			PACIFIC CITY JWSA			PO BOX 520		PACIFIC CITY	OR	971350520	TILL					N	06/28/2006		N

County

County
Tillamook

Related Docs

PODs

POD Loc ID	POD Nbr	POD Name	Src Type	Streamcode	Source	Tributary to	Location (QQ-S-T-R)	River Mile	Lat/ Long	Legal Description	Def	ST Flow	Max Rate	Rate	Max Acre Feet	Acre Feet	POD Type	Status	Remarks	Mapped?
198698	1		ST	HORN CR > NESTUCCA R - 01052000100030	HORN CREEK	NESTUCCA RIVER	SESE 08 04.00S 10.00W WM			330 FEET NORTH AND 750 FEET WEST FROM SE CORNER, SECTION 8	P	N	1.35	1.35			SW	NC		Not Mapped

Uses from this Point of Diversion

Use	P/S	Priority Date	Start Date	End Date	ST Flow	Rate/Acre	Duty	Max Rate	Rate	Max Acre Feet	Acre Feet	Surface Elevation	Households	Status	Remarks
QM	P	05/03/1972	1/1	12/31	N			1.35	1.35					NC	

Totals:	1.35		0	

Limits

Max Rate CFS	Acre Feet	Rate/Acre	Duty	Acres	Surf Elev	Begin Season	End Season
1.35						1/1	12/31

POUs

POU Use Id	Use	P/S	Priority Date	Use Status	Acres	Remarks	Mapped?
161055	QM	P	05/03/1972	NC			Not Mapped

Acres	QQ	SCTN	Twp	Range	DLC/Lot	Status	Remarks	Taxlot
	SESW	18	4.0 S	10.0 W		NC		
	SWSE	18	4.0 S	10.0 W		NC		
	NWNE	19	4.0 S	10.0 W		NC		
	SWNE	19	4.0 S	10.0 W		NC		
	SENE	19	4.0 S	10.0 W		NC		
	NENW	19	4.0 S	10.0 W		NC		
	SENW	19	4.0 S	10.0 W		NC		
	NESW	19	4.0 S	10.0 W		NC		
	NWSW	19	4.0 S	10.0 W		NC		
	SWSW	19	4.0 S	10.0 W		NC		
	SESW	19	4.0 S	10.0 W		NC		
	NESE	19	4.0 S	10.0 W		NC		
	NWSE	19	4.0 S	10.0 W		NC		
	SWSE	19	4.0 S	10.0 W		NC		
	SWNE	30	4.0 S	10.0 W		NC		
	SENE	30	4.0 S	10.0 W		NC		
	NENW	30	4.0 S	10.0 W		NC		

