

**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-49653, Water Right Application S-55346, ) PROPOSED FINAL ORDER  
in the name of the City of The Dalles )

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**Permit Information**

**Application File S-55346/ Permit S-49653**  
Basin 4 – Hood Basin / Watermaster District 3  
Date of Priority: January 13, 1986

**Authorized Use of Water**

Source of Water: Columbia River, a Tributary of Pacific Ocean  
Purpose or Use: Municipal Use  
Maximum Rate: 40 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-49653, water right Application S-55346. A copy of Permit S-49653 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, 1996 to October 1, 2073.
- Grant an extension of time to apply water to full beneficial use from October 1, 1996 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  
City – City of The Dalles  
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  
mgd – million gallons per day

### 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 690-315-0050(5)** authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for 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-49653 was granted by the Department on June 30, 1986. The permit authorizes the use of up to 40.0 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, 1988, and that complete application of water was to be made on or before October 1, 1989.
2. Two prior permit extensions have been granted for Permit S-49653. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1996.
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 March 21, 2011, City of The Dalles (City) 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-49653 be extended from October 1, 1996 to October 1, 2073. This is the third extension of time request for Permit S-49653.
6. Notification of the City’s Application for Extension of Time for Permit S-49653 was published in the Department’s Public Notice dated March 29, 2011. No public comments were received regarding the extension application.
7. On August 30, 2011, the City submitted additional information to supplement their Application for Extension of Time.

**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 March 21, 2011, 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-49653 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-49653 consists of designing and constructing intake, treatment, and transmission facilities; pilot testing treatment systems for Columbia River water quality; completing NEPA and other environmental permitting; preparing a Division 86 Water Management and Conservation Plan; completing the required updates to the Division 86 Water Management and Conservation Plan through permit development; providing mitigation for the new withdrawal of water from the Columbia River; and applying water to full beneficial use.
11. As of March 21, 2011, the permit holder has not diverted any of the 40.0 cfs of water authorized under Permit S-49653 for municipal purposes. Therefore, there is an undeveloped portion of 40.0 cfs of water under Permit S-49653 as per OAR 690-315-0010(6)(g).
12. In addition to the 40.0 cfs of water authorized under Permit S-49653, the City holds the following municipal use water right certificates and permits:
  - Certificate 5691 for 2.0 cfs of water from South Fork Mill Creek;
  - Certificate 14954 for all water from the Dog River;

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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).

- Certificate 44917 for storage of 955 AF of water from the South Fork Mill Creek and Dog River in the Crow Creek Reservoir;
- Certificate 60410 for 955 AF of water from the Crow Creek Reservoir;
- Permit R-13105 for storage of 2100 AF of water from South Fork Mill Creek and Dog River in the Crow Creek Reservoir (enlarged);
- Permit S-53930 for 2100 AF of water from the Crow Creek Reservoir (enlarged);
- Ground Water Registration GR 4257 for 165 gpm (0.368 cfs) of water from the Stadelman Well within the Columbia River basin (currently not useable due to poor water quality);
- Ground Water Registration GR 4258, modified by amendment T-10865 for 2300 gpm (5.12 cfs) of water from three wells (Lone Pine Well, Jordan Well, Marks Well) within the Columbia River basin.
- Certificate 15543 for 2.68 cfs of water from a well (Marks Well) within the Mill Creek basin;
- Certificate 85886 for 0.81 cfs of water from a well (Mill Creek Well) within the Mill Creek basin;
- Certificate 86380 for 0.69 cfs of water from a well (Marks Well) within the Mill Creek basin;
- Certificate 48991 for 5.5 cfs of water from a well (Jordan Street Well) within the Columbia River basin;
- Certificate 60026 for 4.46 cfs of water from a well (Lone Pine Well) within the Columbia River basin;
- Certificate 44915 for 1.56 cfs of water from a well (Wick's Well) within the South Fork Mill Creek basin;
- Permit G-13421 for 1.11 cfs (of which 0.56 cfs has been beneficially used) of water from a well (Kuck Well) within the Columbia River Basin; and
- Certificate 87278 for 0.388 being 0.077 cfs from Well 1, 0.20 cfs from Well 5, and 0.111 cfs from Well 9, all within the Columbia River basin (note: this water right is for commercial use);

13. In addition to the 40.0 cfs of Columbia River water authorized under Permit S-49653, the City's surface water rights for municipal use consist of 2.0 cfs of South Fork Mill Creek water, 3055 AF of stored water, and all the water within the Dog River. The City mostly relies on surface water to meet to its current demand. The City has the current capacity to use 12.4 cfs of water from the Dog River and a planned capacity for using up to 26.3 cfs. They also use 2.0 cfs of water from South Fork Mill Creek and 955 AF of water stored in Crow Creek Reservoir which is filled from South Fork Mill Creek and Dog River. The City estimates that the expansion of the Crow Creek Reservoir and the water treatment plant will increase the reliable summer supply from these sources by approximately 10 cfs.

