

Agenda Item Summary

BACKGROUND

Baker County has applied to the Federal Energy Regulatory Commission (FERC) to construct a hydroelectric project at the existing Mason Dam on the Powder River. Mason Dam is owned by the Bureau of Reclamation and is operated for irrigation by the Baker Valley Irrigation District from April to September. The hydroelectric project would be a new facility with a hydraulic capacity of 300 cfs, a generating capacity of 3.4 MW, and an estimated annual power output of 7,510 MWH. Water that is released from the dam for irrigation and flood control purposes will be used to operate the hydroelectric project.

When new hydroelectric projects are proposed the Department's Hydropower Program coordinates agency participation in the consultation process with the project proponents to ensure that fish and wildlife concerns are addressed in the state water right and the license issued by the Federal Energy Regulatory Commission. Two key fishery mitigation issues for water diversion projects are fish screening (ORS 498.306) and fish passage (ORS 509.585). As required by state law, the Department is requesting action from the Oregon Fish and Wildlife Commission (Commission) on fish screening and fish passage requirements associated with the development of the Mason Dam Hydroelectric Project.

Fish Screening: The Department has consulted with Baker County on screening alternatives for the hydroelectric project's intake. These consultations have included the potential to provide other measures for the protection of game fish if the Commission determines they are adequate (ORS 498.316). The Department issued a letter to Baker County (Attachment 2) to further clarify the fish screening statutes that allow the Department to require installation, operation, and maintenance of fish screens at water diversion; or to allow the project developer to seek an exemption from installing fish screening as approved by the Commission.

The Commission is authorized by ORS 498.316 to not require the installation of screening or by-pass devices under ORS 498.306 if by contract or other form of agreement with the person diverting the water, made such other provision as the Commission determines is adequate for the protection of the game fish in the body of water from which water is being diverted. The Department received a Fish Screening Exemption Proposal from Baker County in October 2013 (Attachment 3) which requested an exemption from fish screening by instead implementing alternative mitigation. With this agenda item, the Department is including the meeting summary from the Fish Screening Task Force's October 23, 2013 meeting which documents the Task Force's support of the Mason Dam screen exemption proposal (Attachment 5), and a draft agreement for mitigation in lieu of screening (Attachment 6).

Fish Passage: Licensing by FERC and issuance of a hydroelectric water

right by the Oregon Water Resources Department, are “triggers” that initiates consideration of fish passage under ORS 509.585(4). The Commission is authorized by ORS 509.585 to enter into an agreement with the owner or operator of an artificial obstruction that waives the statutory requirements for fish passage. To enter into such an agreement with the owner or operator, the Commission must determine, after opportunity for public review and comment, that mitigation proposed by the owner or operator will provide a net benefit to native migratory fish.

Mason Dam is not equipped with an upstream fish passage facility. Baker County submitted its fish passage waiver application, based on negotiations with staff, to the Department on November 6, 2013 (Attachment 7). With this agenda item, the Department is including its proposed determination of the alternatives to fish passage (Attachment 9) to the Commission for approval (ORS 509.585(6)) and a draft fish passage waiver agreement (Attachment 10).

PUBLIC INVOLVEMENT

For the fish screening exemption, the Department presented the proposal as an agenda item at the October 23, 2013 public meeting of the Fish Screening Task Force. The Department issued a news release announcing this meeting on October 10, 2013 (Attachment 4). The task force recommendation is included in Attachment 5.

For the fish passage waiver, the Department presented the proposal as an agenda item at the November 15, 2013 public meeting of the Fish Passage Task Force. The Department issued a news release announcing the meeting on November 7, 2013 (Attachment 8). The task force did not make a motion for its recommendation at the meeting. In addition, the Department issued a news release on November 18, 2013 which opened the 21-day public comment period, described the proposed action, included a link to the waiver documents on the Department’s Web site, and invited the public to the Commission’s January 10, 2014 meeting to provide oral and written comments. The Department also provided a separate notice by email to a broad list of individuals and organizations that have expressed interest in fish passage issues (Attachment 12). This notice was sent to all the members of the Fish Passage Task Force, the local Soil and Water Conservation Districts, and the local Watershed Councils as required by OAR 635-412-0025(12), as well as local tribes and state and federal agencies.