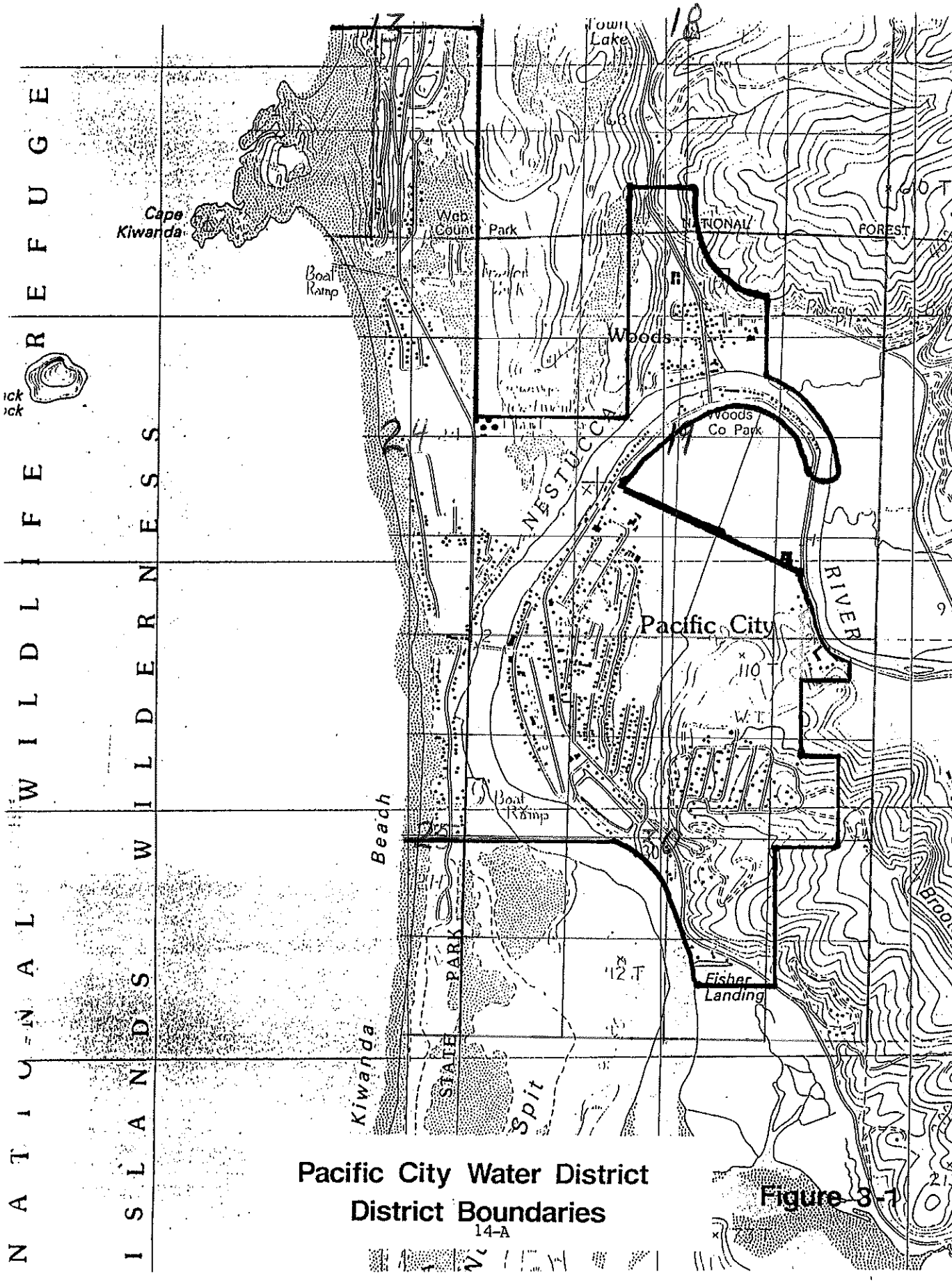
	NWNW	30	4.0 S	10.0 W		NC		
	SWNW	30	4.0 S	10.0 W		NC		
	SENW	30	4.0 S	10.0 W		NC		
	NESW	30	4.0 S	10.0 W		NC		
	NWSE	30	4.0 S	10.0 W		NC		
	SWSE	30	4.0 S	10.0 W		NC		
	NESE	13	4.0 S	11.0 W		NC		
	SESE	13	4.0 S	11.0 W		NC		
	NENE	24	4.0 S	11.0 W		NC		
	SENE	24	4.0 S	11.0 W		NC		
	NESE	24	4.0 S	11.0 W		NC		
	SESE	24	4.0 S	11.0 W		NC		
	NENE	25	4.0 S	11.0 W		NC		
	SENE	25	4.0 S	11.0 W		NC		
Total Acres: 0								

Comments

Water Right Genealogy

- Permit: S 36881 *
  - Cert:

Document Process
n/a



Pacific City Water District
District Boundaries
14-A

Figure 3-7

INFO: JASON GRAIN 965 6718 THE EXISTING WATER RIGHTS THEY HOLD FROM HORN CREEK & A TRIB OF HORN CREEK (PERMITS 26793, 30792) ARE FOR 900 GPM. THE MAXIMUM OUTPUT OF THE SYSTEM THEY HAVE IS 700 GPM. BECAUSE OF REQUIREMENTS PLACED ON THEM BY OTHER AGENCYS THAT IS GOING TO GO DOWN TO 550 GPM. THE NEW POINT OF DIV IS NOT USED & IS NOT GOING TO BE USED. THE ONLY THING THIS PERMIT <u>MAY</u> BE RETAINED FOR IS POSSIBLY AN EXPANDED AREA OF USE.

