

**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 G-12694, Water Right Application G-14109,) PROPOSED FINAL ORDER
in the name of the City of Scio)

Permit Information

Application File G-14109/ Permit G-12694
Basin 2 – Willamette Basin / Watermaster District 19
Date of Priority: June 26, 1995

Authorized Use of Water

Source of Water: Well 4 within the Willamette Basin
Purpose or Use: Municipal
Maximum Rate: 1.78 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 G-12694, water right Application G-14109.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1998 to October 1, 2049.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2049.
- 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 Scio

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

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

Background

1. Permit G-12694 was granted by the Department on August 21, 1996. The permit authorizes the use of up to 1.78 cfs of water from Well 4 within the Willamette Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. 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.
3. 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.
4. The permit holder, the City of Scio (City), submitted an “Application for Extension of Time” to the Department on March 20, 2008, requesting the time to complete construction be extended from October 1, 1998 to October 1, 2049, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12694 be extended from October 1, 1999 to October 1, 2049. This is the first extension of time request for Permit G-12694.
5. Notification of the City’s Application for Extension of Time for Permit G-12694 was published in the Department’s Public Notice dated March 25, 2008. No public comments were received regarding the extension application.

Review Criteria for Municipal 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. This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

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.

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

6. On March 20, 2008, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

7. Permit G-12694 was issued prior to June 29, 2005; therefore, the applicant 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), (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.

8. The remaining work to be accomplished under Permit G-12694 consists installing well level monitoring equipment and new water lines, expanding the waterline distribution system, and installing a new 500,000 gallon reservoir; and of completing construction and applying water to full beneficial use.
9. As of March 20, 2008, the permit holder has appropriated 0.95 cfs of the 1.78 cfs of water authorized under Permit G-12694 for municipal purposes. There is an undeveloped portion of 0.83 cfs of water under Permit G-12694 as per OAR 690-315-0010(6)(g).
10. In addition to the 1.78 cfs of water authorized under Permit G-12694 (Well 4) the City holds municipal use water right Certificate 50300 for 1.33 cfs of water from Well 3 in the Thomas Creek Basin. Well 3 is a backup well for Well 4. The City also has two Ground Water Registrations GR-2625 and GR-2624 for two wells at 600 gpm and 585 gpm, respectively. These wells are not currently in use.
11. According to the City, their peak water demand within its service area boundaries was 0.37 cfs in 2006. The City utilizes a storage reservoir to store pumped water to meet peak daily demands.
12. According to their 2007 Water System Master Plan Update, the City has 339 water services, being 285 residential, 7 multi-family, 33 commercial and 14 public.
13. According to the City, in 2006, the population within the service boundary of the City of Scio was 792. The City of Scio estimates the population will increase at growth rate of 1.7 percent per year, reaching an estimated population of 2,034 by the year 2049.
14. According to the City, their peak day demand is projected to be approximately 0.94 cfs of water by the year 2049.
15. Full development of Permit G-12694 is needed to address the present and future water

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

demand of the City, including system redundancy and emergency use.

16. The City's request for an extension of time until October 1, 2049, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-12694 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g) and (4)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).

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.

17. Prior to the issuance of Permit G-12694 on August 21, 1996, the City constructed the well, installed a meter on the well, and constructed a 500,000 gallon reservoir and waterlines.
18. Since the October 1, 1998, the City installed 5,200 feet of waterline in the Thomas Creek Estates Development and completed a Water System Master Plan.
19. According to the City, as of March 20, 2008, they have invested approximately \$1,800,000, which is approximately 63 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,047,000 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 G-12694, other costs included in this accounting are not partitioned out for G-12694 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.
20. Since the issuance of Permit G-12694 on August 21, 1996, approximately 0.95 cfs of the 1.78 cfs allowed has been appropriated from Well #4 for beneficial municipal purposes under the terms of this permit.
21. The Department has considered the permit holder's compliance with conditions, and has identified the following concern: (1) the record does not show that a Water Management and Conservation plan has been submitted to the Department.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

22. According to the City, as of March 20, 2008, they have invested approximately \$1,800,000, which is approximately 63 percent of the total projected cost for complete development of this project. The City estimates an additional \$1,047,000 investment is needed for the completion of this project.

