

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 #: R-88061 Applicant's Name:

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

Explain: The applicant proposes to store 8.7 AF of water in 6 reservoirs on tributaries of the John Day River above Dayville. All reservoir locations are within 4 miles of the John Day River. The John Day River above Dayville is listed for biological criteria, dissolved oxygen (spawning season and year round), fecal coliform (summer), temperature (year round), habitat modification, e. coli (summer), and flow modification. The John Day Basin has TMDLs for temperature, bacteria, and dissolved oxygen.

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

Explain:

Potential for proposed use to impact bacteria (fecal coliform, e. coli) is high:

The proposed uses of the ponds includes wildlife and stockwatering. Because the ponds are in channel, there is a high potential for animals to be in the pond and in nearby areas which will likely result in animal waste getting transported into the stream.

Potential for impact to temperature (and biological criteria and dissolved oxygen) is medium:

The John Day temperature TMDL states

"During the critical dry season, the condition of intermittent and ephemeral streams can indirectly influence stream temperature in perennial streams. Vegetation disturbance and channel modifications along nonperennial streams typically increase the delivery of fine sediment. This in turn, increases sediment loading in perennial streams, generally leading to shallowing and widening and corollary increases in solar heating."

The construction of 6 proposed reservoirs would involve vegetation disturbance and channel modifications on non-perennial streams, and therefore will likely increase the delivery of fine sediment to the John Day River. This would further exacerbate the temperature impairment on the John Day River.

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?

High bacteria levels in stream add excess organic material. The decomposition of this organic material depletes dissolved oxygen. Low dissolved oxygen concentrations are harmful to fish.

The construction of the dams may increase the delivery of sediment to the John Day River which in turn may increase stream temperatures as described above. The John Day River is already temperature impaired for fish uses year round. Increased temperatures in the John Day River will exacerbate the temperature impairment.

4) Can conditions be applied to mitigate the impact of the use?

☐ NO ☒ YES; recommend from Menu of Conditions and skip to question 7.

- 1) 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.
- 2) Temperature of the reservoir releases below the dam must be less than or equal to the ambient stream temperature above the reservoir. (John Day Basin TMDL p. 88)
- 3) The construction of the ponds should not result in erosion and/ or sediment downstream.

4) The applicant must adhere to the Upper John Day Ag Water Quality Area Plan rules (603-095-2040) which state:

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provisions of ORS 468B.025 or 468B.050.

(3) Livestock Management: By January 1, 2006, livestock areas shall be managed to control direct discharge of pollutants.

(4) Uplands Management: By January 1, 2006, within the vegetative growth capability of the site, private land and access route management must foster sufficient vegetation to protect water quality by providing infiltration, filtering of sediment and animal wastes, and stabilization of soil.

(5) Streamside Management: By January 1, 2006, management of streamside areas must allow the establishment, growth and active recruitment of vegetation, consistent with the vegetative growth capability of the site, for protection of water quality by filtering sediment, stabilizing streambanks, and providing shade.

If the applicant wishes to pursue the permit but is unable to meet the above conditions, the applicant should contact DEQ to determine a suitable water quality mitigation project.

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?

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

DEQ Representative signature:



Date: 5/26/15

WRD Contact: Caseworker: Barbara Park, 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.