

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 G-12406, Water Right Application G-13221,) PROPOSED FINAL ORDER
in the name of the City of Brownsville)

Permit Information

Application File G-13221/ Permit G-12406

Basin 2 – Willamette Basin / Watermaster District 2

Date of Priority: December 7, 1992

Authorized Use of Water

| | |
|------------------|---|
| Source of Water: | Wells B, C, D, and E within the Calapooia Creek Basin |
| Purpose or Use: | Municipal Use |
| Maximum Rate: | 1.25 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 G-12406, water right Application G-13221.

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, 2048.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2048.
- 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 Brownsville
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

WELLS

LINN 11992 - Well B
LINN 11762 - Well D
LINN 1944 - Well E
LINN 11752 - Well C

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(3) provides in pertinent part that the Oregon Water Resources Department (Department) may, under certain conditions order and allow an extension of time, for the completion of construction or perfection of the 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. Permit G-12406 was granted by the Department on April 26, 1996. The permit authorizes the use of up to 1.25 cfs of water from Wells B, C, D, and E within the Calapooia Creek Basin, 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. 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.
3. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 were adopted on November 1, 2002, amended, filed with the Secretary of State, and became effective on November 22, 2005.
4. The permit holder, the City of Brownsville (City), submitted an “Application for Extension of Time” to the Department on March 19, 2003, requesting the time to complete construction of the water system be extended from October 1, 1998 to October 1, 2048, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12406 be extended from October 1, 1999 to October 1, 2048. This is the first extension of time request for Permit G-12406.
5. Notification of the City’s Application for Extension of Time for Permit G-12406 was published in the Department’s Public Notice dated March 25, 2003. No public comments were received regarding the extension application.
6. On January 28, 2005, and May 4, 2005, the City submitted additional information to supplement their Application for Extension of Time.
7. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.

Review Criteria for Municipal 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. This determination shall consider the applicable requirements of ORS 537.230¹, 537.248², 537.630³ and/or 539.010(5)⁴

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.

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

8. On March 19, 2003, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

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

9. Permit G-12406 was issued prior to June 29, 2005; therefore, the applicant 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), (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 G-12406 consists of completing construction of the water system including installing new well pumps, expansion of the water treatment plant, installation of new waterlines, replacement of existing waterlines, and construction of a reservoir; and applying water to full beneficial use.
11. As of March 19, 2003, the permit holder has appropriated 0.479 cfs of the 1.25 cfs of water authorized under Permit G-12406 for municipal purposes. There is an undeveloped portion of 0.771 cfs of water under Permit G-12406 as per ORS 537.630(1).
12. In addition to the 1.25 cfs of water authorized under Permit G-12406 (Well B, Well C, Well D, and Well E) the City holds the following municipal use water right certificates, and ground water registration:
 - Certificate 90031 for 0.67 cfs of water from the Calapooia River and Well B, Well C, Well D, and Well E;
 - Certificate 93465 for 0.58 cfs of water from the Calapooia River; and
 - Ground Water Registration GR-12 for 225 gpm (.5 cfs) of water from a well.

The City's water rights total 3.00 cfs of water. The City of Brownsville has not yet made beneficial use of 0.771 under Permit G-12406.

13. According to the City, they are utilizing 1.25 cfs of water from the Calapooia River, being 0.67 cfs under Certificate 90031 and 0.58 cfs under Certificate 93465 to supply their current demand. Water authorized under Permit G-12406 is used as an alternate source of water in winter months during times of high turbidity in the Calapooia River. Groundwater Registration GR-12 has not yet been adjudicated.
14. According to the City, in 2003, the population within the service boundary of City of Brownsville was 1,460. The City anticipates the population will reach an estimated population of 2,919 by the year 2048, which calculates to an estimated growth rate of

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

1.5 percent per year.

