

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time ) PROPOSED  
for Permit S-39599, Water Right Application S-50474, ) FINAL  
in the name of the City of Amity ) ORDER

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**Permit Information**

**Application File S-50474/ Permit S-39599**

Basin 2B – Middle Willamette Basin / Watermaster District 16

Date of Priority: May 16, 1973

**Authorized Use of Water**

Source of Water: South Yamhill River, a tributary of Yamhill River  
Purpose or Use: Municipal Use  
Maximum Rate: 1.00 Cubic Feet per Second (cfs)

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**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-39599, water right Application S-50474.

**Summary of Proposed Final Order for Extension of Time**

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1998, to October 1, 2031.
- Grant an extension of time to apply water to full beneficial use from October 1, 1998, to October 1, 2031.
- 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 Amity  
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 690-315-0050(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 February 25, 1976, Permit S-39599 was issued by the Department. The permit authorizes the use of up to 1.0 cfs of water from the South Yamhill River, a tributary of the Yamhill River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1977, and that complete application of water was to be made on or before October 1, 1978.
2. Two prior permit extensions have been granted for Permit S-39599. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1998.
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 October 17, 2016, City of Amity (City) submitted an “Application for Extension of Time” (Application) to the Department requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-39599 be extended from October 1, 1998, to October 1, 2031.
6. Notification of the City’s Application for Extension of Time for Permit S-39599 was published in the Department’s Public Notice dated October 25, 2016. No public comments were received regarding the extension application.
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 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 537.230<sup>1</sup>, 537.630<sup>2</sup> and/or 539.010(5)<sup>3</sup>*

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<sup>1</sup> ORS 537.230 applies to surface water permits only.

<sup>2</sup> ORS 537.630 applies to ground water permits only.

<sup>3</sup> ORS 539.010(5) applies to surface water and ground water permits.

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

8. On October 17, 2016, the Department received a completed application for extension of time and the fee specified in ORS 536.050.

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

9. Permit S-39599 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.<sup>4</sup>

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

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

10. The remaining work to be accomplished under Permit S-39599 consists of completing construction and applying water to full beneficial use.
11. As of October 1, 1998, the permit holder had diverted 0.475 cfs of the 1.0 cfs of water authorized under Permit S-39599 for municipal purposes. There is an undeveloped portion of 0.525 cfs of water under Permit S-39599 as per ORS 537.230(1)
12. In addition to the 1.0 cfs of water authorized under Permit S-39599 the City holds the following municipal use water right certificates and permits:
  - Certificate 2341 for 0.5 cfs of water from Breeding Springs;
  - Certificate 3920 for 0.13 cfs of water from Matthew Spring;
  - Certificate 42279 for 0.11 cfs of water from Well 4;
  - Certificate 61988 for 0.475 cfs of water from the South Yamhill River, limited to a maximum annual volume of 95 acre-feet annually, to be used during the period of April 1 through Septemeber 30 of each year;
  - Certificate 82452 for 0.45 cfs of water from the Well 3; and
  - Groundwater Registration 431 for 125 gallons per minute (gpm), being 65 gpm from Well #1 and 60 gpm from Well #2.

These water rights and permits total 2.94 cfs of water; being 2.105 cfs of live flow (surface) water, further limited to 1.63 cfs of live flow water during the period of October through March of each year; and 0.84 cfs of ground water. Currently the City does not utilize 0.63 cfs of surface water under Certificates 2341 and 3920; and 0.84 cfs of groundwater under Certificates 42279 and 82452, and Groundwater Registration 431.

13. In 2010, the City approved an amendment to the Urban Growth Boundary, adding an additional 44.0 acres within the city limits. It is anticipated that as the current UGB approaches buildout, the UGB will again be expanded.
14. The City's peak water demand within its service area boundaries was 0.92 cfs in 2015.

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

15. The City's peak day demand is projected to be approximately 1.0 cfs of water by the year 2031.
16. Full development of Permit S-39599 is needed to address the present and future water demand of City of Amity, including system redundancy and emergency use.

Based on Findings of Fact 10, through 16, the Department finds that the City's request for an extension of time until October 1, 2031, to complete construction and to apply water to full beneficial use under the terms of Permit S-39599 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.*

17. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
18. During the last extension period, being October 1, 1993, to October 1, 1998, the City accomplished the following:
  - constructed a new raw water intake (infiltration gallery) in the South Yamhill River; and
  - began to prepare a Water System Master Plan.
19. Since October 1, 1998, the City has accomplished the following:
  - submitted a Water Management and Conservation Plan (WMCP) in 1999;
  - completed Phase 1 Water System Improvement;
  - installed circular wire wedge intake screen; and
  - submitted an updated WMCP in 2014.

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.

