

**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-6703, Water Right Application S-8092,) **PROPOSED FINAL ORDER**
in the name of the City of Medford)

Permit Information

Application File S-8092/ Permit S-6703

Basin 15 – Rogue Basin / Watermaster District 13

Date of Priority: October 20, 1923

Authorized Use of Water

Source of Water: Big Butte Springs, Tributary to Big Butte Creek
Purpose or Use: Municipal Use
Maximum Rate: 19.2 Cubic Feet per Second (cfs)

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

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

This Proposed Final Order applies only to Permit S-6703, water right Application S-8092.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2000 to October 1, 2056.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 to October 1, 2056.
- 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 Medford

MWC – Medford Water Commission

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

URA – Urban Reserved Area

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 Proposed Final Order: Permit S-6703

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-6703 was granted by the Department on April 25, 1925. The permit authorized the use of up to 30.0 cfs of water from the Big Butte Springs, tributary to Big Butte Creek, for municipal use, of which 10.8 cfs has been perfected under Certificate 86994. The authorized amount remaining under the permit is 19.2 cfs. The permit specified that construction of the water development project was to be completed by April 25, 1930, and that complete application of water was to be made on or before October 1, 1931.
2. Thirteen prior permit extensions have been granted for Permit S-6703. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2000.
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 28, 2000, City of Medford (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-6703 be extended from October 1, 2000 to October 1, 2050.
6. Notification of the City's Application for Extension of Time for Permit S-6703 was published in the Department's Public Notice dated January 6, 2004. No public comments were received regarding the extension application.
7. On March 7, 2001, December 29, 2003, February 4, 2004, May 11, 2005, and June 6, 2011, the City submitted supplemental information and/or updated revisions to their pending Application for Extension of Time.
8. The June 6, 2011 amendment requested the extended time to complete construction be changed from October 1, 2050 to October 1, 2056, and the extended time to apply water to full beneficial use be changed from October 1, 2050 to October 1, 2056.

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 537.230¹, 537.630² and/or 539.010(5)³

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

9. On September 28, 2000, 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)]

10. Permit S-6703 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.⁴

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.

11. The remaining work to be accomplished under Permit S-6703 consists of completing construction including supplementing or replacing the existing pipelines from Big Butte Springs, *or* expansion of the Duff Water Treatment Plant (WTP) and intake upgrades if a permit amendment authorizes moving the POD(s) downstream to the Rogue River; and applying water to full beneficial use.
12. Permit S-6703 authorized the use of 30.0 cfs of water for municipal purposes, of which 10.8 cfs has been perfected under Certificate 86994. There is an undeveloped portion of 19.2 cfs of water under Permit S-6703 as per OAR 690-315-0010(6)(g).
13. In addition to the 19.2 cfs of water authorized under Permit S-6703 and the 10.8 cfs authorized under Certificate 86994, the City holds the following municipal use water right certificates and permits:
 - Certificate 53323 for 30.0 cfs of water from Big Butte Creek, a tributary to the Rogue River;
 - Permit S-6884 for the remaining unappropriated water from Big Butte Creek and its tributaries and/or springs within Big Butte Creek Basin per ORS 538.430(1), tributary to the Rogue River;

