

**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-40699, Water Right Application S-51339, ) FINAL  
in the name of the Tri Authority Water & Sanitary Authority ) ORDER

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**Permit Information**

**Application File S-51339/ Permit S-40699**

Basin 16 – Umpqua Basin / Watermaster District 15

Date of Priority: October 4, 1973

**Authorized Use of Water**

Source of Water: South Umpqua River, a tributary of Umpqua River  
Purpose or Use: Municipal Use  
Maximum Rate: 3.00 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-40699, water right Application S-51339.

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

**The Department proposes to:**

- Grant an extension of time to complete construction from October 1, 1996, to October 1, 2046.
- Grant an extension of time to apply water to full beneficial use from October 1, 1996, to October 1, 2046.
- 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  
Authority – Tri Authority Water & Sanitary Authority  
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  
gpcd – gallons per capita 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 September 16, 1976, Permit S-40699 was issued by the Department. The permit authorizes the use of up to 3.00 cfs of water from the South Umpqua River, a tributary of the Umpqua River, for municipal use. The permit specified that construction of the water development project was to be completed by October 1, 1978, and that complete application of water was to be made on or before October 1, 1979.
2. Four prior permit extensions have been granted for Permit S-40699. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 1996.
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. On October 2, 2003, Tri Authority Water & Sanitary Authority (Authority) 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-40699 be extended from October 1, 1996 to October 1, 2025.
5. 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.
6. Notification of the Authority's Application for Extension of Time for Permit S-40699 was published in the Department's Public Notice dated October 14, 2003. No public comments were received regarding the extension application.
7. On March 17, 2005, the permit holder submitted additional information to supplement and update their Application for Extension of Time. The amendment requested the extended time to complete construction be changed from October 1, 2025, to October 1, 2032, and the extended time to apply water to full beneficial use be changed from October 1, 2025, to October 1, 2032.
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 18, 2017, the permit holder submitted an amendment to their application. The amendment requested the extended time to complete construction be changed from October 1, 2032, to October 1, 2046, and the extended time to apply water to full beneficial use be changed from October 1, 2032, to October 1, 2046.

**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 October 2, 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-40699 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-40699 consists of completing construction of the water system, which includes upgrading the intake and filtration facility; and applying water to full beneficial use.
13. As of June 29, 2005, the permit holder had diverted 1.78 cfs of the 3.00 cfs of water authorized under Permit S-40699 for municipal purposes. There is an undeveloped portion of 1.22 cfs of water under Permit S-40699 as per ORS 537.230(1).
14. In addition to the 3.00 cfs of water authorized under Permit S-40699 the Authority holds the following municipal use and quasi-municipal water right certificates:
- Certificate 30263 for 1.0 cfs of water from the South Umpqua River;
  - Certificate 52975 for 0.125 cfs of water from the South Umpqua River;
  - Certificate 87282 for 0.34 cfs of water from the South Umpqua River;
  - Certificate 90165 for 0.425 cfs of water from the South Umpqua River;

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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).



- Certificate 90166 for 0.25 cfs of water, limited to 50.0 acre-feet during the irrigation season each year from the South Umpqua River; and
- Certificate 90167 for 0.07 cfs of water, limited to 12.5 acre-feet during the irrigation season each year from South Umpqua River.

These water rights and permits total 5.22 cfs of water, limited to 4.9 cfs of water outside of the irrigation season each year. Tri Authority Water & Sanitary Authority has not yet made use of 1.22 cfs of water under Permit S-40699.

15. According to the Application, in 2003, the population within the service boundary of Tri Authority Water & Sanitary Authority was 3,790. The Authority estimates the population will increase at a growth rate of 2.5 percent per year. This would result in an estimated population of 10,958 by the year 2046.
16. The Authority's peak water demand within its service area boundaries was 3.67 cfs in 2003.
17. The Authority's peak day demand is projected to be approximately 4.87 cfs of water by the year 2032, and their peak demand will exceed the cumulative total rate authorized by all the Authorities water rights by 2046.
18. Full development of Permit S-40699 is needed to address the present and future water demand of Tri Authority Water & Sanitary Authority, including system redundancy and emergency use.
19. Based on Findings of Fact 13, through 18, the Department finds that the Authority's request for an extension of time until October 1, 2046, to complete construction and to apply water to full beneficial use under the terms of Permit S-40699 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.*

20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame.
21. During the last extension period, being October 1, 1992, to October 1, 1996, the Authority accomplished the following:

- completed a water system master plan.
22. Since October 1, 1996, the Authority has updated the intake facility.

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.

