

# 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 18392 Applicant's Name: Simms Ranch

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: Redband Trout - Chewaucan SMU 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)]

**ODFW has not identified biologically necessary flows within the impacted reach. However, based on OWRD's Water Availability Reporting System, water is not available for the proposed use from June –August. A further reduction of flow during these months would be harmful to STE fish. [OAR 690-410-0070(2)(h)].**

*Note: This review does not include specific impacts to water quality parameters, as ODFW understands that water quality assessments will be conducted by the Department of Environmental Quality.*

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.

## Recommended Mitigation Obligation

Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat. The proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted, negatively impacting their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to fish, wildlife, and/or their habitat without appropriate mitigation.

ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation outlined below (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations). ODFW recommends the Proposal include an assessment of options using the following actions listed in order of priority:

- (1) avoiding the impact altogether,
- (2) minimizing the impact by limiting the degree or magnitude of the action,
- (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
- (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures, and
- (5) compensating for the impact by replacing or providing comparable substitute resources or environments.

ODFW recommends the applicant contact the caseworker to schedule a consultation with ODFW concerning the recommended Mitigation Obligation if questions arise.

**Choose A, B, or C:**

- A)  Mitigation is not an option. ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.
- B)  Impacts to fish and/or wildlife habitat from the proposed use are expected to be inconsequential. Therefore, ODFW has determined that mitigation is not necessary.
- C)  Based on ODFW's knowledge of applicable Subbasin Plans, Recovery Plans, Regional Restoration Plans, or other documents, the proposed use appears inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program<sup>1</sup> or would otherwise be detrimental to the protection and/or recovery of STE fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the mitigation obligation, consistent with OAR 635-415, outlined below.

## Part 1: Flow Mitigation

### Surface Water or Groundwater Uses

- If the applicant chooses to pursue water use when water is not available, ODFW recommends the applicant provide water-for-water mitigation, as outlined below.
- A) Water Quantity: 2 cfs (cfs or AF; equals amount requested)  
 **plus a net benefit** (for Habitat Category 2)
- B) Months: June - August
- C) Location of Mitigation:  
 within the watershed **at or above** the point of diversion  
 at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)  
 within the watershed of the impacted population(s)  
 benefitting the impacted population(s) and/or higher priority species: list species here
- D) Additional comments: ODFW understands that the applicant has already provided mitigation in a greater amount than the requested use.

## Part 2: Habitat Restoration

Does the Mitigation Goal also allow a habitat restoration project as a mitigation option (i.e., impacts to Habitat Categories 3 – 6)?

YES; In lieu of providing “water-for water,” ODFW’s Habitat Mitigation Policy allows the applicant the option of providing mitigation through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action. If the applicant is interested in pursuing this option, please contact ODFW for further information.

NO; Skip to Part 3, if applicable.

<sup>1</sup> Water Resources Department’s document number 94-2

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: *Danette L. Gaudin* Date: 1-31-20

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

# ODFW PUBLIC INTEREST REVIEW SHEET

Application #: G 18392 Applicant's Name: Simms Ranch

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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: Tui Chub

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. **Same conditions and mitigation as described in ODFW's Division 33 review of G-18392**

4) If conditions cannot be identified to offset impacts to the habitat, would the proposed use harm the species?  NO  YES

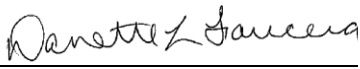
If YES, please explain:

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: 1-31-20

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.