SOURCE: HORN CRK

Cert
32238

DIV PT: SAME AS PERMIT 26793

MOTOR: GRAVITY → PUMPING STATION
(2) 30 HP ELECTRIC

PUMP: (2) DDC 4X5 (2)

PIPE: 8→6 DIV PT → PUMPS → 6"

USE: QUASI MUNICIPAL DOM, PARKS, & BUSINESSES

TIE: MAP SUPPLIED BY DIST ON REVERSE SIDE OF THIS SHEET & SEE 33272 FOR DIVERSION

Russell W [signature]
WRI 7/20/93

$\frac{700}{448.8} = 1.55$ CFS
$- .20$ PERMIT 26793
1.35 ALLOW

NOTE: THE INFO SUPPLIED BY MR. GRAIN ABOUT OTHER RIGHTS WAS INCORRECT. CAN ALLOW 1.35 PER OUR RECORDS & ACTUAL USAGE

PACIFIC CITY WATER DISTRICT

34005 Cape Kiwanda Drive
P. O. Box 88
PACIFIC CITY, OREGON 97135
(503) 965-6491

January 30, 1991

Water Resources Department
3850 Portland Road NE
Salem, OR 97310

RE: File 49201

Your card and follow up letter concerning Permit No. 36881 was somewhat a surprise.

In checking our records it appears that an extension of time for Permit #36881 was requested in September 1985. In October 1985 all staff and board mem were replaced. According to the description of work, it was completed some time before OCtober 85. The records then of work are not complete so it is hard to tell when the work was completed. We had assumed that all construction requirements had been taken care of.

Enclosed are Form C - Notice of Complete Application of Water to a Beneficial Use and Form B - Notice of Completion of Construction.

Please feel free to contact us if you have any questions.

Sincerely,

Verne L. Crawford

Verne L. Crawford, President
Board of Commissioners

STATE OF OREGON

COUNTY OF TILLAMOOK

DRAFT

PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

PACIFIC CITY ~~WATER DISTRICT~~ JWSA
P.O. BOX ~~78~~ 520
PACIFIC CITY, OREGON 97135 -0520

confirms the right to use the waters of HORN CREEK, a tributary of NESTUCCA RIVER, for QUASI MUNICIPAL PURPOSES.

This right was perfected under Permit 36881. The date of priority is MAY 3, 1972. This right is limited to 1.35 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE 1/4 SE 1/4, SECTION 8, T 4 S, R 10 W, W.M.; 330 FEET NORTH AND 750 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 8.

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

A description of the place of use to which this right is appurtenant is as follows:

SE 1/4 SW 1/4
SW 1/4 SE 1/4
SECTION 18

POU WRIS data matches the map.

NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SECTION 19

Should be:
330 N + 750 W
from SE corner.

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SECTION 30

W½ of SE - on map

not on map

TOWNSHIP 4 SOUTH, RANGE 10 WEST, W.M.

DRAFT

SEE NEXT PAGE

NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 13

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 24

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 25
TOWNSHIP 4 SOUTH, RANGE 11 WEST, W.M.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

VICTOR ATIYEH
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-8508

November 13, 1985

Pacific City Water District
PO Box 88
Pacific City, OR 97135

REFERENCE: File Number 49201

Gentlemen:

Your application for an extension of the time limits in which to complete construction and make complete application of water under the terms of your Permit No. 36881 was received. We also have your check in the amount of $100.

The application indicates reasonable diligence has been exercised toward completion of the proposed project; therefore, the time limits to complete construction and make complete application of water are being extended to October 1, 1990.

Sincerely,

Bruce A. Estes, Supervisor
Survey/Certificate Section

BAE/jw

Enclosure

690-10-116

File No. 49201

Application for Extension of Time

RECEIVED
SEP 30 1985
WATER RESOURCES DEPT
SALEM, OREGON

TO THE WATER RESOURCES DIRECTOR OF OREGON

I, PACIFIC CITY WATER DISTRICT
Name

P. O. BOX 88
Mailing Address

PACIFIC CITY, OR 97135,
City State Zip

record owner of water right permit No. 36881, do hereby request that the time in which to:

☐ complete the construction of works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, 19....., be extended to October 1, 19.....; and/or the time in which to

☒ accomplish beneficial use of water to the full extent now intended under the terms of said permit, which time now expires on October 1, 1985, be extended to October 1, 1990..

