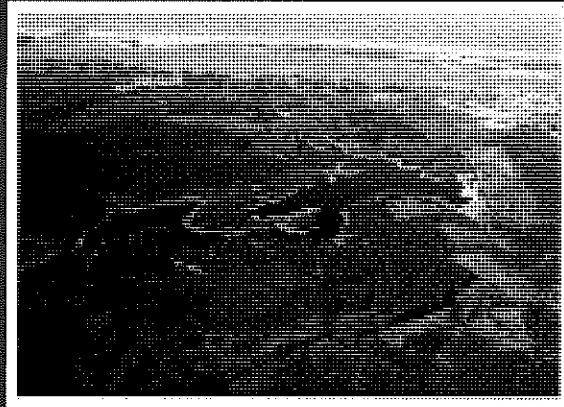


FISH PASSAGE WAIVER REQUESTS UPPER AND LOWER PONY CREEK DAMS



*Oregon Fish & Wildlife Commission
December 5, 2014
Exhibit C*



PRESENTATION SUMMARY

- Policy Framework for Fish Passage Waiver Decisions
- Pony Creek Fish Passage Waiver Overview – 2 Actions for Consideration
 1. Existing MOU amendment (Upper Pony Dam)
 2. New waiver (Lower Pony Dam)
- Mitigation and Net Benefit Analysis Overview
- Public Comment Solicitation & Task Force Recommendations
- ODFW Staff Benefit Analysis and Recommendation for Each Action

OREGON'S FISH PASSAGE POLICY

(revised in 2011)

The State's policy is to provide upstream and downstream passage for all native migratory fish in waters where these fish are currently or have historically been present.

Fish passage must be addressed prior to specific "trigger events":

- construction
- fundamental change in permit status
- abandonment

PASSAGE STATUTES AND RULES

Policy Options - When Trigger Events Occur:

1. Provide passage
2. Request a waiver - requires mitigation
3. Request an exemption - no mitigation

ALTERNATIVES TO PROVIDING FISH PASSAGE

EXEMPTIONS

- No benefits to fish if passage were provided
- No mitigation required
- Reviewed every 7 years
- May be revoked if conditions change

WAIVERS

- Benefits to fish if passage were provided
- Mitigation is required
- Net benefit analysis is required
- Valid until next trigger event

PASSAGE WAIVERS

- Requires "In-Proximity" mitigation
 - within same water basin
- Evaluation or "benefit analysis" based on current conditions
- Commission approves when mitigation, in lieu of providing passage, results in benefits greater than that if passage were provided
- Valid until next trigger event

