Oregon Water Resources Department

Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time for Permit G-12196, Water Right Application G-13479, in the name of the City of Wheeler	)))	PROPOSED FINAL ORDER

Permit Information

Application File G-13479/ Permit G-12196
Basin 1 – North Coast Basin / Watermaster District 1
Date of Priority: July 29, 1993

Authorized Use of Water

Source of Water:	Wells #4, #6, #13, and # 10 within the Nehalem River Basin in the Nehalem River Basin
Purpose or Use:	Municipal
Maximum Rate:	3.60 Cubic Feet per Second (CFS)

This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315.

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

This Proposed Final Order applies only to Permit G-12196, water right Application G-13479.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 1997, to October 1, 2047.
- Grant an extension of time to apply water to full beneficial use from October 1, 1999, to October 1, 2047.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE
Department – Oregon Department of Water Resources
City – City of Wheeler
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

AUTHORITY

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

ORS 537.630(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension of time, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. 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 Water Management and Conservation Plan under OAR Chapter 690, Division 86.

FINDINGS OF FACT

1. On November 6, 1995, Permit G-12196 was issued by the Department. The permit authorizes the use of up to 3.60 cfs of water from Wells #4, #6, #13, and # 10 within the Nehalem River Basin, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1997, and that complete application of water was to be made on or before October 1, 1999.

2. The permit holder, the City of Wheeler (City), submitted an "Application for Extension of Time" (Application) to the Department on May 3, 2004, requesting the time to complete construction be extended from October 1, 1997, to October 1, 2047, and the time to apply water to full beneficial use under the terms and conditions of Permit G-12196 be extended from October 1, 1999, to October 1, 2047. This is the first extension of time request for Permit G-12196.

3. Notification of the City's Application for Extension of Time for Permit G-12196 was published in the Department's Public Notice dated May 10, 2004. No public comments were received regarding the extension application.

4. On June 22, 2005, the City submitted supplemental information and update revisions to their pending Application for Extension of Time.

5. Effective August 15, 2017, HB 2099 (Chapter 704, 2017 Oregon Laws), modifies the definition of the undeveloped portion of a municipal water right permit for the purpose of determining the amount of water that may be subject to fish persistence conditioning and diversion limitations to specify that the undeveloped portion of a municipal permit is the amount of water that has not been diverted as of the later of June 29, 2005, or the date specified in the permit or last approved extension.

Review Criteria for Municipal Quasi-Municipal Water Use Permits *[OAR 690-315-0080(1)]*
The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080. This determination shall consider the applicable requirements of ORS 537.230[1], 537.630[2] and/or 539.010(5)[3]

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

6. On May 3, 2004, the Department received a completed Application for Extension of Time and the fee specified in ORS 536.050 from the permit holder.

---

[1] ORS 537.230 applies to surface water permits only.

[2] ORS 537.630 applies to ground water permits only.

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

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

7. Actual construction began prior to November 6, 1996, as specified in Permit G-12196.

8. According to the well log submitted to the Department on August 20, 1996, construction of TILL 50076 (Well #6) began June 21, 1996.

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

9. The remaining work to be accomplished under Permit G-12196 consists of completing construction and applying water to full beneficial use.

10. As of June 29, 2005, the City had appropriated 1.17 cfs of the 3.60 cfs of water authorized under Permit G-12196 for municipal purposes. There is an undeveloped portion of 2.43 cfs of water under Permit G-12196 as per ORS 537.630(1).

11. In addition to the 3.60 cfs of water authorized under Permit G-12196, the City holds the following rights for municipal use:

    - Certificate 2440 for 3.0 cfs of water from West Branch Gervais (Jarvis) Creek tributary to Nehalem River;
    - Certificate 9250 for 0.28 cfs of water from Jarvis Creek tributary to Nehalem River; and
    - Permit S-39355 for 4.0 cfs of water from Vosburg Creek Tributary to Nehalem River;

    These water rights and permits total 10.88 cfs of water, being 7.28 cfs of surface water, 3.6 cfs of live ground water. The City of Wheeler has not yet made use of 1.9 cfs of water, under Permit G-12196.

12. The City of Wheeler and the City of Mazanita have an intergovernmental cooperative agreement for operation of the joint water system.

13. According to the City, their peak water demand within its service area boundaries was 1.08 cfs in 2000.

14. As of 2004, the population within the service boundary of the City of Wheeler was 410, and the City of Mazanita was 630. The City of Wheeler estimates the population will increase at growth rate of 0.9 percent per year, reaching an estimated population of 670 for City of Wheeler, and the City of Mazanita estimates the population will increase at a growth rate of 3.3 percent per year, reaching an estimated population of 5,407, by the year 2047.

15. Both the City of Wheeler and the City of Manzanita also consists of a significant transient population. Though no studies have been conducted to determine the extent of the transient population, both Cities estimate it is at least equivalent to the base

population. The City also serves water to Nehalem Bay State Park, and Zadduck Creek Water Coop.