I have accomplished the following described works and/or purchase and installation of equipment necessary to the use of water under said permit:

within the past years, see application dated 11-21-80. District has maintained the road to Horn Creek Dam, maintained the Dam, and installed approximately 75 new services. Horn Creek source is now the District's alternate source used during periods of peak demand and in emergencies.

prior to this past year .....

and have accomplished beneficial use of water to the extent of (IF FOR IRRIGATION, STATE HOW MANY ACRES HAVE BEEN IRRIGATED) N/A

(If additional space is required, attach separate sheet)

Jack Schroder President, Board of Directors
(If signing for a corporation please identify your title)

Dated September 24, 1985

$100.00
9-30-85
#47644

MAIL COMPLETED APPLICATION AND STATUTORY FEE OF $100.00 FOR EACH PERMIT TO:

Water Resources Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, Oregon 97310

B-C
10-1-90
BAE

SP*35675-690

378-8508

August 27, 1985

Pacific City Water District
PO Box 88
Pacific City, OR 97135

REFERENCE: File Number 49201

Gentlemen:

I am enclosing a form for use in making application for an extension of time limits under Permit Number 36881

The Water Resources Director is permitted by law to extend the time for completion of a project only upon a showing of reasonable diligence by the permittee. Therefore, you should fill out this application carefully and completely describing what has been accomplished.

The application must be submitted to this office with the statutory filing fee in the amount of $100 for each permit.

Sincerely,

Bruce A. Estes

BRUCE A. ESTES, Supervisor
Survey/Certificate Section

BAE:wpc

690-10-115
6164A

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3739

January 24, 1991

Pacific City Water District
PO Box 88
Pacific City OR 97135

REFERENCE: File 49201

According to the terms of your Permit 36881 complete application of water was to have been made by October 1, 1990.

Complete application of water means use of the water for the beneficial purpose described in the permit to the full extent intended. (In the case of irrigation, it means beneficial irrigation of the lands the permittee intends to cover.) This may be a smaller amount than the permit allowed. If the water has been used, you should promptly submit notice describing the extent of completion as set forth in the letter accompanying your permit and also in our postal card of October 25, 1990.

ORS 537.260 provides that: "Whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the Water Resources Director proof of completion of the appropriation as required by ORS 537.230 and 537.250, the Water Resources Director may, after 60 days notice by registered mail, order the cancellation of the permit."

You are hereby notified that, unless proof of beneficial use is received within 60 days from the date of this letter, the permit may be canceled without further notice.

If you are no longer interested in the project described by the permit, we would appreciate being advised. If the property involved has been sold and any part of the project was completed, you should assign the permit to the new owner. An assignment form will be furnished upon request.

If additional information is needed, please contact the Water Rights Section.

tle

CERTIFIED - RETURN RECEIPT REQUESTED

VICTOR ATIYEH
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-8508

December 4, 1980

Pacific City Water District
P.O. Box 88
Pacific City, OR 97135

Dear Sirs:

REFERENCE: File Number 49201

Your application for an extension of the time limits in which to complete construction and make complete application of water under the terms of your permit numbered 36881 has been received. We also have your check in the amount of $10.

The application indicates reasonable diligence has been exercised toward completion of the proposed project; therefore, the time limits to complete construction and make complete application of water are being extended to October 1, 1985.

Sincerely,

Bruce A. Estes

Bruce A. Estes, Supervisor
Survey-Certificate Section

BAE:lrs
Enclosure: Receipt Number 21657

690-10-116

File No. 49201

Application for Extension of Time

RECEIVED
NOV 24 1980
WATER RESOURCES DEPT
SALEM, OREGON

TO THE WATER RESOURCES DIRECTOR OF OREGON

I, PACIFIC CITY WATER DISTRICT
Name

P.O. Box 88
Mailing Address

Pacific City, Oregon, 97135
City, State, Zip

record owner of water right permit No. 36881, do hereby request that the time in which to:

☐ complete the construction of works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, 19..., be extended to October 1, 19...; and/or the time in which to

☒ accomplish beneficial use of water to the full extent now intended under the terms of said permit, which time now expires on October 1, 19..80 be extended to October 1, 19..85

I have accomplished the following described works and/or purchase and installation of equipment necessary to the use of water under said permit:

within the past year Maintained the road to Horn Creek dam and added 40 new services to the present system. Presently planning a full filtration treatment plant and services to 65 new homes in the next two years.;

prior to this past year .....;

and have accomplished beneficial use of water to the extent of (IF FOR IRRIGATION, STATE HOW MANY ACRES HAVE BEEN IRRIGATED) .....

