

# 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.

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JUL 15 2011

Application #: S-87720 Applicant's Name: Janette Majors

WATER RESOURCES DEPT

SALEM, OREGON

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: Coho (T), Fall Chinook (S), Steelhead (S) 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 (**OWRD has determined that water is unavailable from the river for domestic use**)

- 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 (for water directly from Applegate River); skip to question 6.  YES (for stored water from Applegate Reservoir)

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

**Fishdiv33** OWRD has determined that stored water from Applegate Reservoir is available for irrigation. If this water is used according to the conditions in the contract with Bureau of Reclamation and is only used when it is available, impacts to native species should be reduced. OWRD has determined that water from the Applegate River is not available for domestic use.

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: OWRD has determined that water is not available from the Applegate River for domestic use. Withdrawal of water from the river could reduce water needed for native fish and their habitat unless the water is replaced with water from another source. It should be noted that the Assistant Water Master for Jackson County has sent a letter to OWRD stating that water is available from the river which suggests that further review by OWRD may be needed to determine water availability.

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)

**Fishdiv33** A meter needs to be installed at the POD from the river to limit withdrawal to 0.005 cfs for human consumption.

7) Your recommendation under OAR 690-033-0330 (2):  Approval with conditions (for stored water from Applegate Reservoir)  Approval without conditions  Denial (for withdrawal from Applegate River, pending further study of water availability)

ODFW Representative signature: Brent Crowe Date: July 15, 2011

WRD Contact: Caseworker: \_\_\_\_\_, Water Rights Division, 503-986-0900 / Fax 503-986-0901

# ODFW PUBLIC INTEREST REVIEW SHEET

Application #: \_\_\_\_\_ Applicant's Name: \_\_\_\_\_

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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: \_\_\_\_\_

Stage or value 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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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SALEM, OREGON

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.
- b1v** 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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WATER RESOURCES DEPT  
SALEM, OREGON

## Kerry Kavanagh

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**From:** Brent Crowe [brent.d.crowe@state.or.us]  
**Sent:** Friday, July 15, 2011 9:27 AM  
**To:** Kerry Kavanagh  
**Subject:** RE: S 87720 Majors  
**Attachments:** S87720 Majors.doc  
ODFW's review is attached.

Brent Crowe  
Assistant District Fish Biologist  
Rogue Watershed District  
1495 East Gregory Rd.  
Central Point, OR 97502  
541-826-8774 ext 222  
brent.d.crowe@state.or.us

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**From:** Kerry Kavanagh [mailto:kavanakl@wrd.state.or.us]  
**Sent:** Wednesday, July 13, 2011 9:09 AM  
**To:** CROWE Brent D  
**Cc:** Kerry Kavanagh  
**Subject:** RE: S 87720 Majors

Hi Brent,

Based on a decision by my manager, Tim Wallin, the water availability report is the "official word" on whether water is available.

Kerry

Kerry Kavanagh  
Water Rights Caseworker  
(503) 986-0816

Oregon Water Resources Dept  
725 Summer St NE, Suite A  
Salem, OR 97301-1266  
front desk (503) 986-0900  
fax (503) 986-0901  
<http://oregon.gov/OWRD>

Messages to and from this e-mail address may be available to the public under Oregon law.

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**From:** Brent Crowe [mailto:brent.d.crowe@state.or.us]  
**Sent:** Wednesday, July 13, 2011 9:03 AM  
**To:** Kerry Kavanagh  
**Subject:** S 87720 Majors

Kerry,

I'm reviewing the water right for S87720. Included in the application materials is a letter from Jackson

7/15/2011

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