

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-9370, Water Right Application S-9834,) PROPOSED FINAL ORDER
modified by Permit Amendment T-7480,)
in the name of the City of Toledo)

Permit Information

Application File S-9834/ Permit S-9370, modified by Permit Amendment T-7480

Basin 18 – Mid Coast Basin / Watermaster District 1

Date of Priority: October 24, 1929

Authorized Use of Water

Source of Water:	Siletz River, a Tributary of Siletz Bay
Purpose or Use:	Municipal Use
Maximum Rate:	2.66 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-9370, modified by Permit Amendment T-7480, water right Application S-9834.

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, 2040.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 to October 1, 2040.
- 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 Toledo

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

POD – Point of Diversion

SRWD – Seal Rock Water District

WMCP – Water Management and Conservation Plan

Units of Measure

AF – acre-feet

cfs – cubic feet per second

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-9370 was granted by the Department on January 15, 1930. The permit authorized the use of up to 4.0 cfs of water from the Siletz River, a tributary of the Siletz Bay, for municipal use, of which 1.34 cfs has been perfected under Certificate 87645. The remaining authorized amount under the permit is 2.66 cfs. It specified that construction of the water development project was to be completed by October 1, 1937, and that complete application of water was to be made on or before October 1, 1940.
2. On September 9, 1996, the Department approved Permit Amendment T-7480 (Special Order Volume 50, Page 575) authorizing (1) a change in the point of diversion under Permit S-9370 from 2238 Feet North and 2379 Feet East from the SW Corner of Section 16, Township 9 South, Range 9 West, to 1370 Feet North and 55 Feet East from the SW Corner of Section 9, Township 10 South, Range 10 West; and (2) a change the place of use to include the municipal service area.
3. Eleven prior permit extensions have been granted for Permit S-9370. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2000.
4. 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.
5. 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.
6. On October 21, 2011, City of Toledo (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 modified by Permit Amendment T-7480, (hereafter referred to as simply Permit S-6703) be extended from October 1, 2000 to October 1, 2040.
7. Notification of the City's Application for Extension of Time for Permit S-9370 was published in the Department's Public Notice dated November 1, 2011. No public comments were received regarding the extension application.

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)]

8. On October 21, 2011, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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

9. Permit S-9370 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.

10. The remaining work to be accomplished under Permit S-9370 includes constructing a 1.6 MG storage tank, completing distribution system improvements, constructing a new intake on the Siletz River, and improving the raw water line system; and completing construction and applying water to full beneficial use.
11. Permit S-9370 authorized the use of 4.0 cfs of water for municipal purposes, of which 1.34 cfs has been perfected under Certificate 87645. There is an undeveloped portion of 2.66 cfs of water under Permit S-9370 as per OAR 690-315-0010(6)(g).
12. In addition to the 2.66 cfs of water from the Siletz River authorized under Permit S-9370 and the 1.34 cfs authorized under Certificate 87645, the City holds the following municipal use water right certificates and permits:
 - Certificate 9047 for 0.75 cfs of water from the unnamed branch of Mill Creek;
 - Certificate 9048 for 0.75 cfs of water from Mill Creek;
 - Certificate 42194 for 250 AF of water from the Mill Creek Reservoir [*the storage of 250 AF of water from Mill Creek is authorized under Certificate 42193*];
 - Certificate 14396 for 1.75 cfs of water from the Siletz River; and
 - Permit S-44083 for 4.0 cfs of water from the Siletz 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).

13. In summary, the City holds 1.5 cfs of municipal water rights from an unnamed branch of Mill Creek and Mill Creek, and 250 AF of Mill Creek water stored in a reservoir. In addition to its municipal water rights, the City holds 15 cfs of water rights from Mill Creek for domestic use, being Certificate 905 for 5 cfs and Certificate 9040 for 10 cfs. The 1.5 cfs (Certificates 9047 and 9048) are not currently used by the City due to the location of the authorized POD. The remaining water rights for Mill Creek and Mill Creek Reservoir are typically not used in the summer/fall due to flow flows due to low stream flows and algae blooms that affect water quality.

The City also holds 9.75 cfs of municipal water rights from the Siletz River. These water rights are typically not used during the winter and spring due to high turbidity. The Siletz River water rights are used to meet it municipal demands during the summer and fall months.

