Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SUMMARY SHEET

Threatened and/or Endangered Species (Section 4)

☐ Upper Columbia Basin (above Bonneville Dam)
Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?
☐ YES; see details in Section 4.1 ☐ NO
☐ NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

☒ Lower Columbia Basin (below Bonneville Dam)
Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?
☒ YES; see details in Section 4.2 ☐ NO
☐ NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

☐ Statewide
Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?
☐ YES; see details in Section 4.3 ☐ NO
☐ NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use.

Sensitive Species (Section 5)

Will the proposed use result in a net loss of essential habitat of a sensitive species?
☒ YES; see details in Section 5 ☐ NO
☐ NOT APPLICABLE; sensitive fish will not be impacted by the proposed use.

Public Interest (Section 6)

Will the proposed use impair or be detrimental to the public interest (in addition to that identified under Division 33)?
☐ YES; see details in Section 6 ☒ NO

Conditions (Section 3 and 6)

ODFW recommends the following conditions, along with any mitigation outlined in Section 7, to overcome impairment or detrimental impacts to sensitive, threatened, and/or endangered fish species, non-listed fish species, wildlife, or habitat (see REVIEW SHEET for additional information):

Section 3.1 Identification of Biologically Necessary Flows
☐ **"Mitigation Plan"** [A] ☐ **"Mitigation"** [A] ☐ **"Measurement Device"** [A] ☐ **"Bypass Plan"** [C] ☐ **"Bypass Flow"** [C]
Section 3.2 Biological Flow Availability
☐ **"Maintain Flow"** [A] ☒ **"Mitigation Plan"** [A] ☒ **"Mitigation"** [A] ☒ **"Measurement Device"** [A]
Section 3.3 Fish Passage and Screening
☐ **"Passage"** [A] ☐ **"Maintain Passage"** [A] ☐ **"Screen"** [B] ☐ **"Future Protection"** [B]
Section 3.4 Other Ecological Functions
☐ **"Riparian Plan"** [A] ☐ **"Riparian"** [A] ☐ **"In-water Work"** type here [A] ☐ **"Fish Stocking"** [A]

☐ Site-specific condition(s), including, but not limited to, any identified in Section 6: type here

☐ Comments: type here

Mitigation (Section 7)

Is ODFW recommending mitigation in addition to any conditions identified?
☐ YES; see recommended Mitigation Obligation in Section 7
☒ YES; contact ODFW if the applicant is interested in pursuing mitigation
☐ NO

Oregon Department of Fish and Wildlife's WATER RIGHT APPLICATION REVIEW SHEET

The Oregon Department of Fish and Wildlife (ODFW) provides the following recommendations to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. Mitigation recommendations are consistent with the goals and standards in ODFW's OAR 635-415 (Fish and Wildlife Habitat Mitigation Policy) and other applicable law. The information is requested by the Oregon Department of Water Resources (OWRD) for the purposes of consultation pursuant to OAR 690-33 (Additional Public Interest Standards for New Appropriations), OAR 690-310 (Water Rights Application Processing), OAR 690-400 (State Water Resources Policy), and OAR 690-410 (Statewide Water Resource Management). ODFW recommendations herein are to be utilized in coordination with the Oregon Department of Environmental Quality's (ODEQ) recommendations regarding impacts to aquatic life due to impaired water quality.

Section 1: Proposed Use

Basin: Willamette
Stream: Senecal Creek Tributary to: Mill Creek<Pudding River
TRSQQ: 5S 2W 2 (optional)
Proposed period of use (from application, if available): Nursery use January 1-December 31
Requested amount (cfs or AF): 0.1 cfs; 52.5 AF/year

OWRD's Initial Review Determination:
☐ Allowable type here ☐ **NOT** Allowable; Water is not available type months here
☒ **NOT** Allowable; Water available December-May

Section 2: Fish Species Present

A) ☐ No fish species will be impacted by the proposed use based on parameters assessed by ODFW. **(Skip to Section 6)**