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

23. As described in Findings 9 through 15 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-12694.
24. The City projects a population increase, on average, of 1.7 percent per year over a forty-three year period, being the years 2006 to 2049.
25. Given the current water supply situation of the City, 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 G-12694.
26. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 0.95 cfs under Permit G-12694 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 a greater appropriation of water under the permit consistent with AOR 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)]

27. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-12694.

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

28. 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)]

29. Delay of development under Permit G-12694 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, and lack of available funds to complete all water system improvements within the entire Urban Growth Boundary.

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.

30. On June 16, 2011, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-12694 has the potential for substantial interference with surface water. The Department determined that use undeveloped portion of Permit G-12694, being 0.83 cfs will result in 0.21 cfs of surface water interference with Thomas Creek after 360 days of pumping.
31. The pending municipal Application for Extension of Time for Permit G-12694 was delivered to ODFW on July 28, 2011, for ODFW's review under OAR-690-315-0080.
32. Notification that the pending municipal Application for Extension of Time for Permit G-12694 was delivered to ODFW for review was sent to the City on July 29, 2011.
33. Notification that the pending municipal Application for Extension of Time for Permit G-12694 was delivered to ODFW for review was published in the Department's Public Notice dated August 2, 2011. No public comments were received regarding this notice.
34. On March 1, 2012, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-12694.
35. 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 and is found to have the Potential for Substantial Interference (PSI) with Thomas Creek 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 Thomas Creek will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

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 recognizes that climatic variations will affect the amount of water in the system over time. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. Climate change is likely to cause a long-term reduction in the frequency of favorable water years.

The target flows, in Table 1, below, are ODFW's recommended flows measured at the mouth of Thomas Creek near Scio, Oregon, for maintaining the persistence of listed fish species in Thomas Creek. 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 target flows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, and be adjusted by the ratio of water withdrawn to water being returned directly to Thomas Creek through effluent discharges.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS AT THE MOUTH OF THOMAS CREEK NEAR SCIO, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 31	100
June 1 – June 15	50
June 16 – June 30	40
July 1 – July 15	35
July 16 – July 31	30
Aug 1 – Aug 15	25
Aug 16 – Sept 15	20
Sept 16 – Sept 30	44
Oct 1 – Dec 31	100

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring flows on Thomas Creek at the gage near Scio is sufficient for ensuring flows to maintain the persistence of listed fish are met throughout Thomas Creek. Therefore, ODFW advises the Department to establish this gage as the point for determining whether fish flows are being met for this municipal permit extension.

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

There is an undeveloped portion of 0.83 cfs of water under Permit G-12694 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 0.95 cfs up to the permitted quantity of 1.78 cfs can only be granted through the Department's review and approval of the municipal permit holder'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 G-12694 having PSI with Thomas Creek that can be appropriated. The proposed conditions in this extension of time are based on the following findings:

- a. As determined by the Department on June 16, 2011, use of the undeveloped portion of this permit, being 0.83 cfs, will result in 0.21 cfs of surface water interference with Thomas Creek after 360 days of pumping. For the purpose of conditioning this permit to maintain the persistence of fish, the Department finds that the amount of the undeveloped portion of water under G-12694 having PSI with Thomas Creek is 0.21 cfs.
- b. The target flows needed to maintain the persistence of fish must be measured at

the mouth of Thomas Creek near Scio, Oregon.

- c. When target flows are not met, use of the undeveloped portion of the permit that impacts Thomas Creek surface water 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 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 as of this extension having PSI with Thomas Creek, and Q_T is the target flow (from Table 1).