16. According to the City, their peak day demand is projected to be approximately 5.58 cfs of water by the year 2047. This does not account for redundancies and emergency use.

17. Full development of Permit G-12196 is needed to address the present and future water needs, including system redundancy and emergency uses.

18. The Department has determined that the City's request for an extension of time until October 1, 2047, to complete construction and to apply water to full beneficial use under the terms and conditions of Permit G-12196 is both reasonable and necessary.

Good Cause *[OAR 690-315-0080(1)(e) and (3)(a-g)and (4)]*
The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3) and OAR 690-315-0080(4).

Reasonable Diligence and Good Faith of the Appropriator *[OAR 690-315-0080(3)(a),(3)(c) and (4)]*
Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

19. Prior to the issuance of Permit G-12196 on November 6, 1995, the City constructed Wells 7 and 8.

20. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit G-12196.

The Department has determined 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.

21. As of May 3, 2004, they have invested approximately $7,787,672, which is approximately 59 percent of the total projected cost for complete development of this project. The City estimates an additional $5,350,000 investment is needed for the completion of this project. The Department recognizes that while some of these investment costs are unique to construction and development solely under G-12196, other costs included in this accounting are not partitioned out for G-12196 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 OAR 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.

22. As of June 29, 2005, 1.17 cfs of the 3.60 cfs allowed has been appropriated for beneficial municipal purposes under the terms of this permit.

23. The Department has considered the City's compliance with conditions and did not identify any concerns.

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

24. As of May 22, 2005, the City has invested approximately $7,787,672, which is 59 percent of the total projected cost for complete development of this project. The City estimates an additional $5,350,000 investment is needed for the completion of this project.

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

25. As described in Findings 11 through 17 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit G-12196.

26. The City projects a population increase, on average, of 0.9 percent per year for the City of Wheeler, and 3.3 percent per year for the City of Manzanita, over a 43 year period, being the years 2004 to 2047.

27. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under G-12196.

28. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that appropriation of water beyond 1.17 cfs (not to exceed the maximum amount authorized under this permit, being 3.60 cfs) under Permit G-12196 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 which grants access to a greater appropriation 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)]*

29. The City expects to obtain a fair and reasonable return on investment by continuing development of Permit G-12196.

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

30. Delays caused by any other governmental requirements in the development of this project have not been identified.

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

31. Delay of development under Permit G-12196 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, as well as attempts to form a Regional Water Supply Authority.

Maintaining the Persistence of Listed Fish Species *[OAR 690-315-0080(1)(f) and (2)]*
The Department's determination regarding maintaining the persistence of listed fish species shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The determination shall be limited to impacts related to stream flow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that stream flow would be a limiting factor for the subject listed fish species.

32. On December 8, 2014, the Water Resources Department determined under OAR Chapter 690 Division 9, that use of water under this ground water Permit G-12196 has the potential for substantial interference (PSI) with surface water in accordance with OAR 690-315-0010(6)(f). The Department estimated that use of the undeveloped portion being 2.43 cfs, will result in impact of 2.19 cfs to Nehalem River and 0.24 cfs to Peterson Creek. This is based on a long-term capture rate of 100%

33. The pending municipal Application for Extension of Time for Permit G-12196 was initially delivered to ODFW on March 13, 2006, for ODFW's review under OAR-690-315-0080.

34. Notification that the pending municipal Application for Extension of Time for Permit G-12196 was delivered to ODFW for review was sent to the City on March 15, 2006.

35. Notification that the pending municipal Application for Extension of Time for Permit G-12196 was delivered to ODFW for review was published in the Department's Public Notice dated March 21, 2006. WaterWatch of Oregon and Columbia River Keepers requested copies of the advice received from ODFW.

36. On May 20, 2024, the Department received ODFW's Division 315 Fish Persistence Evaluation for Permit G-12196.

37. 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. ODFW's advice is based on existing data. ODFW recommends the flows set forth in Tables 1 and 2 and advises WRD to develop conditions that allow the City to meet its water needs while maintaining the persistence of listed fish species.

    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 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.

A 303(d) water quality impairment (fecal coliform) has been identified on the Nehalem River reach downstream of the point of diversion. Water withdrawals during low-flow periods may exacerbate already-identified water quality issues.

Use of the full undeveloped portion of the City's water right from the Nehalem River and Peterson Creek will further reduce the likelihood of meeting instream flow targets for fish persistence.

ODFW recommends **full curtailment** of the undeveloped portion of G-12196 from July 1-September 30 when target flow achievement (Ta) is missed (Ta<1) in Peterson Creek or the Nehalem River. For the remainder of the year (October 1-June 30), ODFW recommends **partial curtailment** of the undeveloped portion when target flow achievement (Ta) is missed (Ta<1) on Peterson Creek or the Nehalem River.

Table 1. Monthly target flows for Peterson Creek.

