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-6884, Water Right Application S-10120, in the name of the City of Medford	)))	PROPOSED FINAL ORDER

Permit Information

Application File S-10120/ Permit S-6884
Basin 15 – Rogue Basin / Watermaster District 13
Date of Priority: May 28, 1925

Authorized Use of Water

Source of Water:	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
Purpose or Use:	Municipal Use

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-6884, water right Application S-10120.

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 Reserve Areas
WMCP – Water Management and Conservation Plan

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

AUTHORITY

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

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

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

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the

permit.

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

FINDINGS OF FACT

Background

1. Permit S-6884 was granted by the Department on September 18, 1925. The permit authorizes use of 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, for municipal purposes. The permit specified that construction of the water development project was to be completed by September 18, 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-6884. 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-6884 be extended from October 1, 2000 to October 1, 2050.

6. Notification of the City's Application for Extension of Time for Permit S-6884 was published in the Department's Public Notice dated January 6, 2004. No public comments were received regarding the extension application.

7. On December 29, 2003, February 4, 2004, May 11, 2005, May 23, 2012, and January 14, 2013, the City submitted supplemental information and/or updated revisions to their pending Application for Extension of Time.

8. The January 14, 2013 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 537.230[1], 537.630[2] 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-6884 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-6884 consists of completing construction including supplementing or replacing the existing pipelines from Big Butte Springs, and/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-6884 authorizes use of the remaining unappropriated water from Big Butte Creek and its tributaries and/or springs within Big Butte Creek Basin per ORS 538.430(1). There is a developed portion of 3.1 cfs of water under Permit S-6884; the balance of water authorized under the permit is undeveloped as per OAR 690-315-0010(6)(g).

13. In addition to water authorized under Permit S-6884, 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;
    - Certificate 86994 (partial perfection of Permit S-6703) for 10.8 cfs of water from Big Butte Springs, tributary to Big Butte Creek;
    - Permit S-6703 for 19.2 cfs of of water from Big Butte Springs, tributary to Big

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[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).

Butte Creek;

- 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 curently 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 4, dated January 14, 2013.) 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-6884 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-6884 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:

- Constructed a chain link fence around the springs area for sanitary purposes; 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;
- Completed building designs for Rancheria Springs;
- Constructed a new concrete pump building and security fence;
- Installed a new backup generator at Rancheria Springs; and
- Installed a weir on overflow from the pump house at Rancheria Springs.

28. According to the City, as of 2004, they have invested approximately $10,722,676, which is approximately 23 percent of the total projected cost for complete development of this project. The City estimates a $35,000,000 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-6884, other costs included in this accounting are not partitioned out for S-6884 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 September 18, 1925, the City has diverted 3.1 cfs for beneficial use under Permit S-6884.

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 $10,722,676, which is approximately 23 percent of the total projected cost for complete development of this project. The City estimates a $35,000,000 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-6884.

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-6884.

35. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 3.1 cfs under Permit S-6884 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-6884.

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-6884 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-6884 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-6884 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-6884 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-6884.

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 Permit S-6884 is diverted. These two options are summarized separately.

Option #1

a. This option can only be exercised if water from Big Butte Creek and its tributaries and/or springs within Big Butte Creek basin 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 measured near the mouth of Big Butte Creek at USGS Gage No. 14337500, or its equivalent.) ODFW prefers Option #1 because water from Big Butte Creek and its tributaries and 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. In addition, if Option #1 is exercised, the City may be able to use a potential

credit to offset curtailment, in whole or in part, of the undeveloped portion of the permit based on water restored to Big Butte Creek through instream transfers.

Under Option #1, the severity of the measures to be taken by the water user should reflect the degree to which the recommended target flows 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 Creek and its tributaries and/or springs within Big Butte Creek basin as currently provided for under Permit S-6884. Flows are to be measured at whichever designated location(s) are downstream of the allowable POD(s) being used under Permit S-6884. The target flows, in Table 2, below, are ODFW's recommended flows measured at the three designated locations. Only when target flows are met at all three location(s) downstream of the allowable POD(s) being used under Permit S-6884, may

water be diverted 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 APPOX. 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

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

[b]Eagle 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 each of the designated location(s) described below that are downstream from the allowable POD(s) being used under Permit S-6884. This will ensure 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 designed 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, or its equivalent.

c. November 1 – April 30: Required Diversion Caps or Protection Agreement

In the absence of a Protection Agreement with ODFW regarding seasonally varying flows, any diversion of the undeveloped portion of Permit S-6884 during November through April must be capped as recommended by ODFW in Table 3, below.