B) ☒ The following fish species of primary concern are present at the location of the proposed use or will be impacted by the proposed use:

	Listing Status				Life Stage Present		
Species	**Sensitive**	**Threatened**	**Endangered**	**Not Listed***	**Spawning**	**Rearing**	**Migration**
Spring Chinook Salmon	☐	☒	☐	☐	☐	☒	☒
Winter Steelhead	☐	☒	☐	☐	☐	☒	☒
Pacific Lamprey	☒	☐	☐	☐	☒	☒	☒
Summer Steelhead	☐	☐	☐	☒	☐	☒	☒
Coho Salmon	☐	☐	☐	☒	☐	☒	☒
Fall Chinook Salmon	☐	☐	☐	☒	☐	☒	☒
Coastal Cutthroat Trout	☐	☐	☐	☒	☒	☒	☒
type here	☐	☐	☐	☐	☐	☐	☐
type here	☐	☐	☐	☐	☐	☐	☐

*Impacts to species not listed as sensitive, threatened, and/or endangered are addressed in Section 6.

Section 3: Potential Impacts to Fish Species

*Note: Impacts identified below are determined by professional judgment and/or best available science. Recommended mitigation for identified impacts is outlined in Section 7. See Section 8 for recommended **"condition"** language.*

3.1 Identification of Biologically Necessary Flows

A) ☐ ODFW has not identified biologically necessary flows within the impacted reach.

☐ **"Measurement Device"**

However, based on best professional judgment, impacts to fish from the proposed reduction in flow are expected to be **inconsequential** or there is insufficient information at this time to determine if the proposed use will impair biologically necessary flows for fish. Therefore, no mitigation for a reduction in flow is recommended. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded. **(Skip to Section 3.3)**

☐ **"Mitigation Plan," "Mitigation," and "Measurement Device"**

However, based on OWRD's Water Availability Reporting System, **water is not available** entirely or partially for the proposed use. A further reduction of flow during type here would be harmful to fish.

☐ ODFW recommends the season of use be restricted to type here if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. **(Skip to Section 3.3)**

☐ ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. **(Skip to Section 3.3)**

B) ☒ ODFW recommends the following biologically necessary flows to support the biological needs of fish species:

☒ Instream Water Right certificates and pending applications at the point of impact and/or downstream

☐ Scenic Waterway flows intended to maintain quantities of water necessary for fish uses per ORS 390.835**.**

☒ Other biologically necessary flows at MILL CR > PUDDING R - AT MOUTH

JAN	138 cfs	APR	62 cfs	JUL	4 cfs	OCT	4 cfs
FEB	121 cfs	MAY	20 cfs	AUG	3 cfs	NOV	29 cfs
MAR	109 cfs	JUN	9 cfs	SEP	3 cfs	DEC	124 cfs

Source: ☒ ODFW Regional Flow Target Assessment MILL CR > PUDDING R - AT MOUTH

☐ based on type other source here

☐ type other source here

C) ☐ "**Bypass Plan**" and **"Bypass Flow" (for reservoirs that directly divert from surface water)**

Per 690-410-0070 (2)(c), ODFW recommends the following biologically necessary flows, minus any amount that the applicant may provide as mitigation, be bypassed (passed through) the reservoir **during the filling season**.

JAN	type here cfs	APR	type here cfs	JUL	type here cfs	OCT	type here cfs
FEB	type here cfs	MAY	type here cfs	AUG	type here cfs	NOV	type here cfs
MAR	type here cfs	JUN	type here cfs	SEP	type here cfs	DEC	type here cfs

D) Comments concerning biologically necessary flows: type here

3.2 Biological Flow Availability

A) Based on parameters assessed by ODFW, are the recommended biologically necessary flows (identified in Section 3.1, Question B) available within the impacted reach during the period of impact?