(If additional space is required, attach separate sheet)

Clarence Hebron
(If signing for a corporation please identify your title)
Clarence Hebron, President Board of Directors

Dated November 21, 1980

11-24-80
$10.00
#21657

MAIL COMPLETED APPLICATION AND STATUTORY FEE OF $10.00 FOR EACH PERMIT TO:

Water Resources Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, Oregon 97310

B-C
10-1-85
DAB

SP*35675-690

ROBERT W. STRAUB
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-8508

File 49201

April 21, 1978

Pacific City Water District
P.O. Box 88
Pacific City, OR 97135

Gentlemen,

Your application for an extension of the time limits in which to complete construction and make complete application of water under the terms of your permit number 36881 has been received. We also have your check in the amount of $10.00.

The application indicates reasonable diligence has been exercised toward completion of the proposed project; therefore, the time limits in which to complete construction and make complete application of water are being extended to October 1, 1980.

Sincerely,

Bruce A. Estes, Supervisor
Survey=Certificate Section

BAE:jt
Encl. Receipt 1017

RECEIVED
FEB 8 1978
WATER RESOURCES DEPT.

Application No. 49201

Application for Extension of Time

To the State Engineer of Oregon:

I, PACIFIC CITY WATER DISTRICT, of P.O. Box 88 PACIFIC CITY state of OREGON, am the owner and holder of Permit No. 36881, to appropriate the public waters of the state of Oregon.

Under the terms and conditions of said permit, construction work is required to be completed on or before AUGUST 30, 19 72, and complete application of water is required to be made on or before AUGUST 30, 19 76

I have heretofore done the following work described under said permit during the past year:

maintenance

see letter of April, 78

and did the following work prior to last year: The infiltration gallery was completed and put into use in 1972. It was not done correctly. Consequently it has never worked correctly.

costing $30,000., and I estimate the cost of completion to be $50,000.

I have heretofore used water under said permit to the following extent: To service the PACIFIC CITY - Woods Area with water

I am unable to {complete construction work / ~~make complete application of water~~} within the required time, for the following reasons, to wit: The system was completed but is unsatisfactory. The BOARD is in the process of inspecting the system now. The ENGINEER for the water district, ENCON, is testing the water quality and quantity at present to determine what direction the District should go.

(Strike out phrase not applicable)

(If additional space is required, attach separate sheet)

(A fee of $5.00 for each permit involved must accompany this application.)

(OVER)

Rec 1017
$10.00

B-C
10-1-80

WHEREFORE, I ask that the State Engineer extend the time for the

{completion of construction work / ~~complete application of water~~} under said permit to JANUARY 31, 1980.

(Strike out phrase not applicable)

AFFIDAVIT OF APPLICANT

STATE OF OREGON }
County of Tillamook } ss.

I, ROBERT C. RISSEL, being first duly sworn, depose and say that I have read the above and foregoing application for extension of time; that I know the contents thereof, and the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 4 day of FEBRUARY, 1978

x Elizabeth A. Kocher

Subscribed and sworn to before me this 4 day of FEBRUARY, 1978

[Notarial Seal]

Robert C. Rissel
Notary Public for Oregon

My commission expires 10-6-81

PACIFIC CITY WATER DISTRICT

P. O. BOX 88
PACIFIC CITY, OREGON 97135

April 17, 1978

Water Resources Department
Mill Creek Office Park
555 13th Street N.E.
Salem, Oregon 97310

Attention: Bruce Estes

Dear Mr. Estes;

Please excuse the delay in answering your letter of February 9, 1978. I hope that the following information is what you want so that there will be no further delay.

There is no expansion of the present facility expected. The Water District at this time is looking at a possible expansion or developement of an alternate water supply system. The system as it is now on Horn Creek will be maintained as it is at present.

