Oregon Department of Fish and Wildlife's
WATER RIGHT APPLICATION REVIEW SHEET
Upper Columbia Basin (Above Bonneville Dam)

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 to be 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).

Section 1: Proposed Use

Proposed period of use (from application): November 1 – April 15

Basin: Columbia
Stream: Columbia R
Tributary to: Pacific Ocean
TRSQQ: 5N 30E 7 and 8 (optional)

Section 2: Sensitive, Threatened, and/or Endangered (STE) Fish Species Present

A) ☐ No STE fish species are present at the location of the proposed use nor will be impacted by the proposed use. **(Skip to Section 6)**

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

	Listing Status			Life Stage Present		
STE Species	**Sensitive**	**Threatened**	**Endangered**	**Egg**	**Juvenile**	**Adult**
Snake River Sockeye	☐	☐	☒	☐	☒	☒
Upper Col. Sp. Chinook	☐	☐	☒	☐	☒	☒
Lower Col. Chinook	☐	☒	☐	☒	☒	☒
Snake R. Chinook Sp/S	☐	☒	☐	☐	☒	☒
Snake R. Fall Chinook	☐	☒	☐	☐	☒	☒
Columbia River Chum	☐	☒	☐	☒	☒	☒
Lower Col. R. Steelhead	☐	☒	☐	☐	☒	☒
Mid. Columbia Steelhead	☐	☒	☐	☐	☒	☒
Upper Col. Steelhead	☐	☒	☐	☐	☒	☒
Snake R. Steelhead	☐	☒	☐	☐	☒	☒
Pacific Lamprey	☒	☐	☐	☐	☒	☒
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Section 3: Potential Impacts to STE Fish Species

*Note: Impacts identified below may be determined by professional judgment. Recommended mitigation for identified impacts is outlined in Section 7. See Section 8 for complete **"condition"** language.*

3.1 Instream Flow

Note: Supporting information can be found in the associated Excel file for this application.

A) ☐ ODFW has not identified biologically necessary flows within the impacted reach. However, based on best professional judgment, impacts to STE fish habitat from the proposed reduction in flow are expected to be inconsequential, and no compensation for a reduction in flow is recommended. **(Skip to Section 3.2)**

B) ☐ There is an instream water right(s) (ISWR) that supports biological base flows for STE fish species at the Point of Diversion or downstream.
Certificate(s): type here

C) ☒ ODFW has identified biologically necessary flows not captured in an instream water right (e.g., flows in a Basin Investigation Report, Persistence Flow Determination, Seasonally Varying Flow prescription, or other flow analysis) that would benefit STE fish species at the Point of Diversion or downstream.
Source: 2019 Columbia River System Biological Opinion (and previous BiOps)
Comment: Ongoing surveys indicate the importance of maintaining water levels in the Ives/Pierce Island complex below Bonneville Dam to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. As tailwater elevations below Bonneville Dam are directly correlated with the amount of chum spawning habitat available, the Federal Columbia River Power System Biological Opinion set targets for chum salmon spawning, incubation, and emergence (typically from November, or when chum arrive, through early April). In accordance, ODFW recommends the tailwater elevation set annually by the Technical Management Team (TMT) as the minimum necessary to support chum migration, spawning, incubation, and emergence.

D) Are the biologically necessary flows identified above (Questions B and C) **available** during the period of impact (see Tables 1 and 2 in the associated Excel file for supporting information)?

☐ YES; **"Maintain Flow"**
A further reduction in flow from the proposed use will **not** impair the identified biologically necessary flows for STE fish as long as the identified biologically necessary flows remain satisfied.
Note: Mitigation for a reduction in biologically necessary flows [Section 7, Part 1 and 2] is unnecessary, but mitigation may be recommended [Section 7, Part 3] for other impacts identified in Section 3.3.

☒ NO; **"chum"**
The proposed use **will impair** the identified biologically necessary flows for STE fish wholly or partially during the period of impact.
Comment: The volume of unregulated flow into the Columbia River upstream of Bonneville Dam aides in meeting recommended water elevations for chum salmon migration, spawning, incubation, and emergence. Based on an annual assessment of the 7-day rolling average of the mean daily gage height (i.e., tailwater elevation) below Bonneville Dam, the minimum tailwater elevation is typically NOT MET the majority of the time in October and November.

3.2 Fish Passage and Screening

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

☐ YES; **"Passage"**

☒ NO

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

☒ YES; **"Screen"**

☐ NO

☐ **"Future Protection"**

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

3.3 Other Ecological Functions Important to STE Fish

Are there other impacts to ecological functions important to STE fish during the period of impact (see Table 3 in the associated Excel file for supporting information)?