Month	ODFW Target Flows [cfs]
Jan	22.7
Feb	18.0
Mar	16.1
Apr	13.4
May	8.2
Jun	5.4
Jul	2.1
Aug	1.3
Sept	1.4
Oct	4.9
Nov	17.1
Dec	23.2

Table 2. Monthly target flows for the Nehalem River.

Month	ODFW Target Flows [cfs]
Jan	400
Feb	400
Mar	400
Apr	400
May	265
Jun	178
Jul	178
Aug	178
Sept 1-15	178
Sept 16-30	265
Oct	400
Nov	400
Dec	400

Curtailment amounts should be calculated daily and independently for each stream; curtailment may be required due to conditions on both streams, only one stream, or may not be required if both exceed Ta.

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

$$T_a = (Q_g - P)/Q_t \qquad \textit{(EQ 1)}$$

T_a = target flow achievement
Q_g = gaged daily flow
P = amount of water conditioned for fish persistence (0.24 cfs for Peterson Creek; 2.19 cfs for Nehalem River)
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 of the permit 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 (*EQ 2*).

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

$$D_m = T_a * P \textit{ (EQ 2)}$$

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

In relation to Nehalem River flows

Mean daily flow data measured at USGS gaging station #14301000 (Nehalem River near Foss, OR) are suitable for determining target flow achievement in the Nehalem River. When Nehalem River flows are less than those associated with MF-36, the City's water right is subject to regulation by OWRD. This regulation would apply to the developed as well as the undeveloped portion because MF-36 is senior to Permit G-12196. When Nehalem River target flow achievement (T_a) <1, full curtailment (no additional withdrawal) or partial curtailment (conforming to Equation 2 described above) should occur.

For descriptive purposes only, expected levels of flow target achievement are provided in Table 3, which tabulates the analysis described above using daily data from USGS streamgage #14301000 for the period of record from 1989-2018, the undeveloped water right apportioned to the Nehalem River (2.19 cfs, or 90% of the full undeveloped amount), and monthly target flows for fish persistence. For the years analyzed, the fraction of target non-achievement by month (Table 3, column 2) ranged from 0.00 to 0.91. The most frequent incidences of target non-achievement (when T_a<1) occur in late summer.

Table 3. Persistence flow target non-achievement based on historical streamflow data for Nehalem River.

Month	**Fraction of Days Target Not Met**	**Median of Target Flow Achievement (Ta) When Ta<1**
JAN	0	n/a
FEB	0	n/a
MAR	0	n/a
APR	0	n/a
MAY	0	n/a
JUN	0.01	0.91
JUL	0.29	0.81
AUG	0.83	0.67
SEP 1-15	0.91	0.59
SEP 16-30	0.86	0.37
OCT	0.63	0.34
NOV	0.12	0.72
DEC	0.01	0.64

In relation to Peterson Creek flows

When Peterson Creek flows are less than those associated with IS-70958, the City's water right is subject to regulation by OWRD. This regulation would apply to the developed as well as the undeveloped portion, because IS-70958 is the senior right. When Peterson

Creek target flow achievement (T_a) <1, full curtailment (no additional withdrawal) or partial curtailment (conforming to Equation 2 described above) should occur.

Sample Curtailment Calculations

To exemplify ODFW's recommended curtailment procedure, Tables 4a and 4b demonstrate how full curtailment applies to the extension for the month of August. Tables 5a and 5b demonstrate how curtailment equations 1 and 2 (partial curtailment) apply to the extension for the month of October.

Table 4. Example full curtailment for August: a. Nehalem River (using 90% of the total undeveloped portion, or 2.19 cfs) and b. Peterson Creek (using 10% of the total undeveloped portion, or 0.24 cfs).
4a. Nehalem River

Streamflow [cfs]	**Target [cfs]**	**Target Flow Achievement (T_a)**	**Curtailment [cfs]**	**D_m (amount that can be appropriated) [cfs]**
200	178	1.11	0	2.19
150	178	0.83	2.19	**0**
100	178	0.55	2.19	**0**
50	178	0.27	2.19	**0**

4b. Peterson Creek

Streamflow [cfs]	**Target [cfs]**	**Target Flow Achievement (T_a)**	**Curtailment [cfs]**	**D_m (amount that can be appropriated) [cfs]**
2.0	1.3	1.35	0	0.24
1.0	1.3	0.58	0.24	**0**
0.8	1.3	0.39	0.24	**0**
0.5	1.3	0.20	0.24	**0**

Table 5. Example partial curtailment equations for October: a. Nehalem River (using 90% of the total undeveloped portion, or 2.19 cfs) and b. Peterson Creek (using 10% of the total undeveloped portion, or 0.24 cfs).

