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-18082 **Applicant's Name:** LINDA INSCOE, TERRY INSCOE, POWDER RIVER LAND CO.

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

Explain: The applicant proposes to withdraw water from March 1st to October 31st each year from sources connected to the Lower North Powder River watershed and the Warm Springs Creek watershed (6th field HUCs). The Lower North Powder River is 303d listed for e. coli (year round) and temperature (summer). Warm Springs Creek flows into the Rock Creek-Powder River watershed (5th field HUC) which is 303d listed for e. coli (year round), dissolved oxygen (January 1st to May 15th), arsenic (year round), and temperature (summer).

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

Explain: OWRD has determined the following:

- This use has the potential for substantial interference with the North Powder River and Warm Springs Creek.
- Water is not available from either water body.

Temperature and dissolved oxygen are flow-related parameters. As flow decreases, the temperature and dissolved oxygen impairments become more severe.

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? Redband trout habitat is present in the area of concern. Redband trout is listed as a sensitive species in this area.

Oregon's stream temperature standards are based on the life cycle needs of salmonids. Stream temperatures that exceed the standards can disrupt the life cycle of a sensitive, threatened, or endangered fish species and may even cause death. Temperatures are already known to exceed standards in the North Powder River and Powder River in the summer. In late summer, streamflow in the Lower North Powder River is typically at or near zero. Further withdrawals from the stream will extend the low-flow or no-flow period, reduce the stream's heat capacity, and cause greater fluctuation in daytime and nighttime stream temperatures. This will result in the diminution of habitat of redband trout.

Fish require different concentrations of dissolved oxygen based on their species and life history stage. Oregon's dissolved oxygen standards are based on the most sensitive species and life history stage at the location and season of concern. The dissolved oxygen concentrations of the Powder River from January 1st to May 15th are already known to be insufficient for the habitat of redband trout. Any additional reduction in dissolved oxygen concentrations in this time period would result in the diminution of habitat of these fish species.

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

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

OWRD has determined that water is not available for this proposed use. If the facts of the application change, DEQ should be notified and given the opportunity to submit updated comments.

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 response to #2 and #3.

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: 10/2/2015

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 Not withstanding 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.