

**Oregon Water Resources Department
Water Rights Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-52447, Water Right Application S-71584,)
in the name of the City of Stayton) **PROPOSED FINAL ORDER**

Permit Information

Application File S-71584/ Permit S-52447

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: May 13, 1991

Authorized Use of Water

Source of Water:	North Santiam River, a Tributary of the Santiam River
Purpose or Use:	Municipal Use
Maximum Rate:	25.0 Cubic Feet per Second (cfs) from October 1 through April 30

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-52447, water right Application S-71584. A copy of Permit S-52447 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 1998 to October 1, 2094.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2094.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Stayton

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.

FINDINGS OF FACT

Background

1. Permit S-52447 was granted by the Department on July 8, 1996. The permit authorizes the use of up to 25.0 cfs of water from October 1 through April 30, from the North Santiam River, a tributary of the Santiam River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. On October 1, 1999, City of Stayton (City) submitted an "Application for Extension of Time" to the Department requesting the time to complete construction of the water system be extended from October 1, 1998 to October 1, 2060 and the time to apply water to full beneficial use under the terms and conditions of Permit S-52447 be extended from October 1, 1999 to October 1, 2060. On August 14, 2000, the City submitted information to supplement its application. This is the first extension of time request for Permit G-13015. This is the first extension of time request for Permit S-52447.
3. Due to an ongoing permit extension rulemaking, the Department placed all pending Applications for Extension of Time for municipal and quasi-municipal permits on hold and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time until the new rules were adopted.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002, were amended, filed with the Secretary of State, and became effective on November 22, 2005.
5. The City submitted an "Application for Extension of Time" consistent with the new 315 rules to the Department on June 11, 2003.
6. Notification of the City's Application for Extension of Time for Permit S-52447 was published in the Department's Public Notice dated June 17, 2003. No public comments were received regarding the extension application.
7. On November 12, 2014, the permit holder submitted additional information to supplement and/or update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2060 to October 1, 2094, and the extended time to apply water to full beneficial use be changed from October 1, 2060 to October 1, 2094.

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, 537.248², 537.630³ and/or 539.010(5)⁴

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

8. On October 1, 1999, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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

9. Permit S-52447 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.⁵

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-52447 consists of completing construction of the water system including adding additional treatment capacity and making improvements to the water treatment plant; and applying water to full beneficial use.
11. As of October 1, 1999, the permit holder had not diverted any of the water authorized under Permit S-52447 for municipal purposes. There is an undeveloped portion of 25.0 cfs of water under Permit S-52447 as per OAR 690-315-0010(6)(g).
12. In addition to the 25.0 cfs authorized from October 1 through April 30 under Permit S-52447, the City holds the following municipal use water right certificates and permits:
 - Certificate 80346 for 2.78 cfs of water from the North Santiam River for use from May 1 through September 30 of each year, further limited to 779.5 acre-feet per year;
 - Certificate 80347 for 0.82 cfs of surface water from the North Santiam River for use from May 1 through September 30 of each year, further limited to 230.6 acre-feet per year;

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.248 applies to reservoir permits only.

³ ORS 537.630 applies to ground water permits only.

⁴ ORS 537.010(5) applies to surface water and ground water permits.

⁵ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(1)(d).

