

**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-32449, Water Right Application S-43399,	) FINAL
in the name of the City of Detroit	) ORDER

Permit Information

Application File S-43399/ Permit S-32449

Basin 2 – Willamette Basin / Watermaster District 16

Date of Priority: March 21, 1967

Authorized Use of Water

Source of Water:	Breitenbush River, a tributary of North Santiam River
Purpose or Use:	Municipal Use
Maximum Rate:	1.0 Cubic Feet per Second (cfs)

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

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

This Proposed Final Order applies only to Permit S-32449, water right Application S-43399.

The Department proposes to:

- Grant an extension of time to complete construction from October 1, 2000, to October 1, 2035.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000, to October 1, 2035.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

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

Units of Measure

cfs – cubic feet per second
gpm – gallons per minute
mgd – million gallons per day

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order and allow an extension to complete construction or perfect a water right. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use. Under specific circumstances, the Department may condition extensions of time for municipal water use permit holders to provide that use of the undeveloped portion of the permit maintains the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

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

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under OAR Chapter 690, Division 86 which grants access to water under this extended permit.

FINDINGS OF FACT

1. On November 21, 1967, Permit S-32449 was issued by the Department. The permit authorizes the use of up to 1.0 cfs of water from the Breitenbush River, a tributary of the North Santiam River, for municipal use. It specified that construction of the water development project was to be completed by October 1, 1969, and that complete application of water was to be made on or before October 1, 1970.
2. Six prior permit extensions have been granted for Permit S-32449. The most recent extension request resulted in the completion dates for construction and full application of water being extended to October 1, 2000.
3. Due to an ongoing permit extension rulemaking, in 1998 the Department stopped processing pending Applications for Extension of Time for municipal and quasi-municipal permits, and did not require municipal and quasi-municipal water use permit holders to submit Applications for Extension of Time during the rulemaking process.
4. Municipal and quasi-municipal water use permit extension rules OAR 690-315-0070 through 690-315-0100 became effective on November 1, 2002. The rules were subsequently amended, and the amended rules became effective on November 22, 2005.
5. On May 5, 2009, City of Detroit (City) submitted an "Application for Extension of Time" (Application) to the Department requesting the time to complete construction and the time to apply water to full beneficial use under the terms and conditions of Permit S-32449 be extended from October 1, 2000, to October 1, 2035.
6. Notification of the City's Application for Extension of Time for Permit S-32449 was published in the Department's Public Notice dated May 12, 2009. No public comments were received regarding the extension application.
7. On August 8, 2011, the City submitted additional information to supplement their Application. The information was to detail work accomplished since the Application was submitted.
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.

Review Criteria for Municipal and Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

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

9. On May 5, 2009, 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)]

10. Permit S-32449 was issued prior to June 29, 2005; therefore, the permit holder is not required to provide evidence of actions taken to begin actual construction of the project.⁴

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

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

11. The remaining work to be accomplished under Permit S-32449 consists of completing construction and applying water to full beneficial use.
12. As of June 29, 2005, the permit holder had diverted 0.42 cfs of the 1.0 cfs of water authorized under Permit S-32449 for municipal purposes. There is an undeveloped portion of 0.58 cfs of water under Permit S-32449 as per ORS 537.230(3)(d) and OAR 690-315-0010(6)(g).
13. In addition to the 1.0 cfs of water authorized under Permit S-32449 the City holds the following municipal use water right certificates and permits:
- Certificate 33192 for 0.25 cfs of water from Mackey Creek; and
 - Permit S-54663 for 1.0 cfs of water from Mackey Creek. Permit S-54663 does not allow for diversion during the months of July through October, and in combination with Permit S-32449, cannot exceed 1.0 cfs during the period of February 1 through the end of February.

These water rights and permits total 2.25 cfs of live flow (surface) water, being further limited to 1.25 cfs of live flow water during the month of February. City of Detroit has not yet made use of 1.0 cfs of water under Permit S-54663.

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

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

14. Use of water from Mackey Creek is limited by reduced flows that generally occur during the months of May through October
15. The City has 24 undeveloped commercial zoned lots which increases its potential for growth in commercial water use demand.
16. According to the Application, in 2007, the population served by the City of Detroit was 951, which includes the both full time and part time residents. The City estimates the population will increase at a growth rate of 1.5 percent per year, reaching an estimated population of 2,042 by the year 2035. This population is becoming increasingly more seasonal, which will increase summer-time demand for water provided under this permit.
17. The City's peak water demand within its service area boundaries was 0.57 cfs in 2007.
18. The City's peak day demand is projected to be approximately 1.22 cfs of water by the year 2035.
19. Full development of Permit S-32449 is needed to address the present and future water demand of City of Detroit, including system redundancy and emergency use.