A Protection Agreement regarding seasonally varying flows will supersede the recommended caps in Table 3, below.

Table 3 (Option #2)

DIVERSION CAPS FOR BIG BUTTE CREEK AS RECOMMENDED BY ODFW NOVEMBER 1 – APRIL 30	
Month	Cubic Feet per Second
November	0
December	9
January	33
February	102
March	145
April	112

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

A. Option #1 (Water from Big Butte Creek and its tributaries and/or 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 measured at the mouth of Big Butte Creek at USGS Gage No. 14337500, or its equivalent.)

b. The undeveloped portion of water under Permit S-6884 as per OAR 690-315-0010(6)(g) for Option #1 has been determined to be equivalent to the flow at the mouth of Big Butte Creek as measured at USGS Gage No. 14337500, or its equivalent, if the developed portion of the permit is withdrawn above the gage. If the developed portion of the permit is withdrawn below the gage, then the undeveloped portion of the permit is equal to the measured flow at the gage minus the developed portion of the permit, which is 3.1 cfs. Authorization to incrementally expand use of water under this permit beyond 3.1 cfs up to the permitted quantity 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-6884 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 target flows 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 water from Big Butte Creek and its tributaries and springs is diverted from the Rogue River that the use of the undeveloped portion of the permit represents roughly 2-10% of the existing stream flow in the Rogue River.

v. Based on the importance of Big Butte Creek basin habitat, the water user could receive "credit" for restoring water to Big Butte Creek through instream transfers.[5] The credit could not exceed the total combined maximum rate of the instream transfer(s). When target flows are missed, the credit may applied to the calculated diversion(s) allowed from the Rogue River of the undeveloped portion of Permit S-6884, so long as (1) the total credit is not exceeded, and (2) the legal amount of water that can be diverted under Permit S-6884 is not exceeded.

To qualify for the credit, the instream transfer(s) must protect water to the mouth of Big Butte Creek and must also meet at least one of the following three criteria: (1) the POD(s) are downstream of EPID's Big Butte Creek diversion located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.; or (2) the priority date(s) are senior to April 21, 1915, or (3) a written agreement with EPID protects the water transferred instream past EPID's Big Butte Creek diversion located within the NWNW,

[5] A separate potential credit based on the same instream transfers is also applicable to the undeveloped portion under Permit S-23210.

Section 3, Township 35 South, Range 2 East, W.M.

vi. 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-6884 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- [total municipal wide returned flows/ total municipal wide diverted flows]).

B. Option #2 (Water from Big Butte Creek and its tributaries and/or springs is diverted from within Big Butte Creek Basin)

a. Option #2 must be exercised by the water user if the undeveloped portion of Permit S-6884 is diverted from within Big Butte Creek basin.

b. Authorization to incrementally expand use of water under this permit beyond 3.1 cfs 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 of Permit S-6884. 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 each of the following designated measurement location(s) that are located below the allowable POD(s) being used under Permit S-6884.

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 designated measurement location(s) downstream from the allowable POD(s) being used under Permit S-6884:

a. When $Q \leq Q_T$ at any pertinent location :
No undeveloped portion of the permit may be diverted.

b. When $Q > Q_T$ at each pertinent location :

The maximum amount of the undeveloped portion of Permit S-6884 that could be diverted is based on comparing $Q - Q_T$ at each pertinent measurement location(s). The maximum amount of the undeveloped portion of Permit S-6884 that could be diverted would equal the *smallest* difference of $(Q - Q_T)$, and is defined as:

$$(Q - Q_T),$$

where Q is the flow at the point of interest, Q_T is the target flow (from Table 2).

iii. From November 1 – April 30, the maximum amount of the undeveloped portion of Permit S-6884 that could be diverted is capped based on ODFW's calculated determination of "Net Available Water" (Table 3).

iv. ODFW's advice recognizes that the use of the undeveloped portion of the permit, if diverted from Big Butte Creek and its tributaries and springs, could represent up to 100% 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-6884 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-6884, 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.)[6]

47. On September 16, 2013, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-6884 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-6884.