- Certificate 80348 for 0.39 cfs of surface water from the North Santiam River for use year around, further limited to 78.5 acre-feet per year;
 - Certificate 80349 for 0.6 cfs of surface water from the North Santiam River for use year around;
 - Certificate 57094 for 7.0 cfs of surface water from the North Santiam River for use year around;
 - Transfer T- 9192 for 10 cfs of surface water from the North Santiam River for use year around;
 - Certificate 24587 for 3.0 cfs of ground water from Well #2 within the North Santiam River Basin; and
 - Ground Water Registration GR-145 from 2.67 cfs of ground water from a well within the North Santiam River Basin.
13. The City's surface water rights total 21.59 cfs of water during the months May through September, and 42.99 cfs of water during the months October through April. The City's ground water rights total 5.67 cfs of water. According to the City's 2006 WMCP the City's only undeveloped water rights are the 25.0 cfs under Permit S-52447, and 10.0 cfs under T-9291. (2006 WMCP, Sections 2-4 and Appendix A.)
 14. According to the City's 2006 WMCP, the majority of the wet weather water demands (Nov-Apr) can be supplied under Certificate 57094, which is supplemented with groundwater from Certificate 24587 during periods when surface water is turbid and more difficult to treat at the water treatment plant. Dry weather demands (May-Oct) can be supplied by water from Certificate 57094. Additional current peak day demands can be supplied by water from Certificate 80346. (2006 WMCP, Section 2-4.)
 15. The City of Stayton has entered into a Mutual Water Agreement with the City of Salem which provides for the cities to supply each other with emergency water through an existing intertie system.
 16. According to the City, in 2013 the population within the service boundary of Stayton was 7,685. The City estimates the population will increase at a growth rate of 1.7 percent per year, reaching an estimated population of 30,107 by the year 2094.
 17. The City's peak winter water demand within its service area boundaries was 11.16 cfs in 2014.
 18. The City's limits encompass about 1,770 acres including residential, industrial, commercial and public facilities. Although 86% of all accounts are residential, and 10% are businesses, residential water accounts for 32% of the total annual water demand and business water accounts for 48%. (2006 WMCP at Page 1-1.)

19. The City's peak winter demand is projected to be approximately 43 cfs of water by the year 2094.
20. According to the City, it expects to reach full build-out of the current Urban Growth Boundary (UGB) by the year 2068. A corridor of industrial use (approximately 18% of land outside the City limits, but within the current UGB will most likely be zoned for industrial uses. The City anticipates that future industrial development could potentially come from large industrial water users similar to Norpac Foods, Inc. which currently accounts for 42% of the total water consumption of the City.
21. Full development of Permit S-52447 is needed to address future winter water demand of the City of Stayton, which includes residential, commercial and industrial uses.
22. The City's request for an extension of time until October 1, 2094 to complete construction of the water system and to apply water to full beneficial use under the terms of Permit S-52447 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.

23. Work was accomplished during the original development time frame as follows:
 - 16,000 lineal feet of mainlines of various diameters were constructed;
 - A raw water meter was installed; and
 - 236 new residential services and 35 commercial services were added.
24. Since October 1, 1999, the City has made improvements to the water treatment plant and the distribution pipeline systems, and a WMCP has been approved by the Department.
25. According to the City, as of November 12, 2014, they have invested approximately \$4,200,000, which is about 22 percent of the total projected cost for complete development of this project. The City anticipates a \$15,142,400 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-52447, other costs included in this accounting are not partitioned out for S-52447 because (1) they are incurred under the development of a water supply system jointly utilized under other

rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.

26. Since the issuance of Permit S-52447 on July 8, 1996, the City has not diverted any of the 25.0 cfs for beneficial municipal purposes under the terms of this permit.
27. The Department has considered the City's compliance with conditions, and did not identify any concerns.

Financial Investment and Cost to Appropriate and Apply Water to a Beneficial Purpose
[OAR 690-315-0080(3)(b)]

28. According to the City, as of June 11, 2003, they have invested approximately \$4,200,000, which is about 22 percent of the total projected cost for complete development of this project. The City anticipates a \$15,142,400 investment is needed for the completion of this project.

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

29. As described in Findings 11 through 21 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-52447.
30. The City anticipates an annual population growth rate of 1.7 percent per year over an 82 year period, being the years 2013 to 2094.
31. Given the current water supply situation of the City, including current and expected residential, commercial and industrial demands, and the need for an emergency water supply with the City of Salem, there is a market and present demand for the water to be supplied under S-52447.
32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water under Permit S-52447 up to 25.0 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. 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)]

33. 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)]

34. 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)]

35. Delay of development under Permit S-52447 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, and to budget constraints.

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.