Based on Findings of Fact 10 through 19, the Department finds that the City's request for an extension of time until October 1, 2035, to complete construction and to apply water to full beneficial use under the terms of Permit S-32449 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, 1995, to October 1, 2000, the City completed a Water Master Plan.
22. Since October 1, 2000, the City has accomplished the following:
 - replaced the inlet with 10" stainless steel pipe,
 - installed a Johnson Wedge Wire fish screen;

- installed approximately 300 feet of power line to bypass areas causing reoccurring power failures;
- installed two new 260 gpm pumps;
- installed a SCADA control system;
- constructed a new 240,000 gallon reservoir; and
- replaced of water supply mainlines.

Based on FOF 20 through 22, 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 updates to the Application, as of July 28, 2011, the City has invested approximately \$1,900,925, which is about 55 percent of the total projected cost for complete development of this project. The City estimates a \$1,555,000 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-32449, other costs included in this accounting are not partitioned out for S-32449 because (1) they are incurred under the development of a water supply system jointly utilized under other rights held by the City, and/or (2) they are generated from individual activities counted towards reasonable diligence and good faith as listed in ORS 690-315-0080(4) which are not associated with just this permit, but with the development and exercise of all the City's water rights.
24. As of June 29, 2005, the City had diverted 0.42 cfs of the 1.0 cfs allowed for beneficial municipal purposes under the terms of this permit.
25. The Department has considered the City's compliance with conditions, and did not identify any concerns.

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

26. According to the updates to the Application, as of July 28, 2011, the City has invested approximately \$1,900,925, which is about 55 percent of the total projected cost for complete development of this project. The City estimates a \$1,555,000 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 12 through 19, and 24 above, the City has indicated, and the Department finds that the City must rely on full development of their Permit S-32449.
28. The City estimates an annual population growth rate of 1.5 percent per year over a 28 year period, being the years 2007 to 2035.

29. Given the current water supply situation of the City, including current and expected demands, the need for system redundancy, and emergency water supply, there is a market and present demand for the water to be supplied under Permit S-32449.
30. ORS 537.230(3)(c) and OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of water beyond 0.42 cfs (not to exceed the maximum amount authorized under this permit, being 1.0 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this requirement.

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

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

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

33. Delay of development under Permit S-32449 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-32449 was delivered to ODFW on February 2, 2010, for ODFW's review under OAR-690-315-0080.
35. Notification that the pending municipal Application for Extension of Time for Permit S-32449 was delivered to ODFW for review was sent to the City on April 29, 2010.
36. Notification that the pending municipal Application for Extension of Time for Permit S-32449 was delivered to ODFW for review was published in the Department's Public Notice dated May 4, 2010. No public comments were received regarding this notice.
37. On February 23, 2018, the Department received ODFW's Division 315 Fish Persistence Evaluation and Proposed Fish Persistence Conditions for Permit S-32449.

38. Summary and Excerpts of Advice from ODFW:

Use of water under the portion of this permit that is undeveloped as of June 29, 2005, should be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit. ODFW has determined that the Breitenbush River will be affected by water use under this permit. ODFW's advice is based on the best available information and existing data.

ODFW recognizes that long term climatic variations will affect the amount of water in the system. In favorable water years, fish populations tend to increase and in unfavorable water years, fish populations contract. The long term objective for a listed species is to have the population increase to a sustainable level over time and to be able to maintain itself through natural fluctuations in the environment.

The target flows, in Table 1, below, are ODFW's recommended flows for maintaining the persistence of listed fish species in the Breitenbush River. ODFW advises the development of conditions that allow municipalities to meet their water needs while maintaining the persistence of listed fish species.

The severity of the measures to be taken by the permit holder should reflect the degree to which the recommended target flows are being missed and the percentage of water that is withdrawn by the municipality as compared to the overall streamflow level.

Table 1

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE BREITENBUSH RIVER NEAR DETROIT, OREGON	
Month	Cubic Feet per Second
October	158
November	196
December	300
January	290
February	276
March	287
April	343
May	355
June	245
July	187
August	156
September	142

Streamflow Measurement Point

After analysis of flow records, ODFW has determined that measuring streamflows at USGS Gage # 14179000 on the Breitenbush River above French Creek is sufficient for determining if target flows are met within the Breitenbush River.