23. According to the Application, as of October 2, 2003, they have invested approximately \$2,000,000, which is about 73 percent of the total projected cost for complete development of this project. The Authority estimates a \$750,000 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-40699, other costs included in this accounting are not partitioned out for S-40699 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the Authority, 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 Authority's water rights.
24. As of June 29, 2005, the Authority had diverted 1.78 cfs of the 3.00 cfs allowed for beneficial municipal purposes under the terms of this permit.
25. The Department has considered the Authority'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)]*

26. According to the Application, as of October 2, 2003, they have invested approximately \$2,000,000, which is about 73 percent of the total projected cost for complete development of this project. The Authority estimates a \$750,000 investment is needed for the completion of this project.

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

27. As described in Findings 13, through 18, above, the Authority has indicated, and the Department finds that the Authority must rely on full development of their Permit S-40699.
28. The Authority estimates an annual population growth rate of 2.5 percent per year over a 43-year period, being the years 2003, to 2046.
29. Given the current water supply situation of the Authority, 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-40699.



30. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 1.78 cfs (not to exceed the maximum amount authorized under this permit, being 3.00 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)]**

31. 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)]**

32. 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)]**

33. Delay of development under Permit S-40699 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.*

34. The pending municipal Application for Extension of Time for Permit S-40699 was delivered to ODFW on January 19, 2018, for ODFW’s review under OAR-690-315-0080.
35. Notification that the pending municipal Application for Extension of Time for Permit S-40699 was delivered to ODFW for review was sent to the Authority on March 15, 2006.
36. Notification that the pending municipal Application for Extension of Time for Permit S-40699 was delivered to ODFW for review was published in the Department’s Public Notice dated April 24, 2018. WaterWatch of Oregon submitted comments requesting notification of the advice and conditions received.
37. On October 22, 2021, the Department received ODFW’s Division 315 Fish Persistence Evaluation and Proposed Fish Persistence Conditions for Permit S-40699.
38. Summary and Excerpts of Advice from ODFW:



As directed by ORS 537.230 (3)(d) and ORS 537.630 (3)(d), ODFW provides the following advice to WRD to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. 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 South Umpqua River will be affected by water use under this permit.

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 for 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 naturally-occurring native species.

ODFW's advice is based on existing data. ODFW recommends the flows set forth in Table 1 and advises WRD to develop conditions that allow Tri-City Water and Sanitary Authority (TCWSA) to meet its water needs while maintaining the persistence of listed fish species.

ODFW recommends **partial curtailment** of the undeveloped portion of the water right for most of the year (1/1-9/15 and 11/1-12/30) when target flow achievement ( $T_a$ ) is missed ( $T_a < 1$ ).

ODFW recommends **full curtailment** of the undeveloped portion of the water right from 9/16-10/31 when target flow achievement ( $T_a$ ) is missed ( $T_a < 1$ ). Seasonal low flows and high temperatures during this time coincide with periods of peak use for various life stages of the STE species identified above, and additional water withdrawals will negatively affect fish persistence. The start date for full curtailment is consistent with other regulations that are in place, including the first day of closure for all angling on the S. Umpqua.

**Table 1**

<b>Month</b>	<b>ODFW Target Flows at Gage 14312000 (cfs)</b>	<b>Curtailment type when <math>T_a</math> missed</b>
JAN	571	partial
FEB	571	partial
MAR	571	partial
APR	571	partial
MAY	336	partial
JUN	226	partial
JUL	226	partial



AUG	201	partial
SEPT 1-15	178	partial
SEPT 16-30	225	full
OCT 1-15	268	full
OCT 16-31	419	full
NOV	571	partial
DEC	571	partial

### Streamflow Measurement Point

USGS streamgage #14312000, South Umpqua River near Brockway, OR, was used to assess fish persistence flows. The gage is operational and should provide satisfactory data for TCWSA to evaluate ODFW target flow achievement on a daily basis.

Fish persistence target flows were established for the assumed monitoring location – USGS streamgage #14312000 – 20 miles downstream of the point of diversion (POD). If TCWSA elects to install an appropriate streamflow measurement device near the POD for compliance purposes in place of the USGS gage, ODFW will provide revised target flows to reflect the POD monitoring location.

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

There is an undeveloped portion of 1.22 cfs of water under Permit S-40699 as per ORS 537.230(1). 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-40699 is 1.22 cfs. Therefore, 1.22 cfs is the amount of water under Permit S-40699 that must be conditioned for the persistence of listed fish species.

Authorization to incrementally expand use of water under this permit beyond 1.78 cfs up to the permitted quantity of 3.0 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-40699 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 at USGS streamgage #14312000, South Umpqua River near Brockway, OR.

