

Petition for Agency Declaratory Ruling

Regarding the Dissolved
Oxygen Standard
Applicability in the Lower
Deschutes River

EQC Special Meeting

Oct. 18, 2021



Petition

- Received Aug. 19, 2021, from Deschutes River Alliance
- Requests Declaratory Ruling on the application of the dissolved oxygen (DO) resident trout spawning criterion
- DRA seeks to affect operation of the Pelton Round Butte dam complex
- Petitioner asserts that Redband trout spawning occurs outside of timeframe that DEQ applies the DO spawning criterion (ends June 15) and as such, the later spawning is not protected.

Overview: Petitions for Declaratory Ruling

- Per ORS 183.410
- Discretion as to whether to grant
- Process governed by Attorney General model rules, and includes a hearing
- Ruling only applies to the petitioner and the EQC

Pelton Round Butte

2004 Settlement

- 20+ signatories
- Commitment to actions with objective to restore sustainable natural steelhead production in the Deschutes and Crooked Rivers

Surface water withdrawal structure constructed

- Allow effective downstream collection and passage for smolts
- Operate the project to not measurably increase the temperature over what would occur absent the Project

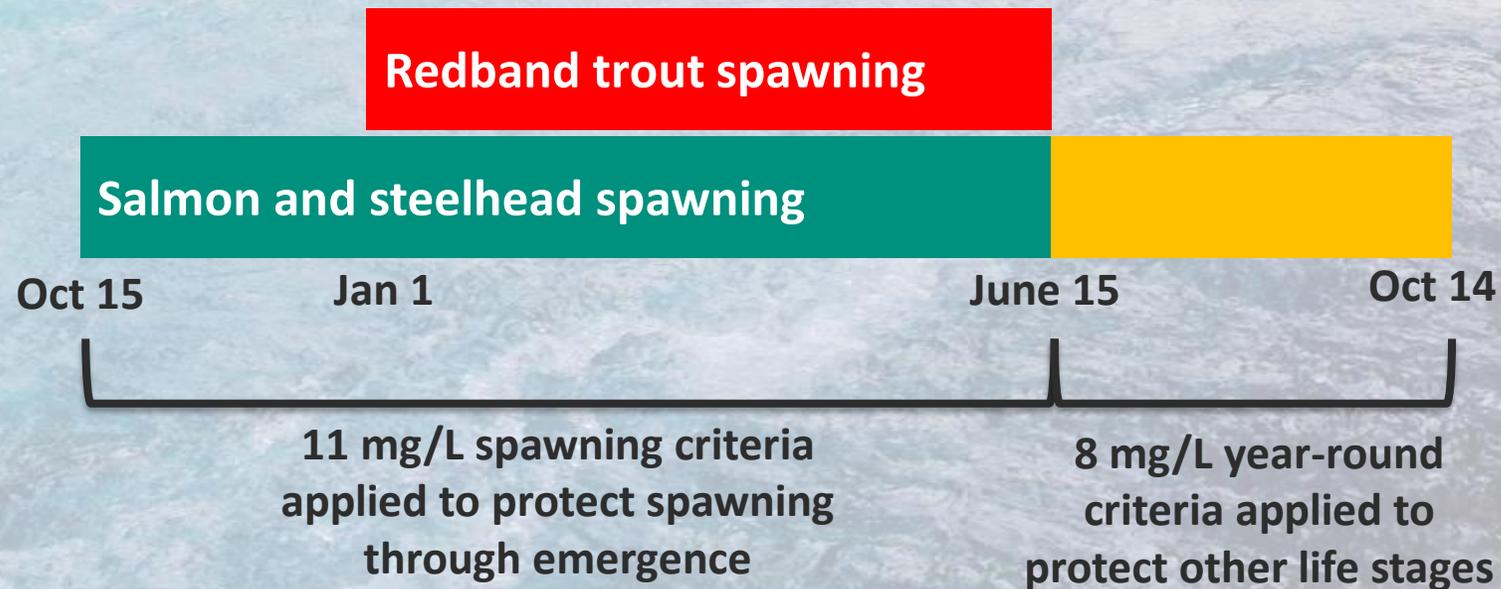


Clean Water Act Section 401 Certification

- DEQ issued a water quality certification for the Pelton Round Butte hydroelectric project in June 2002
- DEQ is currently working on a modification to the 2002 certification
- Any changes to the WQS would need to be reflected in a modification
- The modification will likely be public noticed following EQC adoption of the updates to fish and aquatic life uses but will not be finalized until EPA approves the updates