☐ YES; **"Maintain Flow" and "Measurement Device"**
A further reduction in flow from the proposed use will **not** impair biologically necessary flows for fish as long as the recommended flows remain satisfied real time within and downstream of the point of impact. ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.

☒ NO; **"Mitigation Plan," "Mitigation," and "Measurement Device"**
The proposed use **will impair** biologically necessary flows for fish entirely or partially during the period of impact.

- ☐ Water is only available to support biologically necessary flows within the impacted reach during type here. ODFW recommends the season of use be restricted to coincide with this period if the applicant can show beneficial use during this time (OAR 690-300-0010(57)(b)) or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period.
- ☒ Water is not available to support biologically necessary flows within the impacted reach year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order.

☐ UNKNOWN; **"Mitigation Plan," "Mitigation," and "Measurement Device"**
There is insufficient information on instream flow availability (e.g., no Water Availability Basin) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW assumes impairment and recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach.

☐ NOT APPLICABLE; **"Measurement Device"**
ODFW has determined that impacts to fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on parameters assessed. Therefore, ODFW does not recommend mitigation for a reduction in flow at this time. However, ODFW recommends the system installed to divert water include monitoring equipment, the type determined by OWRD, which allows water use measurement and reporting and ensures the permitted amount is not exceeded.

B) Comments concerning availability of biologically necessary flows: type here

3.3 Fish Passage and Screening

A) Would the proposed use potentially create or maintain an artificial obstruction[1] to fish passage for native migratory fish currently or historically present *at the point of diversion* per ORS 509.585?

☐ YES; **"Passage"**

☒ NO

☐ NO; **"Maintain Passage"**
Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws prior to diversion of water.

[1] "Artificial obstruction" means any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

B) Would fish species benefit from fish screening per ORS 498.306?

☐ YES; **"Screen"**

☒ NO

☐ **"Future Protection"**

Fish screening will not currently benefit fish species but may be beneficial in the future if conditions within the watershed change. Please describe current conditions within the watershed: type here

C) Comments concerning fish passage or screening: type here

3.4 Other Ecological Functions

A) Are there other impacts to ecological functions important to fish during the period of impact?

☐ YES; A "**condition"** will be identified below or mitigation will be recommended in Section 7.4.

☐ Development of the proposed project may disturb the riparian area that provides habitat to fish. "**Riparian**" and **"Riparian Plan"**

☐ To have the least impact on fish and habitat resources, ODFW recommends any in-water work related to construction, development, or maintenance of the proposed use be conducted during the preferred work period of type here **"In-water Work"**

☐ The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. **"Fish Stocking"**

☐ Other impacts to fish: type here

☒ NO

B) Other comments concerning ecological functions important to fish: type here

Section 4: ODFW Findings Regarding Threatened and/or Endangered Fish Species

☐ NOT APPLICABLE; threatened and/or endangered fish will not be impacted by the proposed use. **Skip to Section 5.**

4.1 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Upper Columbia Rules (above Bonneville Dam)

☒ The Upper Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:
Is the proposed use consistent with the Columbia River Basin Fish and Wildlife Program?

☐ YES; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

☐ NO; Based on ODFW's knowledge, the proposed use is **inconsistent** with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program[2] due to impairment of biologically necessary flows or the

[2] The Columbia River Basin Fish and Wildlife Program (WRD's document number 94-2) states: "In determining whether a proposed diversion or transfer would be consistent with salmon and steelhead needs, consult with fish and wildlife agencies and Indian tribes to determine whether the proposed use would cause any reduction in the quantity or productivity of salmon and steelhead habitat" (7.8G.1). In addition, the document includes a recommendation to "halt further issuance of consumptive water rights unless a finding can be made, in consultation with fish agencies and tribes, that existing instream flows meet anadromous fish needs for all life-stages" (Recommendation No.: 7-2).

assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).

Overarching Question 2:
Can the use be conditioned or mitigated to achieve consistency with the Fish and Wildlife Program?