14. The City's ground water rights (including a commercial use permit) total 22.3cfs. All the

City's wells are located within The Dalles Critical Ground Water Area. The wells authorized under Certificate 87278 are non-potable water dewatering wells for land stabilization. The Lone Pine Well, Marks Well and Jordan Street Well are used as the primary ground water sources. The Marks and Jordan Street Wells must be blended with treated surface water due to elevated levels of iron, manganese and turbidity. Due to poor water quality, water from Wicks Well is usable in emergencies only after full treatment at the water treatment plant. Water from the Stadelman Well, authorized under GR 4257, is considered currently unusable due to poor water quality. Water from the Kuck Well serves a tourist facility, but is not connected to the City system. The City's ground water supplies are utilized to supplement surface water sources during peak demand summer months and emergencies.

15. The City has an intertie with Chenoweth Public Utility District (PUD), which through a verbal agreement can be activated to supply or receive emergency water.
16. Commercial and industrial development has occurred within a 225 acre area designated for industrial development within the UGB; about 60 acres are still available for industrial development. An industrial facility spanning 450 acres was recently closed and demolished, making land available for both wetland protection and industrial development. About 265 of these acres will be available for industrial redevelopment. The City is in the process of annexing all lands inside its current UGB, and additionally is pursuing the expansion of this UGB which was established in 1986 as a result of the Columbia River Gorge Scenic Area. The City is also in the process of establishing an Urban Reserve Area (URA) within which an additional 450 acres of industrial lands have been identified for development within the next 50 years. And finally, The Dalles Urban Renewal Agency has completed infrastructure improvements in support of private redevelopment of commercial enterprises, and has purchased most of the properties in a downtown block for additional redevelopment.
17. According to the City, in 2010, the population within the service boundary of the City of The Dalles was 11,930. The City anticipates the population to increase at an estimated growth rate of 1.1 percent per year, reaching an estimated population of 23,159 by the year 2073.
18. The City's peak water demand within its service area boundaries was 10.9 cfs in 2010, and is projected to be approximately 40.2 cfs by the year 2073.
19. Full development of Permit S-49653 is needed to address the future water demand of the City of The Dalles, including system redundancy and emergency use.
20. In accordance with OAR 690-315-0080(1)(d) and as described by findings 16 - 19, the City demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.
21. The City'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-49653 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), (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.*

22. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
23. During the last extension period, being October 1, 1991 to October 1, 1996, the City accomplished the following:
  - Completed quarterly water quality monitoring on the Columbia River;
  - Developed a Water Master Plan;
  - Installed residential water meters and implemented consumption-based billing;
  - Completed leak detection surveys; and
  - Conducted planning and public education as part of a water conservation program.
24. Since October 1, 1996, the City has accomplished the following:
  - Developed an updated Water Master Plan;
  - Completed quarterly water quality monitoring on the Columbia River; and
  - Conducted public education as part of a water conservation program;
25. According to the City, as of March 21, 2011, they have invested approximately \$2,010,040, which is 5.3 percent of the total projected cost for complete development of this project. The City estimates a \$35,600,000 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under S-49653, other costs included in this accounting are not partitioned out for S-49653 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.
26. Since the issuance of Permit S-49653 on June 30, 1986, the City has not diverted any of the 40.0 cfs allowed for beneficial municipal purposes under the terms of this permit.

27. The Department has considered the City'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)]**

28. According to the City, as of March 21, 2011, they have invested approximately \$2,010,040, which is 5.3 percent of the total projected cost for complete development of this project. The City estimates a \$35,600,000 investment is needed for the completion of this project.

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

29. As described in Findings 11 through 19 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-49653 to meet its future water demands.
30. The City estimates an annual population growth rate of 1.1 percent per year over a 63 year period, being the years 2010 to 2073.
31. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit S-49653.
32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-49653 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. 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)]**

33. 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)]**

34. According to the City, delay in the development of this project was caused, in part, by establishment of an Urban Growth Boundary (UGB) under the Columbia River Gorge Scenic Area Act, which was enacted in 1986. The UGB has temporarily limited the ability of the City to grow.

**Events which Delayed Development under the Permit** **[OAR 690-315-0080(3)(g)]**

35. According to the City, delay of development under Permit S-49653 was due, in part, to the size and scope of the municipal water system, which was designed to be phased in over a period of years, and to slower than expected population, business, and industrial growth, and slow economic growth.



