

DRAFT

**ODFW – BAKER COUNTY
MASON DAM
FISH PASSAGE WAIVER AGREEMENT (W-09-0001)**

This Agreement is entered into on the date of last signature by and between the State of Oregon through its Oregon Fish and Wildlife Commission, hereinafter referred to as "the Commission", and Baker County, hereinafter referred to as "the Applicant".

PREAMBLE

The Applicant desires a waiver from fish passage requirements (ORS 509.585) from the Commission for the Applicant's proposed Mason Dam Hydroelectric Project located in the Powder River in Baker County Oregon. This Applicant proposes to install a new hydroelectric facility at Mason Dam which presently precludes native fish migration. This action is a fundamental change in permit status and as per ORS 509.585, invokes Oregon Fish Passage Policy. The Applicant's Fish Passage Waiver Application # W-9-0001 is attached (Attachment A) and hereby incorporated into this Agreement. The Oregon Department of Fish and Wildlife (Department's) benefit analysis is attached (Attachment B) and hereby incorporated into this agreement. This Agreement and the Department's benefit analysis are based on current baseline conditions and no operational changes at the Mason Dam facility.

PROVISIONS OF THE AGREEMENT

1. Pursuant to ORS 509.585 and OAR 635-412-0025(1), (9), and (10)(b), the Commission hereby waives fish passage requirements for Mason Dam, because it determines that the mitigation the Applicant has agreed to results in a net benefit (Attachment B, attached and hereby incorporated into this Agreement) to native migratory fish by providing fish passage improvements at the Silver Creek and McCully Fork Culverts.
2. This agreement to waive fish passage is only valid at Mason Dam and solely for the Applicant's proposed Hydroelectric Project.
3. The Applicant, or your designee, shall provide fish passage mitigation by implementing all of the actions identified in Attachments A and B. The Applicant has arranged for the financing for the required mitigation activities which will cover the cost of construction of the mitigation actions, and the required monitoring, reporting, maintenance, and long-term stewardship of the mitigation sites and activities at the Silver Creek and McCully Fork Culverts.
4. Attachment A includes specific mitigation design plans for the proposed mitigation at the Silver Creek and McCully Fork Culverts. This Waiver Agreement is contingent on these design plans meeting the Department's fish passage criteria and guidelines and shall be reviewed and approved by the Department prior to installation, pursuant to OAR 635-412-0040(6). Requirements for fish passage design criteria specific to road-stream crossings are identified in OAR 635-412-0035(a) or (b).
5. The Applicant, your designee, or the Landowner shall be responsible for obtaining all other necessary permissions and permits as appropriate for the implementation of the mitigation.
6. 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). Fish passage mitigation authorized by or implemented as a result of this Fish Passage Waiver Agreement does not apply towards future mitigation requirements or other natural resource or habitat related impacts and effects associated with this or any other project.
7. All in-water work associated with the proposed project and the mitigation actions shall be completed during the appropriate Department's in-water work period(s), or as appropriately negotiated by the Department, as required in OAR 635-412-0035(10).
8. Mitigation actions shall be completed and fully functional prior to the operation of the hydroelectric project at Mason Dam.
9. The Applicant, your designee, or the Landowner shall monitor and report, 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 after completion of mitigation actions, or as determined by the Department. Reports shall include photographs from established photo-points as part of the monitoring. Monitoring of the mitigation sites shall be conducted annually and during the appropriate times of the year, and unless problems are observed that may require additional analysis, will consist of visual observations, particularly with regards to fish passage function, fish utilization, retention of structural components, and channel stability. Reports shall be submitted to the (1) ODFW Hydropower Program Leader and (2) Fish Passage Program Leader, both in Salem, and (3) ODFW Northeast Region Hydropower Coordinator in La Grande by December 31st each year a report is required. Electronic or hard copy submissions are acceptable.

