

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 #: S 88240 Applicant's Name: OPI Real Estate 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: Winter Steelhead Status: Sensitive Threatened Endangered
 NO YES Species: Pacific Lamprey Status: Sensitive Threatened Endangered
 Plus non listed coho, cutthroat trout, and other native fish.

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. ODFW has determined that ESA – listed winter steelhead historically may have utilized the reach in question. However, the extent to which steelhead utilize the stream and its tributaries for spawning and rearing is uncertain at this time and a full assessment will require further investigation. Due to this determination, ODFW recommends that the applicant pursue options to avoid or minimize impacts to the resource. Based on information available at this time, ODFW offers the following conditions for mitigating impacts to ESA-listed winter steelhead and State-sensitive Pacific lamprey should avoidance not be obtainable:

b51a: The period of use has been limited to November through April. The permit should be restricted for S-88240 if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet State and Federal water quality standards.

Fishdiv33: A) The diversion is required to meet Oregon's fish screening and bypass requirements. ODFW prefers that upstream and downstream fish passage be provided at the site, but State law does allow for other options to address fish passage. If a decision is made to seek a Waiver, the applicant must work closely with the ODFW Fish Passage Coordinator throughout the process of developing appropriate mitigation for impacts to fish passage and in seeking approval from the Oregon Fish and Wildlife Commission. Approval of fish screening and passage must be in writing. B) The diversion shall not detrimentally impact water quality of the source stream or downstream waters to the point that those waters no longer meet existing state or federal water quality standards. The applicant must ensure that the operation of the diversion meet water quality requirements year-round to minimize impacts to aquatic species.

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 Representative signature: Ben Walczak Date: 09/26/16

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

ODFW PUBLIC INTEREST REVIEW SHEET

Application #: S

Applicant's Name:

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; recommend from Menu of Conditions and skip to question 6.

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

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.