☐ YES; Mitigation will be recommended in Section 7, Part 3.

- ☐ The proposed dam or reservoir will detrimentally inundate a wetland.
- ☐ Development of the point of diversion may reduce/degrade the riparian area.
- ☐ The proposed use will limit access to or directly impair cold-water refuges.
- ☐ Other impacts to STE fish: type here

☒ NO

Section 4: ODFW Findings Regarding Threatened and Endangered Fish Species (under OWRD's Division 33 Upper Columbia Rules)

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

☐ Not applicable; threatened and endangered fish are not present at the location of the proposed use nor will be impacted by the proposed use. **Skip to Section 5.**

☐ YES: ODFW did not identify impairment of biologically necessary flows (Page 2, Section 3.1, Question D), impacts to ecological functions important to protection or recovery of threatened and endangered fish (Page 3, Section 3.3), or impacts to threatened and endangered fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on best professional judgment.

[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.

☒ 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 (Page 2, Section 3.1, Question D) or to impacts to ecological functions important to threatened and endangered fish (Page 3, Section 3.3).

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

☐ NO; ODFW found the proposed use will impact irreplaceable, essential habitat for a threatened 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.
Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.

☒ YES:

☒ Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of threatened or endangered fish and/or the proposed use will otherwise impact habitat or ecological functions important to threatened or endangered fish. Without appropriate mitigation, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to threatened or endangered fish. 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 (from Section 3 and 4), to compensate for any potential impact from the proposed use.

☐ In addition to conditions identified in Section 3 and mitigation outlined in Section 7, ODFW recommends the following:

Flow

1) Inconsequential or De Minimis Uses

☐ **"Restrictor"**

ODFW has determined that compensation for a reduction in flow is not necessary. However, a restrictor valve should be placed on the diversion system to ensure the permitted amount is not exceeded.

[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).

2) Surface Water or Groundwater Uses

☒ **"Biologically Necessary Flows"**

To protect beneficial uses, ODFW recommends the biologically necessary flows identified in Section 3.1 B or C [see OAR 690-410-0070(2)(h)] be met or the use mitigated for (see Recommended Mitigation Obligation in Section 7) prior to diversion of water.

Note: Mitigation may be also be recommended [Section 7, Part 3] for impacts identified in Section 3.3.

3) Reservoir Uses

Note: Specific mitigation for a reduction in biologically necessary flows [Section 7, Part 1 and 2] is not being recommended beyond the following condition, but mitigation may be recommended [Section 7, Part 3] for other impacts identified in Section 3.3.

☐ **"Bypass Flows"** (pass-through flows for reservoirs that directly divert from surface water)

☐ **plus a net benefit (**for reservoirs that directly divert from Habitat Category 2)

Other Ecological Functions

☐ **"Riparian"**

☐ Site-specific condition(s), including those related to **Other Ecological Functions Important to STE Fish** (Section 3.3): type here

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

Overarching Question 1:
Will the proposed use result in no net loss of essential habitat of a sensitive fish species?

☐ Not applicable; sensitive fish are not present at the location of the proposed use nor will be impacted by the proposed use. **Skip to Section 6.**

☐ YES: ODFW did **not** identify impairment of biologically necessary flows (Page 2, Section 3.1, Question D), impacts to ecological functions essential to sensitive fish (Page 3, Section 3.3), or the impacts to essential fish habitat from the proposed reduction in flow are expected to be **inconsequential or de Minimis** based on best professional judgment.

☒ NO; ODFW has found impairment of biologically necessary flows (Page 2, Section 3.1, Question D) or impacts to ecological functions (Page 3, Section 3.3) essential to sensitive fish species during the period of impact.

Note: For impacts to habitat identified as non-essential (i.e., Habitat Categories 3B-6), impacts may be identified in Section 6.

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

☐ 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.
Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.

☒ YES:

☒ Same conditions and mitigation as outlined in Sections 3, 4, and 7.

☐ In addition to conditions identified in Section 3 (and 4) and mitigation outlined in Section 7, ODFW recommends the following:

Flow

☐ **"Maintain Flow"**
☐ **"Restrictor"**
☐ **"Biologically Necessary Flows"**
☐ **"Bypass Flows"**
☐ **plus a net benefit**
☐ Site-specific condition(s): type here

Passage and Screening

☐ **"Passage"**
☐ **"Screen"**
☐ **"Future Protection"**

Other Ecological Functions [Section 3.3]

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

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

Overarching Question 1:
Will the proposed use impair or be detrimental to the public interest, welfare, safety and health in regards to protection of commercial and game fishing, fish, wildlife, or recreation, or any other beneficial use to which the water may be applied for which it may have a special value to the public?
Note: Comment on STE wildlife species or other fish or wildlife species not already discussed.

