

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

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time )  
for Permit S-49497, Water Right Application S-58245, ) PROPOSED FINAL ORDER  
in the name of the Port of Umatilla )

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**Permit Information**

**Application File S-58245/ Permit S-49497**

Basin 7 – Umatilla Basin / Watermaster District 5

Date of Priority: January 19, 1979

**Authorized Use of Water**

Source of Water: The Columbia River, a Tributary of the Pacific Ocean

Purpose or Use: Municipal Use

Maximum Rate: 155.0 Cubic Feet per Second (cfs)

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**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-49497, water right Application S-58245. A copy of Permit S-49497 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 from October 1, 1997 to October 1, 2073.
- Grant an extension of time to apply water to full beneficial use from October 1, 1997 to October 1, 2073.
- Make the extension of time subject to certain conditions as set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources  
The Port – Port of Umatilla  
ODFW – Oregon Department of Fish and Wildlife  
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. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

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 which grants access to water under this extended permit.

## FINDINGS OF FACT

### Background

1. Permit S-49497 was granted by the Department on November 27, 1985. The permit authorizes the use of up to 155.0 cfs of water from the Columbia River, a tributary of the Pacific Ocean, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1987, and that complete application of water was to be made on or before October 1, 1988.
2. Two prior permit extensions have been granted for Permit S-49497. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1997.
3. Due to an ongoing permit extension rulemaking, in 1998, the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
5. On September 29, 1997, the Port of Umatilla (Port) submitted an "Application for Extension of Time" to the Department requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-49497 be extended from October 1, 1997 to October 1, 2002.
5. On September 29, 2003, the Port submitted a modified "Application for Extension of Time," consistent with the revised OAR Chapter 690 Division 315 rules governing extensions of time for municipal and quasi-municipal water use permits. The Port's modified application for an extension of time requested that the time to complete construction of the water system and to apply water to full beneficial use be extended from October 1, 1997 to October 1, 2043.
6. Notification of the Port's Application for Extension of Time for Permit S-49497 was published in the Department's Public Notice dated October 7, 2003. No public comments were received regarding the extension application.

7. On September 29, 2010, the Port submitted supplemental information and revisions to their pending Application for Extension of Time. The Port requested the extended time to complete construction be changed from October 1, 2043 to October 1, 2073, and the extended time to apply water to full beneficial use be changed from October 1, 2043 to October 1, 2073.

**Review Criteria for Municipal and 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<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

8. On September 29, 1997, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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

9. Permit S-49497 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.<sup>4</sup>

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

*Under OAR 690-315-0080(1)(c) and (1)(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.*

10. The remaining work to be accomplished under Permit S-49497 consists of expansion of infrastructure to allow for an additional system capacity of 131 cfs, and completing construction and applying water to full beneficial use.
11. As of September 29, 1997, the permit holder has diverted 18.54 cfs of the 155.0 cfs of water authorized under Permit S-49497 for municipal purposes. There is an undeveloped portion of 136.46 cfs of water under Permit S-49497 as per OAR 690-315-0010(6)(g).
12. In addition to the 155.0 cfs of water authorized under Permit S-49497 the Port holds Permit G-3112 for 4.46 cfs of groundwater from a well within the Columbia River Basin. The City of Umatilla uses water authorized under Permit G-3112 and has leased the associated well until 2040 (2007 WMCP, Section 2, page 2-1).

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

<sup>4</sup> Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(1)(d).