Oregon's dissolved oxygen standard

- Beneficial uses and DO criteria applicable to the Lower Deschutes



Water Quality Standards Rulemaking

- Update of fish and aquatic life uses statewide based on best available data
 - Uses associated with the temperature and dissolved oxygen standards
- Targeting late fall 2022 for EQC action
- Last statewide review and designation was 2003
- Methodical, scientifically robust process to update uses
 - Use ODFW data primarily, some USFWS data
 - Input from technical workgroup of experts
- Provides an opportunity for public comment

EQC Action Options

- Deny petition
 - DEQ completes rulemaking to update fish uses
- Agree to initiate a Declaratory Ruling process
 - Direct DEQ to hold a hearing



DEQ Recommendation

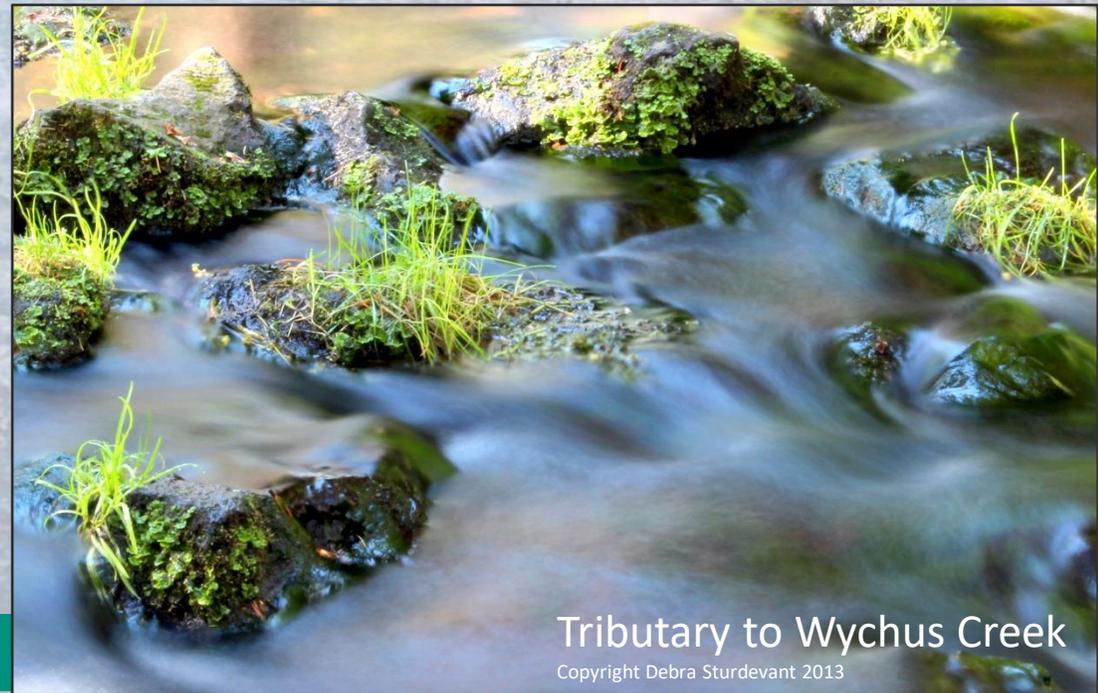
- Deny petition
- Allow DEQ to complete rulemaking process to update fish and aquatic life uses statewide based on best available data
- Rulemaking will include consideration fish uses and spawning dates for lower Deschutes River
- 401 modification will follow the rulemaking
- EQC Informational Item with overview of Pelton Round Butte project

Questions and Discussion



Metolius River, tributary to the Deschutes River

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Tributary to Wychus Creek

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Motion

Option 1: I move that the commission deny the petition and allow DEQ to propose updated use designations following a rulemaking process.

Option 2: I move that the commission direct DEQ to publish notice and hold a hearing on the Declaratory Ruling (per OAR 340-011-0061).