**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.*

36. The pending municipal Application for Extension of Time for Permit S-49653 was delivered to ODFW on March 29, 2011 for ODFW's review under OAR-690-315-0080.
37. Notification that the pending municipal Application for Extension of Time for Permit S-49653 was delivered to ODFW for review was sent to the City on April 1, 2011.
38. Notification that the pending municipal Application for Extension of Time for Permit S-49653 was delivered to ODFW for review was published in the Department's Public Notice dated April 5, 2011. No public comments were received regarding this notice.
39. On December 19, 2011 the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-49653.
40. 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<br/>NEEDS IN THE COLUMBIA RIVER AT McNARY DAM<br/>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.

41. 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 40.0 cfs of water under Permit S-49653 as per OAR 690-315-0010(6)(g). Authorization to use any water under this permit 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 target flows are missed, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-49653 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  $Q_T$  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-49653 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.
42. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-49653 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.
  43. 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-49653, 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>5</sup>
  44. On January 4, 2012, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-49653 are consistent with their advice.
  45. On January 5, 2012, the Department notified the City 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-49653.

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<sup>5</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.

## CONCLUSIONS OF LAW

1. The City 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 City 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>6</sup>. The estimated demand projection is 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 City 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 32, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of any water under Permit S-49653 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.
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 36 through 45, 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 any water under Permit S-49653 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-49653 from October 1, 1996 to October 1, 2073.

Extend the time to apply the water to beneficial use under Permit S-49653 from October 1, 1996 to October 1, 2073.

Subject to the following conditions:

### **CONDITIONS**

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

Diversion of any water under Permit S-49653 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. 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-49653 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> |                                   |
|--|-----------------------------------|
| <b>Month</b>   | <b>1000 Cubic Feet per Second</b> |
| 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-49653 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 40.0 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”

a. Initial Consumptive Use Percentages

Initial Consumptive Use Percentages for the City of The Dalles to adjust water use reductions for the purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition are shown in Table 3, below. Utilization of initial Consumptive Use percentages is subject to an approval, described in 2.C.e, below.

**Table 3**

|        | <b>Initial<sup>1</sup><br/>Consumptive Use<br/>Percentage (%)</b> |
|--------|---|
| April  | 18.3  |
| May    | 41.4  |
| June   | 54.8  |
| July   | 67.8  |
| August | 64.5  |

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

b. Continuing Use of Consumptive Use Percentages by Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.e, below) is contingent upon the City submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.e, below.

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

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

If there are changes to either wastewater technology, or the practices at the City's wastewater treatment facility, resulting in 25% or more reductions in average monthly return flows to the Columbia River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the amount of the undeveloped portion of Permit S-49653 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.e., below.

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

receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

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

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be utilized for the purpose of calculating the amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition.

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

e. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum total amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins from either (1) the date of the Extension Final Order, or (2) 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.c, or 2.C.d. (above) are applicable.

Consumptive Use Percentages Updates which are submitted and receive the Director's concurrence will begin a new 10 year approval period. The approval period begins on the date of the Water Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The City at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On April 15, the last seven mean daily flows in the Columbia River at McNary Dam<sup>6</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,  $Q_A \geq Q_T$ .

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<sup>6</sup> Daily flow data for McNary Dam is available at <http://www.fpc.org/currentdaily/flowspil.txt>.



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 67.8% 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 10.2%.

$$(67.8\% \times 15.0\%) / 100 = 10.2\%$$

(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 10.2% of the amount of the undeveloped portion of the permit does not exceed 20%.

Step 4: The undeveloped portion of this permit as of this extension (E) is 40.0 cfs. Therefore, in this example, the maximum amount of the undeveloped portion of Permit S-49653 that can be diverted as a result of this fish persistence condition is 35.9 cfs.

$$40.0 - ((40.0 \times 10.2\%) / 100) = 35.9$$

Step 5: Given that the entire permit, being 40.0 cfs, is undeveloped, if the amount of water legally authorized for a diversion at a given point in time (for example, authorization provided through a WMCP) is 5.0 cfs, then 5.0 cfs of water would be available for use by the permit holder.

In this example, the 5.0 cfs of undeveloped water is less than the 35.9 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 38.0 cfs, then of the 40.0 cfs only 38.0 cfs of undeveloped water would be available for use by the permit holder.

In this example, the 38.0 cfs of undeveloped water is greater than the 35.9 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 2.1 cfs.

$$38.0 - 35.9 = 2.1$$

DATED: August 22, 2012

  
Dwight French  
Water Right Services Division Administrator

*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 **10/12/2012**, 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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