☒ YES:

☒ Fish or wildlife not yet addressed in this review in Sections 1 – 5 are present during the period of impact.
Wildlife species present: type here
Additional fish species present: White Sturgeon, Coho Salmon, Unlisted Spring, Summer and Fall Chinook and Unlisted Steelhead
Additional comments: type here

☒ Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of fish or wildlife, and/or the proposed use will otherwise impact habitat, commercial and game fishing, or recreation. Without appropriate mitigation, 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.

☐ There are other impacts to ecological functions important to fish or wildlife during the period of impact

that have not been addressed (see Table 3 in the associated Excel file for supporting information). Mitigation will be recommended in Section 7, Part 3.

- ☐ The proposed dam or reservoir will detrimentally inundate a wetland.
- ☐ Development of the point of diversion may reduce/degrade the riparian area.
- ☐ The proposed use will limit access to or directly impair cold-water refugia.
- ☐ Other impacts to STE fish: type here

☐ NO; Additional commercial and game fishing, fish, wildlife, or recreation will not be affected by the proposed use.

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

☐ NO; 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.
Note: This finding may prohibit the application from moving forward as proposed, so consult with the Water Quality/Quantity Program Manager prior to making this recommendation. Check Box A on page 8 and sign the document on page 11 prior to submitting the review to WRD.

☒ YES; ODFW recommends the following:

☒ The next steps and recommended conditions provided in this review thus far (i.e., Findings under WRD's Division 33) compensate for habitat impacts for the fish and/or wildlife species present. Additional conditions are **NOT** necessary.

☐ In addition to conditions identified in Section 3(and 4 and mitigation outlined in Section 7, ODFW recommends the following to protect commercial and game fishing, fish, wildlife, or recreation:

Flow

- ☐ **"Maintain Flow"**
- ☐ **"Restrictor"**
- ☐ **"Biologically Necessary Flows"**
- ☐ **"Bypass Flows"**
  - ☐ **plus a net benefit**
- ☐ Site-specific condition(s): type here

Passage and Screening

- ☐ **"Passage"**
- ☐ **"Screen"**
- ☐ **"Future Protection"**

Other Ecological Functions [Section 3.3]

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

Section 7: ODFW Mitigation Recommendations

ODFW's 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), 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.

ODFW recommends the applicant contact the caseworker to schedule a consultation with the local ODFW Fish Biologist 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[3] 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. To meet the goals outlined in ODFW's Mitigation Policy, ODFW recommends the mitigation provided be available within the mitigation reach and legally protected and maintained for the life of the permit and subsequent certificate.

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

Part 1: Flow Mitigation

Reservoir Uses

☐ ODFW has recommended a bypass flow condition for the proposed reservoir, but not a specific mitigation obligation. However, the applicant may propose mitigation, as outlined below, based on a specified fill rate which will become part of the permit and subsequent certificate.

Surface Water or Groundwater Uses

☒ ODFW recommends the applicant provide water-for-water mitigation, as outlined below.

A) Water Quantity: 23 cfs (cfs or AF; equals amount requested or equivalent % PSI)
☒ **plus a net benefit** (for Habitat Category 2)

B) Months (when biologically-necessary flows are not met during the period of impact): November

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) (see **"chum"** condition regarding specific mitigation options)
☐ benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments: (see **"chum"** condition regarding specific mitigation options)

Part 2: Habitat Restoration

Does the Mitigation Goal also allow habitat restoration as a mitigation option?

☐ YES; In lieu of providing "water-for water", ODFW's Habitat Mitigation Policy allows the applicant the option of providing mitigation, as outlined below, through a habitat restoration project that recreates similar habitat structure and function to that existing prior to the development action.

☒ NO; Skip to Part 3, if applicable.

Part 3: 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.

ODFW Representative's Signature: Danette L Faucera **Date:** 5-15-20

Name: Danette Faucera **Phone:** 503-947-6092 **Email:** danette.l.faucera@state.or.us

Section 8: ODFW's Recommended Condition Language

Biologically Necessary Flows
To protect beneficial uses [OAR 690-410-0070(2)(h)], the Oregon Department of Fish and Wildlife recommends the biologically necessary flows identified in Section 3.1 be met or the use mitigated for prior to diversion of water.