5a. Nehalem River

Streamflow [cfs]	**Target [cfs]**	**Target Flow Achievement (T_a)**	**Curtailment [cfs]**	**D_m (amount that can be appropriated) [cfs]**
550	400	1.37	0	2.19
450	400	1.12	0	2.19
350	400	0.87	0.29	1.9
250	400	0.62	0.83	1.36

5b. Peterson Creek

Streamflow [cfs]	Target [cfs]	Target Flow Achievement (T_a)	Curtailment [cfs]	D_m (amount that can be appropriated) [cfs]
6.0	4.9	1.18	0.00	0.24
4.5	4.9	0.87	0.03	0.21
3.0	4.9	0.56	0.10	0.14
1.5	4.9	0.26	0.18	0.06

Total daily curtailment should be based on the cumulative curtailment for Peterson Creek and the Nehalem River. For example, if flows on 10/1 are 350 cfs in the Nehalem River (Ta=0.87, resulting in 0.29 cfs curtailment), and 4.5 cfs in Peterson Creek (Ta=0.87, resulting in 0.03 cfs curtailment), total curtailment should be the cumulative 0.29 + 0.03 = 0.32 cfs. Alternatively, if flows on 10/1 are 350 cfs in the Nehalem River (Ta=0.87, resulting in curtailment of 0.29 cfs) and flows in Peterson Creek are 6.0 cfs (Ta>1, so no curtailment), then total curtailment should be the cumulative 0.29 + 0.0 = 0.29 cfs.

Streamflow Measurement Point
USGS gaging station #14301000 (Nehalem River near Foss, OR) is located approximately three river miles upstream from the City's wells and provides appropriate data for target flow achievement monitoring for the Nehalem River. It is the City's responsibility to install an additional streamflow gage or develop an approved daily monitoring approach for Peterson Creek. Peterson Creek near its mouth (though outside a backwater influence zone from the Nehalem River) is recommended as a suitable gage location to determine if target flows in Peterson Creek are being met.

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

There is an undeveloped portion of 2.43 cfs of water under Permit G-12196 as per ORS 537.630(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 G-12196 is 2.43 cfs. Therefore, 2.43 cfs is the amount of water under Permit G-12196 that must be conditioned for the persistence of listed fish species.

Use of the undeveloped portion of the groundwater source under Permit G-12196 has the Potential for Substantial Interference (PSI) with both Peterson Creek and the Nehalem River. The Department estimated that the stream depletion rate after 360 days of pumping is 96% of the withdrawal rate. The undeveloped portion of the permit with PSI was determined by OWRD to be 0.24 cfs for Peterson Creek (10%) and 2.19 cfs for the Nehalem River (90%).

Authorization to incrementally expand use of water under this permit beyond 1.17 cfs up to the permitted quantity of 3.6 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 G-12196 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 on the Nehalem River and Peterson Creek, by the water user at USGS streamgage #14301000 on Nehalem River near Foss, OR; and measured at an approved location and using an approved method developed by the water user on Peterson Creek.

b. From October 1-June 30, ODFW recommends **partial curtailment** of the undeveloped portion of water right Permit G-12196 when target flows are missed ($T_a<1$) in Peterson Creek and/or the Nehalem River. Partial curtailment may apply to one or both streams, depending on the independently calculated T_a values.
c. From July 1-September 30, ODFW recommends **full curtailment** of the quantity of the undeveloped portion of water right apportioned to each individual stream, being 2.19 for the Nehalem River, and 0.24 for Peterson Creek, when a target flow is missed ($T_a<1$). Full curtailment may apply to one or both streams, depending on their independently calculated T_a values. Seasonal low flows and high temperatures during this time coincide with important life stages of STE species identified above, and additional water withdrawals will negatively affect fish persistence.

ODFW evaluates water right permit curtailment need based on the fraction of target flow achievement (herein referred to as "target flow achievement value") as determined independently for the Nehalem River and Peterson Creek). *(EQ 1)*.

$$T_a = (Q_g - P)/Q_t \qquad \textit{(EQ 1)}$$

T_a = target flow achievement value Q_g = gaged daily flow
P = amount of water conditioned for fish persistence (0.24 cfs for Peterson Creek; 2.19 cfs for Nehalem River)
Q_t = target flow

When target flow achievement values (TT_{aa}) for the Nehalem River and Peterson Creek are greater than 1, no curtailment is recommended.

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

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(2).

2. The City has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).

3. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).

4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit G-12196 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, 2047[4] pursuant to 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 has determined 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 28, above, and specified under Item 1 of the "Conditions" section of this PFO, the appropriation of water beyond 1.17 cfs (not to exceed the maximum amount authorized under this permit, being 3.60 cfs) under Permit G-12196 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of appropriation of water under the permit consistent with OAR 690-086-0130(7).

9. In accordance with OAR 690-315-0080(1)(f), and as described in Findings 32 through 38, above, the persistence of listed fish species will not be maintained in the portions of the waterways affected by water use under this municipal use permit of the undeveloped portion with surface water impacts, in the absence of special conditions. Therefore, the appropriation of water beyond 1.17 cfs under Permit G-12196 will be subject to the conditions specified under Item 2 of the "Conditions" section of this PFO.

---

[4] 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.

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 G-12196 from October 1, 1997, to October 1, 2047.