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

There is an undeveloped portion of 0.58 cfs of water under Permit S-32449 as per ORS 537.230(3)(d). For the purpose of conditioning this permit to maintain the persistence of fish, the Department finds that the amount of the undeveloped portion of water under Permit S-32449 is 0.58 cfs. Therefore, 0.58 cfs is the amount of water under Permit S-32449 that must be conditioned for the persistence of listed fish species.

Authorization to incrementally expand use of water under this permit beyond 0.42 cfs up to the permitted quantity of 1.0 cfs can only be granted through the Department's review and approval of the municipal permit holder's future WMCPs (OAR 690-086).

When ODFW's recommended target flows are missed, the proposed conditions may result in a reduction in the amount of water conditioned for fish persistence under Permit S-32449 that can be diverted.

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

- a. The flows needed to maintain the persistence of fish must be determined or measured by the water user in the Breitenbush River above French Creek near Detroit, Oregon, at USGS GAGE No.14179000, or its equivalent.
- b. When target flows are not met, the amount of water conditioned for fish persistence must be reduced in proportion to the degree to which the recommended target flows are being missed. ODFW's formula for determining the percent shortfall, or missed target flow is defined as:

$$1 - [(Q - E) / Q_T],$$

where Q is the flow at the point of interest, E is the amount of water conditioned for fish persistence, and Q_T is the target flow (from Table 1).

- c. ODFW's advice recognizes that the use of the undeveloped portion of the permit represents much less than 1% of the natural stream flow during all months of the year.

40. The Department finds, based on ODFW's advice, that in the absence of conditions, the use of the undeveloped portion of Permit S-32449 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-32449, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. (See Item 2 of the "Conditions" section of this PFO.)⁵
42. On June 5, 2018, the Department notified the City as per OAR 690-315-0080(2)(f) of ODFW's written advice and the "Conditions to Maintain the Persistence of Listed Fish" proposed in this PFO for the pending municipal Application for Extension of Time for Permit S-32449.

CONCLUSIONS OF LAW

1. The City is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(2).
2. The City has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. Pursuant to Section 5, Chapter 410, Oregon Laws 2005, the permit holder is not required to demonstrate that actual construction of the project began within one year of the date of issuance of the permit, as otherwise required by OAR 690-315-0080(1)(b).
4. Pursuant to ORS 540.510(3)(a) and (b), water under Permit S-32449 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, 2035⁶, 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

⁵ The Department, based on advice from the ODFW, finds that the conditions contained in this PFO are appropriate for this extension. In other municipal extensions that require conditions to maintain the persistence of listed species, different conditions may be warranted depending on the advice received from ODFW and communications with the particular extension applicant.

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

return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department finds that the City has shown good cause for an extension of time to complete construction and to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

8. As required by OAR 690-315-0090(3) and as described in Finding 29, above, and specified under Item 1 of the “Conditions” section of this PFO, the diversion of water beyond 0.42 cfs (not to exceed the maximum amount authorized under this permit, being 1.0 cfs) under Permit S-32449 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 33 through 41, 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 0.42 cfs under Permit S-32449 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-32449 from October 1, 2000, to October 1, 2035.

Extend the time to apply the water to beneficial use under Permit S-32449 from October 1, 2000, to October 1, 2035.

Subject to the following conditions:

CONDITIONS

1. Development Limitations:

A maximum diversion of 0.42 cfs of water is currently allowed under Permit S-32449. Any diversion of water beyond 0.42 cfs (not to exceed the maximum amount authorized under the permit, being 1.0 cfs) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan (WMCP) under OAR Chapter 690, Division 86 that authorizes access to a greater rate of diversion of water under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. The amount of water used under Permit S-32449 must be consistent with this and subsequent WMCP’s approved under OAR Chapter 690, on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-32449 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of the final order may also meet the WMCP submittal requirements of other Department orders.

2. **Conditions to Maintain the Persistence of Listed Fish**

The first 0.42 cfs of water under Permit S-32449 or any subsequent water right(s) originating from Permit S-32449 is not and will not be conditioned for maintaining fish persistence.

The portion of Permit S-32449 subject to these fish persistence conditions is established as 0.58 cfs in accordance with ORS 537.230(3)(d). The use of 0.58 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-32449 implemented will include these Conditions to Maintain the Persistence of Listed Fish. If more than one resulting water right is subject to these Conditions to Maintain the Persistence of Listed Fish, then legal use of the 0.58 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 Breitenbush River as recommended by ODFW are in Table 2, below; flows are to be measured in the Breitenbush River near Detroit, Oregon (USGS Gage Number 14179000, or its equivalent).

