

**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-31214, Water Right Application S-41810,)
in the name of the Alsea County Service District) **PROPOSED FINAL ORDER**

Permit Information

Application File S-41810/ Permit S-31214

Basin 18 – Mid Coast Basin / Watermaster District 16

Date of Priority: July 22, 1966

Authorized Use of Water

Source of Water: North Fork Alsea River, a Tributary of Alsea River
Purpose or Use: Municipal Use
Maximum Rate: 0.5 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-31214, water right Application S-41810.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2000 to October 1, 2045.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 to October 1, 2045.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

District – Alsea County Service District

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

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-31214 was granted by the Department on August 5, 1966. The permit authorizes the use of up to 0.5 cfs of water from the North Fork Alsea River, a tributary of the Alsea River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1968, and that complete application of water was to be made on or before October 1, 1969.
2. Six prior permit extensions have been granted for Permit S-31214. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2000.
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 November 3, 2003, Alsea County Service District (District) 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-31214 be extended from October 1, 2000 to October 1, 2020.
6. Notification of the District's Application for Extension of Time for Permit S-31214 was published in the Department's Public Notice dated November 11, 2003. No public comments were received regarding the extension application.

7. On November 21, 2003, June 14, 2005, and March 2, 2006, the District submitted supplemental information and update revisions to their pending Application for Extension of Time.
8. On September 11, 2014, the permit holder submitted additional information to 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, 2045, and the extended time to apply water to full beneficial use be changed from October 1, 2020 to October 1, 2045.

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 November 3, 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)]

10. Permit S-31214 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. The remaining work to be accomplished under Permit S-31214 consists of replacing the supply line and distribution lines with larger diameter pipes, installing fire hydrants, development of a surface water intake, completing construction of the water system, and applying water to full beneficial use.
12. Prior to October 1, 2000, the permit holder had diverted 0.11 cfs of the 0.5 cfs of water authorized under Permit S-31214 for municipal purposes. There is an undeveloped portion of 0.39 cfs of water under Permit S-31214 as per OAR 690-315-0010(6)(g).

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).

13. In addition to the 0.5 cfs of water authorized under Permit S-31214, the District is authorized to use 0.1 cfs of ground water under Permit G-11354 (Wells 1 and 2). The District's two water rights total 0.6 cfs of water.
14. The District is currently utilizing a total of 0.1 cfs of water from Wells 1 and 2 to meet its present demand for water. Although up to 0.11 cfs has been diverted from the North Fork Alsea River under Permit S-31214, this surface water source has been retained for emergency use, and bulk water supply for maintenance operations since 1986.
15. The demand projections of the District are defined by the potential demand of the residents, businesses, and schools, as well as agencies that use water outside of the service district. The District provides a small, but unique service to users in an agricultural and forested setting located at the intersection of two state highways.
16. According to the District, in 2003, the population served by the District was estimated at 394. Based on the current growth rate of property development, the District anticipates a population increase, on average, 1.0 percent per year, or less, over the next forty-two years. As the population increases, the demand for water is expected to rise.
17. The District also provides a supply of bulk water at a hydrant connection for various agencies including the U.S. Forest Service, U.S. Bureau of Land Management, Oregon Department of Transportation, and Benton County Public Works. This water is used for emergency response, maintenance, and forest management activities. The District anticipates the demand for these services could double over the next twenty years, as draft stations from streams and rivers become further restricted for protection of threatened and endangered salmon species in the Alsea River Watershed.
18. Based on a projected growth rate of 1.0 percent per year, or less, and bulk supply demands, full development of the remaining portion of Permit S-31214 could occur by the year 2045.
19. Full development of Permit S-31214 is needed to address the present and future water demand of Alsea County Service District, including system redundancy and emergency use.
20. The District's request for an extension of time until October 1, 2045, to complete construction and to apply water to full beneficial use under the terms of Permit S-31214 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.

21. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
22. During the last extension period, being October 1, 1995 to October 1, 2000, the District accomplished the following:
 - Installed a new check valve in the transmission line;
 - Completed a Surface Water Impact Study;;
 - Completed a Water Rehabilitation Project;
 - Installed 2000 feet of new distribution lines;
 - Installed three new hydrants;
 - Replaced sections of water distribution lines; and
 - Completed a Water Management and Conservation Plan
23. Since October 1, 2000, the District installed a new Chlorine injector pump.
24. According to the District, as of November 3, 2003, they have invested approximately \$376,161, which is about 59 percent of the total projected cost for complete development of this project. The District estimates a \$266,000 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-31214, other costs included in this accounting are not partitioned out for S-31214 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the District, 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 District's water rights.
25. Prior to October 1, 2000, the District had diverted 0.11 cfs of the 0.5 cfs allowed for beneficial municipal purposes under the terms of this permit.
26. The Department has considered the District'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)]

27. According to the District, as of November 3, 2003, they have invested approximately \$376,161, which is about 59 percent of the total projected cost for complete development of this project. The District estimates a \$266,000 investment is needed for the completion of this project.