☐ YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ☐ ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.
- ☐ In addition, ODFW recommends the following site-specific condition(s): type here

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here

4.2 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Lower Columbia Rules (below Bonneville Dam)

☐ The Lower Columbia rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:
Is the proposed use detrimental to the protection or recovery of a threatened and/or endangered fish species?

☒ YES; Based on knowledge of recovery plans, the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program[2], and regional restoration programs, ODFW found the use to be detrimental to the protection or recovery of a threatened and/or endangered species due to impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or to impacts to ecological functions important to threatened and/or endangered fish (Section 3.4).

☐ NO; ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions important to protection or recovery of threatened and/or endangered fish (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** based on parameters assessed (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:
Can the use be conditioned or mitigated to avoid the detriment to a threatened and/or endangered fish species?

☒ YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.
- ☒ ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that

fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended below and in Section 3, to compensate for any potential impact from the proposed use.

☐ In addition, ODFW recommends the following site-specific condition(s): type here

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided.

Comments: type here

4.3 ODFW Findings Regarding Threatened and/or Endangered Fish Species Under OWRD's Division 33 Statewide Rules

☒ The Statewide rules do not apply for threatened and/or endangered fish species.

Overarching Question 1:
Will the proposed use result in a loss of essential habitat of a threatened and/or endangered fish species?
Note: For impacts to non-essential habitat for threatened and/or endangered species under Habitat Categories 3-6, skip to Section 6.

☐ YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to threatened and/or endangered fish species during the period of impact.

☐ NO; Based on parameters assessed, ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions essential to threatened and/or endangered fish species (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:
Can the use be conditioned to result in no loss of essential habitat of a threatened and/or endangered fish species?

☐ YES; ODFW recommends the conditions recommended in Section 3 to compensate for any potential impact from the proposed use.

☐ ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3, to compensate for any potential impact from the proposed use.

☐ In addition, ODFW recommends the following site-specific condition(s): type here

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened and/or endangered fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: type here

Section 5: ODFW Findings Regarding Sensitive Fish Species (under OWRD's Division 33 Statewide Rules)

☐ Sensitive species will not be impaired by the proposed use. **Skip to Section 6.**

Overarching Question 1:
Will the proposed use result in a net loss of essential habitat of a sensitive fish species?
Note: For impacts to non-essential habitat for sensitive species under Habitat Categories 3-6, skip to Section 6.

☒ YES; Based on parameters assessed, ODFW has found impairment of biologically necessary flows or the assumption of impairment due to insufficient information on instream flow availability (Section 3.2, Question A), the need for fish passage or screening (Section 3.3), or impacts to ecological functions (Section 3.4) essential to sensitive fish species during the period of impact.

☐ NO; Based on parameters assessed, ODFW finds the use will either **not impair** biologically necessary flows (Section 3.2, Question A) and ecological functions essential to sensitive fish species (Section 3.4) or the proposed reduction in flow is expected to be **inconsequential or de Minimis** (Section 3.1, Question A; Section 3.2, Question A).

Overarching Question 2:
Can the use be conditioned to result in no net loss of essential habitat of a sensitive fish species?

☒ YES; ODFW recommends the conditions and mitigation recommended in Sections 3, 4, and 7 to compensate for any potential impact from the proposed use.

- ☒ ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined in Section 7, and other conditions recommended from Sections 3 and 4, to compensate for any potential impact from the proposed use.
- ☐ In addition, ODFW recommends the following site-specific condition(s): type here

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a sensitive fish species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: type here

Section 6: ODFW's Public Interest Findings (under OWRD's Division 310)

Note: Comment on fish or wildlife species not already discussed in Sections 4 or 5 and impacts to non-essential habitat of STE fish.

Overarching Question 1:
Will the proposed use impair or be detrimental to the public interest?

