

**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-27441, Water Right Application S-35037,) PROPOSED FINAL ORDER
in the name of the Eugene Water and Electric Board)

Permit Information

Application File S-35037/ Permit S-27441

Basin 2 – Willamette Basin / Watermaster District 2

Date of Priority: June 14, 1961

Authorized Use of Water

Source of Water: McKenzie River, a tributary of the Willamette River

Purpose or Use: Municipal Use

Maximum Rate: 183.0 Cubic Feet per Second (cfs)

**This Extension of Time request is being processed in accordance with Oregon
Administrative Rule Chapter 690, Division 315.**

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

This Proposed Final Order applies only to Permit S-27441, water right Application S-35037.

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, 2083.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 to October 1, 2083.
- 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
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
MGD – million gallons per day

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-27441 was granted by the Department on August 11, 1961. The permit authorizes the use of up to 183.0 cfs of water from the McKenzie 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, 1965, and that complete application of water was to be made on or before October 1, 1965.
2. Seven prior permit extensions have been granted for Permit S-27441. 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 September 29, 2003, Eugene Water and Electric Board (EWEB) 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-27441 be extended from October 1, 2000.
6. On December 30, 2003, EWEB submitted a superseding "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-27441 be extended from October 1, 2000 to October 1, 2123.
7. Notification of EWEB's Application for Extension of Time for Permit S-27441 was published in the Department's Public Notice dated January 6, 2004. No public comments were received regarding the extension application.
8. On January 27, 2004, and March 23, 2005, EWEB submitted supplemental information and clarification to their pending Application for Extension of Time.

9. On August 28, 2013, EWEB submitted additional information to supplement and/or update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2123 to October 1, 2083, and the extended time to apply water to full beneficial use be changed from October 1, 2123 to October 1, 2083.

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)]

10. On September 29, 2003, the Department received an incomplete application for extension of time and the fee specified in ORS 536.050. The extension application was completed on December 30, 2003.

Start of Construction [OAR 690-315-0080(1)(b)]

11. Permit S-27441 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.

12. The remaining work to be accomplished under Permit S-27441 consists of future expansion and optimization of the Hayden Bridge Water Treatment Plant (WTP); increasing the transmission capacity and adding connections for potential new wholesale customers; transmission work; construction of a new water treatment plant and intake; adding additional storage reservoirs and pumping stations; and completing construction and applying water to full beneficial use.
13. As of October 1, 2000, the permit holder had diverted 4.82 cfs of the 183.0 cfs of water authorized under Permit S-27441 for municipal purposes. There is an undeveloped portion of 178.18 cfs of water under Permit S-27441 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(1)(d).

14. In addition to the 183.0 cfs of water authorized under Permit S-27441, EWEB and/or the City of Eugene⁵ hold the following municipal use water right certificates and permits:
- Certificate 15180 for 27.08 cfs of water from the McKenzie River;
 - Certificate 68537 for 90.0 cfs of water from the McKenzie River;
 - Permit S-54805 for 30.9 cfs of water from the Willamette River;
 - Surface Water Registration SWR-354 for 30.9 cfs of water from the Willamette River;
 - Permit G-16371, modified by permit amendment T-11164, for 18.49 cfs of water from 12 wells within the Willamette River Basin;

The use of water under Permit S-54805 in combination with SW-354 (or any subsequent related decreed right) is limited to 30.9 cfs. Use of water under Permit S-54805 in any combination with Certificates 15180, 68537, Permit S-27441, and Permit G-16371, modified by Permit Amendment T-11164, cannot exceed a total of 300.08 cfs. Water can be diverted under Permit S-54805 only when the instream flows established by Certificate 59549 are met.

The use of water under Permit G-16371, modified by Permit Amendment T-11164, in any combination with Certificates 15180, 68537, and Permit S-27441 cannot exceed a total 300.08 cfs.

15. EWEB primarily relies on its water rights from the McKenzie River to meet current and future demands. Ground water is not a reliable source of supply. The ground water right and Willamette River water rights/registration are intended to provide supply redundancy and operational flexibility. (2012 WMCP at 5-9, 5-10.)
16. EWEB provides wholesale water to Santa Clara Water District, River Road Water District and the Willamette Water Company.
17. EWEB has a Surplus Water Purchase Agreement with the City of Veneta, and a pipeline is under construction to allow EWEB to deliver water per the agreement to the City of Veneta.
18. EWEB has intergovernmental agreements with Springfield Utility Board (SUB) and Rainbow Water District (RWD) to plan, design, construct, and operate water system interties for water exchanges to mutually increase system reliability and assist with emergency use during periods of short supply.
19. According to EWEB, within the current water delivery area in 2009, the population served by EWEB was 178,031 and its peak water demand was 103.3 cfs. EWEB's water delivery area includes the City of Eugene; the dissolved Bethel, Hillcrest and Oakway Water Districts; Eugene Airport Special Service District; and Lane Community College Special Service District. EWEB serves residential, commercial and industrial customers, and water districts. (2012 WMCP at 2-2.)