13. According to the Port's 2007 WMCP, only Permit S-49497 is utilized under a Regional Water System co-owned by the Port and the City of Hermiston. This Regional Water System was planned, designed, and constructed to meet the water needs of communities and industries within the Port of Umatilla District. The system consists of a water treatment plant (WTP) and potable water and non-potable water distribution systems. (2007 WMCP, Section ES, page ES-1, Section 2, page 2-1, and Section 1, page 1-1.) Non-potable use of water reached nearly 92 percent of all water supplied in 2005; the Regional Water System supplies primarily industrial customers. (2007 WMCP, Section 2, page 2-7, 2-9.)
14. The Port of Umatilla District's boundary is the same as the boundary of the boundary for Umatilla County which is approximately 3,200 square miles. Much of the northern portion of Umatilla County is designated as a Critical Groundwater Area (CGWA), which means the issuance of new groundwater rights is restricted, and groundwater use under existing water rights may continue to be regulated to prevent groundwater overdrafts that cause excessive declines in aquifer levels. Thus, the regional potential demand for water will likely need to be met by surface water available through the Regional Water System.
15. The Port's peak water demand within its service area boundaries was 24 cfs in 2005.
16. The Regional Water System's total existing contract capacity is 20.4 cfs<sup>5</sup>, being 13.7 for industrial use (Extension Application, Exhibit D), and 6.7 cfs with the City of Hermiston (2007 WMCP, Exhibit 1-2). In addition, the Port has Memorandums of Understanding (MOU) with the City of Echo and the City of Stanfield to supply their future municipal water needs. Although the City of Hermiston relies on groundwater as its primary source of supply, it relies on surface water available from the Regional Water System for redundancy, to meet peak needs, and to accommodate growth. (2007 WMCP, Section 5, page 5-2.)
17. According to the Port, in 2005, the population (the City of Hermiston) served by Port of Umatilla was 15,025. However, this water supplied for potable consumptive purposes (6.4 %) is a relatively minor component of the water supplied under Permit S-49467. Thus, population does not serve as a reliable predictor for demand for water use under this permit, and is not expected to be the major driver for water demand in the near future. In addition, potable (~2 %) and non-potable (92 %) industrial water is currently supplied to two power producers and one food processing and manufacturing company.
18. The Port estimates the population (Cities of Hermiston, Echo and Stanfield) they serve will increase at a growth rate that varies between 1.3 and 1.7 percent per year, reaching an estimated population of 60,640 at buildout.
19. The Port's peak day demand is projected to be approximately 155 cfs of water by the year 2073, being 13.4 cfs of currently contracted industrial demand, 42.1 cfs of current and

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<sup>5</sup> The Port also has an existing contract with J.R. Simplot for an additional 2.3 cfs, however this customer stopped using water from the Regional Water System in 2004.

future residential water demand, and 99.4 cfs for future industrial demand.

20. Future municipal demands on the Regional Water System assume as groundwater declines continue and population increases, that Echo and Stanfield may obtain all their water from the Regional Water System within the next 10 years. (2007 WMCP, Section 5, page 5-4.) According to the Port, when assuming the ratio of residential to industrial demands remains constant, future residential water demands to supply the Cities of Echo, Hermiston, and Stanfield in 2073 will be 42.1 cfs, being 1.2 cfs for Echo, 36.7 cfs for Hermiston<sup>6</sup>, and 4.2 cfs for Stanfield.
21. The Port has 542 acres of vacant industrial land, of which 489 acres are certified as “shovel-ready” by the State of Oregon, and can be leased immediately. The port plans to apply for certification of the remained 53 acres in the future. The Port’s available industrial land divided into potential customer types (businesses, warehousing and manufacturing, large industrial), when applying Oregon water demand based estimations for each type, shows an estimated future demand of 99.4 cfs for the 542 acres of available land. (2007 WMCP, Section 5, page 5-7.)
22. Although not included in the projections stated above, according to the 2007 WMCP, because of ongoing concerns about groundwater in the region, and because the Port’s district includes all of Umatilla County, the Regional Water System ultimately could be used to supply municipal demands of other cities, towns, or small rural developments. (2007 WMCP, Section 5, page 5-4.)
23. And finally, according to the Port’s 2007 WMCP, the Umatilla County Critical Groundwater Task Force is investigating ways to use the Regional Water System’s water supply to help offset the area’s shrinking groundwater supplies through projects such as aquifer storage and recovery (ASR). (2007 WMCP, Section 5, page 5-7.)
24. Based on demand productions from currently identified municipal, existing industrial and potential industrial customers through 2073, and in order to alleviate potential water shortages due to declining groundwater levels in the surrounding critical groundwater areas, full development of Permit S-49497 is needed to address the present and future water demands of the Regional Water System, including system redundancy.
25. In accordance with OAR 690-315-0080(1)(d), the Port has demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served.
26. The Port’s request for an extension of time until October 1, 2073, to complete construction and to apply water to full beneficial use under the terms of Permit S-49497 is both reasonable and necessary.