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

28. As described in Findings 12 through 19 above, the District has indicated, and the Department finds that the District must rely on full development of their Permit S-31214.
29. The District estimates an annual population growth rate of 1 percent per year, or less, over the next forty-two years.
30. Given the current water supply situation of the District, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit S-31214.
31. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.11 cfs up to 0.5 cfs under Permit S-31214 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)]

32. 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)]

33. 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)]

34. Delay of development under Permit S-31214 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, but also due to lack of available funding. The community served by the District is timber dependent and qualifies as a low-income area. The remainder of the projects will be

accomplished as capital funds become available.

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.

35. The pending municipal Application for Extension of Time for Permit S-31214 was delivered to ODFW on August 3, 2012, for ODFW's review under OAR-690-315-0080.
36. Notification that the pending municipal Application for Extension of Time for Permit S-31214 was delivered to ODFW for review was sent to the District on August 3, 2012.
37. Notification that the pending municipal Application for Extension of Time for Permit S-31214 was delivered to ODFW for review was published in the Department's Public Notice dated August 8, 2012. No public comments were received regarding this notice.
38. On January 7, 2013, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-31214.
39. Summary and Excerpts of Advice from ODFW:
Use of water under the portion of this permit that is undeveloped as of October 1, 2000, 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 North Fork Alsea 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.

Permit S-31214 has a priority date of July 22, 1966, making it junior to instream water right Certificate 59732 (MF 475) which has a priority date of July 12, 1966. When flows at or near the mouth of North Fork Alsea River are at or below the minimum instream flows listed in Certificate 59732, Permit S-31214 may be subject to being "regulated off" in order for these minimum flows to be met.

The ODFW target flows shown in Table 1 (furthest righthand column), below, are ODFW's recommended flows measured near Alsea, Oregon, for maintaining the persistence of listed fish species in the North Fork Alsea River. The ODFW target

flows are based on the junior instream water right IS-72883 (Certificate 72930), except for June 16-30, when they are based on the senior instream water right MF 475 (Certificate 59732).

Table 1 shows both the minimum instream flows required under Certificate 59732 (MF 475) and ODFW's recommended target flows in the North Fork Alsea River. ODFW recommends that when the minimum flows based on MF 475 are less than or equal to the ODFW target flows, use of the undeveloped portion of the permit must be reduced in proportion to the degree to which the ODFW target flows are being missed.

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 North Fork Alsea River through effluent discharges.

Table 1

North Fork Alsea River		
Month	Minimum Flows required under Certificate 59732 (cfs)	ODFW Target Flows (cfs)
January 1 – April 30	70.0	72.0
May 1 – May 31	50.0	48.0
June 1 – June 15	30.0	48.0
June 16 – June 30	30.0	30.0
July 1 – July 15	20.0	18.0
July 16 – September 15	18.0	18.0
September 16 – September 30	18.0	22.7
October 1 – October 15	25.0	31.3
October 16 – October 31	70.0	31.3
November 1 – December 15	70.0	86.0
December 16 – December 31	70.0	72.0

Streamflow Measurement Points

After analysis of flow records, ODFW has determined that measuring flows at the North Fork Alsea gage (USGS Gage Number 14306100, or its equivalent) near Alsea is sufficient to ensure that target flows to maintain the persistence of listed fish are met within North Fork Alsea River. Therefore, ODFW advises the Department to establish the Alsea gage as the point for determining whether target flows are being

met for this municipal permit extension.

Certificate 59732 specifies that minimum flows are to be maintained in the North Fork of the Alsea River at or near its confluence with the Alsea River (SE¼, Section 1, Township 14 South, Range 8 West, W.M.).