☐ YES; In addition to those previously identified in Sections 4 and 5, the proposed use will impair or be detrimental to the following public interest(s) under ORS 537.170(8): type here

☒ NO; Impairment or detriment to public interests, in addition to those previously identified in Sections 4 and 5, will be inconsequential from the proposed use or has not been assessed at this time. **Skip to Section 7.**

Overarching Question 2:
Can the proposed use be conditioned to overcome the impairment or detriment to the public interest?

☐ YES;

☐ The same conditions and mitigation as outlined in Sections 3, 4, and 7 apply.

☐ ODFW recommends the following site-specific condition(s): type here

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species that is limited on either a physiographic province or site-specific basis (i.e., **Category 1 Habitat**). ODFW recommends avoidance of the impact through alternatives to the proposed use or no authorization of the proposed use if impacts cannot be avoided. Otherwise, the proposed use would harm the species.

Comments: type here

Section 7: ODFW's Recommended Mitigation Obligation

☐ NOT APPLICABLE; ODFW is not recommending mitigation. (**Sign and STOP here**)

ODFW Representative's Signature: _____ Date: type here

Name: type here **Phone:** type here **Email:** type here

Mitigation Obligation

☒ ODFW's assessment reveals flows within the impacted reach are or are assumed to be entirely or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat, so the proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted. These changes will negatively affect their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use would impair or be detrimental to fish, wildlife, and/or their habitat without appropriate mitigation. ODFW recommends the applicant contact the caseworker to schedule a consultation with ODFW concerning the following recommended Mitigation Obligation, if questions arise.

Choose One:

A) ☒ Water is not available to support biologically necessary flows at the POD and/or downstream year-round. ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water through purchasing or transferring an existing water right.

B) ☐ Water is only available to support biologically necessary flows at the POD and/or downstream during type here. ODFW recommends the season of use be restricted to coincide with this period or the proposed use be mitigated prior to issuance of a Proposed Final Order for any use outside of this period. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period will impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further

information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water through purchasing or transferring an existing water right.

C) ☐ There is insufficient information on instream flow availability (e.g., no Water Availability Basin or gage) to determine if the proposed use will impair biologically necessary flows for fish. Therefore, ODFW recommends the proposed use be mitigated prior to issuance of a Proposed Final Order unless the applicant provides sufficient evidence to ODFW that the biologically necessary flows are available and can be maintained within the impacted reach. Without appropriate mitigation and/or conditions, a further reduction in flow or alteration of habitat from the proposed water use outside this period may impair or be detrimental to sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. If the applicant is interested in pursuing mitigation, please contact ODFW for further information concerning appropriate conditions and a Mitigation Obligation consistent with OAR 635-415, as required under OAR 690-33, to compensate for any potential impact from the proposed use. Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water through purchasing or transferring an existing water right.

D) ☐ 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.

E) ☐ 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[3], impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife. Therefore, ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations) as outlined in this section(s), **as well as other conditions recommended in Sections 3-6**. 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.

Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order (*see* Section 9).

7.1 Identification of Habitat Category

Habitat Category[4] for the Primary Species of Concern During the Period of Impact:

Month	Primary Species of Concern	Habitat Category
January	type here	type here
February	type here	type here
March	type here	type here
April	type here	type here

Month	Primary Species of Concern	Habitat Category
May	type here	type here
June	type here	type here
July	type here	type here
August	type here	type here

Month	Primary Species of Concern	Habitat Category
September	type here	type here
October	type here	type here
November	type here	type here
December	type here	type here

[3] Water Resources Department's document number 94-2

[4] *see* ODFW Habitat Mitigation Policy, OAR 635-415-0025

7.2 Flow Mitigation

☐ If the applicant chooses to pursue water use during type here, when biologically necessary flows are not met or water is not available, ODFW recommends the applicant provide water-for-water mitigation that is **legally protected and maintained as an instream water right** for the life of the permit and subsequent certificate, as outlined below.
  ☐ In lieu of mitigation, the applicant may provide evidence that the biologically necessary flows are available and can be maintained within the impacted reach.