20. According to the Application, as of October 17, 2016, they have invested approximately \$2,220,000, which is about 22 percent of the total projected cost for complete development of this project. The City estimates a \$7,936,000 investment is needed for the completion of this project. The Department recognizes that while some of these

investment costs are unique to construction and development solely under S-39599, other costs included in this accounting are not partitioned out for S-39599 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.

21. As of October 1, 1998, the City had diverted 0.475 cfs of the 1.0 cfs allowed 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 Application, as of October 17, 2016, they have invested approximately \$2,220,000, which is about 22 percent of the total projected cost for complete development of this project. The City estimates a \$7,936,000 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 13 through 22 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-39599.
25. The City estimates an annual population growth rate of 2.17 percent per year over a 15 year period, being the years 2016 to 2031.
26. 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-39599.
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 0.475 cfs (not to exceed the maximum amount authorized under this permit, being 1.0 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)]*

28. The City employs generally accepted utility rate-making practices in fixing rates to capture current operating expenses, maintain the system, make debt payments, and create reserves sufficient to repay current users for their investment in the system and provide

funds for future improvements. Use and income from the permitted water development project would likely result in reasonable returns upon the investment made in the project to date.

**Other Governmental Requirements [OAR 690-315-0080(3)(f)]**

29. 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)]**

30. Delay of development under Permit S-39599 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.*

31. The pending municipal Application for Extension of Time for Permit S-39599 was delivered to ODFW on January 24, 2017, for ODFW's review under OAR-690-315-0080.
32. Notification that the pending municipal Application for Extension of Time for Permit S-39599 was delivered to ODFW for review was sent to the City on January 25, 2017.
33. Notification that the pending municipal Application for Extension of Time for Permit S-39599 was delivered to ODFW for review was published in the Department's Public Notice dated February 7, 2017. No public comments were received regarding this notice.
34. On December 18, 2020, the Department received ODFW's Division 315 Fish Persistence Evaluation and Proposed Fish Persistence Conditions for Permit S-39599.
35. Summary and Excerpts of Advice from ODFW:
  - The South Yamhill River provides habitat for Upper Willamette Winter Steelhead (federally threatened, state critical), Spring Chinook (federally threatened, state sensitive-critical), Pacific Lamprey (state sensitive), and Western Brook Lamprey (state sensitive).
  - The South Yamhill River is classified as water quality impaired, per 303(d) listing. Specific impairments include dissolved oxygen and water temperature, both of which are influenced by stream discharge.
  - There are multiple instream water rights on the South Yamhill River reach from the point of diversion (POD) to the confluence with the North Yamhill River. Additionally, existing ODFW instream flow studies (Basin Investigation Reports

(BIR)) quantify target instream flows for fish and wildlife. Please see Table 1 for monthly instream water rights and BIR-based target flows.

- MF 162 has a priority date of 06/22/1964 and is senior to S-50474. It is ODFW’s understanding that municipal diversions from the South Yamhill are subject to regulation by this senior instream right when MF 162 flows are not met.
- MF 163 has a priority date of 11/03/1983 and is junior to S-50474.
- WRD water availability analyses indicate a deficit in available water June-October in reaches downstream of the POD.
- USGS streamgage # 14194150, South Yamhill River at McMinnville, is located 20 river miles downstream of the POD in Water Availability Basin #163 (S. Yamhill River at Mouth). This gage was used for assessing current achievement of fish persistence flows based on the period of record 10/01/1994-05/08/2018.
- ODFW recommends curtailment of the undeveloped portion of water right S-50474 during periods when measured daily flows do not meet target flows for fish persistence (Table 1, Column 5).

Table 1. Instream flow targets and instream water rights for the South Yamhill River in the vicinity of the POD for S-50474.

Period	C-59484 (MF 162) [cfs]	C-59461 (MF 163) [cfs]	BIR Based [cfs]	ODFW Target Flows [cfs]
JAN	15	200	200	<b>200</b>
FEB	15	200	200	<b>200</b>
MAR	15	200	200	<b>200</b>
APR	15	200	200	<b>200</b>
MAY	15	200	200	<b>200</b>
JUN 1-15	15	150	150	<b>150</b>
JUN 16-31	15	100	100	<b>100</b>
JUL 1-15	15	62	60	<b>62</b>
JUL 16-31	15	62	40	<b>62</b>
AUG	15	62	35	<b>62</b>
SEP	15	62	35	<b>62</b>
OCT	15	150	200	<b>200</b>
NOV	15	200	200	<b>200</b>
DEC	15	200	200	<b>200</b>

#### Streamflow Measurement Point and Frequency

Achievement of ODFW flow targets should be based on daily discharge data from USGS streamgage #14194150.



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

There is an undeveloped portion of 0.525 cfs of water under Permit S-39599 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-39599 is 0.525 cfs. Therefore, 0.525 cfs is the amount of water under Permit S-39599 that must be conditioned for the persistence of listed fish species.

