

**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-45827, Water Right Application S-41672,) PROPOSED FINAL ORDER
in the name of the City of Grants Pass)

Permit Information

Application File S-41672/ Permit S-45827

Basin 15 – Rogue Basin / Watermaster District 14

Date of Priority: December 2, 1965

Authorized Use of Water

Source of Water: The Rogue River, a tributary of Pacific Ocean
Purpose or Use: Municipal Use
Maximum Rate: 25.0 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-45827, water right Application S-41672.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1999 to October 1, 2065.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2065.
- 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 Grants Pass

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second

gpm – gallons per minute

mgd – million gallons per day

AUTHORITY

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

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

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

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

permit.

OAR 690-315-0090(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-45827 was granted by the Department on July 21, 1981. The permit authorizes the use of up to 25.0 cfs of water from the Rogue River, a tributary of the Pacific Ocean, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1983, and that complete application of water was to be made on or before October 1, 1984.
2. Four prior permit extensions have been granted for Permit S-45827. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1999.
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 3, 2002, City of Grants Pass (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-45827 be extended from October 1, 1999 to October 1, 2020.
6. Notification of the City's Application for Extension of Time for Permit S-45827 was published in the Department's Public Notice dated March 4, 2003. No public comments were received regarding the extension application.
7. On February 26, 2003, and on December 23, 2005, the City submitted supplemental information and updates to their pending Application for Extension of Time.
8. On September 19, 2013, the permit holder submitted additional information to supplement and update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2020 to October 1, 2065, and the extended time to apply water to full beneficial use be changed from October 1, 2020 to October 1, 2065.

Review Criteria for Municipal and Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

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

9. On September 3, 2002, 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-45827 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-45827 consists of replacing the existing water treatment plant including intake facilities, the building, process equipment, and piping; expanding the treatment capacity to 70 cfs; and completing construction and applying water to full beneficial use.
12. As of December 23, 2005, the permit holder has not diverted any water authorized under Permit S-45827 for municipal purposes. There is an undeveloped portion of 25.0 cfs of water under Permit S-45827 as per OAR 690-315-0010(6)(g).
13. In addition to the 25.0 cfs of water authorized under Permit S-45827 the City holds the following municipal use water right certificate and permits:
 - Permit S-26901 for 25.0 cfs of water from the Rogue River;
 - Permit S-47346 for 25.0 cfs of water from the Rogue River; and
 - Certificate 15839 for 12.5 cfs of water from the Rogue River.
14. The City has 87.5 cfs of water rights from the Rogue River. Permit S-26901 is limited to when flows at the mouth of the Rogue River exceed 735 cfs. Permits S-45827 and S-47346 are junior in priority date to instream Water Right Certificate 59847 which has a

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).

minimum flow of 735 cfs.

15. The City of Grants Pass relies on water from the Rogue River as its sole source of water. According to the City, groundwater supply development in the region is not likely feasible at the capacity required to serve their water system. The City also lacks emergency interconnections with neighboring water system providers as there are not major municipal water providers within a reasonable proximity to the City. Due to the long-term supply options, the City has obtained abundant water rights to accommodate long-term growth.
16. The City is currently utilizing 12.5 cfs under Certificate 15839, 17.2 cfs under Permit S-26901, and 1.3 cfs under Permit S-47346 to meet its current demand. The City anticipates full development of Permit S-26901 by the year 2040, Permit S-45827 by 2065, and Permit S-47346 by 2090.
17. According to the City, in 2010, the population within the service boundary of City of Grants Pass (which includes North Valley) was 34,639. The City estimates the population will increase at a growth rate of 1.76 percent per year, reaching an estimated population of 90,173 by the year 2065.
18. The City's peak water demand within its service area boundaries was 31 cfs in 2010.
19. According to the City, their peak instantaneous diversion rate is projected to be 70 cfs of water by the year 2065.
20. According to the City, Grants Pass city limits encompass an area of approximately 7,000 acres, and include most of the existing Urban Growth Boundary (UGB). Based on a current analysis by the City's Community Development Board, it is anticipated that approximately 1,200 acres will be added to the UGB. Current UGB expansion areas include a land composition similar to the existing service area characteristics. It is anticipated that long-term expansions will continue to maintain a similar land use blend of residential, commercial and industrial land uses.
21. There are no significant jurisdictional constraints that would prevent long-term continued expansion of the UGB as the City grows. The City is not adjacent to any other municipality and while there are some mountainous areas not ideally suited to development, there are no significant topographic restrictions to the City's ultimate expansion.
22. In addition, long term growth is expected in the North Valley area located north the City limits along Interstate Highway 5, and southeast of the unincorporated community of Merlin. There are also some adjacent developed areas outside the city limits that are not currently served by the City, including the Rogue Community College to the west and unincorporated County areas to the southeast of the City. Long-term future growth in these areas is anticipated to be served by the City.