⁵ EWEB, founded in 1911, is chartered by the City of Eugene to serve the interests of its citizens.

20. EWEB has identified potential wholesale customers in neighboring communities (Cities of Coburg, Junction City, and Creswell) based on being approached at various times by these communities to discuss such plans. EWEB projects the need to provide 61 cfs to help meet future water supply needs for the City of Veneta and of neighboring communities listed above.
21. EWEB's population projections include two components: (1) the population within EWEB's current water delivery area, being the City of Eugene and the Urban Growth Boundary (UGB); and (2) the population within the service areas of potential wholesale customers (the Cities of Creswell, Junction City, Coburg, and Veneta). Based on medium-growth projections, EWEB anticipates a population of 327,430 within its current water delivery area by the year 2083. Also based on medium-growth projections, EWEB anticipates an additional population of 207,060 could be served based its potential wholesale connections by the year 2083. Thus, EWEB's total potential service area population is projected to be 534,490 by the year 2083.
22. EWEB's projected maximum day demand for its current water delivery area plus potential wholesale connections will reach 300.08 cfs by the year 2083. EWEB assumes that it would begin to add wholesale connections after the year 2025 as demands rise above the existing water supplies within the neighboring communities.
23. The Lane County Rural Comprehensive Plan (Plan) meets LCDC Statewide Planning Goals, and involves policies to be applied toward land use and other planning and resource-management issues, including planning and zoning designations. This Plan includes areas currently and potentially served by EWEB during the period of the extension. The plan coordinates population projections with land use planning and zoning designations. The Plan adopts by reference, a PSU report, *Population Forecasts for Lane County, its Cities and Unincorporated Area 2008-2035 (May 2009)*. The Plan was adopted by Lane County Board of Commissioners on June 17, 2009 (Ordinance No. PA 1255). (See Attachment 4, Aug. 26, 2013 Extension Application update.) The applicant developed projections for the duration of the extension using the methods employed by the PSU report.
24. Some future potential service areas maybe outside of the place use authorized by Permit S-27441. However, ORS 540.510(3)(a) allows water use under a permit (or certificate) issued to a municipality to be applied to beneficial use on lands to which the right is not appurtenant if the use continues to be for municipal purposes and would not interfere with or impair prior vested water rights.
25. Full development of Permit S-27441 is needed to address EWEB's and potential future wholesale customers' present and expected future water demands, including system redundancy and emergency use.
26. In accordance with OAR 690-315-0080(1)(d) and as described by Finding 23, above, EWEB demonstrated that their estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the water user.

27. EWEB's request for an extension of time until October 1, 2083, to complete construction and to apply water to full beneficial use under the terms of Permit S-27441 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.

28. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame and prior extension periods.
29. During the last extension period, being October 1, 1995 to October 1, 2000, EWEB accomplished the following:
- Completed an upgrade/expansion of the raw water intake facility at the Haden Bridge WTP, resulting in an intake capacity of 100 MGD;
 - Completed a seismic and structural evaluation of the Hayden Bridge Filtration Plant;
 - Completed a Water Supply Plan (1998);
 - Installed a new 42 inch transmission main, resulting increasing the capacity of the distribution system to 100 MGD;
 - Rebuilt several filters at use in the Hayden Bridge Filtration Plant
30. Since October 1, 2000, EWEB has accomplished the following:
- Completed the rebuilding all twelve filters at use in the Hayden Bridge Filtration Plant;
 - Completed construction of a 15 MG reservoir at Haden Bridge to allow expansion of the Hayden Bridge Filtration Plant;
 - Finished construction of a water pumping facility;
 - Completed a Water System Master Plan (2004);
 - Added two filters and a sedimentation basin;
 - Entered into a Surplus Water Purchase Agreement with the City of Veneta (2010)
 - Completed a Water Management Conservation Plan (WMCP, 2012);
 - Engaged in engineering and legal work related to water supply with the City of Veneta, and
 - Completed intake (screens and pumps) improvements.
31. According to EWEB, as of August 26, 2013, they have invested approximately \$35,567,000, which is about 10 percent of the total projected cost for complete

development of this project. EWEB estimates a \$343,000,000 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-27441, other costs included in this accounting are not partitioned out for S-27441 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by EWEB, 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 EWEB's water rights.