36. The pending municipal Application for Extension of Time for Permit S-52447 was delivered to ODFW on February 2, 2010 for ODFW's review under OAR-690-315-0080.
37. Notification that the pending municipal Application for Extension of Time for Permit S-52447 was delivered to ODFW for review was sent to the City on April 29, 2010.
38. Notification that the pending municipal Application for Extension of Time for Permit S-52447 was delivered to ODFW for review was published in the Department's Public Notice dated May 4, 2010. No public comments were received regarding this notice.
39. On November 22, 2010 the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-52447.
40. Summary and Excerpts of Advice from ODFW:
Use of water under the portion of this permit that was undeveloped as of the October 1, 1999, should be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the North Santiam 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 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 long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

The target flows, in Table 1, below, are ODFW's recommended flows measured near Mehama, Oregon, for maintaining the persistence of listed fish species in the North Santiam 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 North Santiam River through effluent discharges.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE NORTH SANTIAM RIVER NEAR MEHAMA, OREGON	
Month	Cubic Feet per Second
October – December	1500
January – February	1200
March 1 – March 15	1200
March 16 – March 31	1500
April – May	1500
June	1200
July 1 – July 15	1200
July 16 – July 31	1000
August	1000
September	1500

Streamflow Measurement Point

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

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

There is an undeveloped portion of 25.0 cfs of water under Permit S-52447 as per OAR 690-315-0010(6)(g). Authorization to use any water under this permit can only be granted through the Department's review and approval of the municipal permit holder's future WMCPs (OAR 690-086). When ODFW's recommended target flows are missed, the Department's proposed conditions may result in a reduction in the amount of the undeveloped portion of water under Permit S-52447 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 near Mehama, Oregon, USGS GAGE No.14183000, or its equivalent.
- b. When target flows are not met, use of the undeveloped portion of the permit must be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flow is defined as:

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

where Q is the flow at the point of interest, E is the undeveloped portion of the permit as of this extension, 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 about 1% of the natural stream flow during the summer months, but much less during the winter and spring months.
 - 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-52447 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
42. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-52447 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, streamflows would be a limiting factor for the listed fish species.
43. 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-52447, 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.)⁶

⁶ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

44. On February 10, 2015, ODFW notified the Department that the proposed “Conditions to Maintain the Persistence of Listed Fish” for Permit S-52447 are consistent with their advice.
45. On February 11, 2015, the Department notified the City as per OAR 690-315-0080(2)(f) of ODFW’s written advice and the “Conditions to Maintain the Persistence of Listed Fish” proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-52447.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(2).
2. The City has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Completion of construction and full application of water to beneficial use can be completed by October 1, 2094⁷. The estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder pursuant to OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the City has shown good cause for an extension of time to complete construction of the water system 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 32 above and specified under Item 1 of the “Conditions” section of this PFO, the diversion of any water up to 25.0 cfs under Permit S-52447 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR

⁷ 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.

8. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 36 through 45 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 any water up to 25.0 cfs under Permit S-52447 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 of the water system under Permit S-52447 from October 1, 1998 to October 1, 2094.

Extend the time to apply the water to beneficial use under Permit S-52447 from October 1, 1999 to October 1, 2094.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

Diversion of any water beyond any water up to 25.0 cfs under Permit S-52447 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-52447 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-52447 that has been established under a prior WMCP or Extension final order issued by 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 undeveloped portion of water under Permit S-52447 per OAR 690-315-0010(6)(g) is 25.0 cfs. This 25.0 cfs is subject to these fish persistence conditions.

A. **Fish Persistence Target Flows**

- a. Fish persistence target flows in the North Santiam River as recommended by ODFW are in Table 2, below; flows are to be measured in the North Santiam River near Mehama, Oregon (USGS Gage Number 14183000, or its equivalent).