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

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

- Certificate 86995 for 46.5 cfs of water from the Willow Creek Reservoir, tributary to Willow Creek (partial perfection of Permit S-20177). The certificate further limits the release of stored water from the reservoir to be carried downstream to the diversion point of Eagle Point Irrigation District Canal to compensate the district for water diverted from Big Butte Springs by the City of Medford. [*Storage of 8320 AF of water from Willow Creek is authorized under Certificate 87017 (partial perfection of Permit R-1118), and storage of 1680 AF of water from Willow Creek and Fourbit Creek is authorized under Permit R-1118*];
 - Permit S-20177 for 55.5 cfs, being 7.0 from Big Butte Springs, tributary to Big Butte Creek; and 48.5 cfs from Willow Lake Reservoir, tributary to Willow Creek. The permit further limits the release of stored water from the reservoir to be carried downstream to the diversion point of Eagle Point Irrigation District Canal to compensate the district for water diverted from Big Butte Springs by the City of Medford. [*Storage of 8320 AF of water from Willow Creek is authorized under Certificate 87017 (partial perfection of Permit R-1118), and storage of 1680 AF of water from Willow Creek and Fourbit Creek is authorized under Permit R-1118*].
 - Certificate 86832 (partial perfection of Permit S-23210) for 60.85 cfs of water from the Rogue River, a tributary of the Pacific Ocean;
 - Permit S-23210 for 39.15 cfs of water from the Rogue River, a tributary of the Pacific Ocean.
14. The City's water rights from Big Butte Creek and Big Butte Springs total 67.0 cfs plus all remaining unappropriated water from from Big Butte Creek and its tributaries and/or springs within Big Butte Creek Basin. The pipeline capacity for Big Butte Creek/Springs is currently limited to 40.8 cfs.
 15. The City's water rights from the Rogue River total 100 cfs. The capacity of Duff WTP on the Rogue River is curenly limited to about 70 cfs.
 16. The City's water rights for storage in Willow Lake Reservoir total 10,000 AF per year. The Reservoir capacity is currently 8,230 AF. Up to 46.5 cfs of water is currently released from Willow Creek Reservoir to compensate Eagle Point Irrigation District for Medford's diversion of water from Big Butte Springs.
 17. Medford Water Commission (MWC) was created in 1922 through an amendment to the City of Medford's charter for the specific purpose of operating the water system on behalf of the City.
 18. The MWC's peak water demand within its service area boundaries was 92.4 cfs in 2005, and is met using water piped directly from Big Butte Springs/Creek and from Rogue River water treated at the Duff WTP. In addition to Medford, White City, Butte Falls, and outside customers and water districts, the MWC's current service area includes the Cities of Phoenix, Jacksonville, Talent, Central Point, and Eagle Point. However, by 2015, Central Point, Eagle Point, Jacksonville, Phoenix and Talent are expected to

acquire water rights to meet their summer demands, but their winter time demands will continue to be met using the City of Medford's water rights.

19. According to the City, in 2005, the population within the current service boundary of MWC was 118,882. This population included the communities of Medford, White City, Phoenix, Jacksonville, Talent, Central Point, Eagle Point, and outside customers and water districts.
20. In 2056, the projected population for Medford, White City, outside customers and water districts is 180,037. The corresponding projected peak day demand is 161.5 cfs.
21. According to the City, the within the next 50 years, the MWC is projected to grow into the Urban Reserve Areas (URA) that were proposed through the ongoing, long-term planning project known as Regional Problem Solving (RPS). (See EXTENSION APPLICATION ATTACHMENT C, dated June 6, 2011.) The types and lands proposed to be served within the URA are expected to retain a proportional mix of uses that is more or less consistent with the City's existing service population. These customers include residential, commercial, industrial and municipal uses.
22. Full development of Permit S-6703 is needed to address the present and future water demand of MWC, including system redundancy and emergency use.
23. In accordance with OAR 690-315-0080(1)(d) and as described by Finding 21, above, 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 water user.
24. The City's request for an extension of time until October 1, 2056, to complete construction and to apply water to full beneficial use under the terms of Permit S-6703 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.

25. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
26. During the last extension period, being October 1, 1995 to October 1, 2000, the City accomplished the following:

- Completed intake improvements;
 - Replaced valves at the Coal Mine Station and Nichols Gap;
 - Upgraded pumping equipment and electrical components;
 - Constructed an enclosure for the chlorine scrubber;
 - Improved road access to springs and transmission lines;
 - Conducted ongoing cathodic protection activities along the transmission lines; and
 - Completed several enhanced watershed protection projects.
27. Since October 1, 2000, the City has accomplished the following:
- Received Department approval for a 2009 WMCP;
 - Replaced a 1/3 mile section of pipeline; and
 - Conducted an aerial image survey of the Big Butte Springs Watershed for mapping and planning purposes.
28. According to the City, as of 2004, they have invested approximately \$10,412,810, which is approximately 34 percent of the total projected cost for complete development of this project. The City estimates a \$20,000,000 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-6703, other costs included in this accounting are not partitioned out for S-6703 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.
29. Since issuance of the permit on April 25, 1925, of the 30.0 cfs originally allowed on Permit S-6703, the City has diverted 10.8 cfs for beneficial use. This amount has been partially perfected under Certificate 86994. The portion remaining to be diverted for beneficial municipal purposes under the terms of this permit is 19.2 cfs.
30. 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)]

31. According to the City, as of 2004, they have invested approximately \$10,412,810, which is approximately 34 percent of the total projected cost for complete development of this project. The City estimates a \$20,000,000 investment is needed for the completion of this project.

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

32. As described in Findings 12 through 22 above, the City has indicated, and the Department finds that the MWC must rely on full development of their Permit S-6703.
33. The City estimates the population served under its water rights during the summer months will increase from 118,882 to 180,037 over the fifty-one year period from 2005 to 2056. The 2056 population served under its water rights during the winter months is projected to be somewhat larger, because it will include the communities of Central Point, Eagle Point, Jacksonville, Phoenix and Talent. (See Finding of Fact 18, above.)
34. Given the current water supply situation of the MWC, 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-6703.
35. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any of the remaining unperfected portion of water under Permit S-6703, being 19.2 cfs, 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)]

36. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-6703.

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

37. 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)]

38. Delay of development under Permit S-6703 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; water demand; and available financing.

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.

39. The pending municipal Application for Extension of Time for Permit S-6703 was delivered to ODFW on November 9, 2011, for ODFW's review under OAR-690-315-0080.
40. Notification that the pending municipal Application for Extension of Time for Permit S-6703 was delivered to ODFW for review was sent to the City on November 10, 2011.
41. Notification that the pending municipal Application for Extension of Time for Permit S-6703 was delivered to ODFW for review was published in the Department's Public Notice dated November 22, 2011. No public comments were received regarding this notice.
42. On March 13, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-6703.
43. 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 to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that South Fork Big Butte Creek, Big Butte Creek, and the Rogue 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 long term 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.

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.

Portions of ODFW's advice are given as Option #1 and Option #2, depending on the location(s) from which the undeveloped portion of the Permit S-6703 is diverted. These two options are summarized separately.

Option #1

- a. This option can only be exercised if water from Big Butte Springs is allowed to flow down into the Rogue River to be diverted under the undeveloped portion of this permit from the Rogue River near or below the Duff Water Treatment Plant located in DLC 41 within the SWNW, Section 13, Township 36 South, Range 2 West, W.M. (By statute, transfer processes cannot allow injury or enlargement, and as a result, any point(s) of diversions [POD(s)] which have been or will be moved or added downstream pursuant to an OWRD transfer process will be limited to the amount of water lawfully available at the original POD(s).) ODFW prefers Option #1 because water from Big Butte Springs is important to the fishery in the Big Butte Creek basin and in the 23 miles on the Rogue River above the Duff treatment plant.

For Option #1, the target flows, in Table 1, below, are ODFW’s recommended flows for maintaining the persistence of listed fish species in the Rogue River from May 1 through September 10 measured near Agness, Oregon; and from September 11 through April 30 measured at Raygold, near Central Point.

Under Option #1, the severity of the measures to be taken by the water user 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 Rogue River through effluent discharges.

