

**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-52498, Water Right Application S-69804,	) FINAL
in the name of the Southwest Lincoln County Water PUD	) ORDER

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**Permit Information**

**Application File S-69804**

**Permit S-52498(modified by Permit Amendment T-7862**

Basin 18 – Middle Coast Basin / Watermaster District 1

Date of Priority: January 13, 1989

**Authorized Use of Water**

Source of Water:	Vingie Creek, a tributary of Pacific Ocean, a tributary of Pacific Ocean
Purpose or Use:	Municipal Use
Maximum Rate:	0.6 cubic feet per second (cfs) during the period of July 1 through July 31 and 1.0 cfs during the period of August 1 through June 30

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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-52498, water right Application S-69804.

**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, 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  
PUD – Southwest Lincoln County Water PUD  
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(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 690-315-0090(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 July 17, 1996, Permit S-52498 was issued by the Department. The permit authorizes the use of up to 0.6 cfs of water from July 1, through July 31, and 1.0 cfs of water from August 1, through June 30, from the Vingie Creek, a tributary of Pacific Ocean, a tributary of the Pacific Ocean, for municipal use. The permit specified actual construction was to begin by July 17, 1997, construction of the water development project was to be completed by October 1, 1998, and that complete application of water was to be made on or before October 1, 1999.
2. On June 15, 1998, the Department approved Permit Amendment T-7862 (Special Order Volume 52, Page 564) authorizing a change in the place of use and the point of diversion under Permit S-52498 (modified by Permit Amendment T-7862) which is hereafter referred to simply as Permit S-52498.
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 March 17, 2003, Southwest Lincoln County Water PUD (PUD) 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-52498 be extended from October 1, 1999, to October 1, 2049. This is the first extension of time request for Permit S-52498.
6. Notification of the PUD's Application for Extension of Time for Permit S-52498 was published in the Department's Public Notice dated March 25, 2003. No public comments were received regarding the extension application.
7. On April 15, 2005, the PUD submitted revisions to their pending Application for Extension of Time. The revision included a request to change to extension date from October 1, 2049, to October 1, 2043.
8. 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.
9. On December 28, 2017, the PUD submitted supplemental information and update revisions to their pending Application for Extension of Time. The information was submitted to update the portion of the permit that was developed prior to June 29, 2005.

**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>*

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

10. On March 17, 2003, 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)]**

11. Permit S-52498 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.*

12. The remaining work to be accomplished under Permit S-52498 consists of completing construction and applying water to full beneficial use.
13. As of June 29, 2005, the permit holder had diverted 0.91 cfs of the 1.0 cfs of water authorized under Permit S-52498 for municipal purposes. There is an undeveloped portion of 0.09 cfs of water under Permit S-52498 as per ORS 537.230(1).
14. In addition to the 0.6 cfs of water from July 1, through July 31, and 1.0 cfs of water from August 1, through June 30, authorized under Permit S-52498 the PUD holds the following municipal use water right certificates and permits:
  - Certificate 90039 for 0.3 cfs of water from the Big Creek;
  - Certificate 90038 for 0.3 cfs of water from the Starr Creek;
  - Certificate 80664 for 0.4 cfs of water from the Dicks Fork;
  - Permit S-31979 for 0.3 cfs of water from the Vingie Creek; and
  - Permit S-53693 for 0.3 cfs of water from the Big Creek;

These water rights and permits total 2.6 cfs, limited to 2.2 cfs during the period July 1, through July 31, of live flow (surface) water. The PUD only utilized the 0.3 cfs of water from Big Creek, authorized under Permit S-53693 for emergency purposes. Southwest

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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.

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



Lincoln County Water PUD has not yet made use of 0.09 cfs of water under Permit S-52498.

15. Under current zoning laws, there are approximately 200 to 300 lots to be developed within the Waldport city limits. Additionally, approximately 1,000 lots could be developed if sewer service is extended out from the cities of Waldport and Yachats.
16. Interconnections between the PUDs distribution system, and the Cities of Waldport and Yachats provide emergency water to both cities.
17. According to the Application, in 2003, the population within the service boundary of the PUD was 2,020. According to the WMCP submitted in 2014, the population within the service boundary of the PUD was 4,122 in 2012. The population includes both full time residents and tourists. The PUD estimates the population will increase at a growth rate of 1 percent per year, reaching an estimated population of 3,008 by the year 2043.
18. The PUD's peak water demand within its service area boundaries was 0.7 cfs in 2003, and 1.1 cfs in 2014<sup>5</sup>.
19. The PUD's peak day demand is projected to be approximately 2.6 cfs of water by the year 2043.
20. Full development of Permit S-52498 is needed to address the present and future water demand of Southwest Lincoln County Water PUD, including system redundancy and emergency use.
21. The Department finds that the PUD'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-52498 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.*

22. Construction of the water distribution system began prior to the issuance of Permit S-52498.

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<sup>5</sup> According to the PUD's current WMCP, and based on Peak Day Use, assuming 12-hr pumping day.

23. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
24. Since October 1, 1998, the PUD has continued to provide additional connections to the water service, have performed maintenance of the water system, and developed the required Water Management and Conservation Plan, as required by the permit.

The Department finds that work has been accomplished during the original development period, which provides evidence of good cause and reasonable diligence in developing the permit.

25. According to the Application, as of March 17, 2003, the PUD has invested approximately \$224,632, which is about 13 percent of the total projected cost for complete development of this project. The PUD estimates a \$1,500,000 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-52498, other costs included in this accounting are not partitioned out for S-52498 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the PUD, 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 PUD's water rights.
26. As of June 29, 2005, the PUD had diverted 0.6 cfs of the 0.6 cfs allowed during the period of July 1, through July 31, of each year, and 0.91 cfs of the 1.0 cfs allowed during the period of August 1, through June 30, of each year, for beneficial municipal purposes under the terms of this permit.
27. The Department has considered the PUD's compliance with conditions, and did not identify any concerns.

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

28. According to the Application, as of March 17, 2003, the PUD has invested approximately \$224,632, which is about 13 percent of the total projected cost for complete development of this project. The PUD estimates a \$1,500,000 investment is needed for the completion of this project.

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

29. According to the Application, as of March 17, 2003, they have invested \$224,632, which is 13 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$1,500,000 investment is needed for the completion of this project.

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

30. Interconnections between the PUD and the cities of Waldport and Yachats for emergency use.



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

31. The PUD has indicated, and the Department finds that Southwest Lincoln County Water PUD must rely on full development of Permit S- 52498 to meet its present and future water demands.
32. The PUD estimates an annual population growth rate of 1 percent per year a 40-year period, being (year) 2003, to 2043.
33. Given the current water supply situation of Southwest Lincoln County Water PUD, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-52498.
34. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.91 cfs (not to exceed the maximum amount authorized under this permit, being 1.00 cfs) under Permit S-52498 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)]**

35. 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)]**

36. According to the Application, delay in the development of this project was caused, in part, by a denial of a permit to construct the intake and access road on U.S. Forrest Service land. The PUD had to gain authorization of a Permit Amendment to change the point of diversion off of land owned by the U.S. Forrest service prior to construction of the intake.

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

37. Delay of development under Permit S-52498 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.*

38. The pending municipal Application for Extension of Time for Permit S-52498 was delivered to ODFW on January 19, 2018, for ODFW's review under OAR-690-315-0080.
39. Notification that the pending municipal Application for Extension of Time for Permit S-52498 was delivered to ODFW for review was sent to the PUD on January 19, 2018.
40. Notification that the pending municipal Application for Extension of Time for Permit S-52498 was delivered to ODFW for review was published in the Department's Public Notice dated April 24, 2018. No public comments were received regarding this notice.
41. On March 29, 2021, the Department received ODFW's Division 315 Fish Persistence Evaluation and Proposed Fish Persistence Conditions for Permit S-52498.
42. Summary and Excerpts of Advice from ODFW:
  - The Southwest Lincoln County PUD has a surface water right from Vingie Creek of 1.0 cfs for the period of August 1-June 30 and 0.6 cfs July 1-31. The undeveloped portion of the permit for the period of August 1-June 30 is 0.09 cfs. There is no undeveloped portion for the month of July.
  - Vingie Creek provides habitat for the following STE species: Coho Salmon (Federal – Threatened, State – Sensitive) and Pacific Lamprey (State – Sensitive). It also provides important habitat for Winter Steelhead (considered potentially at risk) and Coastal Cutthroat Trout.
  - ODFW develops target flows based on available data including (but not limited to) instream water rights on the impacted reach, flows recommended in Basin Investigation Reports (BIR), instream flow studies, and modeled or measured streamflow data. Target flows for Vingie Creek downstream of Southwest Lincoln County PUD's point of diversion (POD) are presented in Table 1.
  - There are no instream water rights on Vingie Creek, and information from WRD's Water Availability Reporting system indicates that there are estimated flow deficits for the months of August-October.
  - If measured daily discharge is less than the recommended target flow, the permit should be conditioned so that Southwest Lincoln County PUD reduces the amount of water diverted through this extension based on the curtailment formula discussed below.
  - There are no known active stream gages on Vingie Creek, so it is Southwest Lincoln County PUD's responsibility to install and maintain an appropriate flow-measurement device to maintain compliance on a daily basis with the conditions outlined in this letter.