23. Full development of Permit S-45827 is needed to address the present and future water demand of City of Grants Pass.
24. In accordance with OAR 690-315-0080(1)(d) and as described by Findings 20 - 22, 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.
25. The City's request for an extension of time until October 1, 2065, to complete construction and to apply water to full beneficial use under the terms of Permit S-45827 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.

26. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
27. During the last extension period, being October 1, 1994 to October 1, 1999, the City accomplished the following:
 - Added a 4.5 MG reservoir and the New Hope Pump Station (3,500 gpm capacity);
 - Added the Harbeck Heights Pump Station (1,380 gpm capacity);
 - Modified the Hefly Pump Station to increase its capacity from 2,200 gpm to 3,200 gpm;
 - Added 19.8 miles of new water mains; and
 - Added 800 new service connections, residential and commercial.
28. Since October 1, 1999, the City has accomplished the following:
 - Added the Laurel Ridge Pump Station (1,450 gpm capacity);
 - Added the addition of the Meadow Wood Pump Station (1,400 gpm capacity);
 - Added 55.7 miles of new water mains;
 - Added 2839 new service connections, residential and commercial;

- Completed filtration plant improvements and modifications;
- Completed master planning documents, a vulnerability assessment and a rate study;
- Made improvements to equipment and plant processes, the intake structure, and reservoirs;
- Made miscellaneous structural repairs and improvements (mobile generator, bulk water station, hydrants);
- Completed improvements to the Hilltop Pump Station;
- Repaired and/or modified certain other pump stations; and
- Completed the construction of the Panoramic Loop Station and the William's Crossing Pump Station.

29. According to the City, as of September 19, 2013, they have invested approximately \$186,130,600, which is about 67 percent of the total projected cost for complete development of this project. The City estimates an \$85,000,000 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-45827, other costs included in this accounting are not partitioned out for S-45827 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.
30. Since the issuance of Permit S-45827 on July 21, 1981, the City has not diverted any of the 25.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
31. 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)]

32. According to the City, as of September 19, 2013, they have invested approximately \$186,130,600, which is about 67 percent of the total projected cost for complete development of this project. The City estimates an \$85,000,000 investment is needed for the completion of this project.

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

33. As described in Findings 12 through 24 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-45827.
34. The City estimates an annual population growth rate of 1.76 percent per year over a 55 year period, being the years 2010 to 2065.

35. Given the current water supply situation of the City, including current and expected demands, there is a market and present demand for the water to be supplied under Permit S-45827.
36. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-45827 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 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). 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)]

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

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

38. 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)]

39. Delay of development under Permit S-45827 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.

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.

40. The pending municipal Application for Extension of Time for Permit S-45827 was delivered to ODFW on November 9, 2011, for ODFW's review under OAR-690-315-0080.
41. Notification that the pending municipal Application for Extension of Time for Permit S-45827 was delivered to ODFW for review was sent to the City on November 10, 2011.
42. Notification that the pending municipal Application for Extension of Time for Permit S-45827 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.

43. On March 13, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-45827.

44. 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 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.

The target flows, in Table 1, below, are ODFW's recommended flows measured near Agness, Oregon, for maintaining the persistence of listed fish species in the Rogue 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 water user should reflect the degree to which the recommended streamflows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, and may be adjusted by the ratio of water withdrawn to water being returned directly to the Rogue River through effluent discharges.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE ROGUE RIVER NEAR AGNESS, OREGON	
Month	Cubic Feet per Second
January 1 – April 30	935
May 1 – June 30	3800
July 1 – Sept 10	2000
September 11 – December 31	935

Streamflow Measurement Point

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 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. Therefore, ODFW advises the Department to establish the Agness gage as the measurement point for determining whether target flows are being met for this municipal permit extension.