Table 1 (Option #1)

ODFW’S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE ROGUE RIVER NEAR AGNESS, OREGON	
Month	Cubic Feet per Second
May 1 – June 30	3800
July 1 – Sept 10	2000
ODFW’S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE ROGUE RIVER AT RAYGOLD, NEAR CENTRAL POINT, OREGON	
Month	Cubic Feet per Second
Sept 11 – April 30	1200

b. Streamflow Measurement Points

After analysis of flow records and how the USACE stores and releases water from its facilities to meet Rogue River target flows, ODFW has determined that from May 1 through September 10, measuring flows on the Rogue River at the Agness gage is sufficient to ensure that target flows are met in order to maintain the persistence of listed fish species. From September 11 through April 30, ODFW has determined that measuring flows at the Raygold gage (also on the Rogue River) is sufficient for ensuring that target flows are met in order to maintain the persistence of listed fish species. Therefore, ODFW advises the Department to establish the Agness gage and Raygold gage as the measurement points for determining whether target flows are being met for this municipal permit extension if the City exercises Option #1.

Option #2

- a. This option must be exercised if water is diverted under the undeveloped portion of the permit from Big Butte Springs as currently provided for under Permit S-6703. The target flows, in Table 2, below, are ODFW’s recommended flows measured at three locations. Only when target flows are met at all three locations (named below), may water be diverted from Big

Butte Springs under the undeveloped portion of this permit.

Table 2 (Option #2)

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN SOUTH FORK BIG BUTTE CREEK BELOW EPID'S POD #1^a (1) SOUTH FORK BIG BUTTE CREEK AT APPROX. RM 1	
Month	Cubic Feet per Second
Jan 1 – Jan 31	70
Feb 1 – May 15	120
May 16 – Jun 30	70
July 1 – Oct 31	47
Nov 1 – Nov 30	60
Dec 1 – Dec 31	70
ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN BIG BUTTE CREEK (2) NEAR CONFLUENCE OF NORTH AND SOUTH FORK BIG BUTTE CREEK BELOW EPID'S POD 2^b AND (3) NEAR MCLEOD, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 15	135
May 16 – June 30	80
July 1 – Aug 15	54
Aug 16 – Dec 31	135

^aEagle Point Irrigation District's (EPID) POD #1 is located within the NENE, Section 10, Township 35 South, Range 2 East, W.M.

^bEagle Point Irrigation District's (EPID) POD #2 is located within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.

b. Streamflow Measurement Points

After analysis of flow records, ODFW has determined that flows must be measured at three locations for ensuring that target flows are met in order to maintain the persistence of listed fish species throughout South Fork Big Butte Creek and Big Butte Creek. The first location is on South Fork Big Butte Creek at approximately RM 1, below the Eagle Creek Irrigation District's (EPID) POD #1. The second location is on Big Butte Creek a short distance downstream from the confluence of the North and South Forks of Big Butte Creek, below EPID's POD #2. The third location is near the mouth of Big Butte Creek at USGS Gage No. 14337500.

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

A. Option #1 (Water from Big Butte Springs diverted from the Rogue River)

- a. Exercise of Option #1 is contingent upon withdrawal of water from POD(s) located on the Rogue River near or below the Duff Water Treatment Plant located in DLC 41 within the SWNW, Section 13, Township 36 South, Range 2 West, W.M. (To avoid injury or enlargement, the Department will limit diversion of water from any POD(s) which have been or will be legally moved or added downstream to the Rogue River under an authorized OWRD transfer process to the amount of water lawfully available at the original POD(s).)
- b. There is an undeveloped portion of 19.2 cfs of water under Permit S-6703⁵ 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 water user's future WMCPs (OAR 690-086). When ODFW's recommended target flows 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-6703 that can be diverted. The proposed conditions for Option #1 are based on the following findings:
- i. From May 1 – September 10, the target flows needed to maintain the persistence of fish must be measured in the Rogue River near Agness, Oregon, USGS GAGE No.14372300, or its equivalent.
 - ii. From September 11 – April 30, the target flows needed to maintain the persistence of fish must be measured in the Rogue River at Raygold, near Central Point Oregon, USGS GAGE No.14359000, or its equivalent.
 - iii. When target flows are not met in the Rogue River, 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 Rogue 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).
 - iv. ODFW's advice recognized if Big Butte Springs water is diverted from the Rogue River that the use of the undeveloped portion of the permit represents roughly 1-2% of the existing stream flow in the Rogue River.
 - v. 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

⁵ Permit S-6703 authorized 30.0 cfs, of which 10.8 cfs has been perfected under Certificate 86994. Under this permit, 19.2 cfs is remaining to be perfected. (See ORDER: IN THE MATTER OF PARTIAL PERFECTION OF WATER RIGHT PERMIT S-6703 IN THE NAME OF THE CITY OF MEDFORD, VOL 83, PAGE 934.)

