

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time) SUPERCEEDING
for Permit S-42117, Water Right Application S-55338,) PROPOSED
in the name of the City of Cottage Grove) FINAL ORDER

Permit Information

Application File S-55338/ Permit S-42117

Basin 0 – Upper Willamette Basin / Watermaster District 2

Date of Priority: September 22, 1977

Authorized Use of Water

Source of Water: Row River, a tributary of Coast Fork Willamette River
Purpose or Use: Municipal Water Supply
Maximum Rate: 6.2 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-42117, water right Application S-55338.

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, 2043.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2043.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
City – City of Cottage Grove
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
WMCP – Water Management and Conservation Plan

Units of Measure

AF – acre-feet
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(3) 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 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for 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

1. On November 14, 1977, Permit S-42117 was issued by the Department. The permit authorizes the use of up to 6.2 cfs of water from the Row River, a tributary of the Coast Fork Willamette River, for municipal water supply, of which 3.1 cfs of water has been perfected under Certificate 91536. The remaining authorized amount under the permit is 3.1 cfs. Permit S-42117 specified that construction of the water development project was to be completed by October 1, 1979, and that complete application of water was to be made on or before October 1, 1980.
2. Four prior permit extensions have been granted for Permit S-42117. The most recent extension request resulted in the completion dates for construction and full application of water being extended from October 1, 1994, to October 1, 1999.
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. On December 11, 2007, the City of Cottage Grove (City) submitted an "Application for Extension of Time" to the Department requesting the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit S-42117 be extended from October 1, 1999 to October 1, 2019.
6. Notification of the City's Application for Extension of Time for Permit S-42117 was published in the Department's Public Notice dated December 18, 2007. No public comments were received regarding the extension application.
7. On August 6, 2008, the City submitted additional information to supplement their Application for Extension of Time. The amendment requested the extended time to complete construction of the water system and the extended time to apply water to full beneficial use of the water system be shortened from October 1, 2019 to October 1, 2013.
8. On August 19, 2008, the Department issued a Proposed Final Order, proposing to approve an Extension of Time from October 1, 1999, to October 1, 2013.
9. On October 3, 2008, WaterWatch of Oregon filed a protest to the PFO, and a request for a contested case hearing.

10. On March 3, 2009, the Department referred the matter to the Office of Administrative Hearings.
11. On December 10, 2009, Administrative Law Judge Joe L. Allen, issued a Proposed Order, and on December 15, 2009, issued an Amended Proposed Order.
12. On September 14, 2010, the Department issued a Final Order in Contested Case, granting an Extension of Time from October 1, 1999, to October 1, 2013 for Permit S-42117.
13. On October 15, 2010, the Department issued Water Right Certificate 86670, confirming the right to use waters of the Row River for municipal purposes, as permitted by Permit S-42117.
14. On November 15, 2010, WaterWatch of Oregon filed a petition for judicial review of the Final Order in Contested Case.

On December 11, 2013, the Court of Appeals of the State of Oregon issued a decision, reversing and remanding the Final Order in Contested Case on Extension of Time, and instructing the Department to vacate the City's Water Right Certificate 86670.
15. On July 1, 2015, the Department issued a Final Order Withdrawing Certificate 86670.
16. 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.
17. On April 23, 2018, the permit holder submitted additional information to supplement and an amendment to update their Application for Extension of Time. The amendment requested the extended time to complete construction and the time to apply water to full beneficial use be changed from October 1, 2013 to October 1, 2043.

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

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 539.010(5) applies to surface water and ground water permits.

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

18. On December 11, 2007, 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)]

19. Permit S-42117 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.⁴

Duration of Extension [OAR 690-315-0080(1)(c) and (1)(d)]

Under OAR 690-315-0080(1)(c) and (1)(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