Our growth has really mushroomed in the past year. During the fiscal year of 1975-76, the District had a 2% increase in Hook-ups. During the fiscal year 1976-77 the District had an approximate 3% increase. During the fiscal year 1977-78 which isn't yet over, the district is experiencing an increase of 5% to this date. The District expects to continue a growth of approximately 5%. The District is considering the annexation of another small water district in near proximity.

Once again please excuse the delay in this answer.

Sincerely,

Elizabeth A. Koeber

Elizabeth A. Koeber
Chairman Board of Commissioners

ROBERT W. STRAUB
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-8508

File 49201

April 7, 1978

Pacific City Water District
P.O. Box 88
Pacific City, OR 97135

Gentlemen,

I am enclosing a copy of my letter of February 9, 1978 regarding your permit 36881. Will you please answer the questions thereon? We must have this information to consider your application for an extension.

This permit requires either the extension or we must go to survey to determine the extent of use which was made by October 1, 1976.

Thank you.

Sincerely,

Bruce A. Estes, Supervisor
Survey-Certificate Section

BAE:jt

ROBERT W. STRAUB
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-8508

File 49201

February 9, 1978

Pacific City Water District
P.O. Box 88
Pacific City, OR 97135

Gentlemen,

We have your application for an extension of the time limits to complete your project described under permit number 36881 which was for the quasi-municipal use of 2.0 cubic feet of water per second from Horn Creek.

You stated the work you had completed during the past year was only maintenance. We are not concerned about that type of work on a quasi-municipal, but we are concerned if you would have an expansion of your facilities and in particular during the past year since 1975 and 1976 did you hook-up any more houses. If you would please inform us as to the growth potential that you have experienced during the past years and if you expect additional growth. This is the type of information that we need on this application.

Please let us know at your earliest convenience and we will then be prepared to act on your extension application.

Thank you very much.

Sincerely,

Bruce A. Estes, Supervisor
Survey-Certificate Section

BAE:jt

ROBERT W. STRAUB
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-3066

49201

January 16, 1978

Pacific City Water District
P.O. Box 78
Pacific City, OR. 97135

Dear Sir:

I have received your letter of January 9, 1978 with the $2.25 for copying. Enclosed are copies of permit 36881 with the map.

I am also enclosing a form for use in making an application for an extension of time limits under permit number 36881.

The Water Resources Director is permitted by law to extend the time for completion of a project only upon a showing of reasonable diligence by the permittee. Therefore, you should fill out this application carefully and completely describing what has been accomplished.

The application must be executed before a notary public and submitted to this office with the statutory filing fee in the amount of $10.00 for each permit.

Sincerely,

LARRY TOLL
Water Rights Engineer

LMT:tld
ENCL: Receipt No. 665

PACIFIC CITY WATER DISTRICT

P. O. BOX 88
PACIFIC CITY, OREGON 97135
January 9, 1978

State of Oregon
555 13th Street N.E.
Salem, Oregon 97310

Attention: Mr. Shook

Dear Mr. Shook;

Enclosed please find a check in the amount of $2.25 to pay for a map (25¢) and a water use permit ($1.75). The Pacific City Water District wishes to renew the Water Permit # 36881 and apply for an extension on the time limit of the permit. The District is in the process now of obtaining further engineering reports so as to determine where the best source of water will be to accomodate the predicted growth of the area.

Thank you for your attention to this matter.

Sincerely,

Elizabeth A. Koeber

Elizabeth A. Koeber
Chairman Board of Commissioners

EAK/bcw

May 25, 1972

49201

Westech Engineering, Inc.
Consulting Engineers and Planners
200 Lancaster Drive, S. E.
Salem, OR 97301

ATTENTION: CAM STEKETEE, P. E.

Gentlemen:

This will acknowledge the application you submitted on behalf of Pacific City Water District for a permit to appropriate 2 cubic feet of water per second from the Horn Creek for municipal water supply. Also acknowledged are the reproducible map and fees of $27 for which our receipt No. 28250 was handed to Mr. Cam Steketee.

This application has been filed and numbered 49201 and is in satisfactory form for approval by issuance of a permit.