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[6] 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, 2056[7], 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 water beyond 3.1 cfs under Permit S-6884 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 water beyond 3.1 cfs under of Permit S-6884 shall be subject to the conditions specified under Item 2 of the "Conditions" section of this PFO.

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[7] 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.

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-6884 from October 1, 2000 to October 1, 2056.

Extend the time to apply the water to beneficial use under Permit S-6884 from October 1, 2000 to October 1, 2056.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Diversion of water beyond 3.1 cfs under Permit S-6884 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-6884 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 Point(s) of Diversion

a. Prior to diversion of any water under Permit S-6884 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-6884 will be limited as part of any transfer process to the amount of water measured in Big Butte Creek near the mouth at USGS Gage No. 14337500, or its equivalent.

B. Fish Persistence Target Flows

a. Fish persistence target flows in the Rogue River as recommended by ODFW are in Table 4, 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 4

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 developed portion of the permit, 3.1 cfs, is *not* subject to these fish persistence conditions.

The maximum amount of the undeveloped portion of Permit S-6884 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 4 are missed based on a seven day rolling average of 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 4).

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:

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

where E is the undeveloped portion of the permit. For water use under Option #1 for Permit S-6884, the undeveloped portion of the permit is equivalent to the streamflow at the mouth of Big Butte Creek as measured at USGS Gage No. 14337500, or its equivalent, minus any portion of the 3.1 cfs developed portion of the permit not diverted above the gage.

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-6884 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-6884 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-6884 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-6884 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-6884 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-6884 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. Big Butte Creek Flow Restoration Credits for Utilization in Rogue River Calculations
This flow restoration credit is based on the amount of water restored to Big Butte Creek through qualified and Department-approved instream transfers. The credit is in cubic feet per second (cfs). When target flows are not met, the credit may be used to increase allowed diversions to the extent discussed below, when diverting the undeveloped portion of Permit S-6884 from the Rogue River.[8]

a. The credit will equal the total combined maximum rate of the instream transfer(s) that protect water to the mouth of Big Butte Creek and also meet at least one of the following three criteria:

1. The POD(s) are downstream of Eagle Point Irrigation District's (EPID) Big Butte Creek diversion located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.; or

2. The priority date(s) are senior to April 21, 1915; or

3. A written agreement with EPID protects the water transferred instream past EPID's Big Butte Creek diversion located within the within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.

[8] A separate potential credit based on the same instream transfers is also applicable to the undeveloped portion under Permit S-23210.

b. The credit may be applied to the calculated allowed diversion of the undeveloped portion of Permits S-6884 so long as (1) water under the undeveloped portion of the permit is diverted from the mainstem Rogue River, (2) the allowed diversion of the undeveloped portion of the permit is determined in accordance with 2.I.A., 2.I.B., 2.I.C., and 2.I.D. above, (3) the total credit as determined above is not exceeded, and (4) the legal amount of water that can be diverted under the permit as granted through the Department's review and approval of the municipal water user's WMCP under OAR 690-086 is not exceeded.

c. Establishing the Flow Restoration Credit
The City of Medford has not identified any instream transfers in Big Butte Creek that meet the criteria in Section 2.I.E.a., above, for the purpose of a flow restoration credit. Thus, at this time the City may not utilize a Flow Restoration Credit for the purpose of offsetting any required reduction to use of the undeveloped portion of Permit S-6884 due to fish persistence conditions.

In order to establish the Flow Restoration Credit, the City must receive the Water Resources Director's concurrence with any proposed Flow Restoration Credit.

F. Examples for Option #1

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

[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-6884 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.

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%.

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

(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: If the gage reading on Big Butte Creek near the mouth at USGS Gage No. 14337500, or its equivalent, is 70 cfs, and the City is diverting the 3.1 cfs developed portion of the permit above the gage, then in this example, the undeveloped portion of Permit S-6884 (E) would be 70.0 cfs.

