

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

Water Rights Application
Number S-9834

**Final Order
Extension of Time for Permit Number S-9370,
modified by Permit Amendment T-7480
Permit Holder: 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 Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

Appeal Rights

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. A request for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either file for judicial review, or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

Permit S-9370 was issued by the Department on January 15, 1930, and modified by Permit Amendment T-7480 on September 9, 1996. The permit called for completion of construction by October 1, 1937, and complete application of water to beneficial use by October 1, 1940. On October 21, 2011, City of Toledo submitted an application to the Department for an extension of

Proposed Final Order: Permit S-9370, modified by Permit Amendment T-7480

time for Permit S-9370. In accordance with OAR 690-315-0050(2), on October 8, 2013, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2040, and the time to fully apply water to beneficial use to October 1, 2040. The protest period closed November 22, 2013, in accordance with OAR 690-315-0060(1). No protest was filed.

Findings of Fact

The Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated October 8, 2013.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended 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 1, below; flows are to be measured in the Siletz River at Siletz, Oregon (USGS Gage Number 14305500, or its equivalent).

Table 1

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 1 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 1).

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.

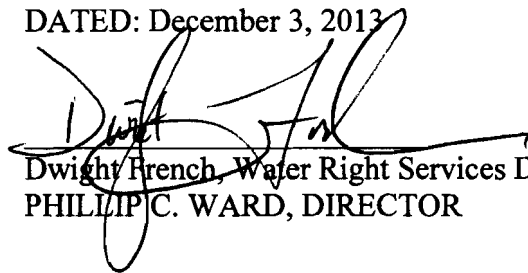
(Conversely, if the amount of water legally authorized for diversion under this permit is 2.0 cfs, then 1.73 cfs (from Step 2) would be the maximum amount of diversion allowed under this permit.)

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0080(3).

Order

The extension of time for Application S-9834, Permit S-9370, modified by Permit Amendment T-7480, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 2000 to October 1, 2040. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 2000 to October 1, 2040.

DATED: December 3, 2013



Dwight French, Water Right Services Division Administrator *for*
PHILIP C. WARD, DIRECTOR

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

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