- d. ODFW's advice recognizes that the use of the undeveloped portion of the permit represents less than 1% of the natural median stream flow during August.
 - e. 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 amount of the undeveloped portion of Permit G-12694 that impacts Thomas Creek surface water 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide appropriated flows}])$.
37. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-12694 that impacts Thomas Creek surface water 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 with surface water impacts, stream flow would be a limiting factor for the listed fish species.
38. 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 G-12694, 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
39. On March 12, 2012, ODFW notified the Department that the proposed "Conditions to

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.

Maintain the Persistence of Listed Fish” for Permit G-12694 are consistent with their advice.

40. On March 14, 2012, 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 G-12694.

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 537.630(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 G-12694 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, 2049⁶ 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 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 26, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of water beyond 0.95 cfs under Permit G-12694 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690,

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.

Division 86 that authorizes access to a greater rate of appropriation 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 30 through 40, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use under this municipal use permit of the undeveloped portion with surface water impacts, in the absence of special conditions. Therefore, the appropriation of water beyond 1.57 cfs⁷ under Permit G-12694 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 G-12694 from October 1, 1998 to October 1, 2049.

Extend the time to apply the water to beneficial use under Permit G-12694 from October 1, 1999 to October 1, 2049.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Appropriation of any water beyond 0.95 cfs under Permit G-12694 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 appropriation 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 G-12694 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 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 total of 1.57 cfs, being 0.95 cfs (the developed portion of the permit) and 0.62 cfs (the undeveloped portion of the permit not having PSI) is *not* subject to these fish persistence conditions.

⁷ The undeveloped portion (0.95) + the developed portion not having PSI (0.62) = 1.57

A. Fish Persistence Target Flows

- a. Fish persistence needs in Thomas Creek as recommended by ODFW are in Table 2, below; flows are to be measured at the mouth of Thomas Creek near Scio, Oregon, USGS GAGE No. 14188800, or its equivalent.

Table 2

FISH PERSISTENCE TARGET FLOWS NEEDS AT THE MOUTH OF THOMAS CREEK MEASURED AT USGS GAGE 14188800, NEAR SCIO, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 31	100
June 1 – June 15	50
June 16 – June 30	40
July 1 – July 15	35
July 16 – July 31	30
Aug 1 – Aug 15	25
Aug 16 – Sept 15	20
Sept 16 – Sept 30	44
Oct 1 – Dec 31	100

- b. Alternate Streamflow Measurement Point(s)
 The location of a streamflow 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 the City 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 undeveloped portion of Permit G-12694 having PSI with Thomas Creek is 0.21 cfs. The maximum amount of the undeveloped portion of Permit G-12694 having PSI with Thomas Creek that can be appropriated 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 at the mouth of Thomas Creek. The percent of missed target flows is defined as:

$$(1 - [(Q_A - E_{PSI}) / Q_T]) \times 100\%$$

where Q_A is the actual flow measured at the designated location based on the seven day rolling average⁸, E_{PSI} is the undeveloped portion of the permit having PSI with Thomas Creek as of this extension, and Q_T is the target flow (from Table 2).

The percent missed target flows applied to the undeveloped portion of this permit having PSI with Thomas Creek provides the maximum amount of undeveloped water that can be appropriated as a result of this fish persistence condition, and is defined as:

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

where E_{PSI} is undeveloped portion of the permit as of this extension having PSI with Thomas Creek, being 0.21 cfs.

The maximum amount of undeveloped water that can be appropriated 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 $Q_A - E_{PSI} \geq Q_T$, the target flow is considered met and therefore the amount of the undeveloped portion of the permit having PSI with Thomas Creek that can be appropriated would not need to be reduced as a result of this fish persistence condition.

C. Consumptive Use Percentages

a. Initial Consumptive Use Percentages

The City of Scio has not identified any Consumptive Use Percentages based on the return of flows to Thomas Creek through effluent discharge. Thus, at this time the permit holder may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit G-12694 that can be appropriated 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 G-12694 that can be appropriated 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 permit holder (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

⁸ Alternatively, the City may use a single daily measurement.