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<sup>6</sup> Hermiston’s projected demand is 58.3 cfs, but only 36.7 cfs of their future demand will need to be met under the Regional Water System. The balance of Hermiston’s water demand will be met through development and utilization of Hermiston’s existing permitted groundwater resources.

**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), (3)(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.*

27. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
28. During the last extension period, being October 1, 1992 to October 1, 1997, the Port accomplished the following:
  - conducted preliminary studies and performed engineering tasks,
  - obtained easements, and permits,
  - completed the intake pump station,
  - completed the raw water transmission pipeline, and
  - completed construction of the water treatment plant and booster pump station.
29. Since October 1, 1997, the Port has accomplished the following:
  - installed distribution lines,
  - completed a non-potable pump station (accomplished by Calpine)
  - received Department approval on its 2007 WMCP, and
  - submitted a WMCP Work Plan Progress Report in 2009.
30. According to the Port, as of September 29, 2003, they have invested approximately \$16,752,000, which is 18.7 percent of the total projected cost for complete development of this project. The Port estimates a \$73,000,000 investment is needed for the completion of this project. Since the issuance of Permit S-49497 on November 27, 1985, the Port has diverted 18.54 cfs of the 155.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
31. The Department has considered the Port's compliance with conditions and did not identify any concerns.

**Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose**  
**[OAR 690-315-0080(3)(b)]**

32. According to the Port, as of September 29, 1997, they have invested approximately \$16,752,000, which is 18.7 percent of the total projected cost for complete development of this project. The Port estimates a \$73,000,000 investment is needed for the completion of this project.

**The Market and Present Demands for Water [OAR 690-315-0080(3)(d)]**

33. As described in Findings 11 through 25 above, the Port has indicated, and the Department finds that the Port must rely on full development of their Permit S-49497.
34. Much of the northern portion of the Port's district boundary is designated as a Critical Groundwater Area (CGWA). Therefore, the appropriation of new groundwater rights is restricted, and groundwater use under existing water rights may be regulated to prevent groundwater overdrafts that cause excessive declines in aquifer levels. The City of Hermiston is nearly surrounded by the Butter Creek CGWA to the west and south, and Stage Gulch CGWA to the southeast. (2007 WMCP, Section 5, page 5-1.) Limitations to groundwater in this region make reliance on Permit S-49497 increasingly necessary.
35. The Port estimates an annual population growth rate that varies between 1.3 and 1.7 percent per year over a 68 year period, being the years 1997 to 2073.
36. Given the current water supply situation of the Port, including the lack of alternative sources of water to meet the Regional Water System's future needs, and due to current and expected demands, and the need for system redundancy, there is a market and present demand for the water to be supplied under Permit S-49497.
37. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 18.54 cfs under Permit S-49497 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. 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)]**

38. The Port expects to obtain a fair and reasonable return on investment by continuing development of Permit S-49497.

**Other Governmental Requirements [OAR 690-315-0080(3)(f)]**

39. 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)]**

40. Delay of development under Permit S-49497 was due, in part, to a slow economy, and to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

**Maintaining the Persistence of Listed Fish Species [OAR 690-315-0080(1)(f) and (2)]**

*The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.*

41. The pending municipal Application for Extension of Time for Permit S-49497 was delivered to ODFW on November 12, 2010, for ODFW's review under OAR-690-315-0080.
42. Notification that the pending municipal Application for Extension of Time for Permit S-49497 was delivered to ODFW for review was sent to the Port on November 12, 2010.
43. Notification that the pending municipal Application for Extension of Time for Permit S-49497 was delivered to ODFW for review was published in the Department's Public Notice dated November 16, 2010. No public comments were received regarding this notice.
44. On June 6, 2012, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-49497.
45. Summary and Excerpts of Advice from ODFW:  
Use of water under the portion of this permit that is undeveloped as of the date of the extension final order should be conditioned from April 10 through August 31 to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the Columbia River will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.  
  