Authorization to incrementally expand use of water under this permit beyond 0.475 cfs up to the permitted quantity of 1.0 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-39599 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 South Yamhill River at McMinnville, Oregon, at USGS GAGE No.14194150, or its equivalent.
- b. ODFW recommends **partial curtailment** of the undeveloped portion of S-50474 following the formula described below when measured daily flows are less than recommended target flows in Table 1. 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 (0.525 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

37. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-39599 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.
38. 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-39599, 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.)<sup>5</sup>
39. On December 22, 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-39599.

### **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(3).
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) and (b), water under Permit S-39599 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, 2031<sup>6</sup>, 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

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<sup>5</sup>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.

<sup>6</sup>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.

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 27, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 0.475 cfs (not to exceed the maximum amount authorized under this permit, being 1.0 cfs) under Permit S-39599 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).

### **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-39599 from October 1, 1998, to October 1, 2031.

Extend the time to apply the water to beneficial use under Permit S-39599 from October 1, 1998, to October 1, 2031.

Subject to the following conditions:

### **CONDITIONS**

#### **1. Development Limitations**

A maximum diversion of 0.475 cfs of water is currently allowed under Permit S-39599. Any diversion of water beyond 0.475 cfs (not to exceed the maximum amount authorized under the permit, being 1.00 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 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-39599 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-39599 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 0.475 cfs of water under Permit S-39599 or any subsequent water right(s) originating from Permit S-39599 is not and will not be conditioned for maintaining fish persistence.*

The portion of Permit S-39599 subject to these fish persistence conditions is established as 0.525 cfs in accordance with ORS 537.230(3)(d). The use of 0.525 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-39599 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 0.525 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 South Yamhill River as recommended by ODFW are in Table 2, below; flows are to be measured in the South Yamhill River near McMinnville, Oregon (USGS Gage Number 14194150, or its equivalent).

**Table 2**

<b>ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE SOUTH YAMHILL RIVER AT McMINNVILLE, OREGON</b>	
<b>Month</b>	<b>Cubic Feet per Second</b>
January	200
February	200
March	200
April	200
May	200
June 1 – 15	150
June 16 – 30	100
July	62
August	62
September	62
October	200

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE SOUTH YAMHILL RIVER AT McMinnville, Oregon	
November	200
December	200

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 0.525 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 a seven-day rolling average of mean daily flows as determined or measured by the water user in the South Yamhill River, near McMinnville (USGS Gage Number 14194150, or its equivalent). 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 (0.525 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 amount of water conditioned for fish persistence is recommended. The curtailed permit rate is determined by scaling the amount of water conditioned for fish persistence 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 ( $Q_g$ ) 65 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.525 cfs, then the gaged daily flow ( $Q_g$ ) minus 0.525 is ( $P$ ) greater than the 62 cfs target flow ( $Q_t$ ) for August 15. In this example,  $(Q_g - P)/Q_t \geq 1$ .

$$(65 - 0.525)/62 \geq 1$$

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 ( $Q_g$ ) is 55 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.525 cfs, then the gaged daily flow ( $Q_g$ ) minus 0.525 cfs ( $P$ ) is less than the 62 cfs target flow ( $Q_t$ ) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.525 cfs, if on August 15, the average of the gaged daily flow ( $Q_g$ ) is 55 cfs and the target flow ( $Q_t$ ) is 62 cfs, the fraction of target flow achievement ( $T_a$ ) is less than 1.

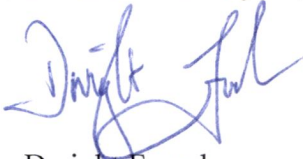
$$(55 - 0.525) / 62 = 0.88$$

$$0.88 < 1$$

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 0.525 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 0.46 cfs.

$$0.88 * 0.525 \text{ cfs} = 0.46 \text{ cfs}$$

DATED: January 26, 2021



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 **March 12, 2021**, 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 Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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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

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**Mailing List for Extension PFO Copies**

**PFO Date: January 26, 2021**

**Application S-50474**

**Permit S-39599**

**Original mailed to:**

City of Amity  
Attn: Justin Houge  
109 Maddox Ave.  
Amity, OR 97101

**Copies sent to:**

1. WRD - App. File S- 50474/ Permit S-39599
2. WRD - Watermaster District: 16 - Joel Plahn
3. Other (engineers, etc)

**Fee paid as specified under ORS 536.050 to receive copy:**

4. None

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

5. None
6. WRD -- Kerri Cope, Water Supply and Conservation Team (WMCP)  
*Done by* \_\_\_\_\_ *Date* \_\_\_\_\_

CASEWORKER: JDP

<b>Copies Mailed</b>
By: _____ (SUPPORT STAFF)
On: _____ (DATE)