

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

Water Rights Application  
Number G-14109

**Final Order**  
**Extension of Time for Permit Number G-12694**  
**Permit Holder: City of Scio**

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**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)

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**This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315**

**Appeal Rights**

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

**Application History**

Permit G-12694 was issued by the Department on August 21, 1996. The permit called for completion of construction by October 1, 1998, and complete application of water to beneficial use by October 1, 1999. On March 20, 2008, the City of Scio submitted an application to the Department for an extension of time for Permit G-12694. In accordance with OAR 690-315-0050(2), on December 10, 2013, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2049 and to extend the time to fully apply water to beneficial use to October 1, 2049. The protest period closed January 24, 2013, in accordance with OAR 690-315-0060(1). No protest was filed.

### **Findings of Fact**

Except as expressly stated herein, the Department adopts and incorporates by reference the findings of fact in the Proposed Final Order dated December 10, 2013.

Footnote 7, as shown in the Proposed Final Order is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):

<sup>7</sup> The ~~undeveloped~~ portion (0.95) + the undeveloped portion not having PSI (0.62) = 1.57

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

## **CONDITIONS**

### 1. **Development Limitations**

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 this 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 this 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 (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.

#### A. **Fish Persistence Target Flows**

- a. Fish persistence needs in Thomas Creek as recommended by ODFW are in Table 1, below; flows are to be measured at the mouth of Thomas Creek near Scio, Oregon, USGS GAGE No. 14188800, or its equivalent.

**Table 1**

<b>FISH PERSISTENCE TARGET FLOWS NEEDS                      AT THE MOUTH OF THOMAS CREEK                      MEASURED AT USGS GAGE 14188800, NEAR SCIO, OREGON</b>	
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 steamflow 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 1 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 average<sup>1</sup>,  $E_{PSI}$  is the undeveloped portion of the permit having PSI with Thomas Creek as of this extension, and  $Q_T$  is the target flow (from

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<sup>1</sup> Alternatively, the City may use a single daily measurement.

Table 1).

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 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%<sup>2</sup> 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

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<sup>2</sup> 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%<sup>is</sup> only for illustrative purposes in this example.

undeveloped portion of the permit not having PSI, being 0.62 cfs.

(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 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.

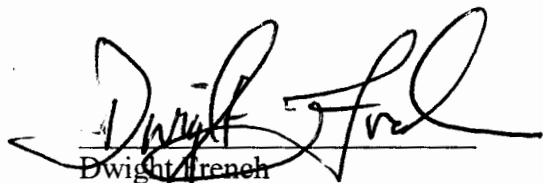
**CONCLUSION OF LAW**

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.630, 539.010(5) and OAR 690-315-0080(3).

**Order**

The extension of time for Application G-14109, Permit G-12694, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended from October 1, 1998 to October 1, 2049. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 1999 to October 1, 2049.

DATED: June 20, 2014



Dwight French  
Water Right Services Division Administrator, for  
Director  
Oregon Water Resources Department



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

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