Bypass Flows (for reservoirs that directly divert from surface water)
The Oregon Department of Fish and Wildlife (ODFW) recommends 1) all live flow be passed downstream at a rate equal to the inflow anytime the biologically necessary flows identified in Section 3.1 are not available immediately upstream of the impacted area or 2) bypass (pass-through) flows be passed downstream at a minimum **equal to** the biologically necessary flows identified in Section 3.1 when live flow immediately upstream of the impacted area is greater than or equal to the biologically necessary flows identified in Section 3.1 [OAR 690-410-0070(2)(c)] (**plus a net benefit to the resource for Habitat Category 2, if identified)**. Once the facility has reached the permitted capacity, ODFW recommends all live flow be passed downstream at a rate equal to the inflow. If a water right with a senior priority date is purchased upstream and legally protected and maintained instream down to the reservoir to augment any portion of the biologically necessary flows identified in Section 3.1 not available, ODFW recommends the permittee store water at a rate equal to inflow minus the amount of water purchased. ODFW recommends the permittee submit a Bypass Proposal to the Oregon Water Resources Department for its approval prior to diversion of water, which describes the method by which the permittee will bypass the recommended flows and how the permittee will quantify and document inflow and outflow. ODFW also recommends the bypass flow data be available upon request by ODFW, WRD, DEQ, or ODA.

chum
During the months of October and November each year, the permittee shall monitor the 7-day rolling average of the mean daily gauge height below Bonneville Dam beginning on the date that the Technical Management Team (TMT; comprised of NOAA and the Corps of Engineers, among others) begin operations to maintain water levels in the Ives/Pierce Island complex to provide for ESA-listed chum salmon migration, spawning, incubation, and emergence. The permittee should contact the Army Corps of Engineers representative of the TMT to verify the start date of when the Columbia River is actively being managed to meet chum elevations and to obtain the tailwater stage target (call the Columbia Basin Water Management Division, Northwestern Division, U.S. Army Corps of Engineers at 503-808-3929).
To monitor mean daily stage at this location, the permittee will use the official project tailwater elevation gage (USGS gage station #14128870 Columbia River below Bonneville Dam, OR). Real-time data from this station is available online at the United States Geological Survey website: http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. The permittee shall maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is required to monitor during October 1 – November 30, which will be available to OWRD upon request.
In addition to monitoring mean daily gage height, the permittee shall do **one** of the following:

1) Prior to issuance of the proposed final order, provide proof to OWRD that permanent mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured for October and November. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. If mitigation is secured, the permittee is not required to track the 7-d rolling average or cease pumping during chum operations.
2) Cease pumping for any days during October and November when the Army Corps of Engineers is managing the Columbia River to meet chum targets **AND** the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the TMT for protection of chum salmon. The permittee shall discontinue pumping for the

duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

3) Provide proof to OWRD that real-time mitigation that fulfills the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations has been secured and is available for this use during the anticipated period that the 7-day rolling average will remain below the target established for October and November of that year. Any mitigation provided for the period October 1 - November 30 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146. The permittee is not required to track the 7-day rolling average or cease pumping during chum operations during periods mitigation has been secured. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

Future Protection

The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screening is not necessary at the time of permit issuance, but 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. 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. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Maintain Flow

To protect beneficial uses [see OAR 690-410-0070(2)(h)], the Oregon Department of Fish and Wildlife recommends the biologically necessary flows identified in Section 3.1 be maintained at the point of diversion or the use be regulated until the identified flows are available.

Mitigation

The Oregon Department of Fish and Wildlife (ODFW) recommends the permittee comply with terms of the associated Mitigation Proposal on file at the Water Resources Department to compensate for detrimental impacts to fish, wildlife, and/or their habitat. The Mitigation Proposal is fully incorporated into the requirements of this permit and may only be altered by written mutual agreement of all parties. ODFW recommends (1) the mitigation provided be legally protected and maintained for the life of the permit and subsequent certificate and (2) regulation of the use and/or cancellation of the permit or subsequent certificate(s) if the required mitigation is not maintained.

Passage

As required by ORS 509.585, the permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of this state that are inhabited, or were historically inhabited, by native migratory fish without obtaining approval from the Oregon Department of Fish and Wildlife (ODFW). The permittee shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption must 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, and 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 509.601) as per the approved plan, waiver, or exemption. If ODFW determines adequate passage of native migratory fish is not being provided, and is unsuccessful in working with the water

user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that adequate fish passage is being provided. The permittee is hereby directed to schedule a consultation with an ODFW Fish Passage Coordinator.

Restrictor

The permittee shall install, maintain, and operate a restrictor valve on the diversion system to limit use to the permitted amount. The valve shall be in place and functional, and approved by the local Watermaster, prior to diversion of water.

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 the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to diversion of water, the permittee shall submit a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to diverting water.

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. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly. 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 will result in a net loss of essential habitat for: list species here
- ☐ Habitat goals and standards not met: type here and explain why not met

ODFW Representative's Signature: _____ **Date:** type here

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