

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 #: G-17938 Applicant's Name: Patrick Campbell

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

Explain: The application proposes to withdraw water from 3 wells near Rock Creek in the John Day Basin. OWRD determined in their groundwater review of this application that the 3 wells are hydraulically connected to Rock Creek and have the potential for substantial interference with Rock Creek flows. Rock Creek is water quality limited for temperature (year round), biological criteria (year round), sedimentation (year round), habitat modification, and flow modification.

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

Explain: The three wells are within 1 mile of Rock Creek and OWRD has found that there is potential for substantial interference from the wells to reduce the flows in Rock Creek.

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?

Temperature

The temperature standard in Rock Creek is 18C year round for salmon and trout migration and rearing use. The standard is currently not being met. Any reduction in stream flow will reduce the heat capacity of Rock Creek and exacerbate the temperature impairment.

Biological criteria

The biological criteria is based on an assessment of the aquatic species of resident biological communities. Because the presence of insects and bugs that support fish populations is linked to stream temperature, the biological criteria impairment is linked to the temperature impairment. A worsening of the temperature impairment will result in a worsening of the biological criteria 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.

Because no water is available from Rock Creek, DEQ recommends denial of the application.

If the facts of the application change so that groundwater is available without the potential for substantial interference with surface water, then DEQ may approve the use so long as the applicant protects the water quality of Rock Creek from further degradation by implementing the best management practices described on pages 140-141 of the John Day TMDL and adhering to the Lower John Day Agricultural Management Area rules OAR 603-095-2900 through 603-095-2960.

From John Day TMDL:

"Healthy riparian vegetation is needed, including shade producing types. There is potential for continuous stands of riparian trees and herbaceous vegetation along most of the Basin's streams, though in some situations this will require considerable evolution in channel configuration. Potential shade producing vegetation is described and referenced in **Appendix C** of this document. Although DEQ does not specify required vegetation types, for overall ecological benefits and consistency with programs directed to fish and wildlife habitat restoration, native vegetation is generally optimal. Passive or active restoration of riparian vegetation could be applied. In some cases, the necessary riparian vegetation may already be present, but more time is needed for the vegetation to mature, or to keep pace with channel recovery. In other cases, active vegetation planting and/or stream fencing may be required."

"Limiting irrigation surface return-flows of warm water can also help meet the heat reduction called for in the TMDL."

From OAR 603-095-2940:

"(4) **Streamside Management:** By January 1, 2008, management must allow the establishment and improvement, over time, of riparian vegetation for streambank stability, filtering sediment and shading, consistent with site capability."

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: See #3 above.

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: 7/21/15

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.