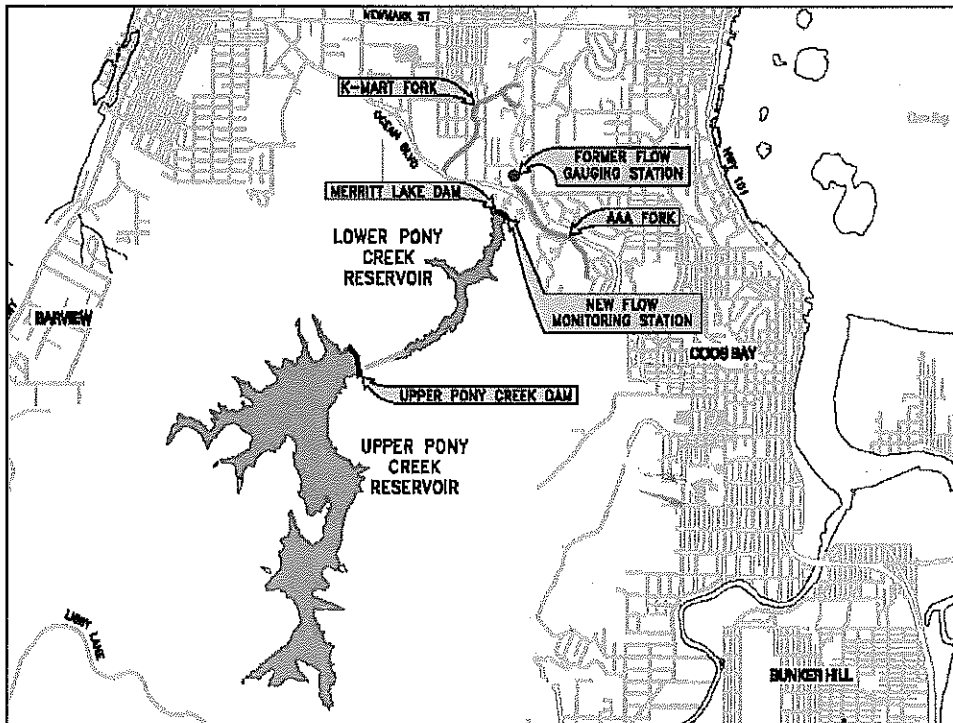
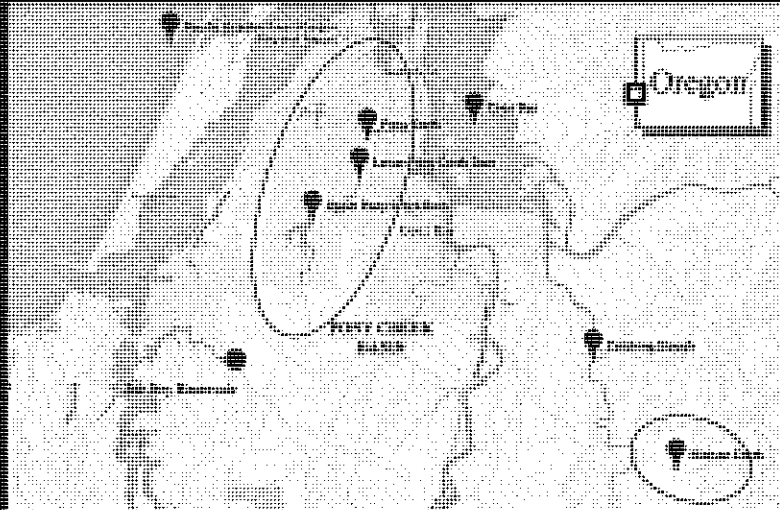
FISH PASSAGE MITIGATION

- Options:
 - provide passage at another barrier
 - restoration of native migratory fish habitat
 - actions increase naturally producing wild populations, or
 - other actions approved by Commission
- Must achieve a net benefit greater than if passage were provided at barrier
- Benefit analysis – evaluates mitigation alternatives and determines benefits

COMMISSION AUTHORITY

- Statute provide Commission authority to approve waivers if:
 - fish passage alternative provides a net benefit to native migratory fish
- Net benefit -
 - increased habitat quality or quantity that biologically leads to an increased number of fish
- Approval authority:
 - Commission approves > 1 mile of habitat
 - Department approves ≤ 1 mile of habitat

COOS BAY AREA MAP



SUMMARY OF PROPOSALS

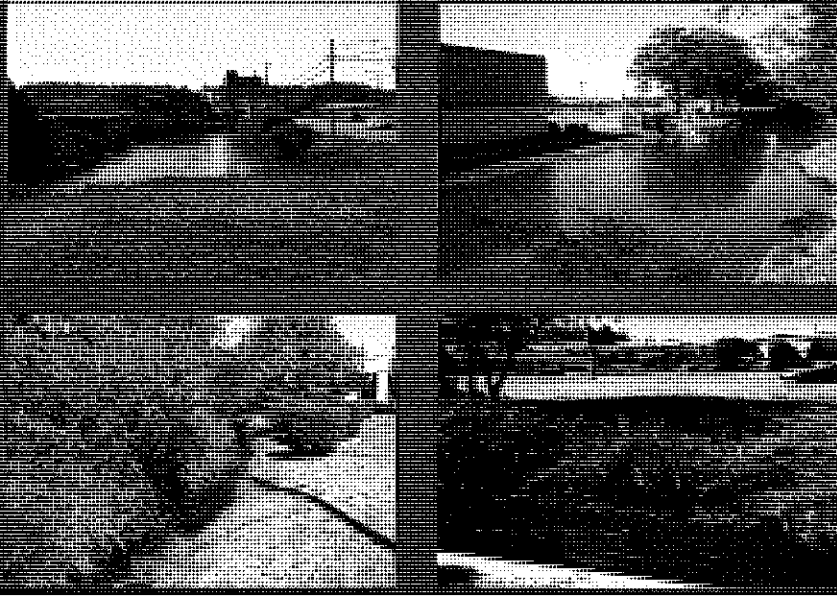
| | |
|---|--|
| <p>Upper Pony Creek Dam:</p> <ul style="list-style-type: none"> • 1999 Fish Passage Waiver with Mitigation • Continuous and Supplemental Flow Releases Required • Alternative Mitigation to Supplemental Release is Requested | <p>Lower Pony Creek Dam:</p> <ul style="list-style-type: none"> • No Existing Fish Passage Waiver • Anticipated "Trigger" Upgraded Spillway and Seismic Stabilization • Applying for New Fish Passage Waiver |
| <p>Proposed Mitigation at Matsen Creek Pasture Arms</p> | |
| <p>South Matsen Arm/Mainstem</p> | <p>North Matsen Arm</p> |

