

# 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 #:G 17981 Applicant's Name: Arlene L. Dietz-Rice Farms LLC

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: Spring Chinook Status:  Sensitive  Threatened  Endangered
- Species: Bull Trout Status:  Sensitive  Threatened  Endangered
- Species: Oregon Chub Status:  Sensitive  Threatened  Endangered
- Species: Pacific Lamprey 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  YES; recommend from Menu of Conditions and skip to question 7.

**wq:** Use should only occur when state and federal water quality standards are being met. DEQ shall be consulted on any potential detrimental impacts to water quality.

**riparian**

**b51a (November – June)** Because interference with the McKenzie River has been determined from this proposed use, ODFW recommends that this water right be conditioned to allow diversion of water only when flows in the lower McKenzie River either meet or exceed ODFW's recommended minimum flows established in "ODFW's Division 315 Fish Persistence Evaluation of Municipal Extension Eugene Water and Electric Board Application # S-35037" dated June 5, 2009. ODFW recommends maintaining a flow of at least 2,000 cfs year round to maintain the persistence of fish species listed as sensitive, threatened, or endangered under state or federal law. Based on WRD's Water Availability Analysis, the recommended 2,000 cfs is currently not met July – October without augmentation from stored water in US Corps of Engineers reservoirs. However, the applicant has offered to cancel underlying Certificate 23812 and has purchased "Bureau of Reclamation Contract No. 159E101864 for use of 67.5 acre-feet (AF) of stored water from the Willamette River Basin Project to provide mitigation for the impacts of groundwater pumping". WRD has determined that this mitigation will offset the proposed withdrawal, yielding no net loss of habitat. In addition, the travel distance for the stored water from the point of release to the point of diversion will yield a net benefit. ODFW prefers Certificate 23812 be transferred and protected instream, if possible. The mitigation is required during the July - October period or whenever the flow of 2,000 cfs is not met and must remain in place for the life of the proposed 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:

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 690-033-0330 (2):  Approval with conditions  
 Approval without conditions  
 Denial

ODFW does not object to the proposed groundwater appropriation contingent on the implementation of the proposed mitigation noted in section (4).

ODFW Representative signature: Jeffrey S. Ziller  Date: August 25, 2015

WRD Contact: **Caseworker:** Barbara Park. 503-986-0859 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.