ODFW recognizes that climatic variations will affect the amount of water in the system. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.  
  
The streamflows, in Table 1, below, are ODFW's recommended flows measured at McNary Dam near Umatilla, Oregon, for maintaining the persistence of listed fish species in the Columbia River. ODFW advises the Water Resources Department to develop conditions that allow municipalities to meet their water needs while maintaining the persistence of listed fish species.

The severity of the measures to be taken by the permit holder should reflect the degree to which the recommended streamflows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, and may be adjusted by the ratio of water withdrawn to water being returned directly to the Columbia River through effluent discharges.

**Table 1**

<b>ODFW'S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE COLUMBIA RIVER AT McNARY DAM NEAR UMATILLA, OREGON</b>	
Month	1000 Cubic Feet per Second
April 10 – June 30	220-260
July 1 – August 31	200

**Streamflow Measurement Point**

After analysis of flow records, ODFW has determined that measuring flows at McNary Dam is sufficient for ensuring that flows to maintain the persistence of listed fish are met in the Columbia River. Therefore, ODFW advises the Department to establish the McNary Dam as the flow measurement location for determining whether fish flows are being met for this municipal permit extension.

**46. Department's Findings Based on Review of ODFW's Advice:**

The Department is proposing conditions in this extension of time consistent with ODFW's advice (See Item 2 of the "Conditions" section of this PFO). There is an undeveloped portion of 136.46 cfs of water under Permit S-49497 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 18.54 cfs up to the permitted quantity of 155.0 cfs can only be granted through the Department's review and approval of the municipal permit holder's future WMCPs (OAR 690-086). When ODFW's recommended flow targets are not met, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-49497 that can be diverted. The proposed conditions in this extension of time are based on the following findings:

- a. The Columbia River streamflows needed to maintain the persistence of fish must be measured at McNary Dam, Oregon.
- b. When target flows are not met in the Columbia River from April 10 through August 31, use of the undeveloped portion of the permit may need to be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flows in the Columbia River is defined as:

$$1 - (Q / Q_T),$$

where Q is the flow at the point of interest, and Q<sub>T</sub> is the target flow (from Table 1).

- c. ODFW's advice recognizes that municipalities may return a certain amount of flow to a river or stream through their effluent discharge. If the withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, then ODFW recommends that any reduction to use of the undeveloped portion of Permit S-49497 should be adjusted by the monthly estimated percentage of the difference between the total water withdrawals and their return flows. Therefore, consistent with ODFW's advice, when appropriate, the Department proposes to adjust any reduction by a "Consumptive Use Percentage," as generally determined by  $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$ .
  - d. Because the main influence of Columbia River flow levels is the federal management of the dams and that the severity of the measures to be taken by the permit holder should reflect the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, the Department proposes to limit any overall reduction based on Columbia River flows to no more than 20 percent of the undeveloped portion.
  - e. From April 10 through June 30, the target flow is expressed as a range (220K-260K cfs). This range is based on the Corps river level forecasting, which reflects the type of water year expected and the physical possibility of providing various flow levels. However, flows below 260K cfs are considered to be less beneficial to the persistence of listed fish species compared to flows of 260K cfs and above. Thus, the larger number in the range (260K cfs) is considered to be the target flow for fish persistence.
47. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-49497 will not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, and as a result of the use of the undeveloped portion of the permit, streamflows would be a limiting factor for the listed fish species.
48. Based on ODFW's advice, the Department proposes to require conditions to maintain, in the portions of the waterways affected by water use under Permit S-49497, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. (See Item 2 of the "Conditions" section of this PFO.)<sup>7</sup>
49. On June 7, 2012, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-49497 are consistent with their advice.