☐ ODFW recommends WRD's "Normal Mitigation," including any site-specific options addressed below.

A) Water Quantity: type here (cfs or AF; equals amount requested)
  ☐ **plus a net benefit** (for Habitat Category 2)

B) Months: type here

C) Location of Mitigation (based on the Habitat Category):
  ☐ **at or above** the point of impact
  ☐ at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)
  ☐ within a high priority reach[5] within the watershed/home range of the impacted species or population
  ☐ within the watershed/home range of the impacted population(s)
  ☐ benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments: type here

7.3 Habitat Restoration Mitigation

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 4, if applicable.

7.4 Other Ecological Functions Mitigation

☐ Not applicable

☐ ODFW recommends the applicant provide the following mitigation, including, but not limited to, mitigation for "Other Impacts to Ecological Functions" or impacts to wildlife.
  Note: Copy and paste the template below for each habitat type in need of replacement.

A) Habitat Structure and Function in Need of Replacement: type here

[5] *see* ODFW's Aquatic Habitat Priority maps

B) Describe the habitat quantity and quality to be replaced: type here

C) Months:

☐ In Perpetuity

☐ Other: type here

D) Location of Mitigation:

☐ **at or above** the point of impact

☐ at or above the point of impact is preferred, but may occur within the watershed/home range of the impacted population(s)

☐ within a high priority reach[5] within the home range of the impacted species or population

☐ within the watershed/home range of the impacted population(s)

☐ anywhere benefitting the impacted population(s) and/or higher priority species: list species here

E) Additional comments: type here

ODFW Representative's Signature: _____ **Date:** 10/2/2025

Name: Jason Brandt **Phone:** 541-315-6222 **Email:** Jason.r.brandt@odfw.oregon.gov

Section 8: ODFW's Recommended Condition Language

List A Conditions
(to be addressed by applicant prior to issuance of the Proposed Final Order)

Bypass Plan (for reservoirs that directly divert from surface water)
Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Bypass Plan which describes the method the permittee shall bypass the recommended flows, as outlined in Section 3.1, C and how the permittee will quantify and document inflow and outflow.

Mitigation Plan
Prior to issuance of the Proposed Final Order, the applicant shall submit, to the application caseworker at OWRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations), as outlined in Section 7, to compensate for any potential impacts to fish, wildlife, or habitats from the proposed use.

Riparian Plan
If development of the point of diversion includes disturbance of the riparian area, the applicant shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's (ODFW) Fish and Wildlife Habitat Mitigation Policy described in OAR 635-415. **Prior to issuance of the Proposed Final Order**, the applicant shall submit, to the application caseworker at OWRD, a Riparian Plan approved in writing by ODFW, unless ODFW provides documentation that a Riparian Plan is not necessary. The applicant is hereby directed to contact ODFW.

List B Conditions
(included in permit and "maintenance" language carried through to certificate)

Bypass Flows (for reservoirs that directly divert from surface water)
Per 690-410-0070 (2)(c), the following flows shall be bypassed or passed through the reservoir during the filling season:

1) When the biologically necessary flows identified below are not available immediately upstream of the impacted area, the permittee shall pass all live flow downstream at a rate equal to the inflow, minus the amount of mitigation water provided upstream by the permittee, if applicable, and
2) When the biologically necessary flows identified below are available immediately upstream of the impacted area, the permittee shall pass flow downstream at a rate **equal to** or greater than the biologically necessary flows.

Once the reservoir has reached the permitted volume, all live flow shall be passed downstream at a rate equal to the inflow.

The permittee shall quantify and document inflow and outflow and maintain the bypass flows for the life of the permit and subsequent certificate per the approved Bypass Plan. The bypass flow data shall be available upon request by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, or Oregon Department of Agriculture.

