

Lower Columbia/Statewide

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 #: S-87269 Applicant's Name: Confederated Tribes of the Warm Springs

1) Will the proposed use occur in an area that may affect the essential habitat of sensitive, threatened, or endangered fish species?
[690-33-330(1)]

NO YES Species: Steelhead, Chinook salmon, coho salmon Status: Sensitive Threatened Endangered

If YES, continue to question (2). If NO, you may comment by completing the public interest review sheet on the back of this page.

2) Stage or value at risk (check all that apply): Spawning, Incubation Rearing Passage Habitat Value

3) Will the proposed use result in a LOSS in the essential habitat of THREATENED OR ENDANGERED SPECIES or a NET LOSS in the essential habitat of a SENSITIVE SPECIES? NO YES

A) Standard of NET LOSS applies to sensitive species statewide. [690-33-330(2)(b)]
B) Standard of LOSS applies to T or E species outside the Columbia Basin. [690-33-330(2)(a)]

4) Can conditions be applied to mitigate the impact to the essential habitat of a S, T or E species?
 NO; skip to question 6. YES

Which conditions are recommended? (select from Menu of Conditions) fishself- This diversion will be located in occupied habitat of steelhead and Chinook salmon. The diversion will need to be screened to meet the ODFW and NOAA Fisheries criteria prior to any diversion of water. It is unknown whether the proposed diversion will alter the natural temperature regime of the West Fork Hood downstream of the diversion site. Any alteration in temperature could potentially negatively effective spawning and incubation success of steelhead, Chinook and coho salmon.

5) If conditions cannot be identified to offset impacts to the essential habitat of S, T or E species, would the proposed use harm the species? NO YES [690-33-330(4)]

If YES, please explain: _____

6) 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)

7) Your recommendation under OAR 690-33-0330 (2): Approval with conditions
 Approval without conditions
 Denial

ODFW Representative signature: [Signature] Date: 12-4-08

WRD Contact: Caseworker: JEANA EASTMAN, 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 Chapter 635-415-030 adopted November 13, 1991, 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 Chapter 635-415-030 adopted November 13, 1991, 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.

Jeana Eastman

From: Rod French [Rod.A.French@state.or.us]
Sent: Friday, December 05, 2008 9:38 AM
To: EASTMAN Jeana M
Subject: S-87269 Confederated Tribes of the Warm Springs

Jeana,

This email pertains to (OAR) 690-033-0120 (2) which prohibits the diversion of water from April 15 through September 30th, and the exemption provided by OAR 690-033-0140(2). The Hood River Basin provides critical habitat to four fish species (bull trout, steelhead, coho salmon, Chinook salmon), which are currently listed as threatened under the federal Endangered Species Act. Additionally, cutthroat trout are considered a sensitive species by the state of Oregon. The proposed diversion occurs in the proximity of Moving Falls at approximate river mile 2.5 in the West Fork of Hood River. The area around the proposed diversion provides spawning, rearing, and adult holding habitat for native steelhead and Chinook salmon along with being an important migratory corridor. Coho salmon and bull trout can generally be found downstream of the diversion. The Lower Columbia River Draft Recovery Plan, list restoring stream flow as primary recovery action for all species in the Hood River.

In order for an exemption from the April 15 through September 30 use limitation, (OAR) 690-033-0140(2) states that projects that provide net benefits for native resident and native anadromous fish recovery are exempt from the seasonal limitation. This proposed project can provide a net benefit for Chinook salmon recovery in the Hood River Basin, as the diversion is intended to be utilized for producing hatchery Chinook which may assist with ongoing recovery efforts. It is more difficult, however, to describe potential net benefits of the diversion to other native anadromous or resident species in the Hood River. Since the use of water is essentially a flow through type of diversion, the use will generally have a neutral effect on other fish species in terms of stream flow. The diversion does, however, have the potential to alter the natural temperature regime of the West Fork Hood River, especially during the summer season. Perhaps the applicant could mitigate for the effects of the diversion, by providing benefits to other native anadromous or resident species in the Hood River at another site.

Please feel to contact me if you require additional clarification. Rod

Rod A. French
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12/5/2008