

**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-35058, Water Right Application S-46891,) PROPOSED FINAL ORDER
in the name of the City of Arlington)

Permit Information

Application File S-46891/ Permit S-35058

Basin 6 – John Day Basin / Watermaster District 21

Date of Priority: December 1, 1970

Authorized Use of Water

Source of Water: Columbia River, a Tributary of the Pacific Ocean
Purpose or Use: Municipal
Maximum Rate: 8.16 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-35058, water right Application S-46891. A copy of Permit S-35058 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 from October 1, 1999 to October 1, 2030.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2030.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

City – City of Arlington

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-35058 was granted by the Department on March 11, 1971. The permit, which has a priority date of December 1, 1970, authorizes the use of up to 8.16 cfs of water from the Columbia River River, a tributary to the Pacific Ocean for municipal use. It specified that construction of the water development project was to be completed by October 1, 1972, and that complete application of water was to be made on or before October 1, 1973.
2. Seven prior permit extensions have been granted for Permit S-35058. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1999.
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, 1999, City of Arlington (City) submitted an "Application for Extension of Time". On August 2, 2010, the City submitted a modified "Application for Extension of Time," consistent with the revised OAR Chapter 690 Division 315 rules governing extensions of time for municipal and quasi-municipal water use permits. The City's modified application for an extension of time requested time to complete the construction and apply the water to full beneficial use under the terms and conditions of Permit S-35058 be extended from October 1, 1999 to October 1, 2030.
6. Notification of the City's Application for Extension of Time for Permit S-35058 was published in the Department's Public Notice dated August 10, 2010. No public comments were received regarding the extension application.

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)]

7. On September 29, 1999 the Department received an application for extension of time and the fee specified in ORS 536.050. On August 2, 2010, the Department received a superseding application for extension of time.

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

8. Permit S-35058 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), (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.

9. The remaining work to be accomplished under Permit S-35058 consists of completing construction and applying water to full beneficial use.
10. As of August 2, 2010, the permit holder has diverted 2.67 cfs of the 8.16 cfs of water authorized under Permit S-35058 for municipal purposes. There is an undeveloped portion of 5.49 cfs of water under Permit S-35058 as per OAR 690-315-0010(6)(g).
11. In addition to the 8.16 cfs of water authorized under Permit S-35058 the City holds the following municipal use water right permits:
 - Permit G-1201 for 2.2 cfs of water from Wells 1 and 2, tributary of the Columbia River;
 - Permit G-13305 for 0.668 cfs of water from a Well, tributary of the John Day River;

These permits total 8.16 cfs of live flow (surface) water and 2.87 cfs of groundwater. The City has submitted a Claim of Beneficial Use for both Permits G-1201 and Permit G-13305.

12. The cost of a water treatment system has kept the city from pursuing development of S-35058 for drinking water. However, the city is currently providing water to area contractors for construction purposes which significantly increase its potential for growth in industrial water use demand.

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).

13. According to the City, in 2009, the population within the service boundary of City of Arlington was 610. The City estimates the population will increase at a growth rate of 2 percent per year, reaching an estimated population of 906 by the year 2030.
14. The City's peak water demand within its service area boundaries was 1.13 cfs in 2009.
15. The City's peak day demand is projected to equal; the full amount of water allowed under this permit (S-35058), 8.16 cfs, by 2030. It is anticipated by the City that 1.68 cfs will be used to satisfy the domestic and drinking water needs of the City with the remaining amount of water used by industrial users.
16. Full development of Permit S-35058 is needed to address the present and future water demand of City of Arlington, including system redundancy and emergency use.
17. The City's request for an extension of time until October 1, 2030, to complete construction and to apply water to full beneficial use under the terms of Permit S-35058 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.

18. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame; temporary withdrawal facilities were put in place at the point of diversion.
19. Since October 1, 1999, the following work was accomplished by City of Arlington:
 - an application for a water right transfer (pending Permit Amendment T-11115) was submitted in August 2, 2010;
20. According to the City, as of August 2, 2010, they have invested approximately \$3,700, which is 7 percent of the total projected cost for complete development of this project. The City estimates a \$50,000, investment is needed for the completion of this project.
21. Since the issuance of Permit S-35058 on March 11, 1971, a total 2.67 cfs of water allowed has been diverted from the Columbia River for beneficial municipal purposes under the terms of this permit.

22. 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)]

23. According to the City, as of August 1, 2010, they have invested approximately \$3,700, which is 7 percent of the total projected cost for complete development of this project. The City estimates a \$50,000, investment is needed for the completion of this project.

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

24. As described in Findings 9 through 17 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-35058.
25. The City estimates an annual population growth rate of 2 percent per year over a 31 year period, being the years 1999 to 2030.
26. Given the current water supply situation of the City, including the lack of alternative sources of water to meet future needs, and due to current and expected demands and the need for system redundancy, there is a market and present demand for the water to be supplied under Permit S-35058.
27. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 8.16 cfs under Permit S-35058 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 which grants access to water under this extended permit. A "Development Limitation" condition is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

28. According to the City, as of August 2, 2010, they have invested \$3,700., which is 7 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$50,000. Investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

29. None have been identified.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

30. As described in Findings 9 through 15 the City has indicated, and the Department finds that City of Arlington must rely on full development of Permit S- 35058 to meet its present and future water demands.

31. The City estimates an annual population growth rate of 2 percent per year over a 21 year period, being 2009 to 2030.
32. Given the current water supply situation of City of Arlington, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-35058.

The Market and Present Demands for Water JOAR 690-315-0080(3)(d)

33. As described in Findings 13 through 24 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-35058.
34. The City estimates an annual population growth rate of 2 percent per year over a 2030 year period, being the years 2009 to 2030.
35. Given the current water supply situation of City of Arlington, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-35058.

Fair Return Upon Investment JOAR 690-315-0080(3)(e)

36. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit S-35058.

Other Governmental Requirements JOAR 690-315-0080(3)(f)

37. Delays caused by any other governmental requirements in the development of this project have not been identified.

Events which Delayed Development under the Permit JOAR 690-315-0080(3)(g)

38. Delay of development under Permit S-35058 was due, in part, to a slow economy, and 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 JOAR 690-315-0080(1)(f) and (2)

The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

39. The pending municipal Application for Extension of Time for Permit S-35058 was delivered to ODFW on November 12, 2010, for ODFW's review under OAR-690-315-0080.

40. Notification that the pending municipal Application for Extension of Time for Permit S-35058 was delivered to ODFW for review was sent to the City on November 12, 2010.
41. Notification that the pending municipal Application for Extension of Time for Permit S-35058 was delivered to ODFW for review was published in the Department's Public Notice dated November 16, 2010. No public comments were received regarding this notice.
42. On June 6, 2012, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit S-35058.
43. **Summary and Excerpts of Advice from ODFW:**
 Use of water under the portion of this permit that is undeveloped as of the date of the extension final order should be conditioned from April 10 through August 31 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 Columbia 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. 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 streamflows, in Table 1, below, are ODFW's recommended flows measured at McNary Dam near Umatilla, Oregon, for maintaining the persistence of listed fish species in the Columbia 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 Columbia River through effluent discharges.

Table 1

ODFW'S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE COLUMBIA RIVER AT McNARY DAM NEAR UMATILLA, OREGON	
Month	1000 Cubic Feet per Second
April 10 – June 30	220-260
July 1 – August 31	200

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring flows at

McNary Dam is sufficient for ensuring that flows to maintain the persistence of listed fish are met in the Columbia River. Therefore, ODFW advises the Department to establish the McNary Dam as the flow measurement location for determining whether fish flows are being met for this municipal permit extension.

