

**BULL RUN WATER SUPPLY HABITAT CONSERVATION PLAN
FISH PASSAGE WAIVER AGREEMENT (W-03-0001)**

This Agreement is entered into on the date of last signature by and between State of Oregon through its Oregon Fish and Wildlife Commission, hereinafter referred to as "the Commission", and the City of Portland's Water Bureau, hereinafter referred to as "the Applicant".

PREAMBLE

The Applicant desires a waiver from fish passage requirements (ORS 509.585) from the Commission for the City of Portland's Municipal Water Supply system located in the Bull Run watershed along Bull Run River. This water supply system includes the Bull Run Dam 1, Bull Run Dam 2, the Headworks diversion dam, and a rock weir, all of which are artificial obstructions to native migratory fish. The Bull Run River is a tributary of the Little Sandy River, a tributary of the Sandy River, a direct tributary of the Columbia River, in Multnomah County. The applicant's Fish Passage Waiver Application # W-03-0001 is attached (Attachment A).

PROVISIONS OF THE AGREEMENT

1. Pursuant to ORS 509.585 and OAR 635-412-0025(1), (9)(a), and (10)(b)(A), the Oregon Fish and Wildlife Commission (Commission) waives fish passage requirements for the artificial obstructions at this location because it determines that the mitigation the Applicant has agreed to results in a net benefit (Attachment B) to native migratory fish relative to providing fish passage at the four artificial obstructions located in the Bull Run River.
2. The locations of these artificial obstructions and mitigation sites shall only be those specified in Attachments A and B.
3. The Applicant shall provide fish passage mitigation by implementing all of the actions identified in Attachment A.
4. Specific mitigation design plans shall meet Oregon Department of Fish and Wildlife's (Department) fish passage criteria and guidelines and shall be approved by the Department prior to installation. The Applicant shall be responsible for obtaining all other necessary permission and permits as appropriate for the implementation of the mitigation.
5. The mitigation shall not be used to comply with any other legal requirements of the Applicant or others, except as allowed in OAR 635-412-0040(3).
6. Mitigation actions shall be completed by the dates specified in Attachment A.
7. All in-water work associated with the mitigation actions shall be completed during the appropriate ODFW in-water work periods.
8. The Applicant shall monitor, as required under OAR 635-412-0040(8), the mitigation sites and provide written status reports to the Department yearly for the first five (5) years and then as necessary, as determined by the Department. Reports shall include photo points established as part of the monitoring. Monitoring of the mitigation sites shall be conducted annually and after flood events and, unless problems are observed that may require additional analysis, will consist of visual observations, particularly with regards to fish passage function of the mitigation sites identified in Attachment A.
9. For the duration of this Agreement, the Applicant shall be responsible for all maintenance required such that the fish passage mitigation sites provide adequate passage for native migratory fish. If monitoring by the Applicant or Department indicates that fish passage is not being provided and mitigation sites are not functioning as designed, the Applicant, in consultation with the Department, shall determine the cause and, during an in-water work period approved by the Department, shall modify the mitigation to rectify problems as necessary.
10. Failure to maintain mitigation for the duration of this Agreement shall constitute a violation of this Agreement and applicable fish passage laws (OAR 635-412-0025(3)). Such failure shall invalidate this fish passage waiver for the artificial obstructions associated with the Bull Run Water Supply system and require the Applicant to provide fish passage at the artificial obstructions.
11. The Department shall be allowed to inspect the mitigation sites at reasonable times for the duration of this Agreement. Unless prompted by emergency or other exigent circumstances, inspection shall be limited to regular and usual business hours, including weekends.
12. The Applicant may employ other parties to perform work under this Agreement but remains responsible for the mitigation, monitoring and reporting.
13. This Agreement remains in effect until such time as the artificial obstruction triggers fish passage laws again (OAR 635-412-0025(3)).

Signature: _____ Date _____
City of Portland's Water Bureau Oregon Fish and Wildlife Commission Date

Name: Steve Kucas _____ Marla Rae _____

Title: Senior Environmental Program Manager _____ Commission Chair _____