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

There is an undeveloped portion of 0.39 cfs of water under Permit S-31214 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 0.11 cfs up to the permitted quantity of 0.5 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 no diversion, or a limit on diversion, of the undeveloped portion of water under Permit S-31214. The proposed conditions in this extension of time are based on the following findings:

- a. Permit S-31214 is junior in priority date to instream water right Certificate 59732 (MF 475). When flows specified in this instream water right are not met, use of water under Permit S-31214 may be subject to regulation consistent with the terms and conditions of Certificate 59732.
- b. As shown in Table 2, below, during certain times of the year, ODFW's target flows exceed the minimum instream flows under Certificate 59732.

Table 2

ODFW'S RECOMMENDED TARGET FLOWS EXCEED INSTREAM FLOWS IN THE NORTH FORK ALSEA RIVER		
Month	Minimum Instream Flows under Certificate 59732 ^a (Lower Limit) (cfs)	ODFW Target Flows (Q _T) ^b (Upper Limit) (cfs)
January 1 – April 30	70.0	72.0
June 1 – June 15	30.0	48.0
September 16 – September 30	18.0	22.7
October 1 – October 15	25.0	31.3
November 1 – December 15	70.0	86.0
December 16 – December 31	70.0	72.0

^a Determined or measured by the water user at or near North Fork Alsea River's confluence with the Alsea River (SE¼, Section 1, Township 14 South, Range 8 West, W.M.).

^b Determined or measured by the water user near Alsea, Oregon, USGS GAGE No.14306100, or its equivalent.

- i. When actual flows minus the undeveloped portion of the permit are above the ODFW target flows (upper limit), full use of the undeveloped portion of the permit can be made.
- ii. When actual flows are at or below the ODFW target flows (upper limit based on junior instream water right Certificate 72930) and above the minimum instream flows under Certificate 59732 (lower limit), use of the undeveloped portion of the permit must be reduced in proportion to the degree to which the recommended target flows are being missed. ODFW's formula for determining the percent shortfall, or missed target flow is defined as:

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

where Q is the flow at the POD, E is the undeveloped portion of the permit as of this extension, and Q_T is the ODFW target flow (from Table 2).

- iii. When actual flows are at or below the minimum instream flows, Permit S-31214 may be subject to regulation until the minimum flows in Certificate 59732 are met.
- c. As shown in Table 3, below, during certain times of the year, the minimum instream flows are equal to or exceed ODFW's target flows.

Table 3

INSTREAM FLOWS ARE EQUAL TO OR EXCEED ODFW'S RECOMMENDED TARGET FLOWS IN THE NORTH FORK ALSEA RIVER		
Month	Minimum Instream Flows under Certificate 59732 ^a (cfs)	ODFW Target Flows (QT) ^b (cfs)
May 1 – May 31	50.0	48.0
June 16 – June 30	30.0	30.0
July 1 – July 15	20.0	18.0
July 16 – September 15	18.0	18.0
October 16 – October 31	70.0	31.3

^a Measured at or near North Fork Alsea River's confluence with the Alsea River (SE¼, Section 1, Township 14 South, Range 8 West, W.M.).

^b Measured near Alsea, Oregon, USGS GAGE No.14306100, or its equivalent.

- i. When actual flows are at or below the minimum instream flows under Certificate 59732, whether or not ODFW target flows are met, Permit S-31214 may subject to regulation until the minimum flows in Certificate 59732 are met.
 - ii. When instream flows under Certificate 59732 are met, ODFW target flows will already be met, and full use of the undeveloped portion of the permit can be made.
 - d. ODFW's advice recognized that the use of the undeveloped portion of the permit represents about 2% of the natural stream flow during the summer months, but a much lower percentage during the winter and spring.
 - e. ODFW's advice recognizes that municipalities may return a certain amount of flow to a river or stream through their effluent discharge. If the withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, then ODFW recommends that any reduction to use of the undeveloped portion of Permit S-31214 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
41. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-31214 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.
42. 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-31214, 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
43. On August 19, 2014, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-31214 are consistent with their advice.

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.

44. On August 22, 2014, the Department notified the District 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-31214.

CONCLUSIONS OF LAW

1. The District 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 District 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, 2045⁶, as required by 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 District 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 31, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 0.11 cfs up to 0.5 cfs under Permit S-31214 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

⁶ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Department, for issuance of a water right certificate; or (2) continue to appropriate water under the water right permit until the Department conducts a survey and issues a water right certificate under ORS 537.625.

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 35 through 44, 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 0.11 cfs under Permit S-31214 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-31214 from October 1, 2000 to October 1, 2045.