Step 4: If the undeveloped portion of this permit (E) is 70.0 cfs, and the undeveloped portion of the permit needs to be reduced by 19.7% (from Step 2), or 13.8 cfs, then the maximum amount of the undeveloped portion of Permit S-6884 that can be diverted as a result of this fish persistence condition is 56.2 cfs.

$$(70.0 \times 19.7\%) / 100) = 13.8$$

$$70.0 - 13.8 = 56.2$$

Step 5: Assuming the Flow Restoration Credit is 5.0 cfs, and the utilization of this whole credit is authorized, then the maximum amount of water that could be diverted under the undeveloped portion of the permit as a result of this fish persistence condition is 61.2 cfs. (This maximum amount may be limited as illustrated in Step 6, below.)

$$56.2 + 5.0 = 61.2$$

Step 6: The calculated maximum amount of water that could be diverted under the permit 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 60.0 cfs (for example, authorization provided through a WMCP), then 60.0 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 3.1 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 70.0 cfs, then 64.3 cfs (61.2 from Step 5 + the 3.1 developed portion) 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 January 1 – December 31

a. Fish persistence target flows for South Fork Big Butte Creek and Big Butte Creek as recommended by ODFW are in Table 5, below. Flows are to be measured at each designated location that is downstream of the allowable POD(s) being used under Permit S-6884. The three designated measurement locations are (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 5

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 APPOX. 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 CREEK, *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

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

[b]Eagle Point Irrigation District's (EPID) POD #2 date is located within the NWNW, Section 3, Township 35 South, Range 2 East, W.M.

B. Determining Water Use Reductions – Generally

The developed portion of the permit, 3.1 cfs, is *not* subject to these fish persistence conditions.

a. January 1 through December 31:
Diversion of the undeveloped portion of Permit S-6884 cannot reduce streamflows below target levels at any of the designated measurement location(s) located below any allowable POD(s) being used under this permit.

The maximum amount of the undeveloped portion of Permit S-6884 that can be diverted as a result of this fish persistence condition is based a comparison of the target flows (Q_T) at the designated measurement locations located downstream of the allowable POD(s) POD(s) being used under Permit S-6884, to the corresponding actual flows (Q_A) prior to any 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 designated measurement location(s) downstream from the allowable POD(s) being used under Permit S-6884:

No water beyond 3.1 cfs may be diverted from Big Butte Creek and its tributaries and springs under this permit when $Q_A \leq Q_T$ at any of the three pertinent measurement locations described above, where Q_A is the actual flow and Q_T is the target flow (from Table 5). Q_A is based on a seven day rolling average of mean daily flows.

ii. When $Q_A > Q_T$ at each designated measurement location(s) downstream from the allowable POD(s) being used under Permit S-6884:

Water may be diverted from Big Butte Creek and its tributaries and springs under the undeveloped portion of the permit when $Q_A > Q_T$ at all pertinent 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 pertinent measurement locations:

$$(Q_A - Q_T)$$

where Q_A is the actual flow based on the seven day rolling average, and Q_T is the target flow (from Table 5).

C. November 1 – April 30: Required Diversion Caps or Protection Agreement

In the absence of a Protection Agreement with ODFW for related seasonally varying flows, any diversion of the undeveloped portion of Permit S-6884 as determined in Sections 2.II.A and 2.II.B will be capped as recommended by ODFW in Table 6, below.

A signed Protection Agreement between the water user and ODFW regarding seasonally varying flows on file with OWRD will supersede the recommended caps in Table 6, below.

Table 6

DIVERSION CAPS FOR BIG BUTTE CREEK AS RECOMMENDED BY ODFW NOVEMBER 1 – APRIL 30	
Month	Cubic Feet per Second
November	0
December	9
January	33
February	102
March	145
April	112

D. Examples for Option #2

May 1 – October 31

In these examples, the POD is located above EPID's POD #1, therefore all three designated measurement locations are pertinent to determining the maximum amount of the undeveloped portion of the permit that can be diverted.

