

**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-49649, Water Right Application S-68639,)
in the name of the City of Siletz) **PROPOSED FINAL ORDER**

Permit Information

Application File S-68639/ Permit S-49649

Basin 18 – Mid Coast Basin / Watermaster District 1

Date of Priority: December 20, 1985

Authorized Use of Water

Source of Water: Siletz River, a Tributary of Siletz Bay

Purpose or Use: Municipal Use

Maximum Rate: 1.0 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-49649, water right Application S-68639.

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, 2051.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2051.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

CTSI – Confederated Tribes of Siletz Indians

City – City of Siletz

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 537.230 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-49649 was granted by the Department on June 30, 1986. The permit authorizes the use of up to 1.0 cfs of water from the Siletz River, a tributary of the Siletz Bay, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1988, and that complete application of water was to be made on or before October 1, 1989.
2. Two prior permit extensions have been granted for Permit S-49649. 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 October 21, 1999, City of Siletz (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-49649 be extended from October 1, 1999 to October 1, 2020.
6. Notification of the City's Application for Extension of Time for Permit S-49649 was published in the Department's Public Notice dated May 6, 2003. No public comments were received regarding the extension application.
7. On November 8, 2000, April 28, 2003 and December 20, 2005, the City submitted supplemental information and update revisions to their pending Application for Extension of Time.
8. On May 5, 2014, the permit holder submitted additional information to supplement and/or 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, 2051, and the extended time to apply water to full beneficial use be changed from October 1, 2020 to October 1, 2051.

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 October 21, 1999, 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-49649 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. As of May 2014, the remaining work to be accomplished under Permit S-49649 consists of completing construction of the water system including construction of additional water storage, adding new water system piping, installing new raw water pumps, and upgrades to the water treatment plant; and applying water to full beneficial use.
12. As of October 1, 1999, the permit holder has diverted 0.27 cfs of the 1.0 cfs of water authorized under Permit S-49649 for municipal purposes. There is an undeveloped portion of 0.73 cfs of water under Permit S-49649 as per OAR 690-315-0010(6)(g).
13. In addition to the 1.0 cfs of water from the Siletz River authorized under Permit S-49649, the City holds the following municipal use water right certificates and permits:
 - Certificate 22447 for 0.5 cfs of water from an unnamed stream (Logan Creek), tributary to the Siletz River;
 - Certificate 15803 for 0.3 cfs of water from an unnamed stream, tributary to the Siletz River; and
 - Certificate 27681 for 0.25 cfs of water from the Siletz River;
 - Certificate 41548 for 0.44 cfs of water from Tangerman Creek and a reservoir, both tributary to the Siletz River [*the storage of 2.0 AF of water in from Tangerman Creek in a reservoir is authorized under Certificate 41547*].

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).

14. The City's surface water rights total 2.49 cfs of water, of which 1.25 cfs is from the Siletz River.
15. The City has a contract agreement, dated August 8, 1994, to use water of the under the Confederated Tribes of Siletz Indians' (CTSI) water right T-7070 for 0.26 cfs from the Siletz River. The agreement is for an undetermined amount of time and allows CTSI to terminate the agreement upon one (1) year's prior written notice. The City of Siletz anticipates 2035 will be the outside date that they will have access to water under this agreement.
16. The City currently to delivers water to CTSI and the Camp 12 water district.
17. The City relies on its water rights from the Siletz River, and the CTSI water right (T-7070) to meet its current demands of 0.78 cfs. The water rights from Tangerman Creek and Tangerman Creek Reservoir are utilized mid-October through May, and are used for an emergency source of water during the remainder of the year.
18. According to the City, in 2013, the population within the service boundary of City of Siletz was 1,721.
19. The City anticipates an average growth rate of 1.75 percent until the year 2051 when the population is projected to reach 3,346. The projected population includes CTSI up until the year 2035 when the agreement for use of T-7070 may terminate and revert back to use by CTSI.
20. The City's peak day demand is projected to be approximately 1.25 cfs of water by the year 2051.
21. The City has determined in consultation with CTSI, the Lincoln County Planning Director, and the City's 2010 Comprehensive Plan, that future growth and development are expected within the Urban Growth Boundary (UGB). The City anticipates maintaining an adequate supply of buildable residential land within the UGB for an overall housing density of 6-8 units per acre.
22. According to the City's 2010 Comprehensive Plan, excluding lands held within tribal trust by CTSI, the City of Siletz has 360 acres within its UGB. Single family residences account for 61% of the acreage, general residences 41%, and general commercial 52%, and public facilities account for 8%. There are 94.5 acres within the UGB that are considered buildable. There is a development potential of 60.5% of lands for single family residences, 31.2% for general residences, and 8.3% for general commercial land. There are no physical or geographic boundaries preventing growth in order to reach full development of the City's water rights.
23. According to the City, potential growth industries include retail and services, education and health services, industry and manufacturing, forestry, outdoor recreation and tourism, and residential homes.