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

The Department is proposing conditions in this extension of time consistent with ODFW's advice (*See* Item 2 of the "Conditions" section of this PFO). There is an undeveloped portion of 5.49 cfs of water under Permit S-35058 as per OAR 690-315-0010(6)(g). Authorization to incrementally expand use of water under this permit beyond 8.16 cfs up to the permitted quantity of 8.16 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 flow targets 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-35058 that can be diverted. The proposed conditions in this extension of time are based on the following findings:

- a. The Columbia River streamflows needed to maintain the persistence of fish must be measured at McNary Dam, Oregon.
- b. When target flows are not met in the Columbia River from April 10 through August 31, use of the undeveloped portion of the permit may need to be reduced in proportion to the degree to which the recommended streamflows are being missed. ODFW's formula for determining the percent shortfall, or missed target flows in the Columbia River is defined as:

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

where Q is the flow at the point of interest, and Q_T is the target flow (from Table 1).

- c. 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-35058 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 $(1 - [\text{total municipal wide returned flows} / \text{total municipal wide diverted flows}])$.
- d. Because the main influence of Columbia River flow levels is the federal management of the dams and that the severity of the measures to be taken by the permit holder should reflect the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level, the Department proposes to limit any overall reduction based on Columbia River flows to no more than 20 percent of the undeveloped portion.

- e. From April 10 through June 30, the target flow is expressed as a range (220K-260K cfs). This range is based on the Corps river level forecasting, which reflects the type of water year expected and the physical possibility of providing various flow levels. However, flows below 260K cfs are considered to be less beneficial to the persistence of listed fish species compared to flows of 260K cfs and above. Thus, the larger number in the range (260K cfs) is considered to be the target flow for fish persistence.
45. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-35058 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.
46. Based on ODFW's advice, the Department proposes to require conditions to maintain, in the portions of the waterways affected by water use under Permit S-35058, 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
47. On June 7, 2012, ODFW notified the Department that the proposed "Conditions to Maintain the Persistence of Listed Fish" for Permit S-35058 are consistent with their advice.

CONCLUSIONS OF LAW

1. The City of Arlington 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. Pursuant to ORS 540.510(3)(a), water under Permit S-35058 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).

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.

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 and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

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-35058 from October 1, 1999 to October 1, 2030.

Extend the time to apply the water to beneficial use under Permit S-35058 from October 1999 to October 1, 2030.

CONDITIONS

1. Development Limitations

Diversion of any water beyond 8.16 cfs under Permit S-35058 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 which grants access to water under this extended permit. The required WMCP shall be submitted to the Department within 3 years of an approved extension of time application. Use of water under Permit S-35058 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 this order may also meet the WMCP submittal requirements of other Department orders.

2. Conditions to Maintain the Persistence of Listed Fish

A. Minimum Fish Flow Needs

- a. Minimum fish flow needs in the Columbia River as recommended by ODFW are in Table 2, below; flows are to be measured in the Columbia River at McNary Dam. Daily flow reports for McNary Dam are available from the Fish Passage Center (FPC) established by the Northwest Power Planning Council (NPPC) at <http://www.fpc.org/currentdaily/flowspil.txt>.

Table 2

ODFW'S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE COLUMBIA RIVER, MEASURED AT McNARY DAM NEAR UMATILLA, OREGON	
Month	1000 Cubic Feet per Second
April 10 – June 30	260
July 1 – August 31	200

b. Alternate Streamflow Measurement Point

The location of a streamflow 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-35058 that can be diverted as a result of this fish persistence condition is determined in proportion to the amount by which the flows shown in Table 2 are missed based on a seven day rolling average of average of mean daily flows measured in the Columbia River at McNary Dam. The percent of missed target flows is defined as:

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

where Q_A is the actual flow measured at the designated location based on the seven day rolling average, and Q_T is the target flow (from Table 2).

The percent missed target flows 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 136.46 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. The overall reduction to the amount of the undeveloped portion of the permit will not exceed 20%.