Example 1: Target flows met at each measurement location - diversion limited

Step 1: On July 15, the last seven mean daily flows in the South Fork Big Butte Creek below EPID's POD #1 were 62, 62, 61, 60, 59, 59 and 58 cfs. The seven day rolling average (Q_A) is 60 cfs. The target flow (Q_T) for July 15 at this location is 47. $Q_A - Q_T =$ 13 cfs.

$$60 - 47 = 13$$

AND, on July 15, the last seven mean daily flows in Big Butte Creek below EPID's POD #2 were 72, 72, 71, 70, 69, 69 and 68 cfs. The seven day rolling average (Q_A) is 70 cfs. The target flow (Q_T) for July 15 at this location is 54. $Q_A - Q_T =$ 16 cfs.

$$70 - 54 = 16$$

AND, on July 15, the last seven mean daily flows in Big Butte Creek at Gage 14337500 were 82, 82, 81, 80, 79, 79 and 78 cfs. The seven day rolling average (Q_A) is 80 cfs. The target flow (Q_T) for July 15 at this location is 54. $Q_A - Q_T =$ 26 cfs.

$$80 - 54 = 26$$

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.

The smallest difference from Step 1 is 13.0, 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 under the permit 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 including the developed portion of the permit, being 3.1 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 20.0 cfs, then 16.1 cfs (13.0 from Step 2 + the 3.1 developed portion) 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 Creek 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 Creek 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 Creek 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 Creek and its tributaries and 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 designated measurement locations.

November 1 – April 30

In these examples, the POD is located below EPID's POD #1, but above EPID's POD #2. Therefore the two designated measurement locations pertinent to determining the maximum amount of the undeveloped portion of the permit that can be diverted are EPID's POD #2 and Big Butte Creek at Gage 14337500.

Example 3: Target flows met at each pertinent measurement location - diversion limited

Step 1: On January 15, the last seven mean daily flows in Big Butte Creek below EPID's POD #2 were 172, 172, 171, 170, 169, 169 and 168 cfs. The seven day rolling average (Q_A) is 170 cfs. The target flow (Q_T) for January 15 at this location is 135. $Q_A - Q_T$ = 35 cfs.

$$170 - 135 = 35$$

AND, on January 15, the last seven mean daily flows in Big Butte Creek at Gage No. 14337500 were 182, 182, 181, 180, 179, 179 and 178 cfs. The seven day rolling average (Q_A) is 180 cfs. The target flow (Q_T) for January 15 at this location is 135. $Q_A - Q_T$ = 45 cfs.

$$180 - 135 = 45$$

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 two relevant measurement locations, subject to a cap as shown in Step 3, below.

The smallest difference is 35.0, thus the maximum amount of the undeveloped portion of the permit that can be diverted is 35.0 cfs, subject to the cap (Step 3).

Step 3: The cap in January based on ODFW's determination of "Net Available Water" is 33.0 cfs. Assuming the City does not have an agreement with ODFW regarding seasonally varying flows, the maximum amount of the undeveloped portion of the permit that can be diverted is capped at 33.0 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

Step 4: The calculated maximum amount of water that could be diverted under the permit due to the fish persistence condition may not, however, 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 25.0 cfs (for example, authorization provided through a WMCP), then 25.0 cfs would be the maximum

amount of diversion allowed under this permit including the developed portion of the permit, being 3.1 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 40.0 cfs, then 36.1 cfs (33.0 from Step 3 + the 3.1 developed portion) would be the maximum amount of diversion allowed under this permit.)

Example 4: Actual flows are less than target flows at one measurement location.

If, on January 15, the last seven mean daily flows (Q_A) in Big Butte Creek below EPID's POD #2 was 130 cfs, and the target flow (Q_T) is 135, then $Q_A \leq Q_T$. The target flow is NOT met at this location.

AND, on January 15, the last seven mean daily flows (Q_A) in Big Butte Creek at Gage 14337500 was 160 cfs, and the target flow (Q_T) is 135, then $Q_A > Q_T$. The target flow is met at this location.

In this example no water may be diverted from Big Butte Creek and its tributaries and 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 two pertinent 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
