

Application for Extension of Time

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Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2001 to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 2001 to October 1, 2030.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

EWEB – Eugene Water and Electric Board

GWD – Glenwood Water District

IGA – Intergovernmental Agreement

SUB – Springfield Utility Board

RWD – Rainbow Water District

ODFW – Oregon Department of Fish and Wildlife

PFO – Proposed Final Order

UGB – Urban Growth Boundary

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-22200 was granted by the Department on August 21, 1953. The permit authorizes the use of up to 20.0 cfs of water from the Middle Fork Willamette River, a tributary of the Willamette River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1955, and that complete application of water was to be made on or before October 1, 1956.
2. Nine prior permit extensions have been granted for Permit S-22200. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2001.
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 February 24, 2003, Springfield Utility Board (SUB) 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-22200 be extended from October 1, 2001 to October 1, 2026.
6. Notification of SUB's Application for Extension of Time for Permit S-22200 was published in the Department's Public Notice dated February 25, 2003. No public comments were received regarding the extension application.

7. On March 14, 2005, June 16, 2005, September 29, 2011, February 1, 2012, and March 6, 2014, SUB submitted supplemental information and/or update revisions to their pending Application for Extension of Time. The September 29, 2011 amendment requested the extended time to complete construction be changed from October 1, 2026 to October 1, 2030, and the extended time to apply water to full beneficial use be changed from October 1, 2026 to October 1, 2030.

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)]

8. On February 24, 2003, 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)]

9. Permit S-22200 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.

10. The remaining work to be accomplished under Permit S-22200 consists of completing construction including expansion of the Willamette Slow Sand Filter Plant (WSSFP), transmission and distribution system improvements, water main replacement, leak detection and repair, Water Master Plan updates and Water Management Conservation Plan (WMCP) updates, and applying water to full beneficial use.
11. As of October 1, 2001, the permit holder had diverted 12.28 cfs of the 20.0 cfs of water authorized under Permit S-22200 for municipal purposes. There is an undeveloped portion of 7.72 cfs of water under Permit S-22200 as per OAR 690-315-0010(6)(g).⁵

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(3)(d).

⁵ SUB submitted a March 6, 2014 affidavit showing that the undeveloped portion should be 7.72 cfs rather than 7.1.

12. The current SUB water system is divided into three separate service areas termed the West, East and North systems. Customers in the West and East systems are served only by SUB. The North System is served jointly by SUB and Rainbow Water District (RWD). The three areas are interconnected with existing piping, but each system is operated largely independently of the other two systems. The interties are used to route surplus or emergency water between systems.
13. SUB relies on a combination of five source water facilities that use surface water or groundwater from over thirty points of diversion.
 - a. The WSSFP provides approximately 34 percent of SUB's water production capacity. The WSSFP is located in the southern portion of the City of Springfield and serves SUB's West and East Water systems.
 - b. The remaining approximately 66 percent of SUB's source water supply is produced by four groundwater source facilities. These facilities are located in the northwest and northeast portions of the City of Springfield and supply water to customers in the North and East Water systems.

West System

14. Water to the West System is distributed from the WSSFP. The WSSFP withdraws water from a surface water intake on the Middle Fork Willamette River, groundwater from 12 wells within the Willamette Wellfield and groundwater from one filter bed perimeter underdrain dewatering system. Water from the Middle Fork Willamette River and groundwater from the perimeter underdrain may also be used to recharge the groundwater wellfield. SUB blends these surface water and groundwater sources for treatment at the WSSFP. SUB has an Agreement with Glenwood Water District (GWD) to supply water from its West System.⁶

In addition to the 20.0 cfs of water authorized under Permit S-22200 SUB relies on the following municipal use water right certificates and a quasi-municipal permit for use in the West System:

- Certificate 27979 for 2.0 cfs of water from Willamette Well #8;
- Certificate 35650 for 400 gpm (0.89 cfs) of water from Willamette Well #9;
- Certificate 35754 for 2.4 cfs of water from Willamette Well #10;
- Certificate 35651 for 3.3 cfs of water from Willamette Well #11;
- Certificate 52375 for 2.22 cfs of water from Willamette Well #12;
- Certificate 85381 for 1.44 cfs of water from Willamette Wells #13 and #15;
- and

⁶ The SUB system also has an intertie with the Eugene Water and Electric Board (EWEB) system in Glenwood. SUB and EWEB have an Intergovernmental Agreement (IGA) under which EWEB will provide emergency water to SUB for the Glenwood area, including GWD. This intertie does not supply the full SUB West System.