Extend the time to apply the water to beneficial use under Permit S-31214 from October 1, 2000 to October 1, 2045.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water beyond 0.11 cfs up to 0.5 cfs under Permit S-31214 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-31214 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**

Although the developed portion of the permit, being 0.11 cfs is not subject to these fish persistence conditions, it may be subject to the minimum instream flows listed in Certificate 59732.

A. **Minimum Instream Flows from Certificate 59732 and ODFW Target Flows**

- a. Permit S-31214 is junior in priority date to instream water right Certificate 59732 (MF 475). When flows specified in this instream water right are not met, use of any water under Permit S-31214 may be subject to regulation consistent with the terms and conditions of Certificate 59732.
- b. The minimum instream flows under Certificate 59732, and ODFW's target flows in North Fork Alsea River as recommended by ODFW are in Table 4, below, for the times of year when ODFW's recommended target flows exceed the minimum instream flows.

Table 4

ODFW'S RECOMMENDED TARGET FLOWS EXCEED INSTREAM FLOWS IN THE NORTH FORK ALSEA RIVER		
Month	Minimum Instream Flows under Certificate 59732 (Lower Limit) (cfs)	ODFW Target Flows (Qr) (Upper Limit) (cfs)
January 1 – April 30	70.0	72.0
June 1 – June 15	30.0	48.0
September 16 – September 30	18.0	22.7
October 1 – October 15	25.0	31.3
November 1 – December 15	70.0	86.0
December 16 – December 31	70.0	72.0

- c. The minimum instream flows under Certificate 59732, and ODFW's target flows in North Fork Alsea River as recommended by ODFW are in Table 5, below, for the times of year when the minimum instream flows are equal to or exceed ODFW's recommended target flows.

Table 5

INSTREAM FLOWS ARE EQUAL TO OR EXCEED ODFW'S RECOMMENDED TARGET FLOWS IN THE NORTH FORK ALSEA RIVER		
Month	Minimum instream Flows under Certificate 59732 (cfs)	ODFW Target Flows (Q_T) (cfs)
May 1 – May 31	50.0	48.0
June 16 – June 30	30.0	30.0
July 1 – July 15	20.0	18.0
July 16 – September 15	18.0	18.0
October 16 – October 31	70.0	31.3

- d. Certificate 59732 specifies that minimum flows are to be maintained in the North Fork of the Alsea River at or near its confluence with the Alsea River (SE¼, Section 1, Township 14 South, Range 8 West, W.M.).
- e. The target flows based on the junior instream water right Certificate 72930 (Q_T) are to be determined or measured by the water user in North Fork Alsea River near Alsea, Oregon (USGS Gage Number 14306100, or its equivalent).
- f. Alternate Target Flow Measurement Point
The location of an ODFW target flow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the ACSD 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

- a. During the times of year when ODFW's recommended target flows exceed the minimum instream flows under Certificate 59732 as shown in Table 4, the following conditions apply:
- i. If flows are above the ODFW target flows (upper limit) in Table 4, such that $Q_A - E \geq Q_T$, then 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. Q_A is the actual flow measured at the designated location based on a seven day rolling average; E is the undeveloped portion of the permit, being 0.39 cfs; and Q_T is the ODFW target flow (from Table 4).
- ii. If flows are at or below the ODFW target flows (upper limit) and above the minimum instream flows (lower limit) in Table 4, then the maximum amount of the undeveloped portion of Permit S-31214 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the ODFW target flows shown in Table 4 are missed based on a seven day rolling average⁷ of mean daily flows as determined or measured by the water user in North Fork Alsea River near Alsea (USGS Gage Number 14306100, 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 location based on a seven day rolling average; E is the undeveloped portion of the permit, being 0.39 cfs; and Q_T is the ODFW target flow (from Table 4).

The percent by which the ODFW 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 as of this extension, being 0.39 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.,

⁷ Alternatively, the water user may use a single daily measurement.

below.

iii. If flows are at or below the minimum instream flows shown in Table 4, then Permit S-31214 may be subject to regulation until the minimum flows in Certificate 59732 are met.

b. During the times of year when the minimum instream flows under Certificate 59732 are equal to or exceed ODFW's recommended target flows as shown in Table 5, the following conditions apply:

- i. If instream flows under Certificate 59732 are met, then ODFW target flows will already be met, and full use of the undeveloped portion of the permit can be made.
- ii. If instream flows under Certificate are missed, then whether or not ODFW target flows are met the use of any water under Permit S-31214 may subject to regulation until the minimum flows in Certificate 59732 are met.

