



Oregon

Kate Brown, Governor

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and

James Stupfel
DOWL
5 Centerpointe Drive
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**RE: ODFW Fish Passage Authorization #PA-17-0138 --- Winchester Dam Repair Project
North Umpqua River**

Mr. Beckley and Mr. Stupfel,

It is a policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish, and any person owning or operating an artificial obstruction¹ may not construct or maintain any artificial obstruction across any waters of this state that are inhabited, or historically inhabited, by native migratory fish without providing passage for native migratory fish (ORS 509.585). The Oregon Department of Fish and Wildlife (ODFW) administers the state's statutes and administrative rules governing fish passage.

The Winchester Water Control District (WWCD) submitted an Oregon Fish Passage Permit Application and supporting documents to ODFW on October 18th, 2022 for proposed repairs to Winchester Dam, owned and managed by the WWCD (referred to herein as the "FPPA"). ODFW finds the proposed Winchester Dam repairs described in the FPPA (the "Project") prevents or precludes upstream passage of native migratory fish by temporarily dewatering and closing the fish ladder located at Winchester Dam; therefore, this Fish Passage Authorization is required by ORS 509.585 and in Oregon Administrative Rule (OAR) 635-412-0020, 635-412-0035(1) and (10) prior to WWCD commencing the project.

This Fish Passage Authorization provides the ODFW fish passage approval for all work related to the Winchester Dam described in the FPPA and is subject to the following terms and conditions:

¹ "Artificial Obstruction", defined in ORS 509.580(1) means any dam, diversion, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

1. The WWCD is the responsible party to ensure the work of its contractors, subcontractors or other agents is consistent with the terms and conditions of this Fish Passage Authorization.
2. The ODFW Umpqua Watershed District Staff shall be contacted four weeks prior to the start of the pre-drawdown activities and again 48-hours in advance of the beginning of Winchester Dam Reservoir drawdown and the temporary dewatering and closure of the fish ladder. Staff contact information:

Greg Huchko 541-391-3514 (cell), 541-464-2177 (office)

Evan Leonetti 541-464-2175

Sara Gregory 541-197-3190

3. All in-water work, defined as work at or below the ordinary high water mark elevation of the project area(s) and includes but not limited to the dewatering and temporary water management activities, installation and removal of cofferdams, use of barges, pile driving, pile cutting, fill removal activities, dam repairs, concrete formwork, pouring and curing, re-watering, or other similar work, shall be completed during the July 7 to August 28 period, unless otherwise modified by ODFW.
4. Temporary closure of the fish ladder shall be limited to August 7th through August 28th unless other ODFW approved temporary upstream passage accommodations are provided.
5. Downstream passage of native migratory fish shall be maintained during the project by maintaining flow through the Winchester Dam south gates, or as otherwise approved by ODFW.
6. The use of the injectable Uretek Foam or other products shall only be authorized contingent on the WWCD's submittal of the MSDS and authorization by the Oregon Department of Environmental Quality.
7. Implementation of fish passage measures prescribed in the Oregon Department of Environmental Quality 401 Water Quality Certification for the project is required.
8. Prior to the Winchester Dam reservoir drawdown and dam repairs, the WWCD will complete fish salvage and relocation measures, including rescue salvage within the fish ladder.
9. Prior to conducting fish salvage, the WWCD will obtain the authorizations required under state and federal law and administered by ODFW and the National Marine Fisheries Service (NMFS), respectively.
10. Following Winchester Dam reservoir drawdown, all work area isolation measures related to in-water repair activities, including fish salvage and relocation, shall be implemented in accordance with the terms and conditions identified in this approval and the terms and conditions of the NMFS Biological Opinion. The terms and conditions include the following:

- a. If salmonids, lamprey, or other native migratory or protected fish are or are assumed by ODFW to be present in the in-water work area(s), fish rescue, salvage, relocation and exclusion will occur under the direction of a qualified fisheries biologist and will occur prior to and throughout the duration of the repair action if native migratory fish are encountered.
- b. General conditions for fish rescue, salvage and relocation activities include:
 - i. Exclusion will include the use of block nets, or similar techniques, to isolate the work area from fish access.
 - ii. Fish rescue, salvage and relocation will be performed using seine nets, dip nets, or electrofishing as determined appropriate and effective by the fisheries biologist and through the oversight of ODFW and through the conditions of the Rescue Salvage Authorization permit.
 - iii. The duration and extent of fish rescue, salvage and relocation actions will be determined by ODFW and through the Rescue Salvage Authorization permit.
 - iv. Adult native migratory fish including lamprey shall be returned to flowing waters of the North Umpqua situated upstream of the project and at location(s) approved by ODFW.
 - v. Juvenile native migratory fish including lamprey ammocoetes shall be returned to flowing waters of the state situated downstream of the project and at location(s) approved by ODFW.
 - vi. Once the work area is determined to be cleared of salmonids, lamprey, or other native migratory fish, in-water work activities will be cleared to begin by ODFW.
 - vii. All electrofishing will be conducted in accordance with the NMFS Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act (NMFS 2000).