Extend the time to apply the water to beneficial use under Permit G-12196 from October 1, 1999, to October 1, 2047.

Subject to the following conditions:

CONDITIONS

1. **Municipal Use Extension Condition**

The use of any water beyond 1.17 cfs under Permit G-12196 is subject to this Municipal Use Extension Condition.

The water user shall develop a plan to monitor and report the impact of water use under Permit G-12196 on water levels within the aquifer that provides water to the permitted wells. The plan shall be submitted to the Department within one year of the date the Extension Order is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted wells or and adequate substitute such as water levels in nearby wells.

2. **Conditions to Maintain the Persistence of Listed Fish**
The first 1.17 cfs of water under Permit G-12196 or any subsequent water right(s) originating from Permit G-12196 is not and will not be conditioned for maintaining fish persistence.

The portion of Permit G-12196 subject to these fish persistence conditions is established as 2.43 cfs in accordance with ORS 537.630(3)(d). The use of 2.43 cfs as authorized under this permit must be hereafter conditioned with these fish persistence conditions. Therefore, all subsequent water right(s) originating from this portion of Permit G-12196 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 2.43 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 Nehalem River and Peterson Creek and as recommended by ODFW are in Table 6, below; Nehalem River flows are to be measured at USGS streamgage #14301000 near Foss, OR and, Peterson Creek flows are to be measured at an approved location and using an approved method developed by the water user.

Table 6

Month	ODFW Target Flows at Gage 14301000 (cfs) on the Nehalem River	ODFW Target Flows on Peterson Creek in cfs
JAN	400	22.7
FEB	400	18.0
MAR	400	16.1
APR	400	13.4
MAY	265	8.2
JUN	178	5.4
JUL	178	2.1
AUG	178	1.3
SEPT 1-15	178	1.4
SEPT 16-30	265	1.4
OCT	400	4.9
NOV	400	17.1
DEC	400	23.2

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 2.43 cfs conditioned for fish persistence that can be appropriated is determined independently for each stream (up to 2.19 cfs on the Nehalem River, and up to 0.24 cfs on Peterson Creek) in proportion to the amount by which the target flows shown in Table 6 are missed. The amount by which the target flows are missed will be based on measured Nehalem River daily flows at USGS streamgage #14301000, Nehalem River near Foss, OR; *and* on Peterson Creek at an approved location and using an approved method developed by the water user. The proportion by which target flows are missed is expressed as a decimal, and termed "flow achievement value."

The target flow achievement value for the Nehalem River (NR) is defined as:

$$T_{aNR} = (Q_{gNR} - P_{NR}) / Q_{tNR} \qquad \textit{(EQ 1a)}$$

Q_{gNR} = gaged daily flow on the Nehalem River
P_{NR} = amount of water conditioned for fish persistence for the Nehalem River, being 2.19 cfs
Q_{tNR} = target flow for the Nehalem River
T_{aNR} = target flow achievement value for the Nehalem River

The target flow achievement value for Peterson Creek (PC) is defined as:

$$T_{aPC} = (Q_{gPC} - P_{NPC}) / Q_{tPC} \qquad \textit{(EQ 1b)}$$

Q_{gPC} = gaged daily flow on the Peterson Creek
P_{PC} = amount of water conditioned for fish persistence for Peterson Creek, being 0.24 cfs
Q_{tPC} = target flow for Peterson Creek
T_{aPC} = target flow achievement value for Peterson Creek

During any time of the year, when the target flow achievement values are greater than 1 in both the Nehalem River ($T_{aNR} > 1$) and Peterson Creek ($T_{aPC} > 1$), no curtailment is recommended. The full undeveloped portion of 2.43 cfs may be utilized.

July 1-Sept 30

When the target flow achievement values are less than 1 in both the Nehalem River ($T_{aNR} < 1$) and Peterson Creek ($T_{aPC} < 1$), the undeveloped portion of 2.43 cfs shall be curtailed in full.

When the target flow achievement value is less than 1 in the Nehalem River ($T_{aNR} < 1$) but greater than 1 in Peterson Creek ($T_{aPC} > 1$), the 2.19 cfs for the Nehalem River shall be curtailed in full, but the 0.24 cfs for Peterson Creek may be fully utilized.

When the target flow achievement value is greater than 1 in the Nehalem River ($T_{aNR} > 1$) but less than 1 in Peterson Creek ($T_{aPC} < 1$) the 2.19 cfs for the Nehalem River may be fully utilized, but the 0.24 cfs for Peterson Creek shall be curtailed in full.

Oct 1 – June 30

When a target flow achievement value is less than 1 for a given stream, partial curtailment of the amount of water conditioned for fish persistence for that stream (up to 2.19 cfs on the Nehalem River, and up to 0.24 cfs on Peterson Creek) is recommended. The maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition is determined independently for each stream by scaling the amount of water conditioned for fish

persistence by the fraction each flow target is not being met ("flow achievement value") for that stream. (*EQ 2a & 2b*).