Very truly yours,

WAYNE J. OVERCASH
Assistant

WJO:kmp

cc: Pacific City Water District

POINT OF INTAKE

6" & 8"

HORN CREEK

2514'

6"

2445'

8"

17 | 20
18 | 19

20 | 29
19 | 30

29 | 32
30 | 31

SE 1/4 - NE 1/4 1.0 A

NE 1/4 - SE 1/4 1.8 A

SW 1/4 - NE 1/4 29.9 A

NW 1/4 - NE 1/4 17.7 A

SW 1/4 - SE 1/4 0.6 A

6"

NW 1/4 - SE 1/4 3.6 A

SW 1/4 - SE 1/4 6.8 A

SE 1/4 - NE 1/4 40.0 A

300,000 GAL. RESERVOIR

10"

SW 1/4 - NE 1/4 40.0 A

NW 1/4 - SE 1/4 37.9 A

SW 1/4 - SE 1/4 31.2 A

SE 1/4 - SW 1/4 3.7 A

NE 1/4 NW 1/4 12.1 A

SE 1/4 - NW 1/4 11.6 A

N

Scale: 1" = 500'

NE 1/4 - SW 1/4 24.4 A

NE STUCCA

SE 1/4 - SW 1/4 31.2 A

NE 1/4 - NW 1/4 35.5 A

SE 1/4 - NW 1/4 40.0 A

NE 1/4 - SW 1/4 3.2 A

10"

6"

NW 1/4 NW 1/4 40.0 A

SW 1/4 - NW 1/4 40.0 A

NW 1/4 - SW 1/4 40.0 A

RIVER

6"

SW 1/4 - SW 1/4 40.0 A

4"

BOUNDARY PACIFIC CITY WATER DISTRICT

18 | 19
13 | 24

19 | 30
24 | 25

30 | 31
25 | 36

R10W

R11W

NE 1/4 - SE 1/4 40.0 A

SE 1/4 SE 1/4 40.0 A

NE 1/4 - NE 1/4 40.0 A

4"

8"

100,000 GAL. RESERVOIR

SE 1/4 - NE 1/4 39.7 A

NE 1/4 - SE 1/4 - 34.4 A

SE 1/4 - SE 1/4 26.9 A

NE 1/4 - NE 1/4 22.0 A

SE 1/4 - NE 1/4 22.1 A

WATER RIGHT APPLICATION for PACIFIC CITY WATER DISTR

T4S, R10W & R11W

RECEIVED
MAY 3 1972
STATE ENGINEER
SALEM OREGON

Application No. 49201

POINT OF INTAKE

6" & 8"

HORN CREEK

2514'

6"

2445'

17 20
18 19

20 29
19 30

SE 1/4 - NE 1/4 1.0A

NE 1/4 - SE 1/4 1.8A

8"

SE 1/4 - NE 1/4 40.0A

NW 1/4 - NE 1/4 17.7A

SW 1/4 - NE 1/4 29.9A

6"

SW 1/4 - SE 1/4 0.6A

NW 1/4 - SE 1/4 3.6A

SW 1/4 - SE 1/4 6.8A

300,000 GAL. RESERVOIR

10"

NW 1/4 - SE 1/4 37.9A

SW 1/4 - NE 1/4 40.0A

SE 1/4 - SW 1/4 3.7A

NE 1/4 NW 1/4 12.1A

SE 1/4 - NW 1/4 11.6A

N

Scale: 1" = 500'

NE 1/4 - SW 1/4 24.4A

NE 1/4 - NW 1/4 35.5A

SE 1/4 - NW 1/4 40.0A

NE 1/4 - SW 1/4 3.2A

NESTUCCA

SE 1/4 - SW 1/4 31.2A

10"

6"

NW 1/4 - SW 1/4 40.0A

RIVER

8"

NW 1/4 NW 1/4 40.0A

SW 1/4 - NW 1/4 40.0A

BOUNDARY PACIFIC WATER DISTRICT

SW 1/4 - SW 1/4 40.0A

4"

18 19

19 30

13 24

24 25

NE 1/4 - SE 1/4 40.0A

SE 1/4 SE 1/4 40.0A

NE 1/4 - NE 1/4 40.0A

4"

8"

100,000 GAL RESERVOIR

SE 1/4 - NE 1/4 39.7A

NE 1/4 - SE 1/4 4.4A

SE 1/4 - SE 1/4 26.9A

NE 1/4 - NE 1/4 22.0A

SE 1/4 - NE 1/4 22.1A