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<sup>7</sup> The Department, based on advice from the ODFW, has determined that the conditions contained in this PFO are appropriate for this extension. In other municipal extensions that require conditions to maintain the persistence of listed species, different conditions may be warranted depending on the advice received from ODFW and communications with the particular extension applicant.

50. On June 8, 2012, the Department notified the Port as per OAR 690-315-0080(2)(f) of ODFW's written advice and the "Conditions to Maintain the Persistence of Listed Fish" proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-49497.

### CONCLUSIONS OF LAW

1. The Port of Umatilla 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 537.230(2).
2. The Port of Umatilla 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. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise 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, 2073<sup>8</sup>. The estimated demand projections are consistent with the amount and types of lands and uses proposed to be served by the permit holder pursuant to 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 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 37, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 18.54 cfs under Permit S-49497 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

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<sup>8</sup> 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.

8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 41 through 50, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use of the undeveloped portion under this municipal use permit, in the absence of special conditions. Therefore, the diversion of water beyond 18.54 cfs under Permit S-49497 will be subject to the conditions specified under Item 2 of the “Conditions” section of this PFO.

### **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 under Permit S-49497 from October 1, 1997 to October 1, 2073.

Extend the time to apply the water to beneficial use under Permit S-49497 from October 1, 1997 to October 1, 2073.

Subject to the following conditions:

### **CONDITIONS**

#### **1. Development Limitations**

Diversion of any water beyond 18.54 cfs under Permit S-49497 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to water under this extended permit. 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-49497 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, on file with the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

#### **2. Conditions to Maintain the Persistence of Listed Fish**

##### **A. Minimum Fish Flow Needs**

- a. Minimum fish flow needs in the Columbia River as recommended by ODFW are in Table 2, below; flows are to be measured in the Columbia River at McNary Dam. Daily flow reports for McNary Dam are available from the Fish Passage Center (FPC) established by the Northwest Power Planning Council (NPPC) at <http://www.fpc.org/currentdaily/flowspil.txt>.

**Table 2**

<b>ODFW'S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE COLUMBIA RIVER , MEASURED AT McNARY DAM NEAR UMATILLA, OREGON</b>	
Month	1000 Cubic Feet per Second
April 10 – June 30	260
July 1 – August 31	200

b. Alternate Streamflow Measurement Point

The location of a streamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the City provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions – Generally

The maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of average of mean daily flows measured in the Columbia River at McNary Dam. The percent of missed target flows is defined as:

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

where  $Q_A$  is the actual flow measured at the designated location based on the seven day rolling average, and  $Q_T$  is the target flow (from Table 2).

The percent missed target flows applied to the undeveloped portion of the permit provides the maximum amount of undeveloped water that can be diverted as a result of this fish persistence condition, and is defined as:

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

where  $E$  is the undeveloped portion of the permit as of this extension, being 136.46 cfs.

The maximum amount of undeveloped water that can be diverted as a result of this fish persistence condition may be adjusted by a Consumptive Use Percentage, when applicable, as per Item 2.C., below. The overall reduction to the amount of the undeveloped portion of the permit will not exceed 20%.

When  $Q_A \geq Q_T$ , the amount of the undeveloped portion of the permit that can be diverted would not need to be reduced as a result of this fish persistence condition.

C. Consumptive Use Percentages for Utilization in Columbia River Calculations

a. Initial Consumptive Use Percentages

The Port of Umatilla has not identified any Consumptive Use Percentages based on the return of flows to the Columbia River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition.

b. First Time Utilization of Consumptive Use Percentages

Utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition may begin after the issuance of the Final Order for this extension of time.

First time utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in 2.C.f., below.