15. The City's peak water demand within its service area boundaries was 0.96 cfs in the year 2000. The City's peak day demand is projected to be approximately 1.35 cfs of water by the year 2049.
16. According to the City, they have proceeded with new residential constructions throughout the City's urban growth boundary. Of the total 675 acres within the City's area of use, there still remain approximately 260 of developable acres.
17. Full development of Permit G-12406 is needed to address the present and future water demand of the City, including system redundancy and emergency use.
18. The City's request for an extension of time until October 1, 2048, to complete construction of the water system and to apply water to full beneficial use under the terms and conditions of Permit G-12406 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g) and (4)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).

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.

19. Prior to the issuance of Permit G-12406 on April 26, 1996, the City constructed LINN 11992 (Well B), LINN 11762 (Well D), LINN 11752 (Well C), and LINN 1944 (Well E).
20. Work was accomplished during the original development time frame under Permit G-12406 as follows:
 - 50 new water services were installed;
 - four pumps were upgraded;
 - four meters were installed;
 - waterlines were installed; and
 - a new filter plant was completed.
21. According to the City, as of March 19, 2003, they have invested approximately \$2,568,695, which is approximately 30 percent of the total projected cost for complete development of this project. The City anticipates an additional \$5,900,000 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 G-12406, other costs included in this accounting are not partitioned out for G-12406 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.

22. As of March 19, 2003, a maximum combined rate of 0.479 cfs of the 1.25 cfs allowed has been appropriated from Well B, Well C, Well D, and Well E for beneficial municipal purposes under the terms of this permit.
23. The Department has considered the City's compliance with conditions, and did not identify any concerns.

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

24. According to the City, as of March 19, 2003, they have invested approximately \$2,568,695, which is 30 percent of the total projected cost for complete development of this project. The City anticipates an additional \$5,900,000 investment is needed for the completion of this project.

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

25. As described in Findings 10 through 16 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-12406.
26. The City anticipates an annual population growth rate of 1.5 percent per year over a forty-five year period, being the years 2003 to 2048.
27. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under G-12406.
28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.479 cfs under Permit G-12406 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)]

29. 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)]

30. 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)]

31. Delay of development under Permit G-12406 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.

32. On February 24, 2006 the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-12406 has the potential for substantial interference with surface water.
33. The pending municipal Application for Extension of Time for Permit G-12406 was delivered to ODFW on February 2, 2010 for ODFW's review under OAR-690-315-0080.
34. Notification that the pending municipal Application for Extension of Time for Permit G-12406 was delivered to ODFW for review was sent to the City on April 29, 2010.
35. Notification that the pending municipal Application for Extension of Time for Permit G-12406 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.
36. On November 14, 2018, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-12406.
37. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as of June 29, 2005, and is found to have the Potential for Substantial Interference (PSI) with the Calapooia River should be conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of listed fish species. ODFW has determined that the Calapooia 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 streamflows, in Table 1, below, are ODFW’s recommended flows measured at Albany, Oregon, for maintaining the persistence of listed fish species in the Calapooia 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 be adjusted by the ratio of water withdrawn to water being returned directly to the Calapooia River through effluent discharges.

Table 1

| ODFW’S RECOMMENDED MINIMUM FISH FLOW NEEDS IN THE CALAPOOIA RIVER AT ALBANY, OREGON | |
|--|-----------------------|
| Month | Cubic Feet per Second |
| October | 58 |
| November – May | 140 |
| June | 90 |
| July | 50 |
| August | 30 |
| September | 25 |

Streamflow Measurement Point

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

38. Department’s Findings Based on Review of ODFW’s Advice:

There is an undeveloped portion of 0.771 cfs of water under Permit G-12406 as per ORS 537.630(1). Authorization to incrementally expand use of water under this permit beyond 0.479 cfs up to the permitted quantity of 1.25 cfs can only be granted through the Department’s review and approval of the municipal permit holder’s future WMCPs (OAR 690-086). When ODFW’s recommended target flows are missed, the Department’s proposed conditions may result in a reduction in the amount

of the undeveloped portion of water under Permit G-12406 having PSI with the Calapooia River that can be appropriated. The proposed conditions in this extension of time are based on the following findings:

- a. As determined by the Department on February 24, 2006, use of the undeveloped portion of this permit, being 0.771 cfs, will result in interference of 95% of the rate of appropriation with the Calapooia River after 360 days of pumping. For the purpose of conditioning this permit to maintain the persistence of fish, the Department finds that the amount of the undeveloped portion of water under G-12406 having PSI with the Calapooia River, which is utilized for the sole purpose of calculating the percent of missed target flows, is 0.731 cfs.

$$E \times I_p = E_{PSI}$$

where E is the undeveloped portion of the permit, I_p is the effect of pumping interference on surface water flows in the Calapooia River expressed as a percentage, E_{PSI} is the undeveloped portion of the permit having PSI with the Calapooia River.

- b. The streamflows needed to maintain the persistence of fish must be determined or measured by the water user at Albany, Oregon, USGS GAGE No.14173500, or its equivalent.
- c. When target flows are not met, use of the undeveloped portion of the permit that impacts Calapooia River surface water 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 having PSI with the Calapooia River, and Q_T is the target flow (from Table 1).

- d. ODFW's advice recognizes 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.
- 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 amount of the undeveloped portion of Permit G-12406 that impacts Calapooia River surface water 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- [total municipal wide returned flows/ total municipal wide appropriated flows]).

39. The Department finds, based on ODFW’s advice, that in the absence of conditions, the use of the undeveloped portion of Permit G-12406 that impacts Calapooia River surface water 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 with surface water impacts, streamflow would be a limiting factor for the listed fish species.
40. 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 G-12406, 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
41. On May 23, 2011, ODFW notified the Department that the proposed “Conditions to Maintain the Persistence of Listed Fish” for Permit G-12406 are consistent with their advice.
42. On May 24, 2011, 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 G-12406.

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 537.630(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, 2048⁷ pursuant to OAR 690-315-0080(1)(d).

⁶ 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.

⁷ Pursuant to ORS 537.630(5), 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

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 28 above and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 0.479 cfs under Permit G-12406 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan under OAR Chapter 690, Division 86.
8. In accordance with In accordance with OAR 690-315-0080(1)(f), and as described in Findings 32 through 42 above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use under this municipal use permit of the undeveloped portion with surface water impacts, in the absence of special conditions. Therefore, the diversion of water beyond 0.479 cfs under Permit G-12406 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 G-12406 from October 1, 1998, to October 1, 2048.

extend the time to apply the water to beneficial use under Permit G-12406 from October 1, 1999, to October 1, 2048.

Subject to the following conditions:

continued on following page

beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

CONDITIONS

1. Development Limitations

A maximum appropriation of 0.479 cfs of water is currently allowed under Permit G-12406. Any appropriation of water beyond 0.479 cfs (not to exceed the maximum amount authorized under the permit, being 1.25 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation 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 G-12406 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the appropriation of water under Permit G-12406 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 first 0.479 cfs of water under Permit G-12406 or any subsequent water right(s) originating from Permit G-12406 is not and will not be conditioned for maintaining fish persistence.

The portion of Permit G-12406 subject to these fish persistence conditions is established as 0.771 cfs in accordance with ORS 537.630(1). The use of 0.771 cfs as authorized under this permit must be hereafter conditioned with these fish persistence conditions. Therefore, all subsequent water right(s) originating from this portion of Permit G-12406 implemented will include these Conditions to Maintain the Persistence of Listed Fish. If more than one resulting water right is subject to these Conditions to Maintain the Persistence of Listed Fish, then legal use of the 0.771 cfs conditioned to maintain the persistence of listed fish species shall be determined among all the permit/water right holders of record; all the permit/water right holders of record subject to these Conditions to Maintain the Persistence of Listed Fish must ensure that these fish persistence conditions are met.