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-6703 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.

B. Option #2 (Water from Big Buttes Springs is diverted at the head of Butte Creek)

- a. Option #2 must be exercised by the water user if the undeveloped portion of Permit S-6703 is diverted from Big Butte Springs.
- b. There is an undeveloped portion of 19.2 cfs of water under Permit S-6703⁶ 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 water user's future WMCPs (OAR 690-086). The Department's proposed conditions for Option #2 may result in no diversion, or a limit on diversion, of the undeveloped portion under Permit S-6703. The proposed conditions for Option #2 are based on the following findings:
 - i. Target flows needed to maintain the persistence of fish must be measured at the three following locations:
 1. On South Fork Big Butte Creek at approximately RM 1, below the EPID's point of diversion (POD) located within the NENE, Section 10, Township 35 South, Range 2 East, W.M.
 2. On Big Butte Creek a short distance downstream from the confluence of the North and South Forks of Big Butte Creek, below EPID's POD located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.
 3. On Big Butte Creek near McLeod, Oregon, USGS GAGE No.14337500, or its equivalent.
 - ii. Target flows (Q_T) must be compared to the actual flow at the point of interest (Q) at each of the three measurement locations listed above.
 - a. When $Q \leq Q_T$ at any location :
No undeveloped portion of the permit may be diverted.

⁶ Permit S-6703 authorized 30.0 cfs, of which 10.8 cfs has been perfected under Certificate 86994. Under this permit, 19.2 cfs is remaining to be perfected. (See ORDER: IN THE MATTER OF PARTIAL PERFECTION OF WATER RIGHT PERMIT S-6703 IN THE NAME OF THE CITY OF MEDFORD, VOL 83, PAGE 934.)

- b. When $Q > Q_T$ at each location :
- The maximum amount of the undeveloped portion of Permit S-6703 that could be diverted is based on comparing $Q - Q_T$ at each of the three measurement locations. The maximum amount of the undeveloped portion of Permit S-6703 that could be diverted would equal the *smallest* difference of $(Q - Q_T)$, not to exceed the amount of the undeveloped portion (E), being 19.2 cfs, and is defined as:

$$(Q - Q_T), \text{ not to exceed } E,$$

where Q is the flow at the point of interest, Q_T is the target flow (from Table 2), and E is the undeveloped portion of the permit as of this extension.

- iii. ODFW's advice recognizes that the use of the undeveloped portion of the permit, if diverted from Big Butte Springs, could at times represent up to 50% of the existing stream flow at the mouth of Big Butte Creek.

45. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-6703 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, stream flows would be a limiting factor for the listed fish species.
46. 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-6703, 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.)⁷
47. On September 20, 2013, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-6703 are consistent with their advice.
48. On September 23, 2013, 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-6703.

⁷ 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, 2056⁸, as required by OAR 690-315-0080(1)(d). 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 35, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of any of the remaining unperfected portion of water under Permit S-6703, being 19.2 cfs, 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.
8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 39 through 48, 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 of the remaining unperfected portion of Permit S-6703, being 19.2 cfs, shall be subject to the

⁸ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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-6703 from October 1, 2000 to October 1, 2056.