Table 2

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE NORTH SANTIAM RIVER MEASURED AT USGS GAGE 14183000, NORTH SANTIAM RIVER NEAR MEHAMA, OREGON	
Month	Cubic Feet per Second
October – December	1500
January – March 15	1200
March 16 – April	1500
May 1 through September 30	Withdrawal Not Authorized

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-52447 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 average⁸ of mean daily flows as determined or measured by the water user in the North Santiam River near Mehama (USGS Gage Number 14183000, or its equivalent). The percent of missed target flows is defined as:

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

where Q_A is the actual flow measured at the designated gage based on the seven day rolling average, E is the undeveloped portion of the permit as of this

⁸ Alternatively, the water user may use a single daily measurement.

extension, 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 as of this extension, being 25.0 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

The City of Stayton has not identified any Consumptive Use Percentages based on the return of flows to the North Santiam River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-52447 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-52447 that can be diverted as a result of this fish persistence condition may begin after the issuance of the Final Order for this extension of time.

First time utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in 2.C.f., below.

Consumptive Use Percentages submitted to the Department for review must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The proposed Consumptive Use Percentages should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-52447 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., below) is contingent upon the City submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.f., below.

The updates to the Consumptive Use Percentages must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The updates should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

d. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology or the practices at the City's waste water treatment facility resulting in 25% or more reductions in average monthly return flows to the North Santiam 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-52447 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 North Santiam River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in 2.C.f., below.

If such changes to either wastewater technology or the practices at the City's waste water treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the City submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

e. Relocation of the Point(s) of Diversion(s) and/or Return Flows

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-52447 that can be diverted as a result of this fish persistence condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the City (1) providing evidence in writing that ODFW has determined that any

relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

f. Approval Periods for Utilization of Consumptive Use Percentages

The utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-52447 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that ends 10 years from the Water Resources Director's most recent date of concurrence with Consumptive Use Percentages Updates as evidenced by the record, unless sections 2.C.d., or 2.C.e. (above) are applicable.

Consumptive Use Percentages (first time utilization or updates) which are submitted and receive the Director's concurrence will begin a new 10 year approval period. The approval period begins on the date of the Water Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The City at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On March 15, the last seven mean daily flows were 1200, 1250, 1290, 1300, 1300, 1280 and 1270 cfs. The seven day rolling average is (Q_A) 1270 cfs. Given that the undeveloped portion of this permit as of this extension (E) is 25.0 cfs, then the 7 day average of mean daily flows minus the undeveloped portion is greater than the 1200 cfs target flow (Q_T) for March 15. In this example, $Q_A - E \geq Q_T$.

$$1270 - 25.0 \geq 1200$$

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 25.0 cfs, if on March 15, the average of the last seven mean daily flows (Q_A) was 1020 cfs, and the target flow (Q_T) is 1200, then the target flow would be missed by 17.1%.

$$(1 - [(1020 - 25) / 1200]) \times 100\% = 17.1\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%⁹ during the month of March and the utilization of this percentage is authorized, and the target flow is missed by 17.1% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 13.5%.

$$(78.7\% \times 17.1) / 100\% = 13.5\%$$

(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 – 17.1% in this example).

Step 3: Given that the undeveloped portion of this permit (E) is 25.0 cfs, and the undeveloped portion of the permit needs to be reduced by 13.5% (from Step 2), or 3.4 cfs, then the maximum amount of the undeveloped portion of Permit S-44926 that could be diverted as a result of this fish persistence condition is 21.6 cfs. (This maximum amount may be limited as illustrated in Step 4, below.)

$$(25.0 \times 13.5) / 100\% = 3.4$$

$$25.0 - 3.4 = 21.6$$

Step 4: The calculated maximum amount of water that could be diverted 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 15.0 cfs (for example, authorization provided through a WMCP), then 15.0 cfs would be the maximum amount of diversion allowed under this permit, rather than 21.6 cfs from Step 3.

(Conversely, if the amount of water legally authorized for diversion under this permit is 25.0 cfs, then 21.6 cfs (from Step 3) would be the maximum amount of diversion allowed under this permit.)

DATED: March 3, 2015


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.*

⁹ Currently, the City of Stayton may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-52447 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 78.7% is only for illustrative purposes in this example.

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **April 17, 2015**, 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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active Duty servicemembers have a right to stay these proceedings under federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

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