Nehalem River: $\mathbf{D_{mNR} = T_{aNR} * P_{NR}}$ *(EQ 2a)*

$\mathbf{D_{mNR}}$ = maximum amount of water conditioned for fish persistence that may be appropriated as a result of this fish persistence condition
$\mathbf{T_{aNR}}$ = target flow achievement value for the Nehalem River
$\mathbf{P_{NR}}$ = amount of water conditioned for fish persistence (2.19 cfs for the Nehalem River)

Peterson Creek: $\mathbf{D_{mPC} = T_{aPC} * P_{PC}}$ *(EQ 2b)*

$\mathbf{D_{mPC}}$ = maximum amount of water conditioned for fish persistence that may be appropriated as a result of this fish persistence condition
$\mathbf{T_{aPC}}$ = target flow achievement value for Peterson Creek
$\mathbf{P_{PC}}$ = amount of water conditioned for fish persistence (0.24 cfs for Peterson Creek)

When the target flow achievement value is less than 1 in both the Nehalem River ($\mathbf{T_{aNR} < 1}$) and Peterson Creek ($\mathbf{T_{aPC} < 1}$), the undeveloped portions of 2.19 cfs and 0.24 cfs shall be curtailed by the fraction each flow target is not being met (i.e, flow achievement value) The maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition would be the sum of $\mathbf{D_{mNR} + D_{mPC}}$.

When the target flow achievement value is less than 1 in the Nehalem River ($\mathbf{T_{aNR} < 1}$) but greater than 1 in Peterson Creek ($\mathbf{T_{aPC} > 1}$) the 2.19 cfs for the Nehalem River shall be proportionately curtailed, but the 0.24 cfs for Peterson Creek may be utilized in full. The maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition would be the sum of $\mathbf{D_{mNR} + 0.24}$.

When the target flow achievement value is greater than 1 in the Nehalem River ($\mathbf{T_{aNR} > 1}$) but less than 1 in Peterson Creek ($\mathbf{T_{aPC} < 1}$) the 2.19 cfs for the Nehalem River may be utilized in full, but the 0.24 cfs for Peterson Creek shall be proportionately curtailed. The maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition would be the sum of $\mathbf{2.19 + D_{mPC}}$.

C. Consumptive Use Percentages for Utilization in Peterson Creek and Nehalem River Calculations

a. Initial Consumptive Use Percentages

The City of Wheeler (CITY) has not identified any Consumptive Use Percentages based on the return of flows to the Nehalem 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 G-12196 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 G-12196 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 CITY (1) providing evidence in writing that ODFW has determined that withdrawal points and effluent discharges are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting monthly Consumptive Use Percentages and receiving the Water Resources Director's concurrence with the proposed Consumptive Use Percentages. Utilization of Consumptive Use Percentages is subject to an approval period described in 2.C.f., below.

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

c. Consumptive Use Percentages Updates

Continuing the utilization of Consumptive Use Percentages for the purpose of calculating the maximum amount of the undeveloped portion of Permit G-12196 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 CITY wastewater treatment facility resulting in 25% or more reductions in average monthly return flows to the Peterson Creek and Nehalem 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 G-12196 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 Peterson Creek and Nehalem 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 CITY wastewater treatment facility occur resulting in 25% reductions, further utilization of Consumptive Use Percentages is contingent upon the CITY submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the 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 G-12196 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 CITY (1) providing evidence in writing that ODFW has determined that any relocated withdrawal points and effluent discharge points are within reasonable proximity to each other, such that fish habitat between the two points is not impacted significantly, and (2) submitting Consumptive Use Percentages Updates as per 2.C.c., above, and receiving the Water Resources Director's concurrence with the 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 G-12196 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 CITY at its discretion may submit updates prior to the end of an approval period.

D. Examples

In each example below, the undeveloped portion (2.43 cfs) is partitioned to estimate the use of groundwater impact on each stream, being 90% of the impact being on the Nehalem River (2.19 cfs), and 10% of the impact on Peterson Creek (0.24 cfs).

Example 1: Jan 1 – Dec 31 ($T_{aNR} > 1$ & $T_{aPC} > 1$)
Target flows are met in both the Nehalem River and Peterson Creek.

On August 15, the gaged daily flow of the Nehalem River (Q_{gNA}) is 190.0 cfs. Given that the amount of water for the Nehalem River conditioned for fish persistence (P_{NR}) is 2.19 cfs, then the gaged daily flow (Q_{gNR}) minus 2.19 cfs (P_{NR}) is greater than the 178.0 cfs target flow (Q_{tNR}) for August 15. In this example, $(Q_{gNR} - P_{NR})/Q_{tNR} \geq 1$.

$$(190.0 - 2.19)/178 \geq 1$$

On August 15, the measured daily flow of the Peterson Creek (Q_{gPC}) is 3.0 cfs. Given that the amount of water for Peterson Creek conditioned for fish persistence (P_{PC}) is 0.24 cfs, then the gaged daily flow (Q_{gPC}) minus 0.24 (P_{PC}) is greater than the 1.3 cfs target flow (Q_{tPC}) for August 15. In this example, $(Q_{gPC} - P_{PC})/Q_{tPC} \geq 1$.

$$(3.0 - 0.24)/1.3 \geq 1$$

The amount of water conditioned for fish persistence, being 2.43 cfs, may be utilized in full because the target flows are considered met in both the Nehalem River and Peterson Creek.