- Permit G-2643, amended by Permit Amendment T-9365, for 1.0 cfs of water from a well (SSF Perimeter Drain).

The water rights for the West System total 33.25 cfs, being 20.0 cfs from the Middle Fork Willamette River, and 13.25 cfs from groundwater.

In addition, SUB also holds the following un-adjudicated groundwater registrations:

- GR-3175 for 900 gpm (2.01 cfs) of water from Willamette Well #1;
- GR-3181 for 1250 gpm (2.79 cfs) of water from Willamette Well #2;
- GR-3178 for 1250 gpm (2.79 cfs) of water from Willamette Well #3;
- GR-3177 for 1200 gpm (2.79 cfs) of water from Willamette Well #4;
- GR-3180 for 600 gpm (1.34 cfs) of water from Willamette Well #5;
- GR-3176 for 1250 gpm (2.79 cfs) of water from Willamette Well #6;
- GR-3179 for 1250 gpm (2.79 cfs) of water from Willamette Well #7; and

SUB also is currently using 3.0 cfs of water from the Middle Fork Willamette River under the City of Springfield's un-adjudicated Surface Water Registration from SWR-131.

East System

15. Water to the East System is distributed from the WSSFP and from the Southern Pacific/Maia and Thurston Wellfields. SUB relies on the following municipal use water right certificates and permits for use in the East System:

- Certificate 82801 for 2.23 cfs of water from Maia Well
- Certificate 56428 for 0.56 cfs of water from Platt Well #1;
- Certificate 56429 for 1.0 cfs of water from Platt Well #2;
- Certificate 56430 for 1.78 cfs of water from Southern Pacific Well #1;
- Certificate 42085 for 1.67 cfs of water from Thurston Well #1;
- Certificate 42086 for 2.14 cfs of water from Thurston Well #2;
- Certificate 42088 for 1.11 cfs of water from Thurston Well #3;
- Certificate 56427 for 0.45 cfs of water from Thurston Well #4;
- Permit G-16147 for 1.78 cfs of water from School Wells #1, and #2;
- Permit G-16148 for 4.91 cfs of water from Thurston Wells #5, #6, #7 and #10
- Permit G-16149 for 4.02 cfs of water from Thurston Wells #8, #9, and #11;
and
- Permit S-54378 for 35.9 cfs of water from the McKenzie River;

The water rights for the East System total 57.55 cfs, being 35.9 cfs from the McKenzie River, and 21.65 cfs from groundwater. Permits G-16147, G-16148, G-16149, and S-54378 are conditioned with mitigation requirements for Cedar Creek.

North System and RWD

16. Water to the North System is distributed from the Sports Way Well and the Weyco Wellfield. SUB and RWD each own 50% of the water rights associated with the Weyco Wellfield. In addition RWD owns the Chase Wellfield and the I-5 Well Field.

SUB holds the following municipal use water right certificates for use in the North System:

- Certificate 87007 for 4.46 cfs of water from Sports Way Well;

SUB and RWD share ownership in the following wells and/or municipal use water right certificates:

- Certificate 45301 for 5.6 cfs of water from Wells #1, #2, #3 and #4 (aka Weyco Wells A, B(1), C(2), and D);
- Certificate 45302 for 4.2 cfs of water from Wells #1, #2 and #5 (aka Weyco Well E(3), and Chase Wells #1 and #2).⁷

In addition, RWD holds the following municipal use water right certificates, a quasi-municipal certificate, and permit:

- Certificate 45303 for 0.89 cfs of water from Chase Well #3;
- Certificate 45304 for 2.0 cfs of water from Chase Well #4;
- Certificate 65691 for 1.56 cfs of water from 7th & Q Street Well (quasi-municipal);
- Permit G-16477 for 7.0 cfs of water from 1-5 Well #1 (LANE 11118) and 1-5 Well #2 (LANE 11119)

The SUB and RWD water rights total 25.71 cfs of groundwater.