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

There is an undeveloped portion of 25.0 cfs of water under Permit S-45827 as per OAR 690-315-0010(6)(g). Authorization to use any water under this permit can only be granted through the Department's review and approval of the municipal water user's future WMCPs (OAR 690-086). When ODFW's recommended target flows are not met, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-45827 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 in the Rogue River near Agness, Oregon, USGS Gage No.14372300, or its equivalent.
- b. When target flows are not met in the Rogue River, use of the undeveloped portion of the permit may need to be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flows in the Rogue River is defined as:

$$1 - (Q / Q_T),$$

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

- c. ODFW's advice recognized that the use of the undeveloped portion of the permit represents less than 1% of the existing stream flow.
 - d. 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-45827 should be adjusted by the monthly estimated percentage of the difference between the total water withdrawals and their return flows. Therefore, consistent with ODFW's advice, when appropriate, the Department proposes to adjust any reduction by a "Consumptive Use Percentage," as generally determined by $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
46. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-45827 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.
47. 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-45827, 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.)⁵

48. On November 14, 2013, ODFW notified the Department that the proposed “Conditions to Maintain the Persistence of Listed Fish” for Permit S-45827 are consistent with their advice.
49. On November 15, 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-45827.

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. Pursuant to ORS 540.510(3)(a), water under Permit S-45827 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2065⁶. 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).
7. 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

⁵ 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.

⁶ 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.

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).

8. As required by OAR 690-315-0090(3) and as described in Finding 36, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of any water under Permit S-45827 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 grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7).
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 40 through 49, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use of the undeveloped portion under this municipal use permit, in the absence of special conditions. Therefore, the diversion of any water under Permit S-45827 will be subject to the conditions specified under Item 2 of the "Conditions" section of this PFO.

Proposed Order

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

Extend the time to complete construction under Permit S-45827 from October 1, 1999 to October 1, 2065.

Extend the time to apply the water to beneficial use under Permit S-45827 from October 1, 1999 to October 1, 2065.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water under Permit S-45827 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 of water 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-45827 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 Rogue River as recommended by ODFW are in Table 2, below; flows are to be measured in the Rogue River near Agness, Oregon (USGS Gage Number 14372300, or its equivalent).

Table 2

FISH PERSISTENCE TARGET FLOWS ON THE ROGUE RIVER MEASURED AT USGS GAGE 14372300 NEAR AGNESS, OREGON	
Month	Cubic Feet per Second
January 1 – April 30	935
May 1 – June 30	3800
July 1 – Sept 10	2000
September 11 – December 31	935

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-45827 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 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 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:

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

where E is the undeveloped portion of the permit as of this extension, being 25.0 cfs.

The maximum amount of undeveloped portion of the permit that can be diverted as a result of this fish persistence condition may be adjusted by a Consumptive Use Percentage, when applicable, as per Item 2.C., 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.

C. Consumptive Use Percentages for Utilization in Rogue River Calculations

a. Initial Consumptive Use Percentages

The City of Grants Pass 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-45827 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-45827 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.C.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-45827 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.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.C.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-45827 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.C.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.C.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-45827 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.C.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-45827 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.C.d., or 2.C.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.

D. Examples

Example 1: Target flow met.

On June 15, the last seven mean daily flows in the Rogue River at the Agness gage were 4100, 4000, 4100, 4000, 3900, 3800 and 3800 cfs. The seven day rolling average (Q_A) is 3957 cfs. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the 7 day average of mean daily flows is greater than the 3800 cfs target flow (Q_T) for June 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

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

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

Step 2: Assuming the Consumptive Use Percentage is 62.2%⁷ during the month of June and the utilization of this percentage is authorized, and the target flow is missed by 31.6% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 19.7%.

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

(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

⁷ Currently, the City of Grants Pass may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-45827 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.

% by which the target flow is missed – 31.6% in this example).

- Step 3: Given that the undeveloped portion of this permit as of this extension (E) is 25.0 cfs, and the undeveloped portion of the permit needs to be reduced by 19.7% (from Step 2), or 4.9 cfs, then the maximum amount of the undeveloped portion of Permit S-45827 that could be diverted as a result of this fish persistence condition would be 20.1 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(25.0 \times 19.7\%) / 100 = 4.9$$

$$25.0 - 4.9 = 20.1$$

- Step 4: The calculated maximum amount of water that could be diverted due to the fish persistence condition may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 10.0 cfs (for example, authorization provided through a WMCP), then 10.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 20.1 cfs from Step 3.

(Conversely, if the amount of water legally authorized for diversion under this permit is 25.0 cfs, then 20.1 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

DATED: December 3, 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 **January 17, 2014**, 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