24. Full development of Permit S-49649 is needed to address the present and future water demand of City of Siletz.
25. In accordance with OAR 690-315-0080(1)(d) and as described by Findings 21 - 23, 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 permit holder.
26. The City's request for an extension of time until October 1, 2051, to complete construction and to apply water to full beneficial use under the terms of Permit S-49649 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.

27. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
28. During the last extension period, being October 1, 1994 to October 1, 1999, service was added to the Confederated Tribes of Siletz (50 new connections).
29. Since October 1, 1999, the City has accomplished the following:
 - Constructed a new storage tank;
 - Constructed a new intake system;
 - Made improvements to distribution lines; and
 - Completed raw water plant improvements including the tank, booster pump station, and system integrator.
30. According to the City's May 14, 2014 extension application updates, they have invested approximately \$2,141,700, which is approximately 49 percent of the total projected cost for complete development of this project. The City estimates a \$2,250,000 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-49649, other costs included in this accounting are not partitioned out for S-49649 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.

31. As of October 1, 1999, the City has diverted 0.27 cfs of the 1.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
32. 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)]

33. According to the City, 2003, they have invested approximately \$2,141,700, which is approximately 49 percent of the total projected cost for complete development of this project. The City estimates a \$2,250,000 investment is needed for the completion of this project.

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

34. As described in Findings 12 through 25 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-49649
35. The City estimates an average annual population growth rate of 1.75 percent per year over a 38 year period, being the years 2013 to 2051.
36. 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-49649.
37. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.27 cfs under Permit S-49649 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 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)]

38. 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)]

39. 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)]

40. Delay of development under Permit S-49649 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. In addition, slower than expected population growth rates, a sluggish economy, and successful conservation efforts by customers have all contributed to the City needing more time to reach full beneficial use of water under Permit S-49649.

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.

41. The pending municipal Application for Extension of Time for Permit S-49649 was delivered to ODFW on August 3, 2012, for ODFW's review under OAR-690-315-0080.
42. Notification that the pending municipal Application for Extension of Time for Permit S-49649 was delivered to ODFW for review was sent to the City on August 3, 2012.
43. Notification that the pending municipal Application for Extension of Time for Permit S-49649 was delivered to ODFW for review was published in the Department's Public Notice dated August 7, 2012. No public comments were received regarding this notice.
44. On July 10, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-49649.
45. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as October 1, 1999 should be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the Siletz River will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

ODFW recognizes that long term climatic variations will affect the amount of water in the system. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

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

The severity of the measures to be taken by the 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 Siletz River through effluent discharges.

