

ODFW DIVISION 33 APPLICATION REVIEW SHEET

Recommendations for Water Right Applications that may affect the
Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Application #: G18063 Applicant's Name: Louis Marks

A) Will the proposed use occur in an area that may affect the essential habitat of a **SENSITIVE** fish species?
☐ NO ☒ YES Species: redband trout If YES, fill out **SECTION I** and the **RECOMMENDATION**.

B) Will the proposed use occur in an area that may affect the essential habitat of a **THREATENED OR ENDANGERED** fish species?
☐ NO ☒ YES Species: Bull Trout Status: ☒ Threatened ☐ Endangered
If YES, fill out **SECTION II** and the **RECOMMENDATION**.

If your answer is **NO** to both questions, you may comment by completing the public interest review sheet on the back of this page.

SECTION I:

1) Will the proposed use result in a **NET LOSS** in the habitat of a SENSITIVE SPECIES? [690-33-330(2)(a)] ☐ NO ☒ YES

☒ There is an instream water right(s) (ISWR) that supports biological base flows for STE fish species at the Point of Diversion or downstream.

Certificate(s): 72663, 72664

☒ ODFW has identified biologically necessary flows not captured in an instream water right (e.g., flows in another flow analysis) that would benefit STE fish species at the Point of Diversion or downstream.

Source: IS 72188, IS 72191

☒ The proposed use **will impair** the identified biologically necessary flows for fish wholly or partially during the period of impact.

2) What stage or value is at risk (check all that apply): ☒ Spawning ☒ Incubation ☒ Rearing ☒ Passage ☒ Habitat Value

3) Can conditions be applied to mitigate the impact to the essential habitat of a SENSITIVE species?
☐ NO ☒ YES; recommend from Menu of Conditions and skip to Section II.

Based on ODFW's knowledge of applicable Subbasin Plans, Recovery Plans, Regional Restoration Plans, or other documents, the proposed use appears inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program¹ or would otherwise be detrimental to the protection and/or recovery of STE fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the mitigation obligation, consistent with OAR 635-415, outlined below. To meet the goals outlined in ODFW's Mitigation Policy, ODFW recommends the mitigation provided be available within the mitigation reach and **legally protected and maintained** for the life of the permit and subsequent certificate.

☒ ODFW recommends the applicant provide water-for-water mitigation:

A) Water Quantity: 5 cfs (cfs or AF; equals amount requested)

☒ In lieu of providing "water-for water", ODFW's Habitat Mitigation Policy allows the applicant the option of providing mitigation through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action. If the applicant is interested in pursuing this option, please contact the local ODFW Fish Biologist for further information.

B) Months (when biologically-necessary flows are not met during the period of impact): March - October

C) Location of Mitigation:

¹ Water Resources Department's document number 94-2

☒ anywhere benefitting the impacted population(s) and/or higher priority species

4) If conditions cannot be identified to offset impacts to the essential habitat of SENSITIVE species, would the proposed use harm the species?
☐ NO ☐ YES [690-33-330(4)] Please explain:

5) If WRD determines that it is in the public's interest to approve a permit even if the impact cannot be mitigated, what conditions do you recommend? (select from Menu of Conditions)

SECTION II:

1) Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program? ☒ NO ☐ YES [690-33-120(1)]
Explain:

Based on ODFW's knowledge, the proposed use is **inconsistent** with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program² due to impairment of biologically necessary flows or to impacts to ecological functions important to threatened and endangered fish.

If NO, can the proposed use be conditioned to achieve consistency with the Fish and Wildlife Program? ☐ NO ☒ YES
(select from Menu of Conditions)

ODFW recommends the same conditions and mitigation as outlined in Section I.

RECOMMENDATION under OAR 690-033-0330 (2): ☒ Approval with conditions
☐ Approval without conditions
☐ Denial

ODFW Representative signature:



Date: 8-14-19

WRD Contact: **Caseworker:** B. Poage Water Rights Division, 503-986-0900 / Fax 503-986-0901

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² The Columbia River Basin Fish and Wildlife Program (WRD's document number 94-2) states: "In determining whether a proposed diversion or transfer would be consistent with salmon and steelhead needs, consult with fish and wildlife agencies and Indian tribes to determine whether the proposed use would cause any reduction in the quantity or productivity of salmon and steelhead habitat" (7.8G.1). In addition, the document includes a recommendation to "halt further issuance of consumptive water rights unless a finding can be made, in consultation with fish agencies and tribes, that existing instream flows meet anadromous fish needs for all life-stages" (Recommendation No.: 7-2).

ODFW PUBLIC INTEREST REVIEW SHEET

Application #: G

Applicant's Name:

1) Will the proposed use occur in an area that may affect the habitat of fish or wildlife species?

☐ NO (**Sign form and return**)

☐ YES Species:

Other:

What stage or value is at risk (check all that apply): ☐ Spawning ☐ Incubation ☐ Rearing ☐ Passage ☐ Habitat Value

2) Will the proposed use result in a loss of habitat? ☐ NO ☐ YES

3) Can conditions be applied to mitigate the impact to the loss of habitat?

☐ NO

☐ YES; recommend from Menu of Conditions and skip to question 6.

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4) If conditions cannot be identified to offset impacts to the habitat, would the proposed use harm the species? ☐ NO ☐ YES

If YES, please explain:

5) If WRD determines that it is in the public's interest to approve a permit even if the impact cannot be mitigated what conditions do you recommend? (select from Menu of Conditions)

6) Your recommendation: ☐ Approval with conditions
☐ Approval without conditions
☐ Denial

ODFW Representative signature:

Date:

WRD Contact:

Caseworker:

Water Rights Division, 503-986-0900 / Fax 503-986-0901

MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND AG

The following condition will be included in any permit issued unless ODFW explicitly requests that it be omitted:

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver or exemption through the Oregon Department of Fish and Wildlife. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator before beginning construction of any in-channel obstruction.

- fishself** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.
- fishapprove** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- fishdiv33** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.
- The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- fishmay** Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
- b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- b51a** The period of use has been limited to _____ through _____.
- b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.
- b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgment the installation of the weir(s) will provide no public benefit.
- futile call** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the _____ River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.
- riparian** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.
- wq** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
- fence** The stream and its adjacent riparian area shall be fenced to exclude livestock.
- blv** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.

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