

**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-734, Water Right Application G-834, ) PROPOSED FINAL ORDER  
in the name of the City of Salem )

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**Permit Information**

**Application File G-834/ Permit G-734**

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: January 2, 1958

**Authorized Use of Water**

Source of Water: A Collector Well within the North Santiam River Basin  
Purpose or Use: Municipal  
Maximum Rate: 30.0 Cubic Feet per Second (CFS)

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**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-734, water right Application G-834.

## **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, 2020.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2020.
- 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 Salem

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-734 was granted by the Department on January 27, 1958. The permit authorizes the use of up to 30.0 cfs of water from a collector well on Geren Island within the North Santiam River Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1959, and that complete application of water was to be made on or before October 1, 1960.
2. Eight prior permit extensions have been granted for Permit G-734. 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. The permit holder, the City of Salem (City), submitted an "Application for Extension of Time" to the Department on January 5, 2004, requesting the time to complete construction and apply water to full beneficial use under the terms and conditions of Permit G-734 be extended from October 1, 1999 to October 1, 2012. On February 4, 2004, the City submitted additional information for the application.
6. Notification of the City's Application for Extension of Time for Permit G-734 was published in the Department's Public Notice dated February 17, 2004. No public comments were received regarding the extension application.
7. On November 16, 2012, the permit holder submitted an updated Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2012 to October 1, 2020, and the extended time to apply water to full beneficial use be changed from October 1, 2012 to October 1, 2020.

**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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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

8. On January 5, 2004, 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)]**

9. Permit G-734 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.<sup>4</sup>

**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.*

10. The remaining work to be accomplished under Permit G-734 consists of completing construction, including improvements to the caisson and ground water distribution system, and applying water to full beneficial use.
11. As of January 5, 2004, the permit holder has not appropriated any of the 30.0 cfs of water authorized under Permit G-734 for municipal purposes<sup>5</sup>. There is an undeveloped portion of 30.0 cfs of water under Permit G-734 as per OAR 690-315-0010(6)(g).
12. In addition to the 30.0 cfs of water authorized under Permit G-734, the City holds the following municipal use water right transfers, permits, certificates, surface water registrations, and ground water registrations:
  - Certificate 88641 for 60.0 cfs of water from the North Santiam River;
  - Certificate 88871 for 50.0 cfs of water from the North Santiam River;
  - Certificate 88872 for 12.0 cfs of water from the North Santiam River;
  - Certificate 87958 for 62.0 cfs of water from the North Santiam River;
  - Certificate 87959 for 55.0 cfs of water from the North Santiam River;

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 537.010(5) applies to surface water and ground water permits.

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

<sup>5</sup> The permit authorizes a “collection system” which has historically been used to appropriate both ground water and surface water at Geren Island Water Treatment Facility. Prior to October 1, 1999, the City’s measurement system did not distinguish between ground water and surface water sources, and as such the amount of beneficial use under the ground water Permit G-734 has not been established.

- Permit S-45565 for 200.0 cfs of water from the Willamette River;
- Claim SWR-626 for 10.0 cfs of water from the Willamette River ;
- Certificate 87902 for 1.12 cfs of water from ASR Wells #1, #2, #4, & #5 in the Pringle Creek Basin;
- Certificate 87903 for 1.0 cfs of water from ASR Wells #1, #2, #4, & #5 in the Pringle Creek Basin;
- Certificate 87904 for 1.33 cfs of water from ASR Wells #1, #2, #4, & #5 in the Pringle Creek Basin;
- Certificate 87905 for 2.0 cfs of water from ASR Wells #1, #2, #4, & #5 in the Pringle Creek Basin;
- Certificate 57917 for 2.16 cfs of water from Jan Ree Wells 5 & 6 in the Willamette Basin;
- Certificate 66077 for 12.06 cfs from Jan Ree Wells 1 - 8, and Hayesville Wells 1 & 2 in the Willamette Basin;
- Transfer T-10263 for 1.11 cfs from Proposed Wells 1 - 6;
- Ground water Registration GR-493, modified by T-10264 for 0.67 cfs from Proposed Wells 1 - 6;
- Ground water Registration GR-3502 for 12.38 cfs of water from Infiltration Gallery #1 at Geren Island in the North Santiam River Basin;
- Ground water Registration GR-3503 for 0.89 cfs of water from Orchards Heights Well in the Glen Creek Basin;
- Ground water Registration GR-3504 for 0.89 cfs of water from Wallace Road Well in the Glen Creek Basin;
- Ground water Registration GR-3505 for 0.56 cfs of water from West Salem City Hall Well in the Willamette River Basin;
- Ground water Registration GR-3506 for 0.98 cfs of water from Market Street Well in the Pringle Creek Basin;
- Ground water Registration GR-3507 for 3.45 cfs of water from Middle Well at Geren Island in the North Santiam River Basin;
- Ground water Registration GR-3508 for 0.45 cfs of water from West Salem City Hall Well in the Willamette River Basin;
- Ground water Registration GR-3509 for 2.45 cfs of water from East Well at Geren Island in the North Santiam River Basin;
- Ground water Registration GR-3510 for 3.95 cfs of water from West Well at Geren Island in the North Santiam River Basin;
- Ground water Registration GR-14 for 2.77 cfs of water from six wells in the Pringle Creek Basin; and
- Limited License LL-001 for Aquifer Storage and Recovery (ASR), for diversion