A. Fish Persistence Target Flows

- a. Fish persistence target flows in the Calapooia River as recommended by ODFW are in Table 2, below; flows are to be measured in the Calapooia

River at Albany, Oregon (USGS Gage Number 14173500, or its equivalent).

Table 2

| ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE CALAPOOIA RIVER MEASURED AT USGS GAGE 14173500, CALAPOOIA RIVER AT ALBANY, OREGON | |
|---|------------------------------|
| Month | Cubic Feet per Second |
| November – May | 140 |
| June | 90 |
| July - October | Appropriation Not Authorized |

b. Alternate Streamflow Measurement Point(s)

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 the City 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 portion of Permit G-12406 subject to fish persistence conditions is 0.771 cfs. The maximum amount of this portion of Permit G-12406 that can be appropriated as a result of this fish persistence condition is determined in proportion to the amount by which the Target Flows shown in Table 2 are missed based on a seven day rolling average of mean daily flows as determined or measured by the water user in the Calapooia River at Albany (USGS Gage Number 14173500, or its equivalent). The percent of missed target flows is defined as:

$$(1 - [(Q_A - E_{PSI}) / Q_T]) \times 100\%,$$

where Q_A is the actual flow determined at the designated gage based on the seven day rolling average⁸, E_{PSI} is the portion of the permit, subject to these conditions, having PSI with the Calapooia River, and Q_T is the target flow (from Table 2).

E_{PSI} is defined as:

$$E_{PSI} = E \times I_p$$

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

where E is the undeveloped portion of the permit, being 0.771 cfs, and I_p is the effect of pumping interference on surface water flows in the Calapooia River expressed as a percentage, being 95%.

The percent by which the target flow is missed applied to the amount of water conditioned for fish persistence provides the maximum amount of water that can be appropriated as a result of this fish persistence condition, and is defined as:

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

where E is the entire portion of the permit subject to fish persistence, being 0.771 cfs.

The maximum amount of water that can be appropriated 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 $Q_A - E_{PSI} \geq Q_T$, the target flow is considered met and therefore the amount of water conditioned for fish persistence that can be appropriated 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 Brownsville has not identified any Consumptive Use Percentages based on the return of flows to the Calapooia 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 portion of Permit G-12406 that can be appropriated 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 water conditioned for fish persistence of Permit G-12406 that can be appropriated 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 water conditioned for fish persistence of Permit G-12406 that can be appropriated 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 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 Calapooia 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 water conditioned for fish persistence of Permit G-12406 that can be appropriated 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 Calapooia 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 updated 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 water conditioned for fish persistence of Permit G-12406 that can be appropriated 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 updated 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 water conditioned for fish persistence of Permit G-12406 that can be appropriated 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 June 15, the last seven mean daily flows were 94, 93, 94, 95, 94, 93 and 92 cfs. The seven day rolling average (Q_A) is 93.6 cfs. Given that the amount of water conditioned for fish persistence of this permit having PSI with the Calapooia River (E_{PSI}) is 0.731 cfs, then the 7 day average of mean daily flows minus the amount of water conditioned for fish persistence is greater than the 90.0 cfs target flow (Q_T) for June 15. In this example, $Q_A - E_{PSI} \geq Q_T$.

$$93.6 - 0.731 \geq 90$$

The amount of water conditioned for fish persistence of the permit having PSI with the Calapooia River that can be appropriated would not be reduced because the target flow is considered met.

Example 2: Target flow missed.

Step 1: Given that the amount of water conditioned for fish persistence of this permit having PSI with the Calapooia River (E_{PSI}) is 0.731 cfs, if on June 15, the average of the last seven mean daily flows (Q_A) was 80 cfs, and the target flow (Q_T) is 90, then the target flow would be missed by 11.9%.

$$(1 - [(80 - 0.731) / 90]) \times 100\% = 11.9\%$$

Step 2: Assuming the Consumptive Use Percentage is 78.7%⁹ during the month of June and the utilization of this percentage is authorized, and the target flow is missed by 11.9% (from Step 1), then the amount of water conditioned for fish persistence of the permit having PSI with the Calapooia River that could be appropriated would be reduced by 9.4%.

$$(78.7\% \times 11.9\%) / 100 = 9.4\%$$

(If adjustments are not to be made by a Consumptive Use Percentage, then the amount of water conditioned for fish persistence of the permit having PSI with the Calapooia River would only be reduced by the % by which the target flow is missed – 11.9% in this example).

