

Application #: S-88458

Applicant: *ST HILAIRE BROTHERS HERMISTON FARM LLC.*

**DEQ Water Right Review**

Basin & Subbasin: *Umatilla Basin, Mid-Columbia Lake Wallula*

What are the names of the surface water source and the nearest receiving waterbody? *Columbia River*

Requested water amount: *55.94 cfs* Requested time period: *10/1-4/14*

The purpose of OAR Chapter 690, Division 33 is to aid the Oregon Water Resources Department (OWRD) in determining whether a proposed use will impair or be detrimental to the public interest with regard to listed sensitive, threatened, or endangered (ST&E) fish species. Oregon’s stream temperature, dissolved oxygen, pH and several other standards are based on the life cycle needs of salmonids and other resident fish and aquatic life. Exceedances of the standards can disrupt the life cycle of a ST&E fish species and may even cause death. Refer to DEQ’s Water Right Application Review Procedures document for additional information. In addition, OWRD must consider water quality impacts as part of a public interest review, OAR 690-310-0120. Note: Water quality impacts and conditions unrelated to ST&E species should be noted as “Division 310” in the recommendations to OWRD.

**For Proposed Uses in the Columbia River Basin**, reviews must determine whether a proposed use complies with existing state and federal water quality standards. Upper Columbia applications require applicants to provide evidence, when they apply, that the proposed use complies with existing state and federal water quality standards. Geographic scope: Columbia River Basin and any waterbody that ultimately drains into the Columbia River.

**For Proposed Uses outside of the Columbia River Basin**, reviews must determine whether a proposed use may affect ST&E fish species habitat. Geographic scope: all other areas outside the Columbia River Basin geographic scope where OWRD determines ST&E fish species are present.

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**Upper and Lower Columbia**

Based on the review completed below, does the proposed use comply with existing state and federal water quality standards or may conditions be applied to bring the use into compliance?  No  Yes

List the conditions, mitigation or restrictions required for the proposed use to comply with existing state and federal water quality standards whenever possible; if no conditions can be recommended to meet the standards, write “none”:

- 1) *Prior to certification, the application must have a protocol in use to monitor stream temperature at the point of diversion and cease diverting when stream temperatures exceed water quality standards (20C).*

*OR*

**Flow Mitigation.** *DEQ recommends that the applicant shall mitigate anticipated impacts to water quality for the habitat of ST&E fish species by providing suitable replacement water. Additional mitigation may be required from other IRT members (example: OWRD may require mitigation for periods when water is not available). Surface flow mitigation is unlikely to provide the same benefit groundwater provides to gaining stream reaches. However, if groundwater mitigation is unavailable within the same aquifer, surface water mitigation will provide suitable mitigation.*

**Mitigation obligation:** *Prior to water use under this permit, the applicant shall provide mitigation water that is of no less volume than the permitted use. Mitigation water shall be sourced upstream of the point of appropriation, or the uppermost point on the stream at which Potential for Surface water Interference occurs. If surface water is used for mitigation, it shall be instream for the period of permitted use and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.*

- 2) Prior to certification, the applicant must have a protocol in use to monitor soil moisture in locations most susceptible to erosion and cease irrigating these locations when soil profiles are full, or likely to fill from precipitation events.
- 3) Division 310 recommendation: Prior to certification, the applicant must have a protocol in use to monitor the soil moisture in locations with the highest leaching potential and cease irrigating these locations when monitoring indicates that leaching is occurring or likely to occur.

**Statewide**

Will the proposed use result in water quality impacts that will cause either “loss” or “net loss” of essential habitat of ST&E fish species?  No  Yes

What conditions are recommended so that the proposed use will not result in “loss” or “net loss” of essential habitat of ST&E fish species? If conditions cannot be recommended to protect water quality to meet the standards of either “loss” or “net loss”, write “none”.