Extend the time to apply the water to beneficial use under Permit S-6703 from October 1, 2000 to October 1, 2056.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any of the remaining unperfected portion of water under Permit S-6703, being 19.2 cfs, shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86, that authorizes access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-6703 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 the final order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

I. Conditions to Maintain the Persistence of Listed Fish - Option #1

A. Authorization for a Change in/Additional of Point(s) of Diversion

- a. Prior to diversion of any water under Permit S-6703 from the Rogue River, a change in or addition of point(s) of diversion to a location on the mainstem of the Rogue River near or below the Duff Water Treatment Plant located in DLC 41 within the SWNW, Section 13, Township 36 South, Range 2 West, W.M. must be approved by the Department in accordance with ORS 537.211 or ORS 540.510.
- b. To prevent injury or enlargement, diversion of water from the Rogue River under Permit S-6703 will be limited as part of any transfer process

to the amount of water lawfully available from Big Butte Springs at the original POD(s) located at the headwaters of Big Butte Creek.

B. Fish Persistence Target Flows

- a. Fish persistence target flows in the Rogue River as recommended by ODFW are in Table 3, below; flows are to be measured in the Rogue River near Agness, Oregon (USGS Gage Number 14372300, or its equivalent), or at Raygold, near Central Point, Oregon (USGS Gage Number 14359000, or its equivalent), depending on the time of year.

Table 3

ODFW’S RECOMMENDED FISH PERSISTENCE TARGET FLOWS MEASURED AT USGS GAGE 14372300, ROGUE RIVER AT AGNESS, OREGON	
Month	Cubic Feet per Second
May 1 – June 30	3800
July 1 – Sept 10	2000
ODFW’S RECOMMENDED FISH PERSISTENCE TARGET FLOWS MEASURED AT USGS GAGE 14359000, ROGUE RIVER AT RAYGOLD, OREGON	
Month	Cubic Feet per Second
Sept 11 – April 30	1200

- b. Alternate Streamflow Measurement Point
The location of a target flow 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.

C. Determining Water Use Reductions – Generally

The maximum amount of the undeveloped portion of Permit S-6703 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 3 are missed based on a seven day rolling average of mean daily flows measured in the Rogue River at the specified gage location. 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 3).

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

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

where E is the undeveloped portion of the permit, being 19.2 cfs.

The maximum amount of undeveloped portion of the permit 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.I.D., below.

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.

D. Consumptive Use Percentages for Utilization in Rogue River Calculations

a. Initial Consumptive Use Percentages

The City of Medford has not identified any Consumptive Use Percentages based on the return of flows to the Rogue 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-6703 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-6703 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.I.D.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-6703 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.I.D.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.I.D.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 Rogue 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-6703 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 Rogue 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.I.D.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.I.D.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-6703 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.I.D.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-6703 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that ends 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.I.D.d., or 2.I.D.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.

E. Examples

Example 1: Target flow met.

On June 15, the last seven mean daily flows in the Rogue River at the Agness gage were 4100, 4000, 4100, 4000, 3900, 3800 and 3800 cfs. The seven day rolling average (Q_A) is 3957 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 3800 cfs target flow (Q_T) for June 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

Step 1: If on June 15, the average of the last seven mean daily flows (Q_A) was 2600 cfs, and the target flow (Q_T) is 3800, then the target flow would be missed by 31.6 %.

$$(1 - (2600 / 3800)) \times 100\% = 31.6\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%⁹ during the month of June and the utilization of this percentage is authorized, and the target flow is missed by 31.6% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 19.7%.

$$(62.2\% \times 31.6\%) / 100 = 19.7\%$$

⁹ Currently, the City of Medford may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-6703 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 62.2% is only for illustrative purposes in this example.

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit would be reduced only by the % by which the target flow is missed – 31.6% in this example).

Step 3: Given that the undeveloped portion of this permit (E) is 19.2 cfs, and the undeveloped portion of the permit needs to be reduced by 19.7% (from Step 2), or 3.8 cfs, then the maximum amount of the undeveloped portion of Permit S-6703 that can be diverted as a result of this fish persistence condition is 15.4 cfs.

$$(19.2 \times 19.7\%) / 100 = 3.8$$

$$19.2 - 3.8 = 15.4$$

Step 4: The calculated maximum amount of water that could be diverted due to the fish persistence condition may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 10.0 cfs (for example, authorization provided through a WMCP), then 10.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 15.4 cfs from Step 3.