14. The City has a water supply agreement to provide water to the Seal Rock Water District (SRWD). The district's 2.6 cfs water right Permit S-40277 is junior to instream water right Certificate 67712. During periods of low stream flows and high demand, the City may need to serve water to SRWD under Permit S-9370, which is senior to the instream water right.
15. According to the City, in 2008, the population within the service boundary of City of Toledo was 3,610 and 4,050 within SRWD. The City estimates its population will increase at a growth rate of 1 percent per year, reaching an estimated population of 4,964 by the year 2040; and that SRWD's population will increase at a growth rate of 1.5 percent per year, reaching an estimated population of 6522 by the year 2040.
16. The City's peak water demand, including water supplied to Seal Rock Water District, was 3.09 cfs in 1995.
17. Based on results from the 2010 Toledo Economic Opportunities Analysis prepared for the City, the City estimates that buildable lands include about 44 acres of industrial land, 21 acres of light industrial land, and 7.6 acres of dependent industrial land within the city limits. In addition, 86 acres of industrial land and about 11 acres of water dependent industrial land were identified within the City's UBG. (*See Extension Application, Attachment 5.*)
18. Based on buildable industrial lands only within existing city limits, and projecting moderate water demands per developable acre, the city anticipates new industrial demand could be approximately 7.1 cfs by the year 2055, of which approximately one-quarter of the amount, being 1.78 cfs, is projected to be needed by the year 2040.
19. In addition to meeting its future municipal demands based on projected growth, the City must be prepared to meet the water demands of the Georgia Pacific industrial facility when it is unable to obtain water from its own water supply. Based on a prior event the City estimates this demand at 0.77 cfs.

20. The City's peak day demand is projected to be approximately 5.78 cfs of water by the year 2040. In addition to typical municipal use based on population growth, this projection includes demand based on providing water to Georgia Pacific on an as needed basis and to Seal Rock Water District per the City's agreement, as well as future industrial demand based on buildable lands.
21. Full development of Permit S-9370 is needed to address the present and future water demand of City of Toledo, including system redundancy and emergency use, and its water supply agreement with SRWD.
22. The City's request for an extension of time until October 1, 2040, to complete construction and to apply water to full beneficial use under the terms of Permit S-9370 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.

23. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
24. During the last extension period, being October 1, 1995 to October 1, 2000, the City has accomplished the following:
 - Made treatment plant storage improvements;
 - Completed a Water Master Plan (1998); and
 - Replaced meters.
25. Since October 1, 2000, the City made improvements to the water treatment plant and completed a new Water Master Plan (2010).
26. According to the City, as of 2001, they have invested approximately \$6,763,000, which is about 25 percent of the total projected cost for complete development of this project. The City estimates a \$20,074,728 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-9370, other costs included in this accounting are not partitioned out for S-9370 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.

27. Since the issuance of the permit on January 15, 1930, of the 4.0 cfs originally allowed on Permit S-9370, the City has diverted 1.34 cfs for beneficial use. This amount has been partially perfected under Certificate 87645. The portion remaining to be diverted for beneficial municipal purposes under the terms of this permit is 2.66 cfs.
28. 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

[OR 690-315-0080(3)(b)]

29. According to the City, as of 2001, they have invested approximately \$6,763,000, which is about 25 percent of the total projected cost for complete development of this project. The City estimates a \$20,074,728 investment is needed for the completion of this project.

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

30. As described in Findings 11 through 21 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-9370
31. The City estimates its annual population growth rate will be 1 percent per year and SRWD's growth rate will be 1.5 percent per year, each over a 32 year period, being the years 2008 to 2040.
32. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy and emergency water supply, and its water supply agreement with SRWD, there is a market and present demand for the water to be supplied under Permit S-9370.
33. OR 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-9307, being 2.66 cfs, shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OR 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 [OR 690-315-0080(3)(e)]

34. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

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

35. 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)]

36. Delay of development under Permit S-9370 was due, in part, to lack of available financing and the need to modify the intake structure, and to the size and scope of the municipal water system, which was designed to be phased in over a period of years.

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

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

37. The pending municipal Application for Extension of Time for Permit S-9370 was delivered to ODFW on August 3, 2012, for ODFW's review under OAR-690-315-0080.
38. Notification that the pending municipal Application for Extension of Time for Permit S-9370 was delivered to ODFW for review was sent to the City on August 3, 2012.
39. Notification that the pending municipal Application for Extension of Time for Permit S-9370 was delivered to ODFW for review was published in the Department's Public Notice dated August 7, 2012. No public comments were received regarding this notice.
40. On January 7, 2013 the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-9370.
41. 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 the Siletz 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.

The target flows, in Table 1, below, are ODFW's recommended flows measured at Siletz, Oregon, for maintaining the persistence of listed fish species in the Siletz River. ODFW advises the Water Resources Department to develop conditions that allow municipalities to meet their water needs while maintaining the persistence of listed fish species.

The severity of the measures to be taken by the permit holder should reflect the degree to which the recommended streamflows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN SILETZ RIVER AT SILETZ, OREGON	
Month	Cubic Feet per Second
January – May	200
June	135
July	180
August	112
September	114
October 1 – October 15	150
October 16 – October 31	220
November – December	220

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring flows at the Siletz gage is sufficient to ensure that target flows to maintain the persistence of listed fish are met within the Siletz River. Therefore, ODFW advises the Department to establish the Siletz gage as the point for determining whether target flows are being met for this municipal permit extension.