32. Between the issuance of Permit S-27441 on August 11, 1961, and October 1, 2000, EWEB has diverted a maximum of 4.82 cfs of the 183.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
33. The Department has considered EWEB'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)]

34. According to EWEB, as of August 26, 2013, they have invested approximately \$35,567,000, which is about 10 percent of the total projected cost for complete development of this project. EWEB estimates a \$343,000,000 investment is needed for the completion of this project.

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

35. As described in Findings 13 through 26 above, EWEB has indicated, and the Department finds that EWEB must rely on full development of their Permit S-27441
36. EWEB estimates population increases in its current water service area that average one percent per year over an 84 year period, being the years 2000 to 2083. EWEB estimates population increases that average 2.9 to 3.4 percent in the Cities of Veneta, Creswell, Junction City and Coburg during the same period.
37. Given the current and expected demands of EWEB and its potential future wholesale customers, including 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-27441.
38. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 4.82 cfs up to 183.0 cfs under Permit S-27441 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)]

39. 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)]

40. 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)]

41. Delay of development under Permit S-27441 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.

42. The pending municipal Application for Extension of Time for Permit S-27441 was delivered to ODFW on September 20, 2007, for ODFW's review under OAR-690-315-0080.
43. Notification that the pending municipal Application for Extension of Time for Permit S-27441 was delivered to ODFW for review was sent to EWEB on September 25, 2007.
44. Notification that the pending municipal Application for Extension of Time for Permit S-27441 was delivered to ODFW for review was published in the Department's Public Notice dated September 25, 2007. No public comments were received regarding this notice.
45. On June 5, 2009 the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-27441.
46. On June 18, 2014, the Department received an Addendum to ODFW's Division 315 Fish Persistence Evaluation for Permit S-27441, which took into consideration the results of a recent Oregon Chub study (Bangs and Hardin, 2014⁶).

⁶ Bangs, B.L., and T.S. Hardin. 2014 Minimum flows for the Oregon chub in the McKenzie River. Native Fish Investigations Project, Oregon Department of Fish and Wildlife, Corvallis, OR.

47. Summary of the June 18, 2014 Addendum from ODFW:
 ODFW recommends that the original recommended flow of 2,000 cfs continues to be the minimum flow target used to maintain the persistence of listed fish species in the lower McKenzie River. ODFW concluded that their additional analysis supports and strengthens ODFW's original June 5, 2009 recommendations and does not propose changing the original advice and recommendations.

48. Summary and Excerpts of the June 5, 2009 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 persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the Lower McKenzie River (approximately river mile 14.1 to the mouth) 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 the USACE will be able to release in any given year. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

The target flow, in Table 1, below, is ODFW's recommended flow measured above Hayden Bridge, Springfield, Oregon, at USGS GAGE No. 14164900, for maintaining the persistence of listed fish species in the Lower McKenzie 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 ratio of water that is withdrawn by the municipality as compared to the overall streamflow level.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOW IN THE LOWER MCKENZIE RIVER MEASURED NEAR HAYDEN BRIDGE, SPRINGFIELD, OREGON	
Months	Cubic Feet per Second
January 1 – December 31	2000

Streamflow Measurement Point

After analysis of flow records and how the USACE stores and releases water from its facilities to meet Lower McKenzie flow targets, ODFW has determined that measuring flows near the point of diversion which is near the gage above Hayden Bridge is sufficient for ensuring that flows to maintain the persistence of listed fish are met throughout the lower 14.1 miles of the McKenzie River. Therefore, ODFW advises the Department to establish the gage above Hayden Bridge as the point for determining whether fish flows are being met for this municipal permit extension.

49. Department's Findings Based on Review of ODFW's Advice and Addendum:
There is an undeveloped portion of 178.18 cfs of water under Permit S-27441 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 4.82 cfs up to the permitted quantity of 183.0 cfs can only be granted through the Department's review and approval of the municipal water user'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-27441 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 above Hayden Bridge, Springfield, Oregon, at USGS GAGE No. 14164900, or its equivalent. This gage is near the authorized point of diversion for Permit S-27441.
 - b. During all months of the year, the target flows are 2000 cfs, therefore, 2000 cfs is used in developing conditions to maintain the persistence of fish species.
 - c. ODFW's advice is contingent upon withdrawal of water from point(s) of diversion located within the lower 14.1 miles of the McKenzie River, and withdrawing water only from this reach of the river.
 - d. ODFW's advice recognizes the main influence on river flow levels during all months of the year is federal management of the dams. Low flows from January through June appear to be mostly related to operation of the reservoir system. When the flow target is not met, use of the undeveloped portion of the permit that legally can be diverted must be reduced in proportion to the degree to which the recommended streamflows are being missed.
 - 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 maximum total amount of an undeveloped portion of a permit that legally can be diverted should be adjusted by the monthly estimated percentage of the difference between the total water withdrawals and their return flows. Because EWEB's return flows do not return to the McKenzie River but instead return to the Willamette River above the confluence with the McKenzie River, ODFW recommends not making any adjustments based on return flows.
50. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-27441 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.