(Conversely, if the amount of water legally authorized for diversion under this permit is 18.0 cfs, then 15.4 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

II. Conditions to Maintain the Persistence of Listed Fish - Option #2

A. Fish Persistence Target flows

- a. Fish persistence target flows for South Fork Big Butte Creek and Big Butte Creek as recommended by ODFW are in Table 4, below. Flows are to be measured at three locations, being (1) below EPID's POD #1 on South Fork Big Butte Creek at approximately RM 1, (2) below EPID's POD #2 on Big Butte Creek – near the confluence of North and South Forks of Big Butte Creek, and (3) in Big Butte Creek near McLeod, Oregon (USGS Gage Number 14337500, or its equivalent).

Table 4

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN SOUTH FORK BIG BUTTE CREEK, MEASURED (1) BELOW EPID'S POD #1^a ON SOUTH FORK BIG BUTTE CREEK AT APOX. RM 1	
Month	Cubic Feet per Second
Jan 1 – Jan 31	70
Feb 1 – May 15	120
May 16 – Jun 30	70
July 1 – Oct 31	47
Nov 1 – Nov 30	60
Dec 1 – Dec 31	70
ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN BIG BUTTE CREEK, MEASURED (2) BELOW EPID'S POD 2^b ON BIG BUTTE CREEK – NEAR CONFLUENCE OF NORTH AND SOUTH FORK BIG BUTTE, AND (3) USGS GAGE 14337500, BIG BUTTE CREEK NEAR MCLEOD, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 15	135
May 16 – June 30	80
July 1 – Aug 15	54
Aug 16 – Dec 31	135

^aEagle Point Irrigation District's (EPID) POD #1 is located within the NENE, Section 10, Township 35 South, Range 2 East, W.M.

^bEagle Point Irrigation District's (EPID) POD #2 is located within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.

B. Determining Water Use Reductions – Generally

The maximum amount of the undeveloped portion of Permit S-6703 that can be diverted as a result of this fish persistence condition is based on a comparison of the target flows (Q_T) at three locations, to the corresponding actual flows (Q_A) prior to diversion of the undeveloped portion under this permit. Q_A is based on a seven day rolling average of mean daily flows.

i. When $Q_A \leq Q_T$ at any measurement location:

No water may be diverted from Big Butte Springs under the undeveloped portion of this permit when $Q_A \leq Q_T$ at any of the three measurement locations described above, where Q_A is the actual flow and Q_T is the target flow (from Table 4). Q_A is based on a seven day rolling average of mean daily flows.

ii. When $Q_A > Q_T$ at each measurement locations:

Water may be diverted from Big Butte Springs under the undeveloped portion of the permit when $Q_A > Q_T$ at all three measurement locations. The maximum amount of the undeveloped portion of the permit that can be diverted is equal to the smallest difference between Q_A and Q_T among the three measurement locations:

$$(Q_A - Q_T), \text{ not to exceed } E,$$

where Q_A is the actual flow based on the seven day rolling average, and Q_T is the target flow (from Table 4), and E is the undeveloped portion of the permit as of this extension, being 19.2 cfs.

iii. When $Q_A - Q_T \geq E$ at each location, the undeveloped portion of the permit that can be diverted would not need to be reduced.

C. Examples

Example 1: Target flows met at each location, no reduction needed.