DEQ review prepared by: *Smita Mehta* Date prepared: *8/26/2021 – DEQ submitted the original Division 33 review for this application on July 6, 2018. In spring of 2021, OWRD contacted DEQ to request that DEQ Division 33 reviews for winter withdrawals on the Upper Columbia River be revised to have consistent recommended conditions with other Division 33 reviews that had been completed for the Columbia River. Some of DEQ’s reviews had a condition to restrict the start of the winter withdrawal season until after temperature criteria for salmon and steelhead migration (20C) was met. DEQ removed this condition in these revised reviews for the following reasons:*

*The DEQ reviewed this individual action and determined that this withdrawal will not significantly diminish the capability of the Columbia River to meet water quality standards. The DEQ reviewer is not aware whether cumulative Oregon withdrawals are significant, and this would influence advisability, however cumulatively they must be an extremely small fraction of the Columbia River flow given its large discharge as it enters Oregon and the many large tributary inflows in the Oregon reach. Additionally, there is currently a lack of water availability data in the basin.*

ODA review requested:  No  Yes Date review sent to ODA: 7/6/18

ODA reviewer: ODA review date: Comments:

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**THE SECTION BELOW IS FOR DEQ INTERNAL USE ONLY**

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1. DEQ’s antidegradation policy (OAR 340-041-0004) is designed to protect water from further degradation from new or increased sources of pollution and protects, maintains, and enhances surface water quality to protect existing beneficial uses. Oregon’s Antidegradation rule states that certain uses are allowed without an antidegradation review.

Is the proposed activity a temporary use in response to an emergency, a restoration activity that the Department of Environmental Quality has determined provides a net ecological benefit, or a temporary use to protect human health and welfare (less than six months), for which the applicant has demonstrated that they will minimize adverse effects to threatened and endangered species?

No.  Yes. Approve application and identify conditions necessary to protect the water quality for the habitat of ST&E fish species.

2. Will the proposed activity result in a permanent withdrawal directly from the **Outstanding Resource Water** with critical habitat for ST&E fish species?

No.  Yes. Describe how the use does or does not comply with existing state and federal water quality standards and how the use may affect ST&E fish species habitat. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain ORW.

3. Is this source **Water Quality Limited** water or tributary to a water quality limited water (limit downstream review to 6<sup>th</sup> field HUC) for parameters that are commonly affected by flow (temperature, dissolved oxygen, pH, etc.)?

No  Yes. Describe how the use does or does not comply with existing state and federal water quality standards and how the use may affect ST&E fish species habitat. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain water quality conditions during season of impairment.

*The Columbia River is listed as water quality limited for temperature year round at the point of diversion. 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. Withdrawals from the stream can reduce the stream's heat capacity and cause greater fluctuation in daytime and nighttime stream temperatures. This can result in the diminution of habitat of sensitive, threatened, or endangered fish species.*

**Table 1: Integrated Report/ 303(d) listings**

Water Body (Stream/Lake)	River Miles	Parameter	Season	Criteria	Beneficial Uses	Status
Columbia River	0-303.9	Temperature	Yearround	20C 7-day average daily maximum	Salmon and steelhead migration corridor	Category 5: water quality limited, 303(d) list, TMDL needed

To determine, select the effective Integrated Report at: <http://www.oregon.gov/deq/wq/Pages/2012-Integrated-Report.aspx> and under Listing Status, select "Water Quality Limited – All (Categories 3B, 4, and 5)". May also document existing water quality data that may not be included in the integrated report.

4. Is a **Total Maximum Daily Load** established for parameters identified as being affected by hydromodification?

No  Yes. *List TMDL and identify the load allocation and if hydromodification is a limiting factor.*

Describe how the use does or does not comply with existing state and federal water quality standards and how the use may affect ST&E fish species habitat. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation is likely needed to maintain water quality conditions during season of impairment.

5. Is it likely that the cumulative withdrawals in the Water Availability Basins (WAB), including the proposed activity, will result in a lowering of water quality that will impair ST&E species habitat?

No  Yes. Describe how the use does or does not comply with existing state and federal water quality standards and how the use may affect ST&E fish species habitat. Consider if water quality can be protected by modifying the use volume, season of use, or other permit conditions. Select appropriate condition from the conditions list. Flow mitigation may be considered. *There is no Water Availability Basin for the Columbia River at this location.*

Consider the cumulative impact of consumptive withdrawals in the **OWRD WAB**.