Table 1

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

Streamflow Measurement Point

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

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

There is an undeveloped portion of 0.73 cfs of water under Permit S-49649 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 0.27 cfs up to the permitted quantity of 1.0 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 S-49649 that can be diverted. The proposed conditions in this extension of time are based on the following findings:

- a. The target flows needed to maintain the persistence of fish must be measured at Siletz, Oregon, USGS GAGE No. 14305500, or its equivalent.
- b. When target flows are not met, use of the undeveloped portion of the permit must be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flow is defined as:

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

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

- c. ODFW's advice recognized that the use of the undeveloped portion of the permit represents 2-3% of the natural stream flow during the summer months, but much lower percentage during the winter and spring.
 - 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-49649 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
- 47. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-49649 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.
 - 48. 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-49649, 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
 - 49. On October 1, 2013, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-49649 are consistent with their advice.
 - 50. On October 4, 2013, the Department notified the City as per OAR 690-315-0080(2)(f) of ODFW's written advice and the "Conditions to Maintain the Persistence of Listed Fish" proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-49649.

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.

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. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2051⁶. 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).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).
7. As required by OAR 690-315-0090(3) and as described in Finding 37, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 0.27 cfs under Permit S-49649 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).
8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 41 through 50, 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 water beyond 0.27cfs under Permit S-49649 will be subject to the conditions specified under Item 2 of

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 Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625

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-49649 from October 1, 1999 to October 1, 2051.

Extend the time to apply the water to beneficial use under Permit S-49649 from October 1, 1999 to October 1, 2051.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water beyond 0.27 cfs under Permit S-49649 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-49649 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690 on file with the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

A. Fish Persistence Target Flows

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

Table 2

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

- b. Alternate Streamflow Measurement Point

The location of a target flow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the City provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions – Generally

The developed portion of the permit, 0.27 cfs is *not* subject to these fish persistence conditions.

The maximum amount of the undeveloped portion of Permit S-49649 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of mean daily flows measured in the Siletz River at Siletz (USGS Gage Number 14305500, or its equivalent). The percent of missed target flows is defined as:

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

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

The percent by which the target flow is missed applied to the undeveloped portion of the permit provides the maximum amount of undeveloped portion of the permit that can be diverted as a result of this fish persistence condition, and is defined as:

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

where E is the undeveloped portion of the permit, being 0.73 cfs.

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

C. Consumptive Use Percentages

a. Initial Consumptive Use Percentages

The City of Siletz has not identified any Consumptive Use Percentages based on the return of flows to the Siletz 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-49649 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-49649 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-49649 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 Siletz 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-49649 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 Siletz 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-49649 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-49649 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 July 15, the last seven mean daily flows were 189, 190, 188, 185, 185, 180 and 178 cfs. The seven day rolling average (Q_A) is 185 cfs. Given that the undeveloped portion of this permit (E) is 0.73 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 180 cfs target flow (Q_T) for July 15. In this example, $Q_A - E \geq Q_T$.

$$185 - 0.73 \geq 180$$

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

Example 2: Target flow missed.

Step 1: Given that the undeveloped portion of this permit (E) is 0.73 cfs, if on July 15, the average of the last seven mean daily flows (Q_A) was 130 cfs, and the target flow (Q_T) is 180 cfs, then the target flow would be missed by 28.2%.

$$(1 - [(130 - 0.73) / 180.0]) \times 100\% = 28.2\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%⁷ during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 28.2% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 22.2%.

$$(78.7\% \times 28.2\%) / 100 = 22.2\%$$

(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 % by which the target flow is missed – 28.2% in this example).

Step 3: Given that the undeveloped portion of this permit (E) is 0.73 cfs, and the undeveloped portion of the permit needs to be reduced by 22.2% (from Step 2), or 0.16 cfs, then the maximum amount of the undeveloped portion of Permit S-49649 that can be diverted as a result of this fish persistence condition is 0.57 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(0.73 \times 22.2\%) / 100 = 0.16$$

$$0.73 - 0.16 = 0.57$$

Step 4: The calculated maximum amount of water that could be diverted under the permit 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 0.50 cfs (for example, authorization provided through a WMCP), then 0.50 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 0.27 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 0.90 cfs, then 0.84 cfs (0.57 from Step 3 + the 0.27 developed portion) would be the maximum amount of diversion allowed under this permit.)

DATED: May 13, 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.*

⁷ Currently, the City of Siletz may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-49649 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 78.7%^{is} only for illustrative purposes in this example.

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 **June 27, 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