On July 15, the last seven mean daily flows in the South Fork Big Butte below EPID's POD #1 were 69, 69, 68, 68, 67, 67 and 68 cfs. The seven day rolling average (Q_A) is 68 cfs. Given that the undeveloped portion of this permit (E) is 19.2 cfs, then the 7 day average of mean daily flows minus the 47 cfs target flow (Q_T) for July 15 is greater than undeveloped portion of the permit (E). At this location, $Q_A - Q_T \geq E$.

$$68 - 47 \geq 19.2$$

AND, on July 15, the last seven mean daily flows in Big Butte below EPID's POD #2 were 76, 76, 75, 75, 74, 74 and 75 cfs. The seven day rolling average (Q_A) is 75 cfs. Given that the undeveloped portion of this permit (E) is 19.2 cfs, then the 7 day average of mean daily flows minus the 54 cfs target flow (Q_T) for July 15 is greater than undeveloped portion of the permit (E). At this location, $Q_A - Q_T \geq E$.

$$75 - 54 \geq 19.2$$

AND, on July 15, the last seven mean daily flows in Big Butte at Gage 14337500 were 86, 86, 85, 85, 84, 84 and 85 cfs. The seven day rolling average (Q_A) is 85 cfs. Given that the undeveloped portion of this permit (E) is 19.2 cfs, then the 7 day average of mean daily flows minus the 54 cfs target flow (Q_T) for August 15 is greater than undeveloped portion of the permit (E). At this location, $Q_A - Q_T \geq E$.

$$75 - 54 \geq 19.2$$

The amount of the undeveloped portion of the permit that can be diverted would not be reduced because actual flows minus target flows are greater than the undeveloped portion of the permit at each designated measuring location. In this example, $Q_A - Q_T \geq E$ at *each* location.

Example 2: Target flows met at each location, reduction needed.

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) at South Fork Big Butte below EPID's POD #1 was 60 cfs, and the target flow (Q_T) is 47, then $Q_A - Q_T = \underline{13.0}$ cfs.

$$60 - 47 = 13.0$$

AND, on July 15, the last seven mean daily flows (Q_A) in Big Butte below EPID's POD #2 was 70 cfs, and the target flow (Q_T) is 54, then $Q_A - Q_T = \underline{16.0}$ cfs.

$$70 - 54 = 16.0$$

AND, on July 15, the last seven mean daily flows (Q_A) in Big Butte at Gage 14337500 was 80 cfs, and the target flow (Q_T) is 54, then $Q_A - Q_T = \underline{26.0}$ cfs.

$$80 - 54 = 26.0$$

Step 2: The maximum amount of the undeveloped portion of the permit that can be diverted equals the smallest difference ($Q_A - Q_T$) among the three measurement locations, not to exceed the undeveloped portion of the permit.

The smallest difference from Step 1 is 13.0 which does not exceed the undeveloped portion of the permit, thus the maximum amount of the undeveloped portion of the permit that can be diverted is 13.0 cfs. (This maximum amount may be limited as illustrated in Step 3, below.)

Step 3: The calculated maximum amount of water that could be diverted due to fish persistence conditions may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 10.0 cfs (for example, authorization provided through a WMCP), then 10.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 13.0 cfs from Step 2.

(Conversely, if the amount of water legally authorized for diversion under this permit is 18.0 cfs, then 13.0 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

Example 2: Actual flows are less than target flows at one measurement location.

If on July 15, the average of the last seven mean daily flows (Q_A) at South Fork Big Butte below EPID's POD #1 was 50 cfs, and the target flow (Q_T) is 47, then $Q_A > Q_T$. The target flow is met at this location.

AND, on July 15, the last seven mean daily flows (Q_A) in Big Butte below EPID's POD #2 was 30 cfs, and the target flow (Q_T) is 54, then $Q_A \leq Q_T$. The target flow is NOT met at this location.

AND, on July 15, the last seven mean daily flows (Q_A) in Big Butte at Gage 14337500 was 60 cfs, and the target flow (Q_T) is 54, then $Q_A > Q_T$. The target flow is met at this location.

In this example no water may be diverted from Big Butte Springs under the undeveloped portion of this permit as a result of this fish persistence condition because the flow target was missed at one of the three measurement locations.

DATED: October 1, 2013


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 **November 15, 2013**, 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.

If you have any questions about statements contained in this document, please contact Ann L. Reece at 503-986-0834.

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