Consumptive Use Percentages submitted to the Department for review must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The proposed Consumptive Use Percentages should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., below) is contingent upon the City submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.f., below.

The updates to the Consumptive Use Percentages must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The updates should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

d. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology or the practices at the City's wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the Columbia River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the Columbia River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in 2.C.f., below.

If such changes to either wastewater technology or the practices at the City's wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the City submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

e. Relocation of the Point(s) of Diversion(s) and/or Return Flows

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that any relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

f. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins 10 years from the Water Resources Director's most recent date of concurrence with Consumptive Use Percentages Updates as evidenced by the record, unless sections 2.C.d., or 2.C.e. (above) are applicable.

Consumptive Use Percentages (first time utilization or updates) which are submitted and receive the Director's concurrence will begin a new 10 year approval period. The approval period begins on the date of the Water



Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The City at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On April 15, the last seven mean daily flows in the Columbia River at McNary Dam<sup>9</sup> were 310K, 290K, 280K, 260K, 260K, 240K and 250K cfs. The seven day rolling average ( $Q_A$ ) is 270K cfs. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the 7 day average of mean daily flows is greater than the 260K cfs target flow ( $Q_T$ ) for April 15. In this example,  $Q_A \geq Q_T$ .

Example 2: Target flow missed.

Step 1: If on July 15, the average of the last seven mean daily flows ( $Q_A$ ) was 170K cfs, and the target flow ( $Q_T$ ) is 200K, then the target flow would be missed by 15.0%.

$$(1 - (170 / 200)) \times 100\% = 15.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%<sup>10</sup> during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 15.0% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 9.3%.

$$(62.2\% \times 15.0\%) / 100 = 9.3\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit would only be reduced by the % by which the target flow is missed – 15.0% in this example).

Step 3: The overall reduction of 9.3% of the amount of the undeveloped portion of the permit does not exceed 20%.

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<sup>9</sup> Daily flow data for McNary Dam is available at <http://www.fpc.org/currentdaily/flowspil.txt>.

<sup>10</sup> Currently, the Port of Umatilla may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 62.2%<sup>15</sup> only for illustrative purposes in this example.

Step 4: The undeveloped portion of this permit as of this extension (E) is 136.46 cfs. Therefore, in this example, the maximum amount of the undeveloped portion of Permit S-49497 that can be diverted as a result of this fish persistence condition is 123.8 cfs.

$$136.46 - ((136.46 \times 9.3\%) / 100) = 123.8$$

Step 5: Given that the permitted quantity under this right is 155.0 cfs, and the undeveloped portion is 136.46 cfs, if the amount of water legally authorized for a diversion at a given point in time is 50.0 cfs, then only 31.5 cfs of undeveloped water would be used to satisfy the 50.0 cfs.

$$50.0 - (155.0 - 136.46) = 31.5$$

[Note: (155.0 - 136.46) equals the developed portion of the permit]

In this example, the 31.5 cfs of undeveloped water is less than the 123.8 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, there would be no required reduction in water use of the undeveloped portion under the permit.

Step 6: If the amount of water legally authorized for a diversion at a given point in time is 145.0 cfs, then 126.5 cfs of undeveloped water would be used to satisfy the 145.0 cfs.

$$145 - (155.0 - 136.46) = 126.5$$

In this example, the 126.5 cfs of undeveloped water is greater than the 123.8 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, the amount of undeveloped water diverted by the permit holder would need to be reduced by 2.7 cfs.


$$126.5 - 123.8 = 2.7$$

In this example, the maximum amount of water that could be appropriated is 142.3 cfs.

$$145.0 - 2.7 = 142.3$$

DATED: June 26, 2012

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and phone  
numbers.*

  
Dwight French  
Water Right Services Division Administrator

**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 **August 10, 2012**, 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 applicant or non-applicant protest fee required under ORS 536.050.
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.

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

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 Right Services Division  
725 Summer St NE, Suite A  
Fax: 503-986-0901                      Salem, OR 97301-1266

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