Example 2: July 1 – Sept 30 ($T_{aNR} < 1$ & $T_{aPC} < 1$)
Target flows are missed in both the Nehalem River and Peterson Creek

On July 15, the gaged daily flow of the Nehalem River (Q_{gNR}) is 160.0 cfs. Given that the amount of water conditioned for fish persistence for the Nehalem River (P_{NR}) is 2.19 cfs, then the gaged daily flow (Q_{gNR}) minus 2.19 cfs (P_{NR}) is less than the 178.0 cfs target flow (Q_{tNR}) for July 15. The flow target is missed in the Nehalem River.

On July 15, the gaged daily flow of the Peterson Creek (Q_{gPC}) is 1.9 cfs. Given that the amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, the gaged daily flow (Q_{gPC}) minus 0.24 cfs (P_{PC}) is less than the 2.1 cfs target flow (Q_{tPC}) for July 1. The flow target is missed in Peterson Creek.

Step 1: Given that the amount of water conditioned for fish persistence is 2.43 cfs ($P_{NR} + P_{PC}$), if on July 15, the average of the gaged daily flow is 160.0 cfs on the Nehalem River (Q_{gNR}), and 1.9 cfs on Peterson Creek(Q_{gPC}), and the target flow is 178.0 cfs on the Nehalem River (Q_{tNR}) and 2.1 cfs for Peterson Creek (Q_{tPC}), then each target flow achievement value (T_{aNR} & T_{aPC}) is less than 1.

Nehalem River
$(160.0 - 2.19) / 178.0 = 0.89$

$0.89 < 1$

Peterson Creek

$(1.9 - 0.24) / 2.1 = 0.79$

$0.79 < 1$

None of the water conditioned for fish persistence (2.43 cfs) could be diverted because the target flows are considered missed in both the Nehalem River and Peterson Creek.

Example 3: July 1 – September 30 ($T_{aNR} < 1$ & $T_{aPC} > 1$)
Target flows are missed in the Nehalem River, but met in Peterson Creek

On July 10, the gaged daily flow of the Nehalem River (Q_{gNR}) is 170.0 cfs. Given that the amount of water conditioned for fish persistence for the Nehalem River (P_{NR}) is 2.19 cfs, the gaged daily flow (Q_{gNR}) minus 2.19 cfs (P_{NR}) is less than the 178.0 cfs target flow (Q_{tNR}) for July 10. The target flow is missed in the Nehalem River.

On July 10, the gaged daily flow of the Peterson Creek (Q_{gPC}) is 3.3 cfs. Given that the amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, then the gaged daily flow (Q_{gPC}) minus 0.24 cfs (P_{PC}) is greater than the 2.1 cfs target flow (Q_{tPC}) for July 10. The flow target is met in Peterson Creek.

Step 1: Given that the amount of water conditioned for fish persistence is 2.43 cfs ($P_{NR} + P_{PC}$), if on July 10, the average of the gaged daily flow is 170.0 cfs on the Nehalem River (Q_{gNR}), and 3.3 cfs on Peterson Creek (Q_{gPC}), and the target flow is 178.0 cfs for Nehalem River (Q_{tNR}) and 2.7 cfs for Peterson Creek (Q_{tPC}), then the target flow achievement value for the Nehalem River (T_{aNR}) is less than 1, but the target flow achievement value for the Peterson Creek (T_{aPC}) is greater than 1.

Nehalem River

$(170.0 - 2.19) / 178.0 = 0.94$

$0.94 < 1$

Peterson Creek

$(3.3 - 0.24) / 2.1 = 1.46$

$1.46 > 1$

Only the amount of water the water conditioned for fish persistence for Peterson Creek, being 0.24 cfs, could be diverted because the target flows are considered missed in the Nehalem River.

Example 4: Oct 1 – June 30 ($T_{aNR} < 1$ & $T_{aPC} < 1$)
Target flows are missed in both the Nehalem River and Peterson Creek

On June 1, the gaged daily flow of the Nehalem River (Q_{gNR}) is 160.0 cfs. Given that the amount of water conditioned for fish persistence for the Nehalem River (P_{NR}) is 2.19 cfs, the gaged daily flow (Q_{gNR}) minus 2.19 cfs (P_{NR}) is less than the 178.0 cfs target flow (Q_{tNR}) for June 1. The flow target is missed for the Nehalem River.