IN - PROXIMITY

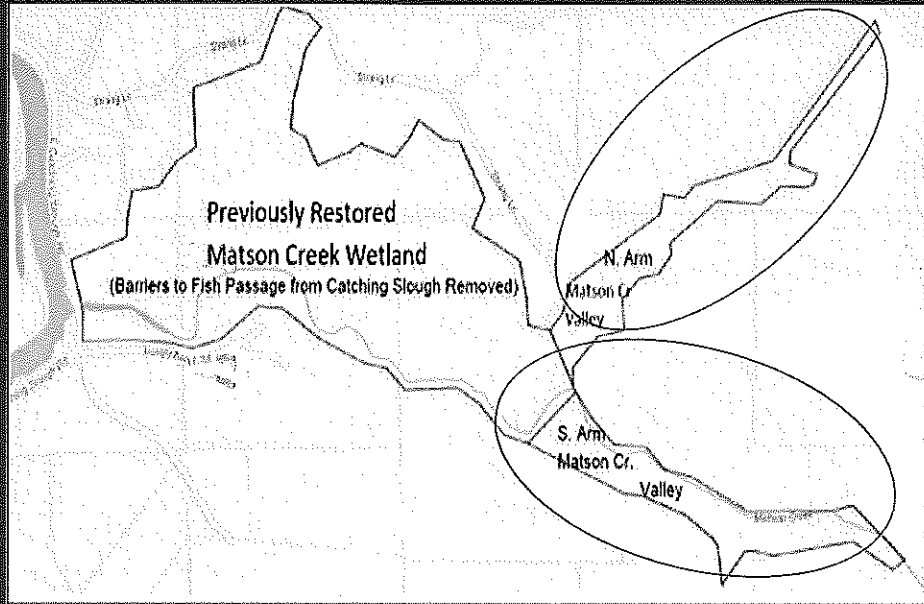
- Rules in 1990's required "In-Place" mitigation;
- Water Board and ODFW constrained by "In-Place" rule;
- Current Rules for Fish Passage Waivers (OAR 635-412-0040) require mitigation occur "In-Proximity" with respect to the location of the "proposed action" and the required mitigation;
- "In-Proximity" is defined as "within the same watershed or water basin defined by CWRD" OAR 635-412-0005 (29)
- This rule change allows for greater opportunity to benefit multiple NMF species



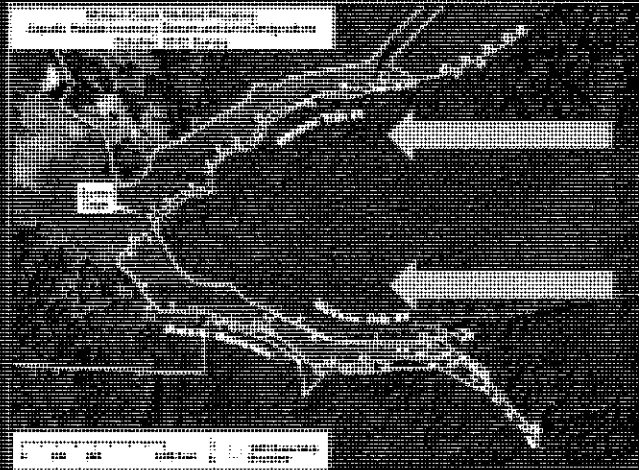
PONY CREEK – URBAN SETTING HABITAT CONDITIONS