20. The remaining work to be accomplished under Permit S-42117 consists of completing construction and applying water to full beneficial use.
21. As of June 29, 2005, the permit holder had diverted 3.1 cfs of the 6.2 cfs of water authorized under Permit S-42117 for municipal purposes, as evidence by Certificate 91536. There is an undeveloped portion of 3.1 cfs of water under Permit S-42117 as per ORS 537.230(1).
22. In addition to the 3.1 cfs of water authorized under Permit S-42117 the City holds the following municipal use water right certificates and permits:
- Certificate 91536 for 3.1 cfs of water from Row River, tributary to Willamette River
 - Certificate 93716 for 2.67 cfs of water from the Layng Creek, tributary to Row River;
 - Inchoate Transfer T-10530 for 3.1 cfs of water from Layng Creek, tributary to Row River
 - Certificate 93717 for 4.0 cfs of water from the Dinner Creek, tributary to Layng Creek;
 - Certificate 93718 for 4.0 cfs of water from the Prather Creek, tributary to Layng Creek;
 - Certificate 87027 for 0.45 of water from the Row River, tributary to Coast Fork Willamette River, limited to 89.75 acre-feet (AF) during the irrigation season of each year;
 - Certificate 87028 for 0.36 cfs of water Row River, tributary to Coast Fork Willamette River, limited to 70.75 AF during the irrigation season of each year; and
 - Certificate 82233 for 3.1 cfs of water from the a well, in the Willamette Basin.

⁴ Section 5, Chapter 410, Oregon Laws 2005 and OAR 690-315-0070(3)(d).

These water rights and permits total 20.78 cfs of surface water and 3.1 cfs of ground water. City of Cottage Grove has not yet made use of 3.1 cfs of water under Permit S-42117.

23. The City currently does not utilize water authorized under Certificates 82233, 93716, 93717, and 93718.
24. According to the Application, in 2015, the population within the service boundary of City of Cottage Grove was 10,415. The City estimates the population will increase at a growth rate of 1.3 percent per year, reaching an estimated population of 14,794 by the year 2043.
25. The City's peak water demand within its service area boundaries was 5.0 cfs in 2016.
26. The City's peak day demand is projected to be approximately 7.01 cfs of water by the year 2043.
27. Full development of Permit S-42117 is needed to address the present and future water demand of City of Cottage Grove, including system redundancy and emergency use.
28. Based on Findings of Fact 20-27, the Department finds that the City's request for an extension of time until October 1, 2043, to complete construction and to apply water to full beneficial use under the terms of Permit S-42117 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.

29. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
30. During the last extension period, being October 1, 1994, to October 1, 1999, the City completed a Water System Master Plan.
31. Since October 1, 1999, the City has accomplished the following:
 - expanded capacity at Row River water treatment plant;
 - replaced transmission lines;
 - completed a Biological Assessment for the water treatment plant improvements;
 - and

- submitted a COBU for partial perfection of Permit S-42117;

The Department finds that work has been accomplished since the beginning of the last authorized extension time period, which provides evidence of good cause and reasonable diligence in developing the permit.

32. According to the Application, as of December 11, 2007, they have invested approximately \$15,017,500, which is about 60 percent of the total projected cost for complete development of this project. The City estimates a \$10,007,500 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-42117, other costs included in this accounting are not partitioned out for S-42117 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.
33. As of June 29, 2005, the City had diverted 3.1 cfs of the 6.2 cfs allowed for beneficial municipal purposes under the terms of this permit.
34. 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)]

35. According to the Application, as of December 11, 2007, they have invested approximately \$15,017,500, which is about 60 percent of the total projected cost for complete development of this project. The City estimates a \$10,007,500 investment is needed for the completion of this project.

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

36. As described in Findings 20 through 27 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-42117.
37. The City estimates an annual population growth rate of 1.3 percent per year over a 28 year period, being the years 2015 to 2043.
38. 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 Permit S-42117.
39. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 3.1 cfs (not to exceed the maximum amount authorized under this permit, being 6.2 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s)

(WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). A “Development Limitation” condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

40. 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)]

41. Uncertainty related to the Municipal Extension of Time process, including legal challenges to the City’s extension of time, contributed to the delay of full development of the use authorized under this permit.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

42. Delay of development under Permit S-42117 was due, in part, to legal challenges and legislative processes related to the Municipal Extension of Time process.

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.