- Open OWRD's Water Availability Reporting System.
- Search for the water availability basin of interest. Select 50% exceedance, this represents that the calculated mean monthly flow, "natural flow", will be available 50% of the time.
- After the water availability report is generated, select the highest nesting order WAB that contains the POD.
- Download to Excel. To calculate "percent of flow" divide the "consumptive use" by the "natural stream flow" and multiply by 100. You may choose to add the consumptive portion or storage amount of the proposed use.

**Table 2. Percent of natural flow.** Monthly flow in Cubic Feet per Second (CFS). Annual flow in Acre Feet (AF).

In making the determination, all water withdrawals in a water availability basin should be considered. Consider the percent of natural flow left instream in each month (see right-most column in Table 1). Based on best professional judgment, evaluate if the cumulative withdrawal is likely to cause impairment to aquatic life or water quality. Water quality standards are established to protect aquatic life.

Antidegradation rule applies, 340-041-0004: Withdrawals cannot cumulatively increase a waterbody's temperature by more than 0.5 degrees Fahrenheit or cause a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach so long as it has no adverse effects on threatened and endangered species. See OAR 340-041-0004(3)-(5) for a description in rule of activities that do not result in lowering of water quality.

In scientific literature, researchers have identified ecological harm occurring when flows are reduced by ~~4~~<sup>>6</sup> 35% of daily flow<sup>1</sup>. Consider the seasonality of any listings and season of withdrawal to determine impact for each month of the year.

Field Code Changed

Consider if hydromodification, due to cumulative withdrawals, is likely a limiting factor in the waterbody at certain times of the year. Temperature and dissolved oxygen are flow-related parameters. When streamflow is reduced, assimilative capacity is reduced. As a waterbody heats up, dissolved oxygen concentrations decline. By reducing stream flows (or groundwater recharge and resulting streamflow), it is likely to exacerbate the temperature and/or dissolved oxygen impairments.

Increases in temperature or a reduction in dissolved oxygen adversely impacts ST&E fish. Fish require different temperature and concentrations of dissolved oxygen based on species and life history stage. Oregon's temperature and dissolved oxygen limits are based on the most sensitive species and the life history stage of those species at the location and season of concern. Additional heat or reduction in dissolved oxygen concentrations will further impact these species habitat. Reduced flows can also increase the concentrations of phosphorous, bacteria, pesticides and metals.

6. Is the use in compliance or can compliance with state and federal water quality standards be assured and ST&E habitat loss prevented by modifying the amount diverted, season of use, or by imposing permit condition(s)?

No.  Yes. Select appropriate condition from the conditions list.

If no, can flow mitigation be implemented to ensure compliance with state and federal water quality standards and prevent loss of ST&E habitat?

No.  Yes.

<sup>1</sup> Richter BD, Davis MM, Apse C, Konrad C. 2011. *Short Communication. A Presumptive Standard For Environmental Flow Protection*. River Research and Applications. Published online in Wiley Online Library (wileyonlinelibrary.com), DOI: 10.002/rra.1551

7. ORS 468B.025 prohibits pollution of waters of the state. Is there potential that the post diversion use (handling or water management) will degrade surface water or groundwater quality? (Example: release of thermally degraded stored water.) Or are there additional water-quality impairments that would result from this proposed use?

No  Yes. Provide basis for conclusion and note if the impacts would impact fish habitat: *The applicant proposes to use the water to irrigate fields using center pivots and handlines. The land to be irrigated is adjacent to the Lower Umatilla Basin Groundwater Management Area, an area designated by ODEQ for having groundwater nitrate concentrations that exceed or approach drinking water limits. Groundwater nitrate concentrations in the GWMA are high due in part to leaching of nutrients from irrigation of agricultural fields. The proposed area of irrigation is adjacent to the GWMA and is labelled as having high to moderately high nitrate leaching potential in NRCS' Nitrate Leaching Potential map. The impacts of nitrate leaching effect drinking water uses from groundwater sources.*

*The applicant proposes to irrigate some acres that are rated as having high susceptibility for sheet and rill erosion by water. Excessive irrigation in such areas could lead to sediment inputs to nearby water bodies. This would impact the habitat of sensitive, threatened, and endangered fish.*

8. Can permit conditions be implemented to prevent water quality degradation?

Yes. Select conditions from the conditions list. Send review to ODA if conditions are recommended for agricultural use.