Table 1. ODFW target flows for Vingie Creek.

Month	ODFW Target Flows (cfs)
JAN	14.01
FEB	12.63
MAR	10.84
APR	7.35
MAY	4.35
JUN	2.38
JUL	1.55
AUG	0.80
SEP	1.39
OCT	1.45
NOV	8.45
DEC	13.53

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

There is an undeveloped portion of 0.09 cfs of water for the period of August 1-June 30 under Permit S-52498 as per OAR 690-315-0010(6)(g). There is no undeveloped portion for the month of July. 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-52498 is 0.09 cfs for the period of August 1-June 30. Therefore, 0.09 cfs is the amount of water under Permit S-52498 that must be conditioned for the persistence of listed fish species.

Authorization to incrementally expand use of water under this permit beyond 0.91 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-52498 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 measured by the water user in Vingie Creek at the existing point of diversion.

- b. ODFW recommends **partial curtailment** of the undeveloped portion of S-69804 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*).

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

$Q_g$  = measured daily flow

$P$  = amount of water conditioned for fish persistence (0.09 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

44. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-52498 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.
45. 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-52498, 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>6</sup>
46. On April 22, 2021, the Department notified the PUD 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-52498.

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<sup>6</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.



## **CONCLUSIONS OF LAW**

1. The PUD 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 PUD 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-52498 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, 2043<sup>7</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 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 PUD 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 34, above, and specified under Item 1 of the "Conditions" section of this PFO, the diversion of water beyond 0.91 cfs (not to exceed the maximum amount authorized under this permit, being 1.0 cfs) under Permit S-52498 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 38, through 46, 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

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<sup>7</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.

permit, in the absence of special conditions. Therefore, the diversion of water beyond 0.91 cfs under Permit S-52498 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-52498 from October 1, 1998, to October 1, 2043.

Extend the time to apply the water to beneficial use under Permit S-52498 from October 1, 1999, to October 1, 2043.

Subject to the following conditions:

### **CONDITIONS**

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

A maximum diversion of 0.91 cfs of water is currently allowed under Permit S-52498. Any diversion of water beyond 0.91 cfs (not to exceed the maximum amount authorized under the permit, being 1.0 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 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-52498 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-52498 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 0.91 cfs of water for August-June under Permit S-52498 or any subsequent water right(s) originating from Permit S-52498 is not and will not be conditioned for maintaining fish persistence.*

The portion of Permit S-52498 subject to these fish persistence conditions is established as 0.09 cfs for the period of August-June in accordance with ORS 537.230(3)(d). The use



of 0.09 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-52498 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 0.09 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. Target Flow Needs

Fish persistence target flows in Vingie Creek as recommended by ODFW are in Table 2, below; flows are to be measured in Vingie Creek at the existing point of diversion.

**Table 2**

<b>ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN VINGIE CREEK</b>	
Month	Cubic Feet per Second
JAN	14.01
FEB	12.63
MAR	10.84
APR	7.35
MAY	4.35
JUN	2.38
JUL	1.55
AUG	0.80
SEP	1.39
OCT	1.45
NOV	8.45
DEC	13.53

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 0.09 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 measured by the water user in Vingie Creek at the existing point of diversion. The fraction of target flow achievement is defined as:

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

$Q_g$  = measured daily flow

$P$  = amount of water conditioned for fish persistence (0.09 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 ( $Q_g$ ) 1.0 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.09 cfs, then the gaged daily flow ( $Q_g$ ) minus 0.09 is ( $P$ ) greater than the 0.802 cfs target flow ( $Q_t$ ) for August 15. In this example,  $(Q_g - P)/Q_t \geq 1$ .

$$(1.0 - 0.09)/0.80 \geq 1$$

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 0.75 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.09 cfs, then the gaged daily flow ( $Q_g$ ) minus 0.09 cfs ( $P$ ) is less than the 0.80 cfs target flow ( $Q_t$ ) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence ( $P$ ) is 0.09 cfs, if on August 15, the average of the gaged daily flow ( $Q_g$ ) is 0.75 cfs and the target flow ( $Q_t$ ) is 0.80 cfs, the fraction of target flow achievement ( $T_a$ ) is less than 1.

$$(0.75 - 0.09) / 0.80 = 0.825$$

$$0.825 < 1$$

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 0.09 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 0.07 cfs.

$$0.825 * 0.09 \text{ cfs} = 0.07 \text{ cfs}$$

DATED: July 6, 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 **August 20, 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 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.

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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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