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

There is an undeveloped portion of 2.66 of water under Permit S-9370⁵ 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 missed, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-9370 that can be diverted. The proposed conditions in this extension of time are based on the following findings:

- a. The target flows needed to maintain the persistence of fish must be measured at Siletz, Oregon, USGS GAGE No.14305500, or its equivalent.

⁵ Permit S-9370 authorized 4.0 cfs, of which 1.34 cfs has been perfected under Certificate 87645. Under this permit, 2.66 cfs is remaining to be perfected. (See ORDER: IN THE MATTER OF PARTIAL PERFECTION OF WATER RIGHT PERMIT S-9370 IN THE NAME OF THE CITY OF TOLEDO, VOL 87, PAGE 778.)

- b. When target flows are not met, use of the undeveloped portion of the permit must 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 flow is defined as:

$$1 - [(Q - E) / Q_T],$$

where Q is the flow at the point of interest, E is the undeveloped portion of the permit, and Q_T is the target flow (from Table 1).

- c. ODFW's advice recognized that the use of the undeveloped portion of the permit represents 2-3% of the natural stream flow during the summer months, but much lower percentage during the winter and spring.
43. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-9370 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.
44. 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-9370, 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
45. On October 4, 2013, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-9370 are consistent with their advice.
46. On October 4, 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-9370.

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).

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.

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, 2040 ⁶.
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 33, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water any of the remaining unperfected portion of water under Permit S-9370, being 2.66 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 37 through 46, 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-9370, being 2.66 cfs, shall be subject to the conditions specified under Item 2 of the "Conditions" section of this PFO.

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction under Permit S-9370 from
October 1, 2000 to October 1, 2040.

Extend the time to apply the water to beneficial use under Permit S-9370
from October 1, 2000 to October 1, 2040.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any of the remaining unperfected portion of water under Permit S-9370, being 2.66 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-9370 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

A. Fish Persistence Target Flows

- a. Fish persistence target flows in the Siletz River as recommended by ODFW are in Table 2, below; flows are to be measured in the Siletz River at Siletz, Oregon (USGS Gage Number 14305500, or its equivalent).

Table 2

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE SILETZ RIVER MEASURED AT USGS GAGE 14305500, SILETZ RIVER AT SILETZ, OREGON	
Month	Cubic Feet per Second
January – May	200
June	135
July	180
August	112
September	114
October 1 – October 15	150
October 16 – October 31	220
November – December	220

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.

B. Determining Water Use Reductions - Generally

The maximum amount of the undeveloped portion of Permit S-9370 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of mean daily flows measured in the Siletz River at Siletz (USGS Gage Number 14305500, or its equivalent). The percent of missed target flows is defined as:

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

where Q_A is the actual flow measured at the designated gage based on the seven day rolling average, E is the undeveloped portion of the permit, and Q_T is the target flow (from Table 2).

The percent by which the target flow is missed applied to the undeveloped portion of the permit provides the maximum amount of 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, being 2.66 cfs.

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

C. Examples

Example 1: Target flow met.

On July 15, the last seven mean daily flows were 189, 190, 188, 185, 185, 180 and 178 cfs. The seven day rolling average (Q_A) is 185 cfs. Given that the undeveloped portion of this permit (E) is 2.66 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 180 cfs target flow (Q_T) for July 15. In this example, $Q_A - E \geq Q_T$.

$$185 - 2.66 \geq 180$$

The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the target flow is considered met.

Example 2: Target flow missed.

Step 1: Given that the undeveloped portion of this permit (E) is 2.66 cfs, if on July 15, the average of the last seven mean daily flows (Q_A) was 120 cfs, and the target flow (Q_T) is 180 cfs, then the target flow would be missed by 34.8%.

$$(1 - [(120 - 2.66) / 180.0]) \times 100\% = 34.8\%$$

Step 2: Given that the undeveloped portion of this permit (E) is 2.66 cfs, and the undeveloped portion of the permit needs to be reduced by 34.8% (from Step 1), or 0.93 cfs, then the maximum amount of the undeveloped portion of Permit S-9370 that can be diverted as a result of this fish persistence condition is 1.73 cfs. (This maximum amount may be limited as illustrated in Step 3, below.)

$$(2.66 \times 34.8\%) / 100 = 0.93$$

$$2.66 - 0.93 = 1.73$$

Step 3: 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 1.5 cfs (for example, authorization provided through a WMCP), then 1.5 cfs would be the maximum amount of diversion allowed under this permit, rather than 1.73 cfs from Step 2.

(Conversely, if the amount of water legally authorized for diversion under this permit is 2.0 cfs, then 1.73 cfs (from Step 2) would be the maximum amount of diversion allowed under this permit.)

DATED: October 8, 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 22, 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 93071-1266
