

# DEQ 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 Reservation of Oregon

1) Is there a connection to a 303(d) listed water quality limited water body?  NO  YES

Explain: The West Fork Hood River is 303(d) listed for beryllium. The 2004/2006 303(d) list also notes that the West Fork was delisted for temperature because a TMDL was approved by EPA in 2002. Because DEQ did not do temperature modeling on the West Fork Hood River, the numeric criteria apply, which are 16°C for core cold water habitat (year around) and 13°C for spawning (August 15<sup>th</sup>-June 15<sup>th</sup>). To meet the requirements of the TMDL, anthropogenic impacts on stream temperature should be minimized. Anthropogenic impacts identified in the TMDL include both removal of riparian vegetation and diversion of flow.

DEQ collected temperature data during 1998 for TMDL development. The data collected on the West Fork Hood River near the mouth indicated that the spawning criterion of 13°C was exceeded from mid-August through mid-September at this site. DEQ did not collect data prior to June 15<sup>th</sup> that year to evaluate compliance during the spring season. The core cold water habitat criterion was not exceeded at this site during that year.

CTWSRO has also collected temperature data since 1990 near Rivermile 5. In a review of this data, the West Fork Hood River appears to meet the numeric criterion for core cold water habitat at this location as well. The spawning criterion was also not met every year during the last two weeks of August at this location. In many years, the stream temperature at this location was right at 13°C for most of the last two weeks of August, indicating that the 13°C was probably exceeded at downstream locations in most years. During 1998 (the one year with data at both sites), when stream temperatures at the DEQ site near the mouth dropped below 13°C, temperatures at the CTWSRO site were around 10°C. Without having any data at the mouth during the spring/early summer, we can only estimate compliance with the spawning criterion based on the data collected at the upstream site. If 10°C at the upstream site is used as an indication of when temperatures at the mouth will exceed 13°C, then it would appear that the spawning criterion could be exceeded at the mouth in late May and early June.

2) What is the potential for this use to impact a water quality limited water body:  HIGH  MEDIUM  LOW

Explain: As calculated in the TMDL, the 7Q10 Low Flow near the mouth was 102 cfs (1932-1999). The proposed diversion of 5 cfs would therefore represent approximately 5% of the stream flow during low flow conditions. The average monthly flows in August and June over the same time period were 173 cfs and 455 cfs respectively, with the 5 cfs diversion representing approximately 3% and 1% of stream flows. Because stream temperatures are strongly influenced by the volume of water in the stream, it appears that there is a potential for this use to impact stream temperatures, particularly in the late summer/early fall.

3) If the answer to question (2) is HIGH or MEDIUM, will the proposed use still result in diminution of water quality for the habitat of sensitive, threatened, or endangered fish species?  NO  YES

If YES, how? Summer steelhead occupy the West Fork Hood River.

4) Can conditions be applied to mitigate the impact of the use?  NO  YES

Which conditions are recommended? (select from Menu of Conditions)

Condition from menu: wq. The use could only be allowed when West Fork Hood River temperatures below the point of use meet temperature criteria. Based on the data available, this would mean that the proposed diversion should not occur (or should at a minimum be reduced) during the last two weeks of May, first two weeks of June, the last two weeks of August, and the first two weeks of September.

5) If conditions cannot be identified to offset impacts, would the proposed use affect the Habitat of Sensitive, Threatened, or Endangered Fish Species?  NO  YES

If YES, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6) If a permit is issued, are there any conditions you would like to see included in the permit?

See comments under #4 above.

7) Your recommendation under OAR 690-033-0330 (2):  Approval with conditions  
 Approval without conditions  
 Denial

DFQ Representative signature: Bonnie Lamb Date: November 5, 2008

WRD Contact Caseworker: Jeanne 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