43. The pending municipal Application for Extension of Time for Permit S-42117 was delivered to ODFW on February 2, 2018, for ODFW’s review under OAR-690-315-0080.
44. Notification that the pending municipal Application for Extension of Time for Permit S-42117 was delivered to ODFW for review was sent to the City on February 6, 2018.
45. Notification that the pending municipal Application for Extension of Time for Permit S-42117 was delivered to ODFW for review was published in the Department’s Public Notice dated February 6, 2018. WaterWatch of Oregon requested notification of any proposed fishery resource protection conditions for this permit.
46. On November 17, 2020, the Department received ODFW’s Division 315 Fish Persistence Evaluation and Proposed Fish Persistence Conditions for Permit S-42117.
47. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as of June 29, 2005, 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

Row River will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

The long-term objective for a listed species is to have the population increase to a sustainable level over time and maintain itself through natural fluctuations. Current scientific projections indicate that regional climate change impacts to freshwater systems in Oregon are likely to cause a long-term reduction in the frequency of favorable water years for many native species. Such changes include decreasing trends in snowpack volume, increased flows during the winter, decreased flows in late summer and fall, and an increasing trend in water temperatures. Conditions outlined in this letter reflect ODFW's obligation to conserve habitat conditions that support native species.

The target flows, in Table 1, below, are ODFW's recommended flows for maintaining the persistence of listed fish species in the Row River. ODFW advises the development of 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 target flows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE ROW RIVER DOWNSTREAM OF COTTAGE GROVE'S POINT OF DIVERSION	
Month	Cubic Feet per Second
January	190
February	190
March	190
April	190
May	190
June	190
July	100
August	100
September	100
October	100
November 1 - 15	175
November 16 - 30	175
December	190

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring streamflows at USGS Gage # 14155500 on the Row River near Cottage Grove is sufficient for determining if target flows are met within the Row River.

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

There is an undeveloped portion of 3.1 cfs of water under Permit S-42117 as per ORS 537.230(3)(d). 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 Permit S-42117 is 3.1 cfs. Therefore, 3.1 cfs is the amount of water under Permit S-42117 that must be conditioned for the persistence of listed fish species.

Authorization to incrementally expand use of water under this permit beyond 3.1 cfs up to the permitted quantity of 6.2 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 proposed conditions may result in a reduction in the amount of water conditioned for fish persistence under Permit S-42117 that can be diverted.

The proposed conditions in this extension of time are based on the following findings:

- a. The flows needed to maintain the persistence of fish must be determined or measured by the water user in the Row River below the City's Point of Diversion near Cottage Grove, Oregon, at USGS GAGE No.14155500, or its equivalent.
- b. ODFW recommends **partial curtailment** of the undeveloped portion of S-55338 following the formula described below when measured daily flows are less than recommended target flows in Table 1.

Calculation: ODFW evaluates water right permit curtailment need based on the fraction of target flow achievement (*EQ 1*).

$$T_a = (Q_g - P) / Q_t \quad (EQ 1)$$

Q_g = gaged daily flow

P = amount of water conditioned for fish persistence (3.1 cfs)

Q_t = target flow

T_a = target flow achievement

When the target flow achievement (T_a) is greater than 1, no curtailment is recommended. When the fraction target flow achievement is less than 1, curtailment of the undeveloped portion is recommended. The curtailed permit rate is determined by scaling the undeveloped portion of the permit by the fraction the flow target is not being met (EQ 2).

If $T_a \geq 1$, no curtailment necessary. Otherwise:

$$D_m = T_a * P \quad (EQ 2)$$

D_m = maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition

49. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-42117 will not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, and as a result of the use of the undeveloped portion of the permit, stream flows would be a limiting factor for the listed fish species.
50. 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-42117, 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
51. On November 23, 2020, 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-42117.

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).

⁵ The Department, based on advice from the ODFW, finds 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.

4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit S-42117 may be applied to beneficial use on land to which the right is not appurtenant.
5. The time requested to complete construction and apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
6. Completion of construction and full application of water to beneficial use can be completed by October 1, 2043⁶, as required by OAR 690-315-0080(1)(d).
7. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department finds 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).
8. As required by OAR 690-315-0090(3) and as described in Finding 39, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 3.1 cfs (not to exceed the maximum amount authorized under this permit, being 6.20 cfs) under Permit S-42117 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7).
9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 43 through 51, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use of the undeveloped portion under this municipal use permit, in the absence of special conditions. Therefore, the diversion of water beyond 3.1 cfs under Permit S-42117 will be subject to the conditions specified under Item 2 of the “Conditions” section of this PFO.