from the North Santiam River at a rate of up to 26 cfs for injection, and recovery at a rate of up to 30.7 cfs from ASR Wells 1 – 15.

13. In addition to the above municipal use water rights, the City of Salem also holds the following water right certificates:
  - Certificate 42199 for 0.05 cfs of water from Jan Ree Well 3 for quasi-municipal use;
  - Certificate 42202 for 1.08 cfs of water from Jan Ree Well 1 for quasi-municipal use;
  - Certificate 42222 for 1.08 cfs of water from Jan Ree Well 4 for domestic use;
  - Certificate 32221 for 0.22 cfs of water from Cascades Gateway Park Well for park use;
  - Certificate 35773 for 0.11 cfs of water from Cascades Gateway Park Well for park use;
  - Certificate 34803 for 0.15 cfs of water from Hemlock Well for domestic use; and
  - Certificate 42200 for 0.37 cfs of water from Jan Ree Well 1 for domestic use.
14. The City's municipal use surface water rights (permits, certificates, and surface water registration) total 239 cfs of water from the North Santiam River, and 210 cfs from the Willamette River. The City relies almost entirely on the North Santiam River for its water supply. In addition, the City also holds ground water rights on Geren Island and has an ASR program the City uses as a redundant source to its surface water supply. Treated drinking water from the North Santiam River is transferred to the ASR wells, where water is stored to meet peak demands or for emergency use. The recovery rate of the City's ASR system is currently limited to 6.9 cfs. (WMCP 2009, Section 2.1.) And finally, the City has several small capacity ground water wells throughout the City for emergency use.
15. The City of Salem provides water to three wholesale customers: The City of Turner, Suburban East Salem Water District and Orchard Heights Water District. Combined, these sales account for approximately 7% of Salem's total average water sales.
16. The City has emergency supply interties with the Cities of Stayton and Keizer supported by Intergovernmental Agreements (IGAs).
17. According to the City, the peak water demand of the current population served was 82.5 cfs in 2007.
18. According to the City, in 2007, the current population served by the City of Salem was 182,855. This includes the populations of Suburban East Salem Water District, the Jan Ree Water Area, City of Turner, in addition to some other areas located outside of Salem's city limits. The City estimates the service population will increase at growth rate

of 1 percent per year, reaching an estimated population of 216,922 by the year 2020.

19. According to the City, its peak day demand is projected to be approximately 102.1 cfs of water by the year 2020.
20. Water supplied under G-734 is intended to be a redundant supply to the City's surface water from Geren Island in the event that the surface water source is unavailable due to unforeseen problems such as flooding, turbidity, algal fouling events, etc. Full development of Permit G-734 is needed to address the present and future demand for supply redundancy and emergency use.
21. The City's request for an extension of time until October 1, 2020, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-734 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.*

22. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-734.
23. During the last extension period, being October 1, 1994 to October 1, 1999, the City completed a Water Master Plan, constructed Filter #3, and connected Filters #1, #2, & #3 to the caisson.
24. Since the October 1, 1999 the City has accomplished the following work:
  - Constructed Filter #4, and connected it to the caisson;
  - Reconstructed Filter #1;
  - Installed a new meter;
  - Added a pump station to the caisson;
  - Made repairs to the water distribution system; and
  - Submitted a WMCP to the Department.
25. According to the City, as of 2009, they have invested approximately \$53,225,000, which is approximately 99.8 percent of the total projected cost for complete development of this project. The City estimates an additional \$120,000 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-734, other costs included in this accounting are not partitioned out for G-734 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.