- b. ODFW recommends **full curtailment** of the undeveloped portion of the water right from 9/16-10/31 when target flow achievement is missed ( $T_a < 1$ ).
- c. ODFW recommends **partial curtailment** of the undeveloped portion of the water right for most of the year (1/1-9/15 and 11/1-12/30) when target flow achievement is missed ( $T_a < 1$ ).
- d. ODFW's advice recognizes that municipalities can return a certain portion of flow to a waterbody through effluent discharge. If the municipality can demonstrate that the withdrawal point(s) and effluent discharge(s) are within reasonable proximity to each other - such that fish habitat between the two points is not impacted significantly - curtailment of the water right extension can be adjusted to be based on monthly consumptive use (diverted-effluent) rather than just the quantity diverted.

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

$$T_a = (Q_g - P) / Q_t \quad (\text{Equation 1})$$

$T_a$  = target flow achievement

$Q_g$  = gaged daily flow

$P$  = amount of water conditioned for fish persistence (1.22 cfs)

$Q_t$  = target flow

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

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

$$D_m = T_a * P \quad (\text{Equation 2})$$

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

40. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-40699 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.

41. 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-40699, 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>

42. On October 22, 2021, the Department notified the Authority 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-40699.

### **CONCLUSIONS OF LAW**

1. The Authority 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 Authority 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-40699 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, 2046<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 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 Authority 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-

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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.

315-0080(1)(e).

8. As required by OAR 690-315-0090(3) and as described in Finding 30, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 1.78 cfs (not to exceed the maximum amount authorized under this permit, being 3.00 cfs) under Permit S-40699 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 34, through 42, 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 1.78 cfs under Permit S-40699 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-40699 from October 1, 1996, to October 1, 2046.

Extend the time to apply the water to beneficial use under Permit S-40699 from October 1, 1996, to October 1, 2046.

Subject to the following conditions:

### **CONDITIONS**

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

A maximum diversion of 1.78 cfs of water is currently allowed under Permit S-40699. Any diversion of water beyond 1.78 cfs (not to exceed the maximum amount authorized under the permit, being 3.00 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-40699 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, on file with the Department. For review of water management and conservation plans that propose to increase the maximum rate of water diverted under an Extended Permit, after January 1, 2042, that the additional diversion of water will not impair or be detrimental to the public interest.



The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-40699 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 1.78 cfs of water under Permit S-40699 or any subsequent water right(s) originating from Permit S-40699 is not and will not be conditioned for maintaining fish persistence.*

The portion of Permit S-40699 subject to these fish persistence conditions is established as 1.22 cfs in accordance with ORS 537.230(3)(d). The use of 1.22 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-40699 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 1.22 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 Umpqua River as recommended by ODFW are in Table 2, below; flows are to be measured at USGS streamgage #14312000, South Umpqua River near Brockway, OR.

**Table 2**

<b>Month</b>	<b>ODFW Target Flows at Gage 14312000 (cfs)</b>
JAN	571
FEB	571
MAR	571
APR	571
MAY	336
JUN	226
JUL	226

AUG	201
SEPT 1-15	178
SEPT 16-30	225
OCT 1-15	268
OCT 16-31	419
NOV	571
DEC	571

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 1.22 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 measured daily flows as determined or measured by the water user at USGS streamgage #14312000, South Umpqua River near Brockway, OR.

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 (1.22 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  $T_a$  is less than one, full or partial curtailment is recommended as outlined below.

When target flow achievement is missed ( $T_a < 1$ ; determined using Equation 1) from September 16 through October 31, of each year, the full undeveloped portion of 1.22 cfs shall be curtailed.



When target flow achievement is missed ( $T_a < 1$ ; determined using Equation 1) during the periods of January 1 through September 15, and November 1 through December 31, of each year, partial 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. Consumptive Use Percentages for Utilization in South Umpqua River Calculations

a. Initial Consumptive Use Percentages

The Tri-City Water and Sanitary Authority (TCWSA) has not identified any Consumptive Use Percentages based on the return of flows to the S. Umpqua River through effluent discharge. Thus, at this time the City may not utilize Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition.

b. First Time Utilization of Consumptive Use Percentages

Utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition may begin after the issuance of the Final Order for this extension of time.

First time utilization of Consumptive Use Percentages is contingent upon the TCWSA (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in 2.C.f., below.

Consumptive Use Percentages submitted to the Department for review must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The proposed Consumptive Use Percentages should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

c. Consumptive Use Percentages Updates



Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition beyond an approval period (as described in 2.C.f., below) is contingent upon the City submitting updated Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages Updates. Utilization of Consumptive Use Percentages Updates is subject to an approval period described in 2.C.f., below.