MITIGATION



PROPOSED MITIGATION ACTIONS IN MATSON CREEK



BENEFIT ANALYSIS - METHODS AND CONSIDERATION

- Native Migratory Species impacted vs. benefit
- Potential of sites - Pony vs. Matson
- Complete habitat package at Matson
- Continuous flow at Pony Creek maintained

NATIVE MIGRATORY FISH SPECIES

- **Pony Creek (Waiver Site):**
 - Coastal Cutthroat Trout - *minimally present today*
- **Matson Creek (Mitigation Site):**
 - Coastal Cutthroat Trout - *resident and secure*
 - Coho Salmon - *spawning and rearing*
 - Chinook Salmon - *transient juvenile rearing*
 - Chum Salmon - *potential spawning and rearing*
 - Winter steelhead - *spawning and rearing*
 - Pacific Lamprey - *spawning and rearing*
 - Western Brook Lamprey - *spawning and rearing*

NET BENEFIT ANALYSIS ACTION #1 - UPPER PONY DAM

Pony Creek

- Habitat miles affected: 0.99 from Merrill Dam to tidewater
- Marginal habitat quality - Urban
- Minimal Cutthroat population only
- Anticipate limited future potential, continued urban development

Matson Creek - South Arm

- Habitat miles restored: 1.08
- Restore to fully functional salmonid habitat
- Numerous native species with potential to benefit
- Complimentary to recent tidal restoration
- Floodplain connection LWD

Staff concludes that the proposed mitigation package at the South Arm of Matson Creek provides a net benefit to native migratory species, with assurance into the future.

NET BENEFIT ANALYSIS ACTION #2 - LOWER PONY CREEK

Pony Creek

- Habitat miles affected: reservoir habitat above Merrill
- Minimal stream habitat - primarily reservoir
- Resident Cutthroat population only

Matson Creek - North Arm

- Habitat miles restored: 0.7 mi
- Restore to fully functional salmonid stream habitat
- Numerous native species with potential to benefit
- Floodplain connection/WD
- Complimentary to recent tidal restoration

Staff concludes that the proposed mitigation package at the North Arm of Matson Creek provides a net benefit to native migratory species, with assurance into the future.

PUBLIC INVOLVEMENT PROCESS

1. Press Release Soliciting Comments

- o 3-week Public Notice Process
- o Sept. 23 – Oct. 15, 2014

2. Fish Passage Task Force Review/Meeting

- o Oct. 17, 2014

3. Commission Meeting

- o December 5th, 2014

FISH PASSAGE TASK FORCE

- Meeting Oct. 17, 2014
- Public Meeting
- ODFW and Applicant – presented the two waiver proposals
- Unanimous support of both waivers
– Vote of 6-0

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COMMISSION ACTION # 1

- UPPER PONY CREEK DAM WAIVER
 1. Approve fish passage waiver amendment
 2. Modify and approve fish passage waiver amendment
 3. Deny the fish passage waiver amendment

Staff recommends Commission approve the request to amend the Upper Pony Creek fish passage waiver in exchange for the proposed mitigation in the South Arm of Matson Creek

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COMMISSION ACTION # 2

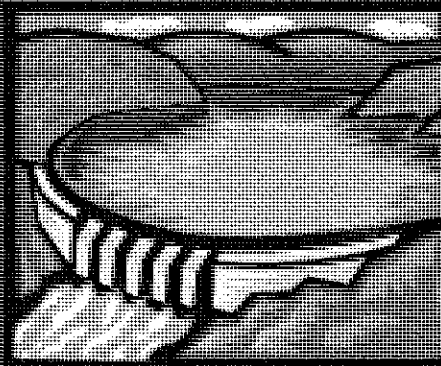
- LOWER PONY CREEK DAM WAIVER

1. Approve fish passage waiver
2. Modify and approve fish passage waiver
3. Deny the fish passage waiver amendment

Staff recommends Commission approves the Lower Pony Creek fish passage waiver in exchange for the proposed mitigation in North Arm of Matson Creek.

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END OF
PRESENTATION



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