26. Since the issuance of Permit G-734 on January 27, 1958, no water has been appropriated for beneficial municipal purposes under the terms of this permit. (See fn 5.)
27. The Department has considered the City's compliance with conditions and did not identify any concerns.

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

28. According to the City, as of 2009, they have invested approximately \$53,225,000, which is 99.8 percent of the total projected cost for complete development of this project. The City estimates an additional \$120,000 investment is needed for the completion of this project.

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

29. As described in Findings 11 through 20 above, the City has indicated, and the Department finds that the City must rely on full development of Permit G-734 as an emergency and redundant source of water to meet its current and future demands.
30. The City projects a population increase, on average, of one percent per year over a thirteen year period, being the years 2007 to 2020.
31. 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-734.
32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of any water under Permit G-734 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)]**

33. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-734.



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

34. 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)]**

35. Delay of development under Permit G-734 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.*

36. On February 23, 2006, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-734 has the potential for substantial interference with surface water. The Department determined that use undeveloped portion of Permit G-734, being 30.0 cfs, will result in 29.6 cfs of surface water interference with the North Santiam River after 360 days of pumping.
37. The pending municipal Application for Extension of Time for Permit G-734 was delivered to ODFW on February 11, 2011, for ODFW's review under OAR-690-315-0080.
38. Notification that the pending municipal Application for Extension of Time for Permit G-734 was delivered to ODFW for review was sent to the City on February 14, 2011.
39. Notification that the pending municipal Application for Extension of Time for Permit G-734 was delivered to ODFW for review was published in the Department's Public Notice dated February 15, 2011. No public comments were received regarding this notice.
40. On September 27, 2011, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-734.
41. Summary and Excerpts of Advice from ODFW:  
Use of water under the portion of this permit that is undeveloped as of the date of the extension final order and is found to have the Potential for Substantial Interference (PSI) with the North Santiam River 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 North Santiam 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 Mehama, Oregon, for maintaining the persistence of listed fish species in the North Santiam River. ODFW advises the Water Resources Department to develop conditions that allow municipalities to meet their water needs while maintaining the persistence of listed fish species.

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

**Table 1**

<b>ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE NORTH SANTIAM RIVER NEAR MEHAMA, OREGON</b>	
<b>Month</b>	<b>Cubic Feet per Second</b>
October – December	1500
January – February	1200
March 1 – March 15	1200
March 16 – March 31	1500
April – May	1500
June	1200
July 1 – July 15	1200
July 16 – July 31	1000
August	1000
September	1500

**Streamflow Measurement Point**

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

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

There is an undeveloped portion of 30.0 cfs of water under Permit G-734 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 permit holder'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 G-734 having PSI with the North Santiam River 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 February 23, 2006, use of the undeveloped portion of this permit, being 30.0 cfs, will result in 29.6 cfs of surface water interference with the North Santiam River 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-734 having PSI with the North Santiam River is 29.6 cfs.
- b. The target flows needed to maintain the persistence of fish must be measured at Mehama, Oregon, USGS GAGE No.14183000, or its equivalent.
- c. When target flows are not met, use of the undeveloped portion of the permit that impacts North Santiam River surface water must 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 the North Santiam River, 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 about 1% of the natural stream flow during the summer months, but much less during the winter and spring months.
43. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-734 that impacts North Santiam River 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 flows would be a limiting factor for the listed fish species.
44. Based on ODFW's advice, the Department proposes to require conditions to maintain, in the portions of the waterways affected by water use under Permit G-734, 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.)<sup>6</sup>

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<sup>6</sup> 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.

45. On January 18, 2012, ODFW notified the Department that the proposed “Conditions to Maintain the Persistence of Listed Fish” for Permit G-734 are consistent with their advice.
46. On January 19, 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-734.

### **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-734 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, 2020<sup>7</sup> 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 32, above, and specified under Item 1 of the “Conditions” section of this PFO, the appropriation of any water under Permit G-734 shall only be authorized upon issuance of a final order

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<sup>7</sup> 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.

approving a Water Management and Conservation Plan(s) 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).

9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 36 through 46, 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 0.4 cfs under Permit G-734 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-734 from October 1, 1999 to October 1, 2020.