Table 2

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE BREITENBUSH RIVER MEASURED AT USGS GAGE 1417900 NEAR DETROIT, OREGON	
Month	Cubic Feet per Second
October	158
November	196
December	300
January	290

ODFW'S RECOMMENDED FISH PERSISTENCE TARGET FLOWS IN THE BREITENBUSH RIVER MEASURED AT USGS GAGE 1417900 NEAR DETROIT, OREGON	
February	276
March	287
April	343
May	355
June	245
July	187
August	156
September	142

Alternate Streamflow Measurement Point

The location of a streamflow measurement point as established in these Conditions to Maintain the Persistence of Listed Fish may be revised if the permit or water right holder provides evidence in writing that ODFW has determined that flows may be measured at an alternate streamflow measurement point and the permit or water right holder provides an adequate description of the location of the alternate streamflow measurement point, and the Water Resources Director concurs in writing.

B. Determining Water Use Reductions - Generally

The maximum amount of the 0.58 cfs conditioned for fish persistence that can be appropriated is determined in proportion to the amount by which the target flows shown in Table 2 are missed based on a seven-day rolling average of mean daily flows as determined or measured by the water user in the Breitenbush River above French Creek, near Detroit (USGS Gage Number 14179000, or its equivalent). The percent of missed target flows is defined as:

$$(1 - [(Q_A - E) / Q_T]) \times 100\%,$$

where Q_A is the streamflow measured at the designated gage based on the seven-day rolling average⁷, E is the amount of water conditioned for fish persistence, and Q_T is the target flow (from Table 2).

The percent by which the target flow is missed applied to the amount of water conditioned for fish persistence provides the maximum amount of water that can be diverted as a result of this fish persistence condition, and is defined as:

$$E - (E \times \% \text{ missed target flows}),$$

⁷ Alternatively, the City may use a single mean daily measurement.

where E is the amount of water conditioned for fish persistence, being 0.58 cfs.

When $Q_A - E \geq Q_T$, the target flow is considered met and therefore the amount of water conditioned for fish persistence that that can be diverted would not need to be reduced.

C. Examples

Example 1: Target flow met.

On August 15, the last seven mean daily flows were 164, 163, 164, 165, 164, 163 and 162 cfs. The seven-day rolling average is (Q_A) 163.6 cfs. Given that the amount of water conditioned for fish persistence is 0.58 cfs, then the seven-day average of mean daily flows (Q_A) minus 0.58 is greater than the 156 cfs target flow (Q_T) for August 15. In this example, $Q_A - E \geq Q_T$.

$$163.6 - 0.58 \geq 156$$

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.

Step 1: Given that the amount of water conditioned for fish persistence (E) is 0.58 cfs, if on August 15, the average of the last seven mean daily flows (Q_A) was 130 cfs and the target flow (Q_T) is 156 cfs, then the target flow would be missed by 17.0%.

$$(1 - [(130 - 0.58) / 156]) \times 100\% = 17.0\%$$

Step 2: Given that the amount of water conditioned for fish persistence is 0.58 cfs, which needs to be reduced by 17.0% (from Step 1), or 0.10 cfs, then the maximum amount of water conditioned for fish persistence that can be appropriated as a result of this fish persistence condition is 0.48 cfs.

$$(0.58 \times 17.0\%) / 100\% = 0.10$$

$$0.58 - 0.10 = 0.48$$

Step 3: The calculated maximum amount of water that could be appropriated due to the fish persistence condition may not exceed the amount of water to which the permit or water right holder is legally entitled to divert under this extended permit or subsequent water right(s). Under the extended permit or subsequent water right(s) the maximum amount that could be legally diverted is 1.0 cfs.

In this example, if the amount of water legally authorized for diversion under this permit or subsequent water right is 0.7 cfs (for example, authorization provided through a WMCP or partial perfection), then 0.7 cfs would be the maximum amount of diversion allowed under this water right *including* amounts of water *not conditioned for maintaining fish persistence* as authorized under this or any subsequent water right(s) originating from Permit S-32449, being up to a total of 0.42 cfs.

(Conversely, if the amount of water legally authorized for diversion under the permit or subsequent water right is 1.0 cfs, then 0.90 cfs (0.48 from Step 2 + the 0.42 not conditioned for fish persistence conditions) would be the maximum amount of diversion allowed under this water right.

DATED: July 3, 2018, 2018



Dwight French
Water Right Services Division Administrator

*If you have any questions,
please check the information
box on the last page for the
appropriate names and phone
numbers.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **August 17, 2018**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and

- how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
- a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

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

If you have any questions about statements contained in this document, please contact Jeffrey D. Pierce at 503-986-0802.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.

If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.

Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