When $Q_A \geq Q_T$, 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 for Utilization in Columbia River Calculations

a. Initial Consumptive Use Percentages

The City of Arlington has not identified any Consumptive Use Percentages based on the return of flows to the Columbia 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-35058 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-35058 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-35058 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 wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the Columbia 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-35058 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 Columbia 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 wastewater 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-35058 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-35058 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that begins 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 April 15, the last seven mean daily flows in the Columbia River at McNary Dam⁶ were 310K, 290K, 280K, 260K, 260K, 240K and 250K cfs. The seven day rolling average (Q_A) is 270K cfs. The amount of the undeveloped portion of the permit that can be diverted would not be reduced because the 7 day average of mean daily flows is greater than the 260K cfs target flow (Q_T) for April 15. In this example, $Q_A \geq Q_T$.

Example 2: Target flow missed.

Step 1: If on July 15, the average of the last seven mean daily flows (Q_A) was 170K cfs, and the target flow (Q_T) is 200K, then the target flow would be missed by 15.0%.

$$(1 - (170 / 200)) \times 100\% = 15.0\%$$

Step 2: Assuming the Consumptive Use Percentage is 62.2%⁷ during the month of July and the utilization of this percentage is authorized, and the target flow is missed by 15.0% (from Step 1), then the amount of the undeveloped portion of the permit that could be diverted would be reduced by 9.3%.

$$(62.2\% \times 15.0\%) / 100 = 9.3\%$$

(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 – 15.0% in this example).

Step 3: The overall reduction of 9.3% of the amount of the undeveloped portion of the permit does not exceed 20%.

Step 4: The undeveloped portion of this permit as of this extension (E) is 136.46 cfs. Therefore, in this example, the maximum amount of the undeveloped portion of Permit S-35058 that can be diverted as a result of this fish persistence condition is 123.8 cfs.

⁶ Daily flow data for McNary Dam is available at <http://www.fpc.org/currentdaily/flowspil.txt>.

⁷ Currently, the City of Arlington may not utilize Consumptive Use Percentages for the purpose of calculating the amount of the undeveloped portion of Permit S-35058 that can be diverted as a result of this fish persistence condition. The utilization of the Consumptive Use Percentage 62.2%^{is} only for illustrative purposes in this example.

$$136.46 - ((136.46 \times 9.3\%) / 100) = 123.8$$

Step 5: Given that the permitted quantity under this right is 8.16 cfs, and the undeveloped portion is 136.46 cfs, if the amount of water legally authorized for a diversion at a given point in time is 50.0 cfs, then only 31.5 cfs of undeveloped water would be used to satisfy the 50.0 cfs.

$$50.0 - (8.16 - 136.46) = 31.5$$

[Note: (8.16 - 136.46) equals the developed portion of the permit]

In this example, the 31.5 cfs of undeveloped water is less than the 123.8 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, there would be no required reduction in water use of the undeveloped portion under the permit.

Step 6: If the amount of water legally authorized for a diversion at a given point in time is 145.0 cfs, then 126.5 cfs of undeveloped water would be used to satisfy the 145.0 cfs.

$$145 - (8.16 - 136.46) = 126.5$$

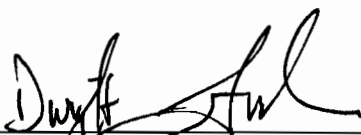
In this example, the 126.5 cfs of undeveloped water is greater than the 123.8 cfs maximum undeveloped portion (from Step 4) that can be diverted as a result of this fish persistence condition. Therefore, the amount of undeveloped water diverted by the permit holder would need to be reduced by 2.7 cfs.

$$126.5 - 123.8 = 2.7$$

In this example, the maximum amount of water that could be appropriated is 142.3 cfs.

$$145.0 - 2.7 = 142.3$$

DATED: February 12, 2013



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 **3/29/2013**, 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.

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- If you have any questions about statements contained in this document, please contact Joan M. Smith at 503-986-0898.
 - 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
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