Extend the time to apply the water to beneficial use under Permit G-734 from October 1, 1999 to October 1, 2020.

Subject to the following conditions:

### **CONDITIONS**

1. **Development Limitations**

Appropriation of any water under Permit G-734 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-734 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**

The undeveloped portion of the permit not having PSI with the North Santiam River, being 0.4 cfs is *not* subject to these fish persistence conditions.

A. Fish Persistence Target Flows

- a. Fish persistence needs in the North Santiam River as recommended by ODFW are in Table 2, below; flows are to be measured in the North Santiam River near Mehama, Oregon (USGS Gage Number 14183000, or its equivalent).

**Table 2**

<b>FISH PERSISTENCE TARGET FLOWS ON NORTH SANTIAM RIVER MEASURED AT USGS GAGE 14183000, NEAR MEHAMA, OREGON</b>	
Month	Cubic Feet per Second
October – December	1500
January – February	1200
March 1 – March 15	1200
March 16 – March 31	1500
April – May	1500
June	1200
July 1 – July 15	1200
July 16 – July 31	1000
August	1000
September	1500

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-734 having PSI with the North Santiam River is 29.6 cfs. The maximum amount of the undeveloped portion of Permit G-734 having PSI with the North Santiam River 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 in the North Santiam River near Mehama (USGS Gage Number 14183000, or its equivalent). 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 gage based on the seven day rolling average<sup>8</sup>,  $E_{PSI}$  is the undeveloped portion of the permit having PSI with the North Santiam River as of this extension, 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 this permit having PSI with the North Santiam River provides the maximum amount of water that could be appropriated under this permit 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 the North Santiam River, being 29.6 cfs.

### C. Examples

#### Example 1: Target flow met.

On August 15, the last seven mean daily flows were 1010, 1100, 1010, 1025, 1029, 1032 and 1035 cfs. The seven day rolling average ( $Q_A$ ) is 1034.4 cfs. Given that the undeveloped portion of this permit having PSI with the North Santiam River ( $E_{PSI}$ ) is 29.6 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 1000.0 cfs target flow ( $Q_T$ ) for August 15. In this example,  $Q_A - E_{PSI} \geq Q_T$ .

$$1034.4 - 29.6 \geq 1000.0$$

The amount of the undeveloped portion of the permit having PSI with the North Santiam River that can be appropriated would not be reduced because the target flow is considered met.

#### Example 2: Target flows missed.

Step 1: Given that the undeveloped portion of this permit having PSI with the North Santiam River ( $E_{PSI}$ ) is 29.6 cfs, if on August 15, the average of the last seven mean daily flows ( $Q_A$ ) was 900 cfs, and the target flow ( $Q_T$ ) is 1000, then the target flow would be missed by 13.0%.

$$(1 - [(900 - 29.6) / 1000]) \times 100\% = 13.0\%$$

Step 2: Given that the undeveloped portion of this permit having PSI with the North Santiam River ( $E_{PSI}$ ) is 29.6 cfs, which needs to be reduced by 13.0 % (from Step 1), or 3.8 cfs, then the maximum amount of the

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<sup>8</sup> Alternatively, the City may use a single daily measurement.

undeveloped portion of Permit G-734 having PSI with the North Santiam River that can be appropriated as a result of this fish persistence condition is 25.8 cfs. (This maximum amount may be limited as illustrated in Step 3, below.)

$$(29.6 \times 13.0\%) / 100 = 3.8$$

$$29.6 - 3.8 = 25.8$$

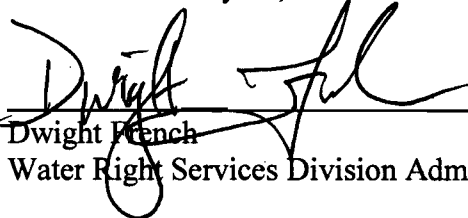
Step 3: The calculated maximum amount of water that could be appropriated due to the fish persistence condition may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 20.0 cfs (for example, authorization provided through a WMCP), then 20.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 25.8 cfs from Step 2.

(Conversely, if the amount of water legally authorized for diversion under this permit is 28.0 cfs, then 26.2 cfs (25.8 from Step 2 + the 0.4 cfs not having PSI) would be the maximum amount of diversion allowed under this permit.)

D. 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: January 14, 2014

  
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 **February 28, 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.

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- If you have any questions about statements contained in this document, please contact Ann 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
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