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction under Permit S-42117 from October 1, 1999, to October 1, 2043.

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

Extend the time to apply the water to beneficial use under Permit S-42117 from October 1, 1999, to October 1, 2043.

Subject to the following conditions:

CONDITIONS

1. Development Limitations

No diversion of water is currently allowed under the unperfected portion of Permit S-42117. Any diversion of the remaining unperfected portion of water under the permit, being 3.1 cfs of water 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-42117 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-42117 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 3.1 cfs of water under Permit S-42117 or any subsequent water right(s) originating from Permit S-42117 is not and will not be conditioned for maintaining fish persistence.

The portion of Permit S-42117 subject to these fish persistence conditions is established as 3.1 cfs in accordance with ORS 537.230(3)(d). The use of 3.1 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 S-42117 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 3.1 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. Minimum Fish Flow Needs

Fish persistence target flows in the Row River as recommended by ODFW are in Table 2, below; flows are to be measured in the Row River near Cottage Grove, Oregon (USGS Gage Number 14155500, or its equivalent).

Table 2

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE ROW RIVER DOWNSTREAM OF COTTAGE GROVE'S POINT OF DIVERSION	
Month	Cubic Feet per Second
January	190
February	190
March	190
April	190
May	190
June	190
July	100
August	100
September	100
October	100
November 1 - 15	175
November 16 - 30	175

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 permit or water right holder provides evidence in writing that ODFW has determined that flows may be measured at an alternate streamflow measurement point and the permit or water right holder 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 3.1 cfs conditioned for fish persistence that can be appropriated is determined in proportion to the amount by which the target flows shown in Table 2 are missed based on gaged daily flows⁷ as determined or

⁷ Alternatively, the City may use a seven day rolling average of mean daily flows.

measured by the water user in the Row River above the City's Point of Diversion, near Cottage Grove (or USGS Gage Number 14155500, or its equivalent). The curtailment need based on the fraction of target flow achievement is defined as:

$$T_a = (Q_g - P) / Q_t \quad (EQ 1)$$

Q_g = gaged daily flow

P = amount of water conditioned for fish persistence (3.1 cfs)

Q_t = target flow

T_a = target flow achievement

When the fraction target flow achievement (T_a) is greater than 1, no curtailment is recommended. When the fraction target flow achievement is less than 1, curtailment of the undeveloped portion is recommended. The curtailed permit rate is determined by scaling the undeveloped portion of the permit by the fraction the flow target is not being met (EQ 2).

If $T_a \geq 1$, no curtailment necessary. Otherwise:

$$D_m = T_a * P \quad (EQ 2)$$

D_m = maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition

C. Examples

Example 1: Target flow met.

On August 15, the gaged daily flow is 105 cfs. Given that the amount of water conditioned for fish persistence is 3.1 cfs, then the gaged daily flow (Q_g) minus 3.1 cfs (P) is greater than the 100 cfs target flow (Q_t) for August 15. In this example, $(Q_g - P)/Q_t \geq 1$.

$$(105 - 3.1)/100 = 1.019$$

$$1.019 \geq 1$$

The amount of water conditioned for fish persistence that can be diverted would not be reduced because the target flow is considered met.

Example 2: Target flow missed.

On August 15, the gaged daily flow is 80 cfs. Given that the amount of water conditioned for fish persistence is 3.1 cfs, then the gaged daily flow (Q_g) minus 3.1 cfs (P) is less than the 100 cfs target flow (Q_t) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence (**P**) is 3.1 cfs, if on August 15, the average of the gaged daily flow (**Q_g**) is 80 cfs and the target flow (**Q_t**) is 100 cfs, the fraction of target flow achievement (**T_a**) is less than 1.

$$(80 - 3.1)/100 = 0.769$$

$$0.769 \leq 1$$

Step 2: Given the fraction of target flow achievement (**T_a**) is less than 1 (from Step 1), and amount of water conditioned for fish persistence (**P**) is 3.1 cfs; the maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition (**D_m**) is 2.384 cfs.

$$0.769 * 3.1 \text{ cfs} = 2.384 \text{ cfs}$$

DATED: December 8, 2020



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 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 **January 24, 2021**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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 the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

If you have any questions about statements contained in this document, please contact Jeffrey 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