The North System has interties with EWEB for emergency water supplies under an IGA between EWEB, SUB and RWD.

17. The service area of SUB includes all areas within the City of Springfield city limits, a limited area outside the city limits but within the City of Springfield's Urban Growth Boundary (UGB),⁸ and the service area of GWD. The service areas of RWD and GWD are generally the urban areas within the UGB but outside the City of Springfield city limits. SUB and RWD work as partners to supply water to Springfield-area water customers. SUB's total source production capacity represents 68 percent of the source water supplied to the SUB, RWD and GWD service areas, and RWD's total source production capacity represents 32 percent of the source water supplied to the SUB, RWD and GWD

⁷ SUB's ownership interest in Certificate 45302 is limited to a 50% interest in the portion associated with Weyco Cell E(3). SUB does not own any interest in the Chase wells or that portion of the water right.

⁸ New customers within the UGB must annex into the City of Springfield in order to receive water from SUB.

service areas. As the municipal water provider for the City of Springfield, SUB's water service area will continue to expand as the city annexes additional land within the UGB into the City of Springfield, consistent with the City of Springfield Comprehensive Plan.

18. According to SUB, in 2010, the population within the SUB service area was 66,331. SUB estimates the population will increase at a growth rate of 1.2 percent per year, reaching an estimated population of 74,814 by the year 2030.
19. SUB's peak water demand within its service area boundary was 36.43 cfs of water in 2010, based on its maximum daily demand without a 10% demand reserve.
20. SUB's peak demand is projected to be 77.59 cfs of water by the year 2030, being approximately 17 cfs for the West System, 40 cfs for the East System and 20 cfs for the North System. This peak demand figure is equivalent to SUB's projected peak hour demand without a 10% demand reserve.
21. SUB has quantified the amount of water it can reasonably anticipate being available to divert or appropriate under each of its water rights to meet future demands within each of its three water systems, taking into consideration undetermined water rights (groundwater and surface water registrations), wellfield pumping capacities and recharge limitations, water quality issues, interferences between wells, and resource limitations such as fish persistence requirements.
 - a. Within the West System, reliable water from groundwater is limited to 10.37 cfs, and 20.0 cfs of water under Permit S-22200 is available to meet the future demand of 17 cfs. These two separate types of source water are not necessarily additive. Any surplus of reliable water could be used to supply shortages in the East System.
 - b. The water sources from the McKenzie River, Thurston Wells #8 through #11, and School Wells #1 and #2 and are not yet developed. Reliable water available from groundwater is limited to 11.38 cfs to meet the future demand of 40 cfs for the East System. In 2030, the deficiency will be met by fully developing the remaining 7.1 cfs under Permit S-22200, surplus supply from the East System, and developing water rights specifically designated for use under the East System as needed for the remainder of the deficiency.
 - c. Within the North System, reliable water from groundwater is limited to 7.04 cfs to meet the future demand of 20 cfs. Because all water rights in the North System are currently developed, SUB plans to satisfy the deficiency in 2030 through development of additional supply in the East System. An existing intertie that allows water to move from the North System to the East System could be modified so that water could also move from the East System to the North System.

22. SUB recognizes that it has other undeveloped or partially developed permits that could be used to meet SUB's future water supply needs by the year 2030. However, full development of Permit S-22200 is its first priority because existing infrastructure including access, land, zoning, power, transmission pipeline capacity, etc., are already in place to support the expansion of the WSSFP or construction of additional treatment facilities within the West System.
23. Full development of Permit S-22200 is needed to address the present and future water demand SUB customers.
24. SUB's request for an extension of time until October 1, 2030, to complete construction and to apply water to full beneficial use under the terms of Permit S-22200 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.

25. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame and previous extensions of time.
26. During the last extension period, being October 1, 1996 to October 1, 2001, SUB replaced river pump station #1 and station piping.
27. Since October 1, 2001, SUB has accomplished the following:
 - Constructed a new slow sand filter plant;
 - Installed new river intake screens
 - Installed aeration and chlorination equipment in the filter plant inlet basin;
 - Expanded the UV system;
 - Completed engineering of the filter plant expansion.
28. According to SUB, as of February 24, 2003, it has invested approximately \$6,550,844, which is about 30 percent of the total projected cost for complete development of this project. SUB estimates a \$15,050,000 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-22200, other costs included in

this accounting are not partitioned out for S-22200 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by SUB, 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 SUB's water rights.

29. As of October 1, 2001, SUB had diverted 12.28 cfs of the 20.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
30. The Department has considered SUB'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)]

31. According to SUB, as of February 24, 2003, it has invested approximately \$6,550,844, which is about 30 percent of the total projected cost for complete development of this project. SUB estimates a \$15,050,000 investment is needed for the completion of this project.

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

32. As described in Findings 11 through 23 above, SUB has indicated, and the Department finds that SUB must rely on full development of their Permit S-22200.
33. SUB estimates an annual population growth rate of 1.2 percent per year over a 20 year period, being the years 2010 to 2030.
34. Given the current water supply situation of SUB, including current and expected demands, there is a market and present demand for the water to be supplied under Permit S-22200.
35. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 12.28 cfs under Permit S-22200 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)]

36. SUB expects to obtain a fair and reasonable return on investment by continuing development of Permit S-22200.

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

37. 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)]

38. Delay of development under Permit S-22200 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.

39. The pending municipal Application for Extension of Time for Permit S-22200 was delivered to ODFW on March 13, 2006, for ODFW's review under OAR-690-315-0080.
40. Notification that the pending municipal Application for Extension of Time for Permit S-22200 was delivered to ODFW for review was sent to SUB on March 15, 2006.
41. Notification that the pending municipal Application for Extension of Time for Permit S-22200 was delivered to ODFW for review was published in the Department's Public Notice dated March 21, 2006. No public comments were received regarding this notice.
42. On December 30, 2011, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-22200.
43. Summary and Excerpts of Advice from ODFW:
Use of water under the portion of this permit that is undeveloped as of October 1, 2001, 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 Middle Fork Willamette River will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

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

change is likely to cause a long-term reduction in the frequency of favorable water years.

The target flows, in Table 1, below, are ODFW's recommended flows measured at Jasper, Oregon, for maintaining the persistence of listed fish species in the Middle Fork Willamette 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 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 Middle Fork Willamette River through effluent discharges.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE MIDDLE FORK WILLAMETTE RIVER AT JASPER, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 31	1500
June 1 – Aug 31	1280
Sept 1 – Sept 15	1400
Sept 16 – Dec 31	1500

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring flows in the Middle Fork Willamette River at the gage at Jasper, OR is sufficient for ensuring that target flows are met in order to maintain the persistence of listed fish. Therefore, ODFW advises the Department to establish the gage on the Middle Fork Willamette River at Jasper as the point for determining whether target flows are being met for this municipal permit extension.

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

There is an undeveloped portion of 7.72 cfs of water under Permit S-22200 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 12.28 cfs up to the permitted quantity of 20.0 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 not met, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-22200 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 determined or measured by the water user in the Middle Fork Willamette River at Jasper, Oregon, USGS GAGE No.14152000, or its equivalent.
- b. When target flows are not met in the Middle Fork Willamette River, use of the undeveloped portion of the permit may need to be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flows 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, and Q_T is the target flow (from Table 1).

- c. ODFW's advice recognized that the use of the undeveloped portion of the permit represents less than 1% of the existing stream flow during any month.
 - 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-22200 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
45. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-22200 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.
 46. 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-22200, 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.)⁹

⁹ 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.

47. On January 9, 2012, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-22200 are consistent with their advice.
48. On January 12, 2012, the Department notified SUB 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-22200.
49. On June 17, 2014, ODFW notified the Department that the Department's *updated*¹⁰ proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-22200 are consistent with their advice.

CONCLUSIONS OF LAW

1. SUB 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. SUB has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a), water under Permit S-22200 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, 2030¹¹, as required by 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

¹⁰ The proposed conditions were updated to reflect SUB's March 6, 2014 affidavit showing that the undeveloped portion should be 7.72 cfs rather than 7.1.

¹¹ 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.

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 SUB 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 35, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 12.28 cfs under Permit S-22200 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7).
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 39 through 49, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use of the undeveloped portion under this municipal use permit, in the absence of special conditions. Therefore, the diversion of water beyond 12.28 cfs under Permit S-22200 will be subject to the conditions specified under Item 2 of the "Conditions" section of this PFO.

Proposed Order

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

Extend the time to complete construction under Permit S-22200 from October 1, 2001 to October 1, 2030.

Extend the time to apply the water to beneficial use under Permit S-22200 from October 1, or 2001 to October 1, 2030.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water beyond 12.28 cfs under Permit S-22200 up to 20.0 cfs shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-22200 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 Middle Fork Willamette River as recommended by ODFW are in Table 2, below; flows are to be measured in the Middle Fork Willamette River at Jasper, Oregon (USGS Gage Number 14152000, or its equivalent).

Table 2

FISH PERSISTENCE TARGET FLOWS IN THE MIDDLE FORK WILLAMETTE RIVER MEASURED AT USGS GAGE 14152000, AT JASPER, OREGON	
Month	Cubic Feet per Second
Jan 1 – May 31	1500
June 1 – Aug 31	1280
Sept 1 – Sept 15	1400
Sept 16 – Dec 31	1500

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 SUB provides evidence in writing that ODFW has determined that persistence flows may be measured at an alternate streamflow measurement point and provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions - Generally

The maximum amount of the undeveloped portion of Permit S-22200 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 as determined or measured by the water user in the Middle Fork Willamette River at Jasper (USGS Gage Number 14152000, 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 average¹², 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 water 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 7.72 cfs.

The maximum amount of undeveloped water 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

Springfield Utility Board (SUB) has not identified any Consumptive Use Percentages based on the return of flows to the Middle Fork Willamette River 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 S-22200 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-22200 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 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

¹² Alternatively, the water user may use a single daily measurement.

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-22200 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 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 waste water treatment facility resulting in 25% or more reductions in average monthly return flows to the Middle Fork Willamette 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-22200 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 Middle Fork Willamette 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 permit holder's waste water 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 S-22200 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 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 S-22200 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 permit holder at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On October 15, the last seven mean daily flows were 1500, 1550, 1590, 1500, 1500, 1580 and 1570 cfs. The seven day rolling average is (Q_A) 1541 cfs. Given that the undeveloped portion of this permit (E) is 7.72 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 1500 cfs target flow (Q_T) for October 15. In this example,

$$Q_A - E \geq Q_T$$

$$1541 - 7.72 \geq 1500$$

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 7.72 cfs, if on October 15, the average of the last seven mean daily flows (Q_A) was 1350 cfs, and the target flow (Q_T) is 1500, then the target flow would be missed by 10.5%.

$$(1 - [(1350 - 7.72) / 1500]) \times 100\% = 10.5\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%¹³ during the month of October and the utilization of this percentage is authorized, and the target flow is missed by 10.5% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 8.3%.

$$(78.7\% \times 10.5\%) / 100 = 8.26\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the undeveloped portion of the permit would only be reduced by the % by which the target flow is missed – 10.5% in this example).

Step 3: Given that the undeveloped portion of the permit (E) is 7.72 cfs, and the undeveloped portion of the permit needs to be reduced by 8.26% (from Step 2), or 0.64 cfs, then maximum amount of the undeveloped portion of Permit S-22200 that could be diverted as a result of this fish persistence condition would be 7.08 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(7.72 \times 8.26\%) / 100 = 0.64$$

$$7.72 - 0.64 = 7.08$$

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 permit holder is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 15.0 cfs (for example, authorization provided

¹³ Currently, the permit holder may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-22200 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.

through a WMCP), then 15.0 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 12.28 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 20.0 cfs, then 19.36 cfs (7.08 from Step 3 + the 12.28 developed portion) would be the maximum amount of diversion allowed under this permit.)

DATED: August 26, 2014


Dwight French
Water Right Services Division Administrator
Oregon Water Resources Department

*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 **October 10, 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