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 G-12694 that can be appropriated as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., below) is contingent upon the permit holder 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 permit holder's wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to Thomas Creek, 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 G-12694 that can be appropriated 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 Thomas Creek 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 permit holder's wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the permit holder 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 G-12694 that can be appropriated 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 permit holder (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 G-12694 that can be appropriated 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 permit holder at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On August 10, the last seven mean daily flows were 26.4, 26.3, 26.0, 25.9, 25.5, 25.3 and 25.4 cfs. The seven day rolling average (Q_A) is 25.8 cfs. Given that the undeveloped portion of this permit having PSI with Thomas Creek (E_{PSI}) is 0.21 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 25.0 cfs target flow (Q_T) for August 10. In this example, $Q_A - E_{PSI} \geq Q_T$.

$$25.8 - 0.21 \geq 25.6$$

The amount of the undeveloped portion of the permit having PSI with Thomas Creek that can be appropriated 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 having PSI with Thomas Creek (E_{PSI}) is 0.21 cfs, if on August 25, the average of the last seven mean daily flows (Q_A) was 8.0 cfs, and the target flow (Q_T) is 20.0, then the target flow would be missed by 61.0%.

$$(1 - [(8.0 - 0.21) / 20]) \times 100\% = 61.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%⁹ during late August and the utilization of this percentage is authorized, and the target flow is missed by 61.0% (from Step 1), then the amount of the undeveloped portion of the permit having PSI with Thomas Creek that could be appropriated would be reduced by 48.0%.

$$(78.7\% \times 61.0\%) / 100 = 48.0\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit having PSI with Thomas Creek would only be reduced by the % by which the target flow is missed – 61.0% in this example).

Step 3: Given that the undeveloped portion of this permit having PSI with Thomas Creek (E_{PSI}) is 0.21 cfs, which needs to be reduced by 48% (from Step 2), or 0.10 cfs, then the maximum amount of the undeveloped portion of Permit G-12694 having PSI with Thomas Creek that can be appropriated as a result of this fish persistence condition is 0.11 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(0.21 \times 48.0\%) / 100 = 0.10$$

$$0.21 - 0.10 = 0.11$$

Step 4: The calculated maximum amount of water that could be appropriated 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 1.6 cfs (for example, authorization provided through a WMCP), then 1.6 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 0.95 cfs, plus the undeveloped portion of the permit not having PSI, being 0.62 cfs.

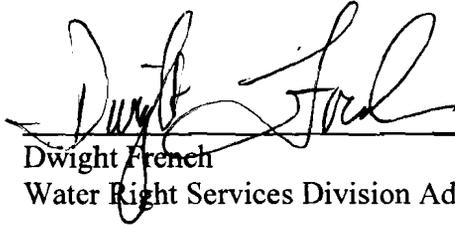
⁹ Currently, the City of Scio may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit G-12694 that can be appropriated as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 78.7%⁹ is only for illustrative purposes in this example.

(Conversely, if the amount of water legally authorized for diversion under this permit is 1.78 cfs, then 1.68 cfs (.11 from Step 3 + the 0.95 developed portion + the 0.62 cfs undeveloped portion not having PSI) would be the maximum amount of diversion allowed under this permit.)

E. Relocation of the Point(s) of Appropriation (s) and New Quantification of PSI.

Any relocation of the point(s) of appropriation(s) through a permit amendment or transfer process will require a new OWRD ground water review pursuant to OAR Chapter 690 Division 9 to determine if use of water at the relocated point(s) of appropriation(s) has the potential for substantial interference (PSI) with surface water. This review will be used to quantify a new value for E_{PSI} , being the undeveloped portion of the permit as of this extension having PSI with the surface water based on the new locations of the point(s) of appropriation(s). The new value for E_{PSI} will be then utilized in the calculations for determining the maximum amount of water that could be appropriated under this permit as a result of this fish persistence condition.

DATED: December 10, 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 24, 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