11. Materials used to fill waters of this state shall be clean, non- hazardous, and non-toxic.

12. In project areas where fish may be exposed to materials necessary to construct or deconstruct the project (concrete, steel, etc.), all potential sharp or abrasive edges and surfaces shall be made smooth as to preclude harm or physical injury to native migratory fish.

13. ODFW shall be allowed access to the project and inspect the project at reasonable times for the duration of this approval. Unless prompted by emergency or other exigent circumstances, inspection shall be limited to regular and usual business hours, including weekends.

14. Post project monitoring and reporting is required for this project. Monitoring and reporting shall include a summary of all fish rescued, salvaged and relocated (as required in the Rescue Salvage Authorization permit), documentation of any fish mortality associated with the project, established photo points depicting dam repair activities during and throughout the duration of and after the project, validation of final volumes of repairs to the dam, and

the efficacy of upstream passage alternatives during the project. Monitoring report shall be submitted to ODFW by December 31, 2023.

15. This Fish Passage Authorization expires December 31, 2023, and only applies to the dam repair and other activities specifically proposed in the October 18th, 2022 Fish Passage Application. Proposed Winchester Dam repairs as described in the October 18th, 2022, FPPA do not exceed the threshold in OAR 635-412-0005(9)(b) in place at the time of this Fish Passage Authorization that would trigger a review of permanent fish passage at Winchester Dam. Future repair actions to Winchester Dam will be subject to the administrative rules in place at the time of WWCD's application or ODFW's approval, or both.

This project, which requires joint state and federal approval and consistent with OAR 635-412-0035(1)(f), shall take into account federal requirements authorized by NMFS' Endangered Species Act consultation and associated biological opinion. Please retain this Fish Passage Authorization for your records, as this documents ODFW's fish passage approval of the project. Failure to comply with the terms and conditions set forth above shall constitute a violation of this authorization and applicable fish passage laws (ORS 509.585 and 509.610).

ODFW strongly encourages and recommends the WWCD implement the following avoidance and best management practices to the maximum extent practicable to avoid and minimize fish injury, harm and fish passage delay during the repair project:

- ODFW recommends providing temporary passage of native fish at the south radial gate location(s) through the use of super-sacks, or by other means, to avoid and minimize impacts associated with the temporary closure of the fish ladder and to reduce the impacts to migrating native fish during the project.
- ODFW recommends WWCD conduct a fish ladder inspection with ODFW once the fish ladder is dewatered to evaluate, identify and implement any needed repairs to the fishway or auxiliary water supply system.

This Fish Passage Authorization fulfills Oregon fish passage statutory requirements administered by the Oregon Department of Fish and Wildlife and may not satisfy any other federal, state, or local laws, rules, or regulations, including but not limited to State or Federal Endangered Species Acts, any applicable water rights conditions, approvals, or other certificates administered by regulatory authorities. It is the WWCD's sole responsibility to seek and comply with all necessary and required local, county, state, and federal approvals and permits. This approval in no way purports or authorizes take of a state or federally-listed species.

Please continue to coordinate with Greg Huchko Greg.F.Huchko@odfw.oregon.gov (ODFW Umpqua Watershed District Fish Biologist) or his designee as the project advances towards implementation. The WWCD may similarly contact me at 503-947-6228 or by email at greg.d.apke@odfw.oregon.gov with questions regarding the content or the provisions of this Fish Passage Authorization.

Sincerely,



Greg Apke
ODFW - Statewide Fish Passage Program Coordinator

Enclosure Cc:

Greg Huchko, ODFW Umpqua Watershed District Fish Biologist
Evan Leonetti, ODFW Umpqua Watershed Assistant District Fish Biologist
Fabian Carr, ODFW Umpqua Watershed Broodstock Collection/Fish Survey
Sara Gregory, ODFW Umpqua Watershed Manager
Chris Kern, ODFW West Region Manager
Anika Marriott, Oregon Department of Justice
Chandra Ferrari, ODFW Water Program Manager & Deputy Habitat Division Administrator
Alan Ritchey, ODFW Fish Screening and Passage Program Manager
Joel Watts, ODFW Fish Passage Engineer
Michelle Weaver, ODFW ESA Program Specialist
Holly Huchko, ODFW ESA Program Specialist
Shaun Clements, ODFW Fish Division Deputy Administrator
Debbie Colbert, ODFW Deputy Director for Fish and Wildlife
Kate Wells, NOAA Fisheries Acting Branch Chief
ODFW Fish Passage Project Files (#FPA-17-0138)