51. 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-27441; 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.)⁷
52. On July 16, 2014, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-27441 are consistent with their advice.
53. On August 19, 2014, the Department notified EWEB as per OAR 690-315-0080(2)(f) of ODFW's June 5, 2009 written advice, the June 18, 2014 Addendum, 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-27441.

CONCLUSIONS OF LAW

1. EWEB 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. EWEB 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-27441 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, 2083⁸. The estimated demand projection is consistent with the

⁷ 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.

⁸ For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625.

amount and types of lands and uses proposed to be served by the permit holder pursuant to OAR 690-315-0080(1)(d).

7. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that EWEB 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 38, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 4.82 cfs up to 183.0 cfs under Permit S-27441 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 42 through 53, 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 4.82 cfs under Permit S-27441 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-27441 from October 1, 2000 to October 1, 2083.

Extend the time to apply the water to beneficial use under Permit S-27441 from October 1, 2000 to October 1, 2083.

Subject to the following conditions:

CONDITIONS

1. **Development Limitations**

Diversion of any water beyond 4.82 cfs up to 183.0 cfs under Permit S-27441 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-27441 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**

The developed portion of the permit, 4.82 cfs, is *not* subject to these fish persistence conditions.

A. **Fish Persistence Target Flows**

- a. Fish persistence target flow needs in the Lower McKenzie River (approximately river mile 14.1 to the mouth) as recommended by ODFW are in Table, 2 below; flows are to be measured on the McKenzie River above Hayden Bridge, Springfield, Oregon at USGS gage No. 14164900, or its equivalent.

Table 2

FISH PERSISTENCE TARGET FLOW ON THE LOWER MCKENZIE RIVER MEASURED AT USGS GAGE 14164900 ABOVE HAYDEN BRIDGE SPRINGFIELD, OREGON	
Months	Cubic Feet per Second
January 1 – December 31	2000

b. **Alternate Streamflow Measurement Point**

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

B. Determining Water Use Reductions – Generally

The maximum amount of the undeveloped portion of Permit S-27441 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 average⁹ of mean daily flows as determined or measured by the water user in the Lower McKenzie River at the specified gage location. 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 the seven-day rolling average, E is the undeveloped portion of the permit, being 178.18 cfs, and Q_T is the target flow (from Table 2).

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

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

where E is the undeveloped portion of the permit, being 178.18 cfs.

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. Examples

Example 1: Flow target met:

On September 15, the last seven mean daily flows in the Lower McKenzie River at the designated gage were 2430, 2450, 2525, 1910, 1875, 2460 and 2500 cfs. The seven day rolling average (Q_A) is 2307 cfs. Given that the undeveloped portion of this permit (E) is 178.18, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 2000 cfs target flow (Q_T) for September 15. In this example, $Q_A - E \geq Q_T$.

$$2307 - 178.18 \geq 2000$$

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

⁹ Alternatively, the water user may use a single daily measurement.

Example 2: Target flow missed.

Step 1: Given that the undeveloped portion of this permit (E) is 178.18, if on September 15, the average of the last seven mean daily flows (Q_A) was 1720 cfs, and the target flow (Q_T) is 2000, then the target flow would be missed by 22.9%.

$$(1 - [(1720 - 178.18) / 2000]) \times 100\% = 22.9\%$$

Step 2: Given that the undeveloped portion of this permit (E) is 178.18 cfs, and the undeveloped portion of the permit needs to be reduced by 22.9% (from Step 1), or 40.8 cfs, then the maximum amount of the undeveloped portion of Permit S-27441 that could be diverted as a result of this fish persistence condition would be 137.38 cfs. (This maximum amount may be limited as illustrated in Step 3, below.)

$$(178.18 \times 22.9\%) / 100 = 40.8$$

$$178.18 - 40.8 = 137.38$$

Step 3: The calculated maximum amount of water that could be diverted under the permit due to the fish persistence condition may not exceed the amount of water to which the City is legally entitled to divert. In this example, if the amount of water legally authorized for diversion under this permit is 134.82 cfs (for example, authorization to divert 130.0 cfs provided through a WMCP plus the 4.82 cfs developed portion of the permit), then 134.82 cfs would be the maximum amount of diversion allowed under this permit.

(Conversely, if the amount of water legally authorized for diversion under this permit is 150.0 cfs, then 142.2 cfs (137.38 from Step 2 + the 4.82 developed portion of the permit) would be the maximum amount of diversion allowed under this permit.)

DATED: September 23, 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 **November 7, 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