Step 3: The amount of water conditioned for fish persistence of this permit having PSI with the Calapooia River (E_{PSI}) is 0.731 cfs. Therefore, in this example, the maximum amount of water conditioned for fish persistence of Permit G-12406 having PSI with the Calapooia River that can be appropriated as a result of this fish persistence condition is 0.662 cfs.

$$0.731 - ((0.731 \times 9.4\%) / 100) = 0.662$$

Step 4: Given that the permitted quantity under this right is 1.25 cfs, the entire undeveloped portion is 0.771 cfs, and the amount of water conditioned for fish persistence having PSI with the Calapooia River is 0.731 cfs: If the amount of water legally authorized for appropriation at a given point in time (for example, authorization provided through a WMCP) is 1.0 cfs, then only 0.481 cfs of the amount of water conditioned for fish persistence having PSI with the Calapooia River would be used to satisfy the 1.0 cfs.

⁹ Currently, the City of Brownsville may not utilize Consumptive Use Percentages for the purpose of calculating the amount of water conditioned for fish persistence of Permit G-12406 that can be appropriated 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.

$$1.0 - ((1.25 - 0.771) + (0.771 - 0.731)) = 0.481$$

Note: (1.25 - 0.771) equals the developed portion of the permit
(0.771 - 0.731) equals the undeveloped portion of the permit not having PSI

In this example, the 0.481 cfs of water conditioned for fish persistence having PSI with the Calapooia River is less than the 0.662 cfs maximum amount of water conditioned for fish persistence of the permit having PSI with the Calapooia River (from Step 3) that can be appropriated as a result of this fish persistence condition. Therefore, there would be no required reduction in water use of water conditioned for fish persistence under the permit.

Step 5: If the amount of water legally authorized for appropriation at a given point in time is 1.20 cfs, then 0.681 cfs of water conditioned for fish persistence having PSI with the Calapooia River would be used to satisfy the 1.20 cfs.

$$1.20 - ((1.25 - 0.771) + (0.771 - 0.731)) = 0.681$$

In this example, the 0.681 cfs of water conditioned for fish persistence is greater than the 0.662 cfs maximum amount of water conditioned for fish persistence having PSI with the Calapooia (from Step 3) that can be appropriated as a result of this fish persistence condition. Therefore, the amount of water conditioned for fish persistence (having PSI with the Calapooia River) appropriated would need to be reduced by 0.019 cfs.

$$0.681 - 0.662 = 0.019$$

In this example, the maximum amount of water that could be appropriated is 1.181 cfs.

$$1.20 - 0.019 = 1.181$$

DATED: January 8, 2019


Dwight French
Water Rights 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 **February 22, 2019**, 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 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>

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- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at 503-986-0802.
 - 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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Mailing List for Extension PFO Copies

PFO Date: January 8, 2019

**Application G-13221
Permit G-12406**

Original mailed to Applicant:

City of Brownsville
Attn: S. Scott McDowell
PO Box 188
Brownsville, OR 97327

| |
|-------------------------------------|
| Copies Mailed |
| By: _____ (SUPPORT STAFF) |
| on: _____ (DATE) |

Copies sent to:

1. WRD - App. File G- 13221/ Permit G-12406
2. WRD - Watermaster District 2 – Michael Mattick
3. Jon E. Erwin, PE,CWRE; Erwin Consulting Engineering; 33923 Bond Rd, Lebanon, OR 97355

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

5. WRD – Kerri Cope;– Notify of WMCP needed
*Done by*_____ *Date*_____

CASEWORKER: JDP