The updates to the Consumptive Use Percentages must (1) be specified as a percentage (may be to the nearest 1/10 percent) for each month of the year and (2) include a description and justification of the methods utilized to determine the percentages. The updates should be submitted on the *Consumptive Use Percentages Update Form* provided with the Final Order for this extension of time.

d. Changes to Wastewater Technology and/or Wastewater Treatment Plant Practices

If there are changes to either wastewater technology or the practices at the TCWSA wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the South Umpqua River, then the Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition. The 25% reduction is based on a 10-year rolling average of monthly wastewater return flows to the South Umpqua River as compared to the average monthly wastewater return flows from the 10 year period just prior to date of the first approval period described in 2.C.f., below.

If such changes to either wastewater technology or the practices at TCWSA wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the TCWSA submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

e. Relocation of the Point(s) of Diversion(s) and/or Return Flows

If the point(s) of diversion(s) and/or return flows are relocated, Consumptive Use Percentages in effect at that time may no longer be utilized for the purposes of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition.

After relocation of the point(s) of diversion(s) and/or return flows, further utilization of Consumptive Use Percentages is contingent upon the TCWSA (1) providing evidence in writing that ODFW has determined that any relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting Consumptive Use



Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages.

- f. Approval Periods for Utilization of Consumptive Use Percentages  
The utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit S-40699 that can be diverted as a result of this fish persistence condition may continue for a 10 year approval period that ends 10 years from the Water Resources Director's most recent date of concurrence with Consumptive Use Percentages Updates as evidenced by the record, unless sections 2.C.d., or 2.C.e. (above) are applicable.

Consumptive Use Percentages (first time utilization or updates) which are submitted and receive the Director's concurrence will begin a new 10-year approval period. The approval period begins on the date of the Water Resources Director's concurrence with Consumptive Use Percentages Updates, as evidenced by the record. The TCWSA at its discretion may submit updates prior to the end of an approval period.

D. Examples

Example 1: Target flow met.

On August 15, the gaged daily flow is ( $Q_g$ ) 245.0 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 1.22 cfs, then the gaged daily flow ( $Q_g$ ) minus 1.22 is ( $P$ ) greater than the 201.0 cfs target flow ( $Q_t$ ) for August 15. In this example,  $(Q_g - P)/Q_t \geq 1$ .

$$(245.0 - 1.22)/201 \geq 1$$

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 during the periods of January 1 through September 15, and November 1 through December 31, of each year.

On August 15, the gaged daily flow ( $Q_g$ ) is 198.0 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 1.22 cfs, then the gaged daily flow ( $Q_g$ ) minus 1.22 cfs ( $P$ ) is less than the 201.0 cfs target flow ( $Q_t$ ) for August 15.

Step 1: Given that the amount of water conditioned for fish persistence ( $P$ ) is 1.22 cfs, if on August 15, the average of the gaged daily flow ( $Q_g$ ) is 198.0 cfs and the target flow ( $Q_t$ ) is 201.0 cfs, the fraction of target flow achievement ( $T_a$ ) is less than 1.

$$(198.0 - 1.22) / 201.0 = 0.979$$

$$0.979 < 1$$

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 1.22 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 1.19 cfs.

$$0.979 * 1.22 \text{ cfs} = 1.19 \text{ cfs}$$

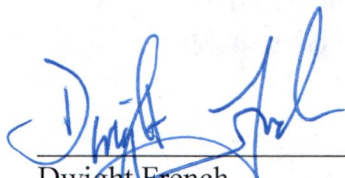
Example 3: Target flow missed during the period September 16 through October 31, of each year.

On October 15, the gaged daily flow is ( $Q_g$ ) 245.0 cfs. Given that the amount of water conditioned for fish persistence ( $P$ ) is 1.22 cfs, then the gaged daily flow ( $Q_g$ ) minus 1.22 is ( $P$ ) less than the 268 cfs target flow ( $Q_t$ ) for October 15. In this example,  $(Q_g - P)/Q_t < 1$ .

$$(245.0 - 1.22)/268 < 1$$

Because  $T_a < 1$  during the period of full curtailment, no water can be diverted under the conditions of this permit.

DATED: November 30, 2021



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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 14, 2022**, 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 D. Pierceall at 503-979-3213.

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 503-979-9160.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Water Right Services Division  
725 Summer St NE, Suite A  
Salem, OR 97301-1266

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Fax: 503-986-0901