{copy table from Section 3.1, Question C}

Egress
Native migratory fish may become trapped or entrained in the reservoir(s) during or after flooding events. Therefore, the permittee shall work with ODFW and obtain, in writing, an ODFW-approved fish passage plan to address egress from the reservoir(s) or other approved methods to keep fish out of the reservoir(s) during flood events (e.g., berm construction around the reservoirs). Approval of the proposed fish passage plan shall be obtained prior to diversion of water. The permittee shall submit proof to ODFW that fish passage (egress) has been implemented per the approved plan prior to diversion of water.

Fish Stocking
Per ORS 498.222 and OAR 635-007-0600, all persons transporting live fish in Oregon must have a Fish Transport Permit (FTP) issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without an FTP approved by ODFW. As part of the FTP permitting process, the permittee may be required to screen the inlet and outlet of the reservoir to ensure that fish cannot escape into public waters and/or to keep wild fish from entering the reservoir.

Future Protection
The permittee may be required in the future to install, maintain, and operate fish screening per ORS 498.306 to prevent harm to fish from the proposed diversion. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion

within one year after receiving written notification from ODFW that a fish screen is required. Once installed, the water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards.

In-Water Work
Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of {type here} unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.

Maintain Flow
The biologically necessary flows shown in the following table shall be maintained real time within and downstream of the point of impact or the use may be regulated until the flows are available.

{copy table from Section 3.1, Question B}

Maintain Passage
The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

Measurement Device
The permittee shall install, maintain, and operate a water use control and/or measuring device, as identified by OWRD. The device shall be installed, functional, and approved by the local Watermaster, **prior to diversion of water**.

Mitigation
The permittee shall comply with terms of the associated Mitigation Plan to compensate for detrimental impacts to fish, wildlife, and/or their habitat. The Mitigation Plan is fully incorporated into the requirements of this permit and may only be altered by written mutual agreement of all parties. The mitigation shall be legally protected and maintained for the life of the permit and subsequent certificate.

Passage
The permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585) without obtaining approval for the artificial obstruction from the Oregon Department of Fish and Wildlife (ODFW).

The permittee shall submit a proposal for fish passage to ODFW or apply for a fish passage waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption shall be obtained **prior to construction** of any in-channel obstruction or **prior to diversion of water** that may create an artificial obstruction due to low flow. The permittee shall submit proof to ODFW that fish passage has been implemented per the plan, waiver, or exemption **prior to diversion of water**.

The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) as per the approved plan, waiver, or exemption. The permittee is hereby directed to schedule a consultation with an ODFW Fish Passage Coordinator.

Riparian
The permittee shall restore or enhance the riparian area per the approved Riparian Plan **prior to diversion of water** and maintain the riparian area for the life of the permit and subsequent certificate per the approved Riparian Plan.

Screen
The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place, functional, and approved in writing by ODFW **prior to diversion of water**. The water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screening Coordinator.

Section 9: ODFW's Review of the Mitigation Proposal

Because the mitigation is site- and species-specific, ODFW recommends written approval of the Proposal by ODFW prior to issuance of a Proposed Final Order. ODFW finds the following:

☐ ODFW **supports** the Mitigation Proposal with the following condition(s):

- ☐ **"Mitigation"**
- ☐ Site-specific condition(s): type here

Additional information:

- ☐ A Fish Passage Waiver or Exemption has been granted for the proposed POD that fulfills the fish passage requirements for this use.
- ☐ Comments: type here

☐ ODFW **cannot support** the Mitigation Proposal because it is not consistent with the criteria in OAR 635-415.

- ☐ The proposed mitigation is inconsistent with the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program[6], impairs essential habitat, or is otherwise detrimental to the protection and/or recovery of sensitive, threatened, and/or endangered fish species, non-listed fish species, or wildlife.
- ☐ Habitat goals and standards not met: list here and explain why not met

ODFW Representative's Signature: _____Date: type here

Name: type here **Phone:** type here **Email:** type here

[6] Water Resources Department's document number 94-2