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**TECHNICAL MEMORANDUM: FISH PASSAGE WAIVER PROCEDURE**

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**PURPOSE**

As part of the Tualatin Basin Water Supply Feasibility Study, Clean Water Services and its Partners are considering alternatives to increase the water storage capacity in Henry Hagg Lake, including two alternatives that would raise Scoggins Dam. Changes to the height of the dam would trigger a fish passage review by the Oregon Department of Fish and Wildlife (ODFW). The Partners are interested in exploring the feasibility of obtaining a waiver for fish passage. This Technical Memorandum presents the requirements and procedures for the waiver process.

The following steps are required in the waiver process:

**1. REQUEST A DETERMINATION**

The Partners would request a determination on historic and/or current native migratory fish presence above Scoggins Dam from Jim Muck, ODFW Local District Biologist.

**2. DETERMINATION OF HISTORICAL MIGRATORY FISH PRESENCE**

The ODFW Local District Biologist would make a written determination on whether native migratory fish were historically or are currently present. A fish passage waiver/exemption would not be needed if native migratory fish do not occur in Scoggins Creek. The decision would rest solely with the ODFW Local District Biologist, although supporting evidence for historical condition provided by the applicant could be considered.

Based on information reviewed by MWH and presented in Technical Memorandum: Biological Basis for Fish Passage at Scoggins Dam (MWH, 2003), a likely outcome of this step would be a

determination by ODFW that native salmonids are not currently, but were historically, present in Scoggins Creek both above and below the dam. Evaluation of ODFW historical reports indicates that Scoggins Creek and tributaries above the existing dam supported anadromous salmonids including Chinook salmon and steelhead. This analysis assumes that ODFW would require a waiver or exemption for fish passage.

### **3. COMPLETE THE FISH PASSAGE WAIVER/EXEMPTION APPLICATION**

A fish passage waiver is issued when supporting evidence indicates a net benefit would be achieved by providing fish passage. Under this first scenario, the applicant would provide appropriate mitigation and would work with the ODFW Local District Biologist to determine a suitable mitigation plan. In this second scenario, a fish passage exemption would be issued when supporting evidence shows no net benefit by providing fish passage (e.g., upstream habitat is severely degraded). No mitigation would be required in this case. An exemption also would be granted if mitigation had already occurred. In this third scenario, the exemption application would be similar to a waiver because the past mitigation efforts would be described and approved.

The following information would be required for a complete waiver application:

- a. Description of proposed action and its purpose (1-2 paragraphs). The project description likely would be taken from the Tualatin Basin Water Supply Feasibility Study report.
- b. Detailed description of why passage will not be provided. The description would include information on current biological conditions, including data on the amount of available habitat, fish distribution, and fisheries data related to the warm water reservoir fishery.
- c. In table form:
  - o Location information (coordinates, watershed, etc.) for artificial obstruction
  - o Description of anadromous species currently and historically present, including specifying Threatened and Endangered species and their status affected by artificial obstruction
  - o Description of habitat, including quality, length, brief description of flow and water quality, and land use for areas both upstream and downstream of barrier.
- d. References for data on species and habitat information.
- e. Description of factors limiting passage in stream with artificial obstruction (i.e. description of the dam).
- f. Description of impacts to other fish and wildlife. This information can be obtained from the feasibility report.
- g. At least one map depicting entire river containing passage barrier.
- h. Photos of passage barrier, adjacent land use, stream habitat, other obstructions, etc.

Additional information may be required in the application if mitigation has previously been performed:

- a. Description of mitigation
- b. Distance between mitigation and artificial obstruction
- c. Relationship of mitigation to existing fish management plans, including Oregon Plan
- d. Description of land use plans that may impact mitigation
- e. Identification of funding sources
- f. Description of mitigation evaluation, monitoring, and maintenance
- g. In table form: description of location, species, and habitat for mitigation area as was done for the area of the artificial obstruction (see items c. and d. under Step 4)
- h. Map that depicts entire river where mitigation will occur, if different from area of artificial obstruction
- i. Photos of alternative site, including land use, habitat, obstructions, etc.

#### **4. WAIVER/EXEMPTION APPLICATION PROCESSING**

Upon receiving the application, ODFW would perform a net benefit analysis, which could involve site visits and additional research. The decision process takes approximately three weeks. ODFW is legally required to give a waiver when available information supports a determination of a net benefit (Net benefit is defined in statute as “an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed.”)

#### **5. DRAFT AGREEMENT**

The applicant and ODFW would put together a draft agreement outlining mitigation (not necessary if exemption with no mitigation involved) when a determination of an overall net benefit is reached. The applicant would work closely with the ODFW Local District Biologist throughout the process to ensure that the components of mitigation are complete and satisfactory so that a Draft Agreement could be developed quickly.

#### **6. NOTICE PERIOD**

A three-week public notice period would be required after all documents are in place. Under some conditions, the paperwork would be reviewed by the Oregon Fish and Wildlife Commission. In this instance, the three-week notice period would occur between the time the paperwork is submitted and the Commission reviews the application.

#### **7. REVIEW PROCESS**

The distance of fish habitat affected by the waiver/exemption determines the review process.

- If the passage barrier restricts access to habitat that is a ½ mile or less, the Passage Coordinator (Tom Stahl) reviews the application.

- For habitats  $> \frac{1}{2}$  mile, the application would be reviewed by the Commission, resulting in longer processing time. After the paperwork has been submitted to the Commission, it normally takes 4-6 weeks to be placed on the meeting agenda. This may take longer, however, because the Commission sets the agenda at its discretion and may delay review due to other considerations.

### **TOTAL ESTIMATED APPLICATION PROCESSING TIME**

- For areas in which a passage barrier restricts access to habitats  $> \frac{1}{2}$  mile, the total estimated processing time would be approximately three months, primarily due to review by the Oregon Fish and Wildlife Commission.
- For areas in which a passage barrier restricts access to habitats  $< \frac{1}{2}$  mile, the total estimated processing time would be approximately eight weeks. This time may be reduced for very simple situations.