On June 1, the gaged daily flow of the Peterson Creek (Q_{gPC}) is 4.0 cfs. Given that the amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, the gaged daily flow (Q_{gPC}) minus 0.24 cfs (P_{PC}) is less than the 5.4 cfs target flow (Q_{tPC}) for June 1. The flow target is missed for Peterson Creek.

Step 1: Given that the amount of water conditioned for fish persistence is 2.43 cfs ($P_{NR} + P_{PC}$), if on June 1, the average of the gaged daily flow is 160.0 cfs on the Nehalem River (Q_{gNR}), and 4.0 cfs on Peterson Creek(Q_{gPC}), and the target flow is 178.0 cfs for Nehalem River (Q_{tNR}) and 5.7 cfs for Peterson Creek (Q_{tPC}), the target flow achievement values (T_{aNR} & T_{aPC}) are less than 1.

Nehalem River
$(160.0 - 2.19) / 178.0 = 0.89$

$0.89 < 1$

Peterson Creek
$(4.0 - 0.24) / 5.4 = 0.70$

$0.70 < 1$

Step 2: Given the target flow achievement value for Nehalem River (T_{aNR}) is less than 1 (from Step 1), and amount of water conditioned for fish persistence for the Nehalem River (P_{NR}) is 2.19 cfs, the maximum amount of water conditioned for fish persistence for the Nehalem River that can be appropriated as a result of this fish persistence condition is 1.95 cfs. ($D_{mNR} = = T_{aNR} * P_{NR}$)

Nehalem River
$0.89 * 2.19$ cfs $= 1.95$ cfs

Step 3: Given the target flow achievement value for Peterson Creek (T_{aPC}) is less than 1 (from Step 1), and amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, the maximum amount

of water conditioned for fish persistence for Peterson Creek that can be appropriated as a result of this fish persistence condition is 0.17 cfs. ($D_{mPC} = = T_{aPC} * P_{PC}$)

Peterson Creek

0.70 * 0.24 cfs = 0.17 cfs

Step 4: The maximum amount of water out of the 2.43 cfs conditioned for fish persistence that may be diverted based on Nahalem River and Peterson Creek stream flows is 2.10 cfs. ($D_{mNC} + D_{mPC}$).

1.95 + 0.17 = 2.12 cfs

Example 5: October 1 – June 30 ($T_{aNR} > 1$ & $T_{aPC} < 1$)
Target flows are met in the Nehalem River, but missed in Peterson Creek

On November 1, the gaged daily flow of the Nehalem River (Q_{gNR}) is 420.0 cfs. Given that the amount of water conditioned for fish persistence for the Nehalem River (P_{NR}) is 2.19 cfs, then the gaged daily flow (Q_{gNR}) minus 2.19 cfs (P_{NR}) is more than the 400.0 cfs target flow (Q_{tNR}) for November 1. The target flow is met for the Nehalem River.

On November 1, the gaged daily flow of the Peterson Creek (Q_{gPC}) is 16.0 cfs. Given that the amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, then the gaged daily flow (Q_{gPC}) minus 0.24 cfs (P_{PC}) is less than the 17.1 cfs target flow (Q_{tPC}) for November 1. The target flow is missed for Peterson Creek.

Step 1: Given that the amount of water conditioned for fish persistence is 2.43 cfs ($P_{NR} + P_{PC}$), if on November 1, the average of the gaged daily flow is 420 cfs on the Nehalem River (Q_{gNR}), and 16.0 cfs on Peterson Creek (Q_{gPC}), and the target flow is 400.0 cfs for Nehalem River (Q_{tNR}) and 17.1 cfs for Peterson Creek (Q_{tPC}), then the target flow achievement value for the Nehalem River (T_{aNR}) is greater than 1, but target flow achievement value Peterson Creek (T_{aPC}) is less than 1.

Nehalem River

(420 – 2.19) / 400 = 1.04

1.04 > 1

Peterson Creek

(16 – 0.24) / 17.1 = 0.92

0.92 < 1

Step 2: The full amount of water the water conditioned for fish persistence for the Nehalem River, being 2.19 cfs, could be diverted because the target flows are not considered missed in the Nehalem River.

Step 3: Given the target flow achievement value for Peterson Creek (T_{aPC}) is less than 1 (from Step 1), and amount of water conditioned for fish persistence for Peterson Creek (P_{PC}) is 0.24 cfs, the maximum amount of water conditioned for fish persistence for Peterson Creek that can be appropriated as a result of this fish persistence condition is 0.19 cfs.
($D_{mPC} = = T_{aPC} * P_{PC}$)

Peterson Creek
0.24 *0.92 = 0.22

Step 4: The maximum amount of water out of the 2.43 cfs conditioned for fish persistence that may be diverted is 2.41 cfs.

2.19 + 0.22 = 2.41

DATED: July 23, 2024

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 **September 6, 2024,** 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.

- If you have any questions about statements contained in this document, please contact Jeffrey 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 Will Davidson at 503-507-2749.
- 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