4) *Monitor soil moisture in locations most susceptible to erosion and cease irrigating these locations when soil profiles are full, or likely to fill from precipitation events.*

5) *Division 310 recommendation: Monitor the soil moisture in locations with the highest leaching potential and cease irrigating these locations when monitoring indicates that leaching is occurring or likely to occur.*

No. Provide basis for conclusion:

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#### CONDITIONS

Reviewer may modify stock condition language to meet site and project needs.

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**Flow Mitigation.** DEQ recommends that the applicant shall mitigate anticipated impacts to water quality for the habitat of ST&E fish species by providing suitable replacement water. Additional mitigation may be required from other IRT members (example: OWRD may require mitigation for periods when water is not available). Surface flow mitigation is unlikely to provide the same benefit groundwater provides to gaining stream reaches. However, if groundwater mitigation is unavailable within the same aquifer, surface water mitigation will provide suitable mitigation.

Mitigation obligation: Prior to water use under this permit, the applicant shall provide mitigation water that is of no less volume than the permitted use. Mitigation water shall be sourced upstream of the point of appropriation, or the uppermost point on the stream at which Potential for Surface water Interference occurs. If surface water is used for mitigation, it shall be instream for the *month - month time period* and of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

**Reduced Withdrawal:** Water withdrawal is limited to *Enter CFS or AF for the defined period, or a month by month rate or volume.*

**Period of Use:** Water withdrawal is limited to the period: *start date through end date.*

**Limit Withdrawal:** No water shall be diverted under this right unless the flow in the *waterbody name* is at or above *CFS* cubic foot per second, as determined at Gaging Station ID .

**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 the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to diversion of water, the permittee shall submit a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to diverting water.

**Pond releases:** Permittee shall not release polluted off-channel stored water into waters of the state, unless under emergency situations. For routine maintenance, the Permittee shall land apply stored water or provide treatment prior to releasing it *include dates when releases are allowed*. Permittee shall comply with OAR 340-041 and ensure that water-quality standards are not violated by releases from storage.

**Pond construction:** Permittee must construct pond off channel, *identify waterbody and setback to prevent stream capture and justification for distance selected*.

**Reservoir Flow Releases:** To prevent pollution downstream the permittee shall not discharge water from the reservoir when the flow at Gaging Station ID (*gage name*) is below Mean Daily Discharge of *CFS* (discharge which was equaled or exceeded for 90% percent of the time) except when release is directed by the State Engineer to prevent dam failure.

**Lining:** Permittee must line the pond with *include material or allowable infiltration rate* to minimize seepage and protect groundwater quality per OAR 340-040. The liner is to be in place and inspected and approved in writing by the DEQ prior to storage of water.\* If the liner fails, it must be replaced within one calendar year.

**Water Quality:** The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water-quality standards.

**Prohibited Activities:** Permittee may not cause pollution of any waters of the state, or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means, per ORS 468B.025(1). If the Department of Environmental Quality determines that pollution of waters of the state is occurring, the permit holder is not in compliance with ORS 468B.025(1), DEQ shall notify OWRD of the violation.

**Agricultural Water Quality Management Area Rules:** Permittee must comply with basin-specific Agricultural Water Quality Management Area Rules in OAR 603-095. Livestock management and cropping must protect riparian areas on the property, allowing site capable vegetation along streams to establish and grow to provide the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff. Active management of livestock and/or a livestock exclusion fence is needed to protect riparian areas and provide the required functions.

**Live Flow:** Once the allocated volume has been stored, all live flow must be passed downstream at a rate equal to that of the inflow in a method that protects instream water quality.

**Site-Specific Condition:**

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\* OAR 690-410-0010(2)(a), OAR 690-310-0120, OAR 690-310-0140