C. Consumptive Use Percentages

a. Initial Consumptive Use Percentages

The Alsea County Service District has not identified any Consumptive Use Percentages based on the return of flows to North Fork Alsea River through effluent discharge. Thus, at this time the ACSD may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-31214 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-31214 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 ACSD (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-31214 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 ACSD 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 ACSD's waste water treatment facility resulting in 25% or more reductions in average monthly return flows to North Fork Alsea 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-31214 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 North Fork Alsea 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 ACSD's waste water treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the ACSD 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-31214 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 ACSD (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-31214 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 ACSD at its discretion may submit updates prior to the end of an approval period.

D. Examples

- a. **Examples for during the times of year when ODFW's recommended target flows based on the junior instream right Certificate 72930 exceed the senior minimum instream flows under Certificate 59732 as shown in Table 4.**

Example 1: ODFW Target flow met.

On June 15, the last seven mean daily flows were 49, 50, 55, 55, 48, 45 and 52 cfs. The seven day rolling average (Q_A) is 50.6 cfs. Given that the undeveloped portion of this permit as of this extension (E) is 0.39 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 48.0 cfs ODFW target flow (Q_T) for June 15. In this example, $Q_A - E \geq Q_T$.

$$50.6 - 0.39 \geq 48.0$$

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

Example 2: ODFW Target flow missed, but instream flow under Certificate 59732 is met.

Step 1: Given that the undeveloped portion of this permit (E) is 0.39 cfs, if on September 16, the average of the last seven mean daily flows (Q_A) was 19.5 cfs (which is greater than the instream minimum flow of 18.0 under Certificate 59732), and the ODFW target flow (Q_T) is 22.7 cfs, then the ODFW target flow would be missed by 15.8%.

$$(1 - [(19.5 - 0.39) / 22.7]) \times 100\% = 15.8\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%⁸ during the month of August and the utilization of this percentage is authorized, and the ODFW target flow is missed by 15.8% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 12.4%.

$$(78.7\% \times 15.8\%) / 100 = 12.4\%$$

(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 ODFW target flow is missed – 15.8% in this example).

Step 3: Given that the undeveloped portion of this permit as of this extension (E) is 0.39 cfs, and the undeveloped portion of the permit needs to be reduced by 12.4% (from Step 2), or 0.05 cfs, then the maximum amount of the undeveloped portion of Permit S-31214 that can be diverted as a result of this fish persistence condition is 0.34 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(0.39 \times 12.4\%) / 100 = 0.05$$

$$0.39 - 0.05 = 0.34$$

⁸ Currently, the Alsea County Water District may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-44066 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 78.7%¹⁵ only for illustrative purposes in this example.

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 ACSD is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 0.40 cfs (for example, authorization provided through a WMCP), then 0.40 cfs would be the maximum amount of diversion allowed under this permit including the developed portion of the permit, being 0.11 cfs.

(Conversely, if the amount of water legally authorized for diversion under this permit is 0.5 cfs, then 0.45 cfs (0.34 from Step 3 + the 0.11 developed portion) would be the maximum amount of diversion allowed under this permit.)

Example 3: ODFW Target flow missed and instream flow under Certificate 59732 is missed.

If on September 16, the average of the last seven mean daily flows (Q_A) was 17.5 cfs, and the minimum instream flow under Certificate 59732 is 18.0, then Permit S-31214 may be subject to regulation until the minimum instream flow is met.

In this example (Q_A) is equal to or less than the 18.0 cfs minimum instream flow under Certificate 59732.

- b. Examples for during the times of year when the minimum instream flows under Certificate 59732 are equal to or exceed ODFW's recommended target flows as shown in Table 5.**

Example 4: The instream flow under Certificate 59732 is met; therefore the ODFW target flow is met.

If on May 10, the average of the last seven mean daily flows (Q_A) was 51.0 cfs, and the minimum instream flow under Certificate 59732 is 50.0, then the ODFW target of 48.0 cfs would also be met. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the ODFW target flow is considered met.

Example 5: The instream flow under Certificate 59732 is missed.

If on May 10, the average of the last seven mean daily flows (Q_A) was 49.0 cfs, and the ODFW target flow (Q_T) is 48.0 cfs and the minimum instream flow under Certificate 59732 is 50.0, then although the ODFW target low is met, Permit S-31214 may be subject to regulation until the minimum instream flow is met.

DATED: September 16, 2014


Dwight French
Water Right Services Division Administrator

*If you have any questions,
please check the information
box on the last page for the
appropriate names and phone
numbers.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **October 31, 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