ISSUE 1

FISH SCREENING EXEMPTION

ANALYSIS

Baker County is seeking an exemption for fish screening requirements at the Mason Dam Hydroelectric Project (Attachment 3). Fish screening is required under ORS 498.306; however, ORS 498.316 provides an opportunity for the Commission to grant exemptions to the screening requirements. Game fish found in the reservoir include redband trout, bull trout, hatchery rainbow trout, tiger trout, and yellow perch. Tiger trout and tiger muskie have been introduced as a management tool to

control abundant populations of yellow perch and potentially provide for a unique angling opportunity. Bull trout are rare in the reservoir and the Department believes they are unlikely to become entrained due to their rarity and habitat preferences. Baker County is requesting to enter into an agreement with the Commission to mitigate for the game fish that may be entrained through the hydroelectric project during its operation by 1) establishing a fund to supplement the Department's Phillips Reservoir stocking program for the term of the FERC license, 2) constructing a fish screen on the Shaw-Stewart Diversion, and 3) establishing a Powder River Screening Fund. Baker County and Department staff estimated that approximately 910 hatchery rainbow trout and 957 redband trout could be entrained in the intake of the hydroelectric project annually. Baker County is proposing to address the loss of hatchery fish by providing funds to the Department for 1,000 hatchery fish. Baker County is proposing to address the loss of redband trout by implementing the second and third measures which are estimated to protect 957 redband trout annually.

OPTIONS

1. Approve the fish screening exemption request and authorize the Commission to enter into an agreement with Baker County.
2. Deny the fish screening exemption request.

**STAFF
RECOMMENDATION**

Staff recommends that the Commission approve an exemption from fish screening for the Mason Hydroelectric Project, and sign the agreement for the proposed measures as described in the agreement

DRAFT MOTION	I move to approve Baker County an exemption from providing fish screening at the Mason Dam Hydroelectric Project in exchange for implementing the measures described in the agreement and authorize the Chair of the Commission to enter into an agreement with Baker County to this effect.
EFFECTIVE DATE	Date of last signature by the Chair of the Oregon Fish and Wildlife Commission and the Chair of the Baker County Commission.

ISSUE 2

FISH PASSAGE WAIVER

ANALYSIS

A description of the fish passage waiver site (Mason Dam) and the mitigation sites (Silver Creek and McCully Fork) are contained in the attached waiver application (Attachment 7). The Department's benefit analysis is attached to this packet, as is the draft agreement between the Commission and Baker County which specifies the provisions of the waiver (Attachments 9 and 10 respectively).

Baker County proposes to improve passage conditions at:

- 1) Silver Creek by replacing an undersized culvert at US Forest Service

Rd. 5540, and

- 2) McCully Fork culvert by implementing a roughened channel design immediately downstream of the culvert and placing weirs and native streambed materials within the existing culvert consistent with Department passage criteria

The two fish passage mitigation measures for Mason Dam will address native migratory fish population limitations by;

- Improving access to 5.3 miles of tributary bull trout habitat;
- Improving access to 11.0 miles of redband trout, sucker and pikeminnow habitat;
- Increasing bull trout genetic exchange and interaction within Critical Habitat;
- Increasing opportunity for migratory life history expression of redband trout;
- Improving spawning opportunities for native migratory fish in both McCully Fork and Silver Creek above the culverts.

Department staff have analyzed the benefits of Baker County's mitigation proposal (Attachment 7) compared to the benefits of providing fish passage at Mason Dam and have concluded that the proposed mitigation measures will provide a net benefit to native migratory fish (Attachment 9). The proposed mitigation will increase accessibility to habitat for redband and bull trout, which will improve population fitness and life history diversity and maintain healthy trout populations. Native suckers and northern pikeminnow will also benefit from increased accessibility to high quality habitat, supporting healthy and genetically diverse populations.

OPTIONS

1. Approve the fish passage waiver request and authorize the Commission to enter into an agreement with Baker County.
2. Deny the fish passage waiver request.

STAFF RECOMMENDATION

Staff recommends that the Commission approve a waiver from fish passage at Mason Dam, and sign the waiver agreement for the proposed mitigation measures as described in Baker County's waiver application.

DRAFT MOTION	I move to approve Baker County a waiver from providing fish passage at Mason Dam in exchange for implementing the mitigation measures described by Baker County in its application and authorize the Chair of the Commission to enter into an agreement with Baker County to this effect.
EFFECTIVE DATE	Date of last signature by the Chair of the Oregon Fish and Wildlife